FIRST STEP AUSTRALIA
10 IDEAS FOR REDUCING REOFFENDING
February 2020

Andrew Bushnell, Research Fellow
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Executive summary

Key points

• Australia has high and rising rates and levels of incarceration, and one of the main causes of these trends is stubbornly high rates of reoffending.
• There is a wide range of policy reforms aimed at reducing reoffending that have some evidentiary support, though more study is needed.
• Reducing reoffending will have significant benefits for taxpayers in the form of improved community safety and slowing the increase in spending on criminal justice.

Narrative

In December 2018, United States President Donald Trump signed into law the First Step Act, a reform of criminal justice at the federal level of the United States. The act emphasises the importance of reducing reoffending in tackling high and rising incarceration. For Australia, Trump’s reforms are mostly of interest as signalling a shift in the politics of criminal justice reform, and as an indicator of the kinds of reform that are likely to attract widespread support.

Like the United States, though not on the same scale, Australia’s criminal justice system has seen some unmistakeable and unsustainable trends. Over the past 10 years, incarceration has risen sharply in Australia. The imprisonment rate has risen from 167 to 217 per 100,000 adults. There are now more than 43,000 people in our country’s prisons. Running our prisons costs more than $4 billion each year, at a per prisoner annual cost of $110,000. One of the main drivers of this trend is the stubbornly high rate of reoffending: 58 percent of prisoners have been in prison before; 45 percent of prisoners will return to prison within two years of their release.

The single most effective criminal justice reform would be to reduce reoffending. However, because the factors that contribute to the decision to commit crime are so complex, this is a hard problem that will require a range of different policy interventions. This paper considers 10 ideas for reducing reoffending that have some evidentiary basis, noting though that this evidence is rarely dispositive. Reducing reoffending is key to increasing the community safety dividend that taxpayers accrue from their investment in the criminal justice system. The aim of governments should be to maximise this return to the taxpayer, and the evidence suggests that this means having a corrections system that is truly corrective as well as punitive.
Findings

This paper considers 10 policy ideas aimed at reducing Australia’s high rates of reoffending. The paper considers the costs, complexity, and effectiveness of the reforms in light of the available evidence and the Australian context. This table summarises the assessment of each reform against these standards. Definitions can be found in the introduction.

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<th>Reform</th>
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<th>Complexity</th>
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<tr>
<td>1. Punishment reform for nonviolent offenders</td>
<td>Low</td>
<td>High</td>
<td>High</td>
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<td>2. Improved work opportunities for prisoners</td>
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Importantly, these scores are not intended to be scientific; they are instead a shorthand way of capturing the diversity of options available to governments and performing a simple triage assessment. This report emphasises the need for adopting a “whatever works” approach to reducing reoffending. However, which reforms are most viable at any given time depends on resources and bureaucratic and political factors.
Introduction

The First Step Act

When the question of how to use the criminal justice system to rehabilitate offenders by correcting their behaviour, in addition to punishing them for their crimes, was first considered in the 1970s, some criminologists concluded that “nothing works”.¹ But the massive increase in incarceration from that period through the 2000s, especially in the United States but also experienced here in Australia, revived the study of rehabilitative programs for offenders, and there is now renewed hope that the criminal justice system can be corrective as well as punitive.

This renewed hope contributed to the recent passage in the United States Congress of the First Step Act, signed into law by President Donald Trump in December 2018. The act is a significant reform of the American federal prison system. Among its various reforms, the act creates incentives for prisoners to participate in vocational education and extends subsidies for businesses taking on ex-offenders. In declaring April 2019 to be Second Chance Month, President Trump stressed the importance of redemption and the possibility of assisting ex-offenders to build better lives:

Inmates are often eager to leave behind the challenges presented by incarceration. Too often, however, they find the transition to life outside of prison to be daunting. If they are not able to find jobs and housing and rebuild relationships with family and friends, they may find it harder to escape the cycle of reoffending. Sadly, 5 out of 6 State prisoners are rearrested within 9 years of their release, and more than a third of former Federal prisoners will be rearrested within 5 years of their release. In addition to the harm caused to the victims of crime, these high recidivism rates place a significant financial burden on taxpayers, deprive our labor force of productive workers, and leave families without spouses, children, and parents.²

While there are some lessons for Australian policymakers from the reform itself, it is most noteworthy in our context for what it heralds: a changing political economy for criminal justice policy.³ President Trump’s reforms build upon a long campaign for criminal justice reform led by conservative state administrations, in recognition of the costs that high levels of incarceration and reoffending impose on taxpayers both fiscally and in reduced community safety.

Background: Australia’s criminal justice system

Just as in the United States, Australia’s criminal justice system evinces some unmistakeable and unsustainable trends.

Incarceration has risen sharply in Australia in recent years. There are more than 43,000 people in Australian prisons, up 30 percent in just five years.\(^4\) The imprisonment rate increased from 167 per 100,000 adults to 217 per 100,000 adults in the 10 years to 2017-18.\(^5\) One of the main drivers of this growth is the high rate of reoffending. Fifty-eight percent of Australian prisoners have been incarcerated before, and 45 percent of Australian prisoners return to prison within two years of their release.\(^6\)

The failure of the correctional system to actually correct offender behaviour comes at a high cost to taxpayers, who pay ever more for expensive prisons and also absorb the effects of repeat offending. Australian prisons cost on average $110,000 per prisoner per year just to operate, which is estimated to be the fifth highest in the OECD on that measure.\(^7\) This figure does not include capital works, like, for example, the $2.2 billion committed by the NSW Government to new prison places.\(^8\) It also does not include healthcare and other services for prisoners.

For these reasons, the single most cost-effective criminal justice reform would be to successfully reduce reoffending. However, the reduction of reoffending is a hard problem: there are so many factors that shape an individual’s decision to commit crime, and this means that there is a wide range in the nature, scope, and intensity of possible interventions.

This paper

Inspired by this political change, the purpose of this paper is to introduce 10 policy reforms aimed at reducing reoffending, each of which has some evidentiary support. The evidence is limited.\(^9\) Where positive, it is promising rather than overwhelming and where negative, it is cautionary rather than dispositive. In part though, the problem is that the data is limited, and more won’t be known without careful testing by governments committed to finding what works, actively seeking out the benefits for taxpayers that will accrue from safer streets.

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\(^6\) Australian Bureau of Statistics (2018), Prisoners in Australia 2018, Table 9; Productivity Commission (2019), as above, Table CA.4.

\(^7\) Andrew Bushnell (2017), Australia’s criminal justice costs: an international comparison, Melbourne: Institute of Public Affairs.


\(^9\) Andrew Leigh MP noted this in his recent paper about the growth of incarceration in Australia, in relation to in-prison rehabilitation programs. This paper considers a range of policies that go beyond in-prison programs. Andrew Leigh (2019), The second convict age: explaining the return of mass imprisonment in Australia, Canberra: self-published p. 13.
Given these limitations, the information presented here is not a series of recommendations. Instead, it is a summary of various options that have been tried in Australia and overseas. Each of the 10 ideas presented here have been scored for to their cost, complexity, and potential effectiveness. The scoring is intended to be illustrative rather than scientific, presenting a shorthand evaluation of the policies and the broad range of possible approaches available to governments. These evaluative standards are defined as follows.

**Cost:** How much the policy would cost to implement, minus any savings that might result from its achieving moderate success, in line with the evidence. Cost is considered against the high cost of prison.

**Complexity:** How difficult it would be to implement the policy, given bureaucratic and political realities. Complexity is increased by scale and novelty.

**Effectiveness:** How impactful the policy would be in terms of the overall high rates of reoffending seen in Australia, meaning how many people it would likely help given the Australian context and the evidence for the reform.

These standards interact. For example, complexity and effectiveness both contribute to cost, while cost contributes to complexity as political risk, and all three are connected by the scale of the reform in question. This brief summary does not attempt to capture all of these subtleties.

Overall, the summary evaluations demonstrate that governments have a wide variety of options in addressing the problem of high levels of reoffending—where some options may seem too complex or costly, there are others that a simpler and cheaper. As such, though the paper does not make recommendations, it is intended to show that all governments can and should be doing something about this problem.
1. Punishment reform for nonviolent offenders

Description

The primary goal of criminal justice reform is to rationalise the use of prisons, so that while violent and repeat offenders are taken out of the community, non-violent and low-risk offenders are given the opportunity to correct their behaviour by other means. Put another way, incarceration is not always the punishment that best fits the crime. For many nonviolent offenders, especially those without lengthy histories of reoffending, alternatives to prison like community service, fines, restitution orders can be used individually or in combination to provide the same punitive effect at lower cost to taxpayers and, crucially, often with a better chance of reducing reoffending.

In particular, community service combines retribution and rehabilitation. Offenders are obliged to make amends to society while also having the opportunity to develop the skills and positive habits that work instils. Nationally, one day in community corrections (averaged across all types) costs less than 10 percent of one day of incarceration.\(^{10}\) There is some evidence that community service is more likely to reduce reoffending than incarceration.\(^ {11}\) And a 2017 NSW study found that state’s Intensive Corrections Orders, which allow the use of a combination of these kinds of alternatives to incarceration, were proving more effective in reducing reoffending than incarceration.\(^ {12}\) However, although this study used a comparison of matched groups, it might be expected that as the cohort of offenders in the community expands, the results will not scale linearly.

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10 Productivity Commission (2019), as above, Table 8A.17.
There are legitimate concerns around the quantity and quality of work available to offenders in community service schemes. Regarding quantity, the Productivity Commission reported in 2017 that offenders sentenced to community service are ordered on average to serve just 78 hours, and work just 41 hours—the equivalent of little more than one week’s fulltime work. The availability of suitable work and the quality of that work can be addressed by involving a wider range of organisations in the provision of community service opportunities. Abolishing the requirement that community service work be unpaid would permit greater private sector involvement, and better align community service work with in-prison work opportunities.\textsuperscript{13}

### Evaluation

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<thead>
<tr>
<th>Cost</th>
<th>Complexity</th>
<th>Effectiveness</th>
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<tbody>
<tr>
<td>Low</td>
<td>High</td>
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</tr>
<tr>
<td>Saves on capital works and supervision costs</td>
<td>Increased quantity and quality of supervision of offenders in the community to match larger cohort</td>
<td>Large potential cohort: most serious offence of 56 percent of offenders was a nonviolent offence</td>
</tr>
<tr>
<td>Community service per offender cost would likely rise with greater numbers and with paid options, but would still be less than prison</td>
<td>Political risk arising from placing more offenders in the community</td>
<td>Positive results shown for community corrections (though this may not scale as cohort composition changes)</td>
</tr>
<tr>
<td>Legislative change may be required (sentencing laws, punishment options)</td>
<td></td>
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\textsuperscript{13} See the argument in Bushnell (2018), as above.
2. Improved work opportunities for prisoners

Description

One of the most consistent findings in criminology is that unemployment is correlated with a higher risk of reoffending. Studies have also found that stable employment post-release is correlated with reduced reoffending risk, in part because of the positive social ties that come from being in the workplace.

It follows that one of the main goals of corrections should be to prepare offenders for finding and performing well in stable employment. Across Australia, prisoners work in a range of industries with varying skill levels required. Nationally, 80.5 percent of prisoners are involved in employment, rising to 91.5 percent in Victoria and falling to 67 percent in Queensland. Some prisoners learn to build furniture or work with metal; but for others, prison work is more menial and less obviously connected to real world skills. For example, Qantas’ use of prison labour for packing the headsets it gives to passengers has recently been the subject of controversy on the grounds that this work is not rehabilitative and is inadequately compensated. However, the goal here should not be to peremptorily rule out certain kinds of work; rather, we should aim to expand the types of work available by encouraging the private sector and civil society to provide opportunities for prisoners.

New South Wales is the leading state in Australia for prison industries. Corrective Services Industries runs a prison industries program with annual revenue of more than $100 million. Participants in this program work with wood and in commercial bakeries, among other work. Other models for providing work opportunities exist, and can complement, not replace, government-run programs. In Kansas, for example, more than 500 prisoners work for private businesses that are permitted to operate within prison facilities.

15 For example: Kym Lindeman, Mark Howard, and Abilio de Almeida Neto (2017), Evaluation of vocational training in custody: Relationships between training, post-release employment and recidivism, Research publication No. 57, Sydney: Department of Justice.
18 Information about NSW Corrective Services Industries can be found at https://www.csi.nsw.gov.au/ [accessed 30 September 2019].
Prisoners earn commercial wages, of which they keep around 50 percent, after taxes and restitution to victims, and not including the portion they are obliged to save.  

Kansas reports a three-year recidivism rate of 35 percent, half of the US average. Another option is to expand work release: prisoners are taken from prison to a place of work. The Productivity Commission reports that just 0.7 percent of prisoners in Australia participate in work release programs. One notable work release program in Australia is the Northern Territory’s Sentenced to a Job scheme, in which prisoners are employed by commercial businesses in areas like catering and woodworking. A review of the program found that it was successful in terms of participation rates and reported benefits to participants, but noted that the low risk profile of participants and the inability to guarantee continued work after sentence completion means that the program “is likely to have a limited effect on reducing recidivism”. There is some overseas evidence that work release programs are associated with lower rates of recidivism. A 2016 study for the US Department of Justice found that work release participants reoffended at lower rates, and that participants in private sector employment were more likely to find employment after release than participants in government-run programs (though there was no difference in recidivism across public and private sector programs).

### Evaluation

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<tr>
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<tbody>
<tr>
<td>Low</td>
<td>Operating prison work at scale involves supervision, training, and finding suitable tasks for offenders</td>
<td>High There is still significant scope for increasing the quality and quantity of work in prisons, as well as increasing the number of prisoners who participate</td>
</tr>
<tr>
<td>Medium</td>
<td>The involvement of private companies is a political risk, as is the release of prisoners into the community for work</td>
<td></td>
</tr>
<tr>
<td>High</td>
<td>Operating prison work at scale involves supervision, training, and finding suitable tasks for offenders</td>
<td>High There is still significant scope for increasing the quality and quantity of work in prisons, as well as increasing the number of prisoners who participate</td>
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Prison industries can be self-sustaining, generating significant revenue. Work release is a higher cost option, requiring a high level of oversight.

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21 Productivity Commission (2019), as above, Table 8A.11.


3. Greater access to in-prison educational opportunities

Description

Along with work itself, education and training are crucial for the development of marketable skills that will support stable employment after incarceration. Nationally, 34 percent of prisoners are involved in education and training. The Productivity Commission breakdown reveals that vocational education and training makes up two-thirds of this figure, while eight percent of prisoners are involved in pre-certificate courses, encompassing remedial literacy and numeracy classes. Just 1.8 percent of Australian prisoners are involved in higher education (diploma level and above). This figure is just 0.2 percent in New South Wales.25

The focus on literacy and numeracy is important. Ex-offenders’ low level of literacy is regularly cited as a barrier to employment by researchers and by employers.26 But opportunities for prisoners with already more developed skills are also important: studies suggest that higher education can reduce reoffending by incentivising good behaviour, increasing prisoners’ pro-social skills, and increasing their time horizons and risk aversion.27 One US meta-study found that in-prison higher education is correlated with better employment outcomes for former prisoners.28 These results suggest that increasing education opportunities in prison may, over time, pay for itself.29

25 Productivity Commission (2019), as above, Table 8A.10.
26 See for example: Lesley Hardcastle et al (2018), A qualitative study of the experiences of ex-prisoners who are seeking employment, the experiences of practitioners who work with ex-prisoners who are seeking employment and models of practice used, Sydney: UNSW p. 4.
However, prisoners in Australia are often unable to participate in higher education because of restrictions on their internet use and access to educational materials. One innovative program is Making a Connection, which is run by the University of Southern Queensland. This program allows prisoners to enrol in tertiary education remotely by providing computers and on-site servers loaded with the course materials.\(^{30}\) This program mirrors efforts in the United States to expand higher education in prisons. For example, the Alliance for Higher Education in Prisons promotes partnerships between prisons and higher education institutions.\(^{31}\) In further recognition of the value of higher education, Donald Trump’s First Step Act expands an Obama-era initiative to provide government grants for college education to eligible prisoners. In 2018, before the expansion, it was reported that 65 institutions were already participating in the scheme.\(^{32}\)

### Evaluation

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<td>Medium</td>
<td>Medium</td>
<td>High</td>
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<tr>
<td>Increasing access to in-prison education involves start-up and operational costs, including appropriate staffing. These costs are partially offset over the longer term by anticipated benefits in terms of reduced offending (depending on scale and success of reform).</td>
<td>Developing and implementing suitable programs for a wider range of offenders presents a considerable challenge in both novelty and scale.</td>
<td>Education and training are vital for increasing the job prospects of ex-offenders and helping them to avoid reoffending. There is wide scope for increasing the quality and types of education available to prisoners.</td>
</tr>
</tbody>
</table>

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30 University of Southern Queensland (2019), “Making the connection”.


4. Employer tax credits and wage subsidies for ex-offenders

Description

Given the importance of employment for reducing reoffending risk, an important part of criminal justice reform is increasing ex-offenders’ access to employment and removing barriers to employment.

Simply put, it is better and less expensive to help individuals into employment than to subsidise passivity through welfare. The Commonwealth already recognises this fact through wage subsidies for job seekers who are 15-24 years of age, Indigenous, or more than 50 years old. Employers taking on eligible members of these groups can access up to $10,000 in subsidies for wages and training.\(^{33}\)

In the United States, a similar scheme operates as a tax credit for businesses hiring members of certain groups held to “have consistently faced significant barriers to employment” including offenders who are within one year of having been convicted of a felony or of having been released from prison. The Work Opportunity Tax Credit provides employers with a credit for between 25 to 40 percent of eligible employees’ first year wages.\(^{34}\)

A similar scheme in Australia would be one way that the Commonwealth could assist states in reducing crime and reoffending. The Commonwealth could extend its existing scheme of wage subsidies to ex-offenders. Subsidies can be useful for businesses with cash flow limitations. In general, however, tax credits are preferable to subsidies because they reduce the churn of money through the state. The development of an entirely new scheme would significantly add to the complexity of this reform.


\(^{34}\) Internal Revenue Service (2019), “Work opportunity tax credit”.
This reform also occasions one notable political risk: all else being equal, a reform like this allows ex-offenders to out-compete other applicants on the price of their labour. This kind of distortion of the employment market might be broadly acceptable to the public in relation to groups seen as not having done anything to deserve their diminished standing in that market, but this sympathy may not extend to convicted criminals. The viability of such a scheme depends on the demonstration of the community benefiting from the distortion in the form of increased community safety.

**Evaluation**

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<tr>
<td>Medium</td>
<td>Medium</td>
<td>Low</td>
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<tr>
<td>The per-person cost could be quite high if the value of the subsidy or credit is equal to those used for other cohorts</td>
<td>Implementation may only require the extension of existing schemes</td>
<td>This reform would provide good support to some ex-offenders but it is unknown how great would be take-up of this opportunity by businesses</td>
</tr>
<tr>
<td>Overheads are lower where the scheme operates as an extension of existing policy</td>
<td>Significant political risk if policy is seen to deliver ex-offenders an unfair advantage</td>
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</table>

5. Government-backed insurance for employers of ex-offenders

Description

Another barrier to the employment of former prisoners is that employers understandably worry about the risk of a new employee with a criminal record of reoffending within the workplace.

This risk can be mitigated by insurance. In Australia, job seekers placed into employment through the government’s job search program jobactive are provided with group personal accident insurance and public liability insurance through a government contract with a private insurance company.35

A similar arrangement could be made for employee dishonesty insurance, which would indemnify employers up to a set amount for property and financial crimes committed by employees. In the United States, the federal government provides a ‘fidelity bond’ to employers taking on ex-offenders, with a value of up to US$5000 and covering the first six months of employment.36

Unlike tax credits and wage subsidies, an insurance scheme would remediate one of the disadvantages former prisoners have in the job market without allowing them to undercut the market price for labour, and so might be less politically risky.

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<tr>
<td>Low</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Government would likely be able to command a good price by buying the insurance in bulk</td>
<td>Would involve the design and implementation of a novel scheme</td>
<td>The novelty and unfamiliarity of this scheme would likely mean a lengthy trial period</td>
</tr>
<tr>
<td>Cost would depend on level of take-up among businesses</td>
<td>Once established, the scheme would readily scale up</td>
<td>Unclear how many businesses would take on staff they otherwise would have overlooked as a result of this scheme</td>
</tr>
</tbody>
</table>

36 Federal Bonding Program (2016), “Job seekers: We’ve got your back”. 
6. Connecting businesses to ex-offenders

Description

Getting ex-offenders into employment is vital for their rehabilitation. There are roles to play in this endeavour for government, civil society, religious groups and private businesses.

In the United States, the First Step Act includes a program, Ready to Work, that will see the Bureau of Prisons work directly with employers interested in taking on ex-offenders.37 The idea is to get ex-offenders into employment as quickly as possible; US research suggests that speedy entry into employment is a key part of reduced reoffending.38

The challenge is to connect ex-offenders with organisations interested in employing them. However, at the moment these connections are not easy to navigate. For example, jobactive does not allow jobseekers to indicate in their search terms that they are ex-offenders, nor does there seem to be a specialised placement program for ex-offenders the way there is for other groups at risk of unemployment.39 There does not seem to be a database of civil society groups that are active in providing or coordinating employment opportunities for ex-offenders.

At the state level, there exist various programs that aim to connect businesses and ex-offenders. However, these are not universally well-implemented. The Jobs Victoria Employment Network assists a range of groups, but the search functionality of the website does not seem to allow ex-offenders to easily find partner organisations that fit their specific needs.40 The goal should be to simplify the navigation of the support systems so that they are more useful to ex-offenders looking to reintegrate into society.

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<tr>
<td>Low</td>
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<td>High</td>
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<tr>
<td>Refinement and simplification of existing processes</td>
<td>Designing systems that are more functional for ex-offenders will require study and consultation</td>
<td>Research indicates that it is important not only that ex-offenders move into employment but that they do so quickly</td>
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<tr>
<td>Work outsourced to non-public agencies</td>
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37 Department of Justice (2019), “Media release: Bureau of Prisons ‘Ready to Work’ initiative seeks new business partnerships to strengthen re-entry success and address national hiring challenges”.


39 The job search function is available here: https://jobsearch.gov.au/service-providers/search
This was also noted in Baldry et al (2018), as above, p. 39.

7. Mentoring programs

Description

Often, ex-offenders will benefit from guidance provided by people who understand their situation and can support them as they transition to normal life. Mentoring programs connect offenders to volunteers from community and faith-based organisations who can provide advice and support. The premise of mentoring programs is that meeting with positive role models can counteract some of the criminogenic effect of continued contact with antisocial persons in corrections environments.

In the United States, there is emerging evidence of the effectiveness of mentoring programs for adult offenders.41 While there have not been many comprehensive studies of the effects of mentoring on reoffending, some specific US programs have shown promising results when offenders are connected to volunteers from the community.42 One study found that visits from community volunteers were more effective than visits from family and friends.43 Volunteers can be peers of offenders, that is, ex-offenders with similar experiences, or non-peers from community groups. One innovative program in Nevada pairs offenders with police officers.44 Peer mentoring has been recommended for its ability to demonstrate to offenders that rehabilitation is possible. Whatever the approach, the available evidence suggests that mentoring works best as part of a comprehensive approach to transition.45


42 Renata Cobbs Fletcher and Jerry Sherk with Linda Jucovy (2009), Mentoring former prisoners: A guide for re-entry programs, Public/Private Ventures, pp. 3-4.


44 Marie Rohde (2016), “Giving hope for prisoners” in Badger Institute, as above, pp. 14-23.

45 Chidi Umez et al (2017), Mentoring as a component of re-entry: Practical considerations from the field, New York: The Council of State Governments Justice Center.
In Australia, there have been a range of mentoring programs in prisons over recent years. Prison Fellowship Australia currently runs a prison ministry program in several states reflecting its Christian beliefs.46 Australian Red Cross runs a peer mentor prisoner support program in Tasmania.47 New South Wales had a program for mentoring women inmates but federal funding was discontinued in 2012.48 The program had shown some preliminary promise.49 A University of New South Wales review of employment outcomes for former prisoners recommended that more mentoring programs be established with the aim of assisting the reintegration of offenders into productive society.50

Many of these programs may be difficult to scale up. However, the idea should be to enable greater civil society involvement in rehabilitation by encouraging a “whatever works” approach. The goal is to see a proliferation of programs of various kinds and sizes. This includes culturally-specific programs—for example, for Indigenous Australians. While in the interests of both fairness and effectiveness, these should be matched, wherever possible, with equivalent programs for other offenders, the goal should be to get any and all suitable groups involved.

**Evaluation**

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<th>Cost</th>
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<tr>
<td>Low</td>
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<tr>
<td>Programs can be run in concert with civil society organisations</td>
<td>Government needs only to encourage greater involvement by a wider range of organisations</td>
<td>There is emerging evidence for the benefits of mentoring from community organisations</td>
</tr>
<tr>
<td></td>
<td>Many programs are small in scale</td>
<td>Programs can be hard to scale up, as tailoring to particular interests is part of their effectiveness – a “whatever works” approach is appropriate</td>
</tr>
</tbody>
</table>

46 Prison Fellowship Australia (2019), “Prison Fellowship Australia programs”.
47 Australian Red Cross (2019), “Services for people in the justice system”.
48 Australian Institute of Family Studies, “The WIFAN Mentoring Program: Knowledge circle practice profiles”.
50 Baldry et al (2018), as above.
8. Social impact bonds and other incentives for service providers

Description

In recent years, there has been growing interest in tying the private operation of prisons and private provision of rehabilitation services to performance requirements. The goal is to incentivise private providers to outperform government services by making (some part of) payment contingent upon hitting certain targets, including reduced reoffending.

One prominent model of outcome-based contracting of service is social impact bonds. On this model, investors provide capital for new programs with return-on-investment contingent upon program results. Social impact bonds were pioneered in the United Kingdom, where there had been 45 such projects up to July 2018, in areas ranging from criminal justice to homelessness to adoption.51 In criminal justice, social impact bonds have been used for the private operation of prisons and the provision of reintegration services.

In Australia, social impact bonds have been used for families with children in care, mental illness, and homelessness among other initiatives.52 There have been two reoffending bonds so far. In 2017, the Queensland government announced a social impact bond (called a “social benefit bond”) for youth reoffending as part of a trial of impact investing, in partnership with the group Life Without Barriers. The trial will last five years.53 In 2018, a partnership was formed between the NSW Government, the not-for-profit community group ACSO, the neurological and mental health service arbias, and NAB to provide reintegration support and reduce reoffending.54 Governments have also recently begun including performance payments in private prison contracts. Three prisons in Australia – Parklea in New South Wales, Ravenhall in Victoria, and Melaleuca in Western Australia – have contracts with small performance components tied to reoffending rates.55 However, no attempts as yet have been made to connect impact investing to prison operations.

52 Emma Tomkinson (2017), “Social impact bonds (SIBs) in Australia”.
Social impact bonds are a promising method for injecting some competitive discipline into the provision of criminal justice services. However, there are a number of risks associated with them that are worth noting. First, they are dependent on reliable metrics and measurements for determining returns to be paid, and these are not always possible.\(^{56}\) Secondly, for this reason, they can be expensive to design and operate. Thirdly, it has been argued that social impact investing leads to less policy innovation as investors seek short-term returns with existing programs.\(^{57}\) Fourthly, and relatedly, because investors are profit-seeking, social impact bonds may cost more than normal public-private partnerships as returns rise with successful results. Though investors inject capital into the policy area in question, they will not reduce public costs unless their intervention is a failure, which is self-defeating.\(^{58}\) Fifthly, the evidence for social impact bonds is limited, especially in criminal justice, and this means this is a reform that remains at the trial stage.\(^{59}\) All of these concerns are simply to do with the logistics of investing, leaving to one side the growing literature about its moral basis.\(^{60}\)

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<tr>
<td>Medium</td>
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<tr>
<td>Costs are partly assumed by participating organisations</td>
<td>Measures and metrics must be designed and complex contracts overseen</td>
<td>So far, the evidence for social impact bonds in criminal justice is limited</td>
</tr>
<tr>
<td>Successful schemes may lead to higher costs for taxpayers</td>
<td>This is a relatively new idea, especially in criminal justice, and will require trials</td>
<td>Successful incentive schemes for the operation of prisons and programs would have benefits for all prisoners</td>
</tr>
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\(^{56}\) Ibid.


9. Diversion and residential facilities

Description

Community-based rehabilitation programs are often more appropriate than incarceration for nonviolent offenders. Diversion programs for offenders with drug and alcohol dependency and other mental health issues offer supervision and access to rehabilitative services without the expense and negative effects of incarceration. Diversion programs are characterised by the avoidance of a criminal conviction being recorded. These programs include the use of specialist courts, like, for example, the NSW Drug Court, to administer rehabilitation, and police diversion, where court proceedings are avoided altogether. It should be noted that diversion programs are not necessarily connected to the broader notion of ‘restorative justice’, which aims to include victims and offenders in a process of reconciliation and which is arguably inseparable from the belief that criminal justice should not be punitive.\(^{61}\) By contrast, diversion, and in particular specialist courts, uses the prospect of punishment to encourage compliance with rehabilitative activities.

Diversion programs in Australia have shown positive results in reducing reoffending. A 2009 study of New South Wales’ Magistrates Early Referral into Treatment (MERIT) Program found a positive correlation with reduced reoffending. An earlier 2008 study of the NSW Drug Court found that participants were less likely to be reconvicted for any offences, and much less likely to be reconvicted of violent offences and drug offences, than non-participant offenders.\(^{62}\) A 2019 study also showed that diversion is more effective than incarceration in reducing reoffending among offenders with diagnoses of psychosis.\(^{63}\) Regarding police diversion, a study by Griffith University found that police diversion reduced reoffending relative to finalised court appearances.\(^{64}\)

Although many states already have various diversion programs, one outstanding concern that merits closer attention is ensuring access to these programs for all suitable offenders. Criminal justice reform in the United States has sought to expand the use of diversion through the use of residential facilities both for rehabilitation and as lower security alternatives to prison. For example, drug courts in the United States often sentence suitable offenders to residential treatment facilities, rather than to day treatment programs. The Drug Treatment Alternative to Prison program in New York sees drug offenders sentenced to a facility for 18 to 24 months.\(^{65}\) This program has

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\(^{64}\) Simon B. Little (2015), “Impact of police diversion on re-offending by young people [PhD thesis]”, Griffith University.

reduced the rate of recidivism among its cohort by an estimated 40 percent.\textsuperscript{66} It also saved taxpayers an estimated US$92 million over its first 20 years of operation.\textsuperscript{67} The advantage of such a program is that it allows offenders who may not otherwise qualify for community-based punishment (say for lack of stable housing) to participate in diversion. It also allows for the co-location of supervised residences and various rehabilitation and reintegration services.\textsuperscript{68}

A more coercive alternative is the creation of facilities that are not prisons but still feature a high level of supervision and control. In Texas, Intermediate Sanction Facilities are used for low risk offenders who have breached parole or community corrections conditions. These facilities provide a supervised alternative to prison for a period of between 60 and 180 days.\textsuperscript{69} They also provide rehabilitation and reintegration services. The advantage of these facilities compared to minimum security prisons is, or should be, closer integration with the community.\textsuperscript{70} Western Australia’s Wandoo Rehabilitation Prison, opened in 2018, is a similar concept and has shown early promise, as well as operating more cheaply than it did in its earlier incarnation as a private prison for men.\textsuperscript{71}

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<tr>
<td>Significant upfront investment in facilities and personnel required</td>
<td>Programs and facilities will need to be designed and built</td>
<td>For offenders with drug and alcohol problems and mental health issues, diversion programs can be very effective in preventing repeat offending</td>
</tr>
<tr>
<td>Longer-term cost offset if successful</td>
<td>Finding suitable locations for residential options will occasion some political risk</td>
<td>Alternatives to incarceration are a key part of criminal justice reform overall, permitting the safe reduction of spending on incarceration</td>
</tr>
</tbody>
</table>

\textsuperscript{66} CODAC (2017), “Alternative to Prison program offers new chance at success”.

\textsuperscript{67} Center for Health and Justice (2013), No entry: A national survey of criminal justice diversion programs and initiatives, Chicago: TASC, p. 19.

\textsuperscript{68} One example of co-location is Victoria’s new Neighbourhood Justice Centre, which houses a court and support services. This idea could be extended to residences for offenders being punished in the community. Neighbourhood Justice Centre (2019), “What we do”.

\textsuperscript{69} Texas Board of Pardons and Parole (2004), “Board policy: Special condition ‘ISF’ (Intermediate Sanction Facility)”.

\textsuperscript{70} Guidelines for ISFs include the claim that “These community-based facilities allow the offender to retain some ties to family and local support mechanisms with programming that continues community contact including community service restitution and local rehabilitative services”. Texas Department of Criminal Justice (2009), “State contracted Intermediate Sanction Facility: Policy and procedures for community supervision placements”.

\textsuperscript{71} Government of Western Australia (2019), “Media release: WA’s first female drug treatment prison: one year open and one year drug-free”.

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10. Access to transportation

Description

One barrier to post-release employment that can be targeted by government policy is transportation. Increasing access to transport increases access to employment, and has been correlated with reduced recidivism, albeit only weakly.\(^\text{72}\) Access to transportation has also been included in comprehensive reintegration service trials that have shown some promise in regards to reoffending.\(^\text{72}\) Qualitative studies indicate that transport is one of the barriers to employment and reintegration commonly reported by released prisoners—in particular in regional areas.\(^\text{74}\)

In the United States, concerns have been raised about the suspension of driver’s licences for unpaid fines, as this situation can be self-defeating: former prisoners need licences to find employment but need money to first pay off their fines and lift the suspension.\(^\text{75}\) One solution is to forgive fines upon release from prison.

In Australia, reform has also focused on prisoners who do not have licences. In-prison driver education has been identified as another key enabler of access to transportation. This has been noted as particularly important for indigenous offenders. In New South Wales, driver education exists as part of the Balunda-a program for Indigenous offenders, and as part of the Maranguka Justice Reinvestment Program at Bourke.\(^\text{76}\) The expansion of these programs to non-Indigenous offenders is worthy of investigation.

\(^{72}\) Miriam Northcutt Bohmert (2014), Access to transportation and outcomes for women on probation and parole [PhD thesis], Michigan State University.


\(^{75}\) Anne Kim (2019), “You’re out of prison. Now you have to get your driver’s license back.”, Washington Post, 5 April 2019.

\(^{76}\) Australian Law Reform Commission (2017), Incarceration rates of Aboriginal and Torres Strait Islander peoples, DP 84, Canberra: Australian Government pp. 130-1.
Another possibility for enabling access to transportation is subsidised or complementary public transport for released prisoners. A qualitative review of insecure conditions for former prisoners found that access to transportation is a key enabler of a return to normal life. Providing public transport tickets at a concession rate or at no cost would be a relatively low-cost and easily implemented policy intervention. This policy could also be used for assisting family and others to visit prisoners, which is known to have some rehabilitative effect.

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- Government already provides concession rates for public transport to a large number of people
- The written component of driver education would complement existing programs
- Increasing access to public transport involves the extension of existing schemes
- However, providing driver education, beyond the written component, would depend on being able to provide safe access to appropriate facilities
- This reform will benefit anyone for whom transport issues are a barrier to employment, though the number of offenders for whom this factor is important is unknown

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77 Harding (2014), as above.
Conclusion

A reduction in reoffending would pay a significant dividend to taxpayers. It would slow, if not reverse, the growth of incarceration and it would improve community safety by reducing crime and enabling the more efficient use of criminal justice resources. In addition to these economic concerns, it would also reflect a positive commitment to having a corrections system that lives up to its name and puts offenders back into mainstream society in an improved condition.

None of the policies outlined here is sufficient by itself to achieve the task, nor does any of them exclude any of the others. True criminal justice reform will involve some combination of reforms such as these, touching on sentencing, prison operations, alternatives to prison, and reintegration, thereby reshaping the environment in which potential criminals make their decisions.

Of course, the problem of reoffending is downstream of the decisions offenders make to offend in the first place. But the criminal justice system must resolutely reject the notions that some people are irredeemable and that any reoffending reduction policies will be too little, too late. The state must punish offenders in order to vindicate individual rights and community standards, but equally, and for the same reasons, it must be mindful of the condition of offenders after they have paid their debt to society.

Corrections is a moral concept, implying that as a society we have made a collective determination about the behaviour that we expect from one another and that we are justified in applying coercion to encourage that behaviour. To abandon the rehabilitative potential of the criminal justice system is to concede that our society has no moral wisdom to impart or lacks sincerity in its stated convictions. It is incumbent upon governments, then, to pursue sensible reforms in defence of community safety and the common good.
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Wodak, Jo and Andrew Day (2017), Sentenced to a job: A case study, Sydney: UNSW. Available here: http://unsworks.unsw.edu.au/fapi/datastream/unsworks:47334/bin2c9f8fd4-2421-400b-9035-6625efe0ee49?view=true&xy=0
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About the author

Andrew Bushnell is a Research Fellow at the Institute of Public Affairs, working on the Criminal Justice Project. He previously worked in policy at the Department of Education in Melbourne and in strategic communications at the Department of Defence in Canberra.

Andrew holds a Bachelor of Arts (Hons.) and a Bachelor of Laws from Monash University, and a Master of Arts from Linköping University in Sweden.