

**Rehabilitation Devolution –
how localising justice can reduce
crime and imprisonment.**

By Rob Allen
December 2015

About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system.

Transform Justice was set up in 2012 by Penelope Gibbs, a former magistrate who had worked for five years to reduce child and youth imprisonment in the UK. The charity will help create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. **Transform Justice** will enhance the system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes. Transform Justice has produced reports on the centralisation of magistrates' courts, on criminal appeals against sentence, on justice reinvestment and on magistrates and diversity.

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Executive summary

The new Conservative Government provides a fresh and promising context in which to reform criminal justice, by devolving power and responsibility to a more local level and learning from American “Justice Reinvestment” (JR) initiatives. The term JR has come to cover a variety of programmes/approaches, both in the UK and the USA, which aim to shift resources away from the unnecessary use of criminal prosecution and imprisonment into more local, productive and cost effective ways of preventing crime and reducing reoffending.

The last few years have seen important reforms at federal and state level in the USA. More than half of states have introduced JR laws or policies which have sought to reduce the severity of sentences for non-violent offences, and to reduce breaches of parole and supervision, in order to avert unaffordable prison growth. The extent to which these have contributed to the stabilisation or reduction in prison numbers is contested in some states, but the overall trends have changed – 2014 was the first time in 38 years that both federal and state prison populations fell in tandem. Many states have used some of the spending earmarked for new prisons to strengthen alternatives.

There are four main areas for learning; first about how a much more locally based approach to criminal justice has enabled experimentation and reform, which has involved a wide range of stakeholders from different levels and branches of government, and from outside it. Second, how the politics of criminal justice has become more moderate with much of the leadership coming from conservatives who previously took a hard line, and with almost all of the JR measures enjoying bipartisan support. Third, the measures introduced to moderate prison growth have been based on comprehensive data collection and analysis which has enabled the costs, benefits and impacts to

be carefully evaluated. Finally, some states embracing JR have required a proportion of the savings to be reinvested in programmes to reduce re-offending. They have also created incentives to manage low risk and low level offenders at the county rather than state level by strengthening probation supervision.

JR initiatives in England and Wales have sought to test whether financial incentives can reduce the use of imprisonment for under 18’s, and encourage agencies at a local level to lower demand on the criminal justice system. Consortia of local authorities have shown that they can use financial incentives to stimulate measures to reduce the numbers of under 18s imprisoned; and localising financial responsibility for the cost of remanding under 18 year olds has coincided with falls in numbers in custody. There is enough promise in the results to warrant an expansion of JR.

The principles that should underpin such an expansion include:

- a) Ensuring that local communities and agencies take greater financial and organisational responsibility for preventing and treating crime in their areas, and creating incentives to minimise the use of “national” resources such as prisons and courts.
- b) The encouragement of local leadership to develop effective criminal justice responses, working with the widest possible range of stakeholders in partnership with central government departments.
- c) Effective use of high quality research and data collection to inform policy and practice development, and the use of resources and the management of risk at a local level.

Specific options which could be considered include:

1. Transferring responsibility for meeting the entire costs of custody for under 18's to local authorities and Police and Crime Commissioners (PCCs) from 2017
2. Planning for local authorities (possibly in consortia) and PCCs to be responsible from 2018 for commissioning secure and other accommodation for under 18's rather than simply purchasing what is currently available.
3. Working to identify the best ways of transferring responsibilities to a more local level for young adult and/or women offenders with a view to devolving budgets by the end of the parliament. A pilot JR initiative on women combining up front money and reward payments (drawing on the learning from earlier pilots) should be started.
4. Analysing the likely costs and benefits of placing, (a) the National Probation Service and, (b) the Prison Service under more local financial and organisational control; and of the options for increasing the role of Community Rehabilitation Companies in a localised justice system.
5. Inviting PCC's to chair new Justice and Safety Partnerships with CRC's, local government, health and judicial participation which would give a greater regional voice in the system and create a commissioning vehicle to which criminal justice budgets might be devolved. They could oversee the national roll out of Operation Turning Point (led by West Midlands Police), which reserves prosecution to those cases which cannot be diverted, and they might be given a role in re-investing any savings.

Section 1 introduction

Transform Justice published the paper '*Justice Reinvestment Empty Slogan or Sustainable Future for Penal Policy*' in February 2014. It made recommendations about how progress could be made in shifting increasingly scarce resources away from the unnecessary use of imprisonment, towards measures which work better at a local level to prevent crime and reduce re-offending.

Among the report's proposals were:

- the devolution of much greater elements of the budgets which fund imprisonment and probation to a regional or local level in order to incentivise alternatives to imprisonment and
- the transfer to local government of almost all of the custodial budgets for children under 18 (building on the responsibility for remand costs which they assumed in April 2013)
- the creation of an inter-departmental Justice Reinvestment Board chaired by a senior minister to drive a comprehensive programme of institutional reform

These recommendations are still highly relevant in England and Wales, but the election of a new government has given impetus to the search for a more cost effective criminal justice policy. The government has committed to the devolution of significant powers and responsibilities to a more local level.¹ The Cities and Local Government Devolution Bill for example, aims to devolve far reaching powers over economic development, transport and social care to large cities which choose to have elected mayors, and legislate to deliver a historic deal for Greater Manchester. As part of this approach, from April 2016, the £6bn health and social care budget will be taken over by the region's councils and health groups. In the crime and justice sphere, the election of the Conservative government has ensured the continuation of the local Police and Crime Commissioners; indeed the Conservative manifesto promised to develop their role. The government is consulting on whether Police and Crime Commissioners should take responsibility for fire and rescue authorities. They could, in principle, alongside other local partners, play a greater role in managing criminal justice in their areas.

⁰¹ <http://www.telegraph.co.uk/news/politics/conservative/11625316/Why-we-want-to-hand-power-to-local-people.html>

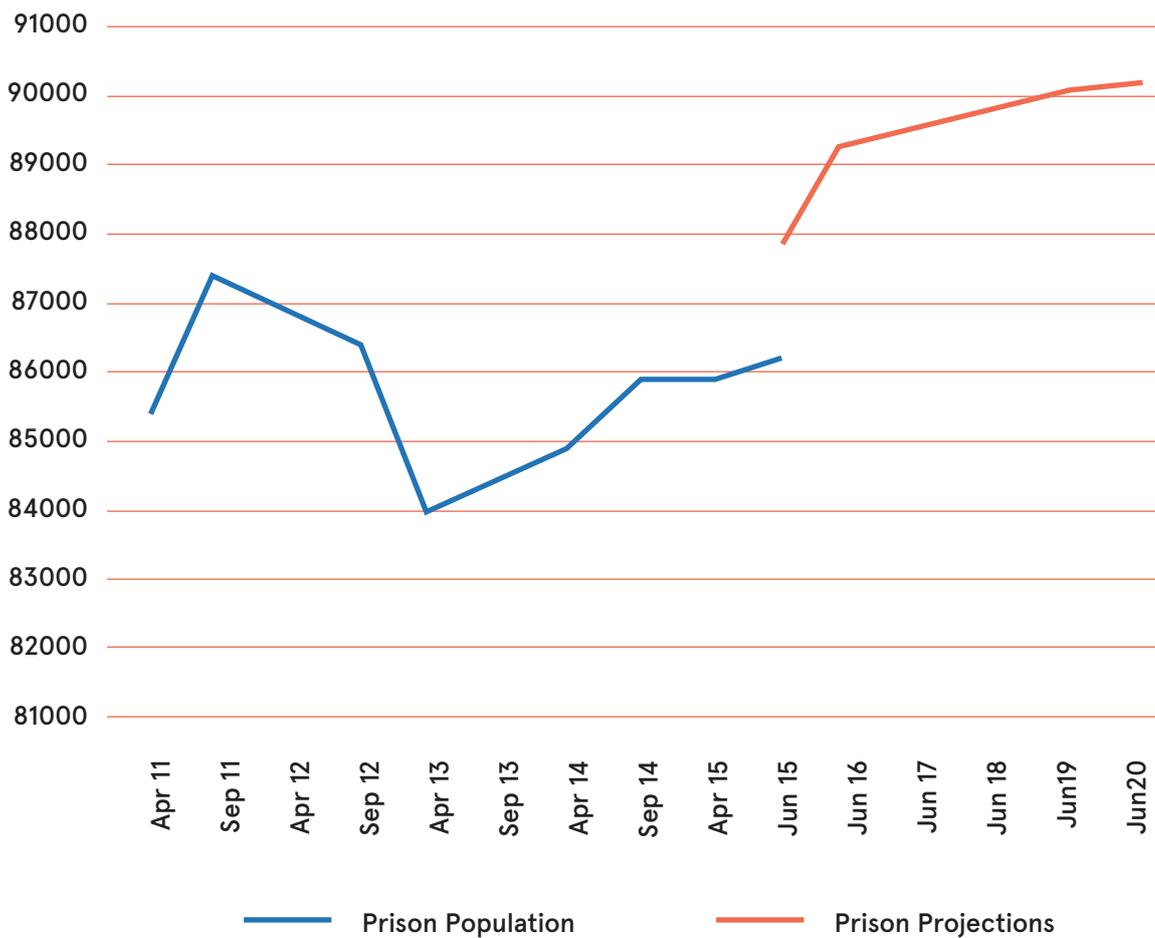
Besides its intrinsic merits, a more local approach could help the Ministry of Justice to meet the savings it has to find by 2020. Whether the cuts are 25% or 40%, simply slicing more off existing budgets will not work. New mechanisms for organising and paying for criminal justice will be needed. For example, devolving to the PCC and local authorities the £100 million spent annually on criminal justice in Greater Manchester might enable local agencies to develop more innovative and effective measures to reduce levels of crime, numbers of prosecutions and the rate of imprisonment – thereby bringing down cost in a responsible and sustainable manner.

Simply imposing further budget cuts on prisons is not viable. Performance and safety have suffered drastically², so further economies will need to be achieved by reducing demand on the system. Currently prison numbers are below MoJ forecasts, so there is an opportunity to take steps, if not to reduce the prison population, at least to avert the growth which is projected to take the prison population to 90,000 by the end of the Parliament.

The first six months of the Conservative administration suggests that such a policy turn may be a real possibility. Michael Gove's approach as Justice Secretary seems to mark a clear philosophical break with the immediate past, and a willingness to contemplate far reaching change based both on evidence, and a belief that people who break the law should be helped to redeem themselves.

⁰² See for example HMIP Annual report 2013-14.

Prison Population England and Wales 2011-15 and projections to 2020



Source: <https://www.gov.uk/government/statistics/prison-population-figures-2015>
 and from Prison Populations in England and Wales 2014-2020
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380586/prison-population-projections-2014-2020.pdf

So it seems timely to reconsider the prospects for JR and in particular to assess what might be learned from the USA, something which Mr Gove himself has done.³ Recent years have seen a growing recognition of what one leading Republican Congressman has called the “moral irresponsibility and fiscal unsustainability” of prison policy.⁴ With research showing that perhaps no more than 25% of the drop in the US crime rate since the mid-nineties is due to imprisonment, and with the identification of credible alternatives for minor offenders, a diverse range of states have embarked on bipartisan reform initiatives.

Since 2007, more than half of the states have participated in a federal government sponsored Justice Reinvestment Initiative (JRI) and made research-based policy changes to control prison growth. In part as a result of these efforts, state and federal prison populations both declined in 2014, marking the first fall in both populations together since 1978.

Of course there are substantial differences between US and UK justice systems. The imprisonment rate in the USA is more than five times higher than in England and Wales, with levels of sentencing shockingly severe compared to those in Europe. Yet the much more localised US system provides scope for experimentation and reform at state and county level, while the federal jurisdiction has enabled the Obama administration to introduce a “smart on crime” approach which ensures finite resources are devoted to the most important law enforcement priorities.⁵ There is much to learn.

03 <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11909309/The-Texas-prison-experiment-that-inspired-Michael-Gove.html>

04 Congressman Sensenbrenner at AEI seminar September 9th 2015

05 <http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>

US Prisoners under Jurisdiction of State Corrections 2004-14



Source: Bureau for Justice Statistics Prisoners in 2014
<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>

Section 2 JR in the USA

For many years the US has been far and away the world's leading user of imprisonment. Harsh sentencing policies in the late 1980s and 1990s, coupled with federal grants for prison building, saw the country's custodial population rocket from half a million in 1980 to 2.3 million in 2008. State spending on imprisonment and probation has increased from \$6.7 billion in 1985, to \$51.9 billion in 2013.

Concern about the financial, social and ethical costs has led to a range of initiatives to bring numbers down, many of which have been packaged as Justice Reinvestment. The origins of JR lie in the recognition that disproportionate numbers of people who end up in prison are drawn from the poorest neighbourhoods – so called “million dollar blocks” such as in Brooklyn, New York, where a million dollars is spent each year on imprisoning residents from one residential block area.

The idea is to use the funds currently spent on prison more productively in preventing crime and reoffending in those neighbourhoods, thereby creating a virtuous cycle.⁶ While the early proponents of JR argued for a radical switch of resources from “cops, courts and corrections” to community based organisations in the “high stakes” areas most affected by crime and imprisonment, the model of JR which has been applied in more than half of the States of the US has been rather more diluted in scope. It is based on a number of key steps:

A comprehensive analysis of the way the criminal justice system operates and in particular who goes to prison and what it costs

The creation of a consensus to introduce measures to reduce the unnecessary use of prison in ways that do not impact on public safety

The passing of legislation

The monitoring of the impact of the changes and of the way resources are reinvested.

A summary of reforms made from 2007 to 2013 found change in four main areas; sentencing, release provisions, community sentences and what the authors call “sustainability”, or arrangements for supporting the changes in the other three areas.⁷

⁰⁶ Cadora and Tucker <https://www.opensocietyfoundations.org/publications/ideas-open-society-justice-reinvestment>

⁰⁷ http://www.pewtrusts.org/~media/assets/2013/pspp_sentencing_and_corrections_reform_matrix.pdf?la=en

Main Measures in JR States 2007 – 2013

Sentencing

- Reclassification and redefinition of drug and property offences
- Establishment or expansion of presumptive probation for certain offences
- Revision of sentencing guidelines, mandatory minimums

Release

- Revision of parole hearings/decision/eligibility standards.
- Expansion of good/earned-time prison credits/re-entry leave
- Establishment/expansion geriatric or medical parole

Probation

- Establishment of earned discharge from probation/parole supervision
- Authorisation of graduated responses for violations and administrative jail sanctions
- Establishment/improvement of electronic monitoring
- Establishment of mandatory re-entry supervision
- Requirement for risk-needs assessment, evidence-based practices and interventions such as substance abuse/mental health/CBT
- Reform/piloting specialty courts (HOPE Probation, drug courts, etc.)
- Reduce probation terms and revocation periods

Sustainability

- Requirement for fiscal impact statements, data collection/performance measurement
- Establishment of leadership/board qualification requirements
- Establishment of measures to streamline/improve efficiency of system
- Improvement of restitution/victim notification systems Establish oversight council

Since 2013, JR programmes have also seen:

- Utah reduce the severity of punishment for non-violent and lower level violent offences, and limit courts' ability to pass longer sentences on offenders with previous convictions.
- Oregon remove mandatory minimum prison sentences for repeat drug and property offences; and require any sentencing or corrections legislation to be accompanied by a statement of the impact on finances for the next ten years.
- Pennsylvania require people convicted of the two lowest-level minor offence types to serve a community sentence, rather than sentencing them to prison; increase by 20% the number of parole cases reviewed each month; and provide special Transitional Coordinators for mid to high risk parolees in their first 6 months of supervision.
- South Dakota enable offenders on probation to earn early discharge; and decriminalise failure to pay victim compensation.
- Louisiana cap the amount of time those on parole can spend in prison for breach of their parole terms.

JR has also led to a variety of investments in public safety using the tax dollars saved. These have enabled expansion of treatment and recidivism reduction programmes in and outside prison, drug courts, and grant funds for counties to strengthen their crime prevention and diversion efforts. The Council of State Governments has illustrated a range of these investments:⁸

State	Projected savings (and period)	Reinvestment (and period)
Hawaii	\$130m (6 years)	\$3.4m (1 year) reinvested in victim services, treatment, parole supervision, and research and planning
Kentucky	\$422m (10 years)	\$30m (3 years) reinvested to expand interventions in the community, treatment programs, probation and parole services, and provide for additional pre-trial services and drug court case specialists
North Carolina	\$560m (6 years)	\$8m redirected to existing community-based programs
Ohio	\$78m (4 years)	\$10m (2 years) reinvested in strengthening probation supervision
Pennsylvania	\$253m (5 years)	\$21m reinvested in law enforcement, victim services, and probation

Across the USA, state prison populations have stabilised or fallen slightly and some of this decline has been attributed to JR initiatives. In some states, the measures introduced have had a direct and relatively large impact on prison numbers. In others however, it has been other reforms unrelated to (although highly compatible with) JR that have made the difference. It is clear however that JR initiatives have led to resources being used to strengthen non-custodial approaches, with funds typically spent on probation and treatment in the community. As yet, data is not available about the impact which this has had on rates of re-offending or on crime.

⁰⁸ 2013 Lessons from the States: Reducing Recidivism and Curbing Corrections Costs Through Justice Reinvestment http://csgjusticecenter.org/wp-content/uploads/2013/04/FINAL_State_Lessons_mbedit.pdf

North Carolina

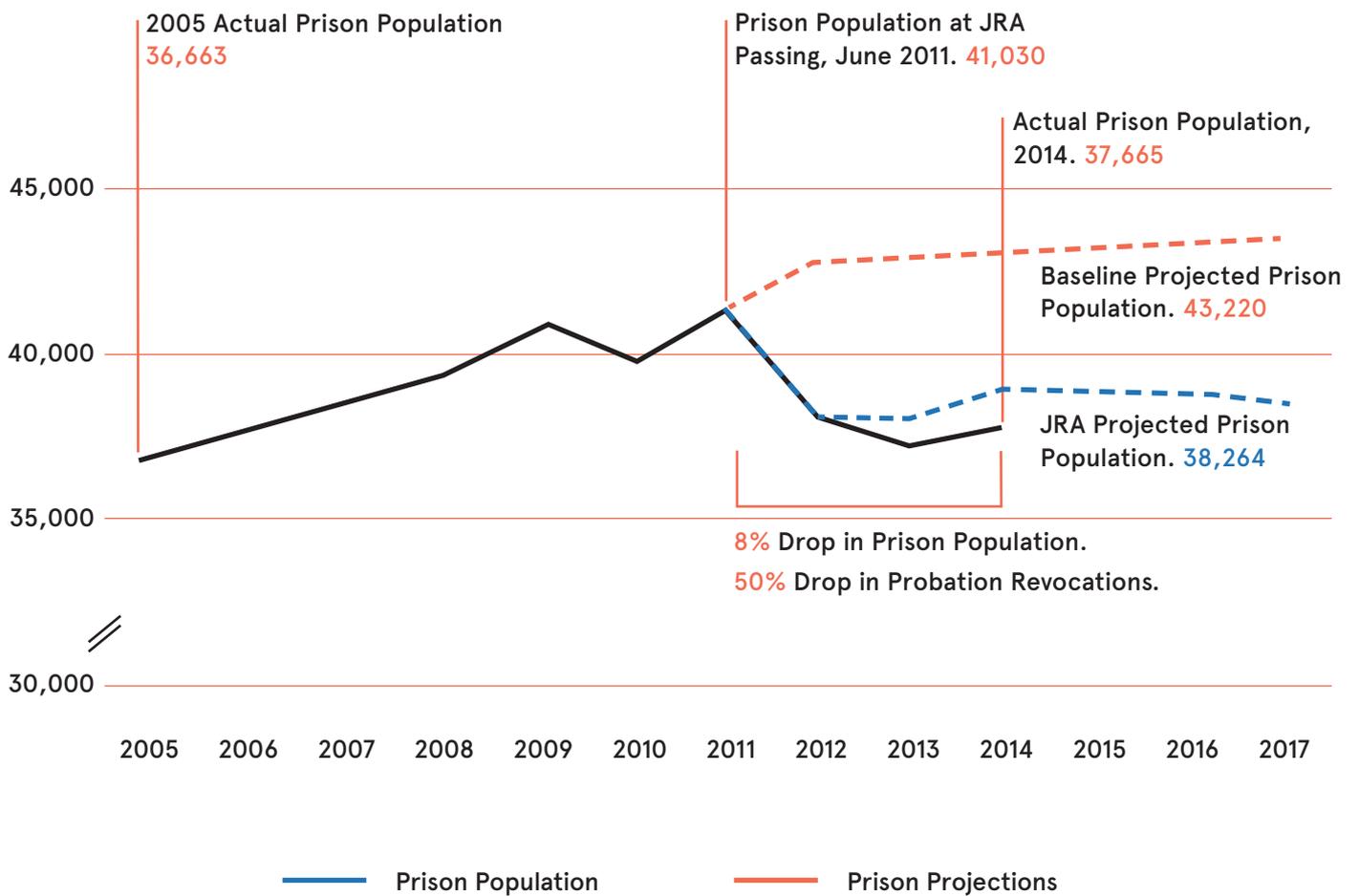
A JR Case Study

In North Carolina, data analysis showed that more than half of admissions to state prison in 2006 were for breach of probation supervision. Because probation is provided as a form of suspended sentence, those who failed to comply served the outstanding part of the sentence in state prison, although they had not committed a new offence. The state government gave probation a range of new tools to secure compliance – including the power to place offenders in jail for two or three day periods in response to breaches. When these so-called “quick dips” or other measures are unsuccessful, and probation has to be terminated, offenders are no longer required to serve all of their outstanding sentence in prison. Instead they serve a flat 90 day period of “confinement in response to violation” or CRV. The so-called “dunk” is served in one of two special centres, with low security and intensive programming.

North Carolina’s Justice Reinvestment Act 2011 also introduced “advanced supervised release” under which certain prisoners are eligible for release from prison before serving their minimum sentences, if they complete treatment programmes while in custody.

Prison Population in North Carolina Trends and Projections 2005 - 2017

Data from the North Carolina Department of Public Safety



Section 3 Dimensions of Reform relevant to the UK

What are the factors that have brought about these change in the USA that are most relevant to the UK?

a) Localising Justice

One key structural aspect of the US reforms is their basis in a highly devolved system of criminal justice and prison administration. Responsibility for criminal justice legislation is devolved to individual states, and justice is administered either at state or county level. States and counties can only run the criminal justice they can afford. Facing enormous budgetary pressure after 2008, many state and local politicians questioned the level of spending on prison and jail compared to other policy areas. Many have concluded that scarce resources can be better spent in other ways, not only by dealing with minor cases outside the court and prison systems, but by investing in early intervention programmes with high risk families. The configuration of responsibilities in the US means that almost all of the savings accruing from such approaches can be used at the local level.

This perhaps explains why a wide range of local stakeholders have been so actively involved in JR reforms. For example, the Maryland Justice Reinvestment Coordinating Council includes representatives from all three branches of government – legislators from both parties and both houses, judges, prosecutors and public defenders, and a variety of executive agencies, including police and prisons from state and county level. Such a wide ranging presence is not an accident. It is a requirement if States want to benefit from federal financial support in diagnosing problems and proposing solutions.

The involvement of local counties in criminal justice is one of the distinguishing features of the system in USA. Most remand prisoners and those serving sentences of up

to a year are held in county jails run by sheriffs rather than state prisons. An important element of JR reforms in many states has been to encourage a higher proportion of offenders to be dealt with at county level, that is, more locally. In Pennsylvania, for example, part of the JR strategy was to reduce by 30 percent the number of people admitted to prison for very short sentences by 2017, through providing performance-driven funding to counties that volunteered to house these people.⁹

In England and Wales, local government plays a very limited role in criminal justice (although a more substantial one in relation to under 18's). There have been proposals for a much more locally driven system, for example the 2009 call by the All Party Parliamentary Local Government Group for a system of "primary justice", in which control of prisons and key supporting services would be moved away from Whitehall to a local level, and funded by local 'safety and justice' budgets (comprising approximately 35% of the prison budget, the administration budget for magistrates' courts, local policing and probation).¹⁰ Recent pressures on local government have inhibited serious progress being made in this direction, although the introduction of Police and Crime Commissioners provides an alternative option for a more locally based system. As things stand however, there is currently little in the way of devolution, either of responsibility or costs. An essential pre-requisite for a genuine justice reinvestment based reform is to give more power to agencies in local areas to determine how best to use resources for dealing with people in conflict with the law.

09 https://csgjusticecenter.org/wp-content/uploads/2013/12/PA_2-page_report.pdf

10 LGIU 2009 <http://www.lgiu.org.uk/report/primary-justice-an-inquiry-into-justice-in-communities/>

b) Changing the Political Context

At a political level, conservative thinking in the USA has increasingly embraced prison reform. The Right on Crime movement has, for example, promoted less use of prison on the back of core conservative beliefs: in constitutionally limited government, individual liberty, personal responsibility, free enterprise, and the centrality of the family and community.¹¹ All these values are threatened when prison is overused, for example “when nonviolent offenders who may be safely supervised in the community are given lengthy sentences. Prisons provide diminishing returns when such offenders emerge more disposed to re-offend than when they entered prison”.

Conservative thinking has also been influenced by religiously inspired beliefs in redemption: for Right on Crime “an ideal criminal justice system works to reform amenable offenders who will return to society through harnessing the power of families, charities, faith-based groups, and communities”.

Maximising the public safety return on taxpayers’ dollars has perhaps been the most powerful driver of changing ideology, with reform in many republican states prompted by the need to avoid the costs of building and staffing new prisons. Whatever the motivations, the Right on Crime initiative, led by Newt Gingrich (whose 1994 Contract with America pledged a crime bill to fund police and prisons over social programmes) has attracted signatories from large numbers of high profile conservatives , including Jeb Bush.¹²

On the Democrat side, the Obama administration has relatively late on introduced a series of changes at the federal level which have sent a signal that the era of mass incarceration should come to an end. While it remains to be seen what role criminal justice plays in the forthcoming Presidential campaign, there are signs that the attitudes of the electorate may favour smart approaches to the use of imprisonment rather than simply tough ones. California’s voters backed reforms to the notorious “three strikes and you’re out” policy in 2012, and last year supported greater leniency with minor theft. The Governor recently refused to agree to the creation of new criminal offences, preferring to pause and reflect on how to make criminal justice more human, more just and more cost-effective.¹³

Over here, Justice Secretary Michael Gove has signalled a more thoughtful approach. He told the Howard League that he would like to see the prison population fall “over time” but, while floating the idea of enabling prisoners to earn earlier release, he has been cautious about sentencing reform. He said “We must not imagine that softening the laws on drugs, or shying away from exemplary penalties for violent conduct, will make life easier and safer for children growing up in disordered, abusive and neglectful surroundings. When individuals transgress, then punishment should be swift and certain. The courts should ensure victims do not have to wait long months before criminals face trial, and the sentences passed down should be applied proportionally and reflect the moral sentiments of the public in a democracy”.¹⁴

11 <http://rightoncrime.com/>

12 <http://rightoncrime.com/2011/09/jeb-bush-signs-the-right-on-crime-statement-of-principles/>

13 https://www.gov.ca.gov/docs/SB_716_Veto_Message.pdf

14 <https://www.gov.uk/government/speeches/the-treasure-in-the-heart-of-man-making-prisons-work>

c) Analysing the Criminal Justice and Prison System

Collecting data about the operation of the criminal justice and prison systems has always been a key aspect of Justice Reinvestment. The Justice Reinvestment Initiative (JRI) launched by the Bureau of Justice Assistance (BJA) in 2010, has enabled states to hire experts to collect and analyse data about criminal justice populations and costs, develop proposals for change, and measure the fiscal and public safety effects of changes. High quality analysis has enabled reform efforts to be tailor-made to the drivers of imprisonment which are most relevant to particular states or counties.

Analysis of the data from a number of JR states has found that a surprisingly high percentage of prisoners are there because they have breached probation or parole conditions. This is one of the four key drivers of increased imprisonment, alongside parole processing delays or denials, insufficient or inefficient community supervision or support and, of course, sentencing policies and practices. While the drivers may be somewhat different in England and Wales (and in different parts of the jurisdiction), there is considerable scope for improving the way information is collected and analysed in order to inform policy making and monitor its impact and costs.

d) Reinvesting Resources

In Pennsylvania, House Bill 135 of 2012 established a formula that requires a percentage of cost savings achieved through reductions in prison numbers to be reinvested in public safety improvements over the next six years. North Carolina has passed a juvenile justice law to allow the closing of youth prisons (known as youth development centres) as populations diminish and "transfer State funds appropriated for the operation of that youth development centre to fund community-based programs, to purchase care or services for pre-delinquents, delinquents, or status offenders in community-based or other appropriate programs, or to improve the efficiency of existing youth development centres, after consultation with the Joint Legislative Commission on Governmental Operations".

Many other states, whether or not specifically required in law to do so, have used some of resources saved by JR to strengthen community-based treatment, probation, prevention-oriented policing strategies, and community-based recidivism reduction efforts. These reinvestments generally fall short of the radical vision of JR's original proponents who argued for resources to be transferred to those small areas (the size of wards) where most crime was committed. State governments have tended to transfer resources to community based criminal justice agencies, such as probation, rather than to grass roots level in the communities themselves.

The US has seen more radical proposals for using financial incentives to curb the use of prison. These include charging counties for how many people they send to state prison; another involves limiting the number of days in state prison which are made available for residents from each county annually.¹⁵ Several JR initiatives have focused on removing a "perverse incentive" – if county probation officers breach someone they supervise, the offender is sent to a state prison, which the county doesn't have to pay for, a dynamic not about punitive attitudes, puritanical culture, or racial bias but "straight from the chapters of a textbook on levels of government, separation of powers, and bureaucracy".¹⁶

¹⁵ <http://www.theatlantic.com/business/archive/2015/09/should-states-charge-for-prison-beds/405778/>

¹⁶ Adam Gelb Laboratories of Incarceration <http://www.cato-unbound.org/2015/09/23/adam-gelb/laboratories-incarceration>

Section 4 JR in the UK

The 2014 Transform Justice Report on JR argued that, since 2010, progress on the implementation of JR has faltered, although a number of piecemeal pilot schemes have tested aspects of the approach.

How have these fared?

a) Youth Justice

The most radical experiment in JR in England and Wales was a scheme to delegate the whole of the budget for under 18 imprisonment to consortia of local authorities. The idea was to incentivise them to reduce the use of custody. The final report on the Youth Justice Reinvestment Pathfinder has confirmed that financial incentives can stimulate local measures to reduce the numbers of under 18s imprisoned.¹⁷

Although two of the consortia withdrew from the pathfinder after year one, the other two radically reduced their use of custody. The consortium of five local authorities in West Yorkshire received £1.5 million up front to spend on diversionary activities, and succeeded in reducing custodial bed nights by 28% in year one and 42% in year two (against a target in each year of 10%). £300,000 was paid to the four West London Boroughs which made up the second area, where custody bed nights fell by 40% in year two against a target of 12%.¹⁸ While the evaluation could not attribute the falls in custody to the pathfinder (custody bed nights fell across England and Wales by 12% in year one and 33% in year two), those who ran the programmes are convinced that the funding made a difference. The pilot sites were able not only to intensify and extend their existing programmes – particularly packages of community based measures designed as alternatives to custody – but also to develop ways of intervening at key points in the decision-making system to minimise the likelihood of

imprisonment.

These “system” interventions included

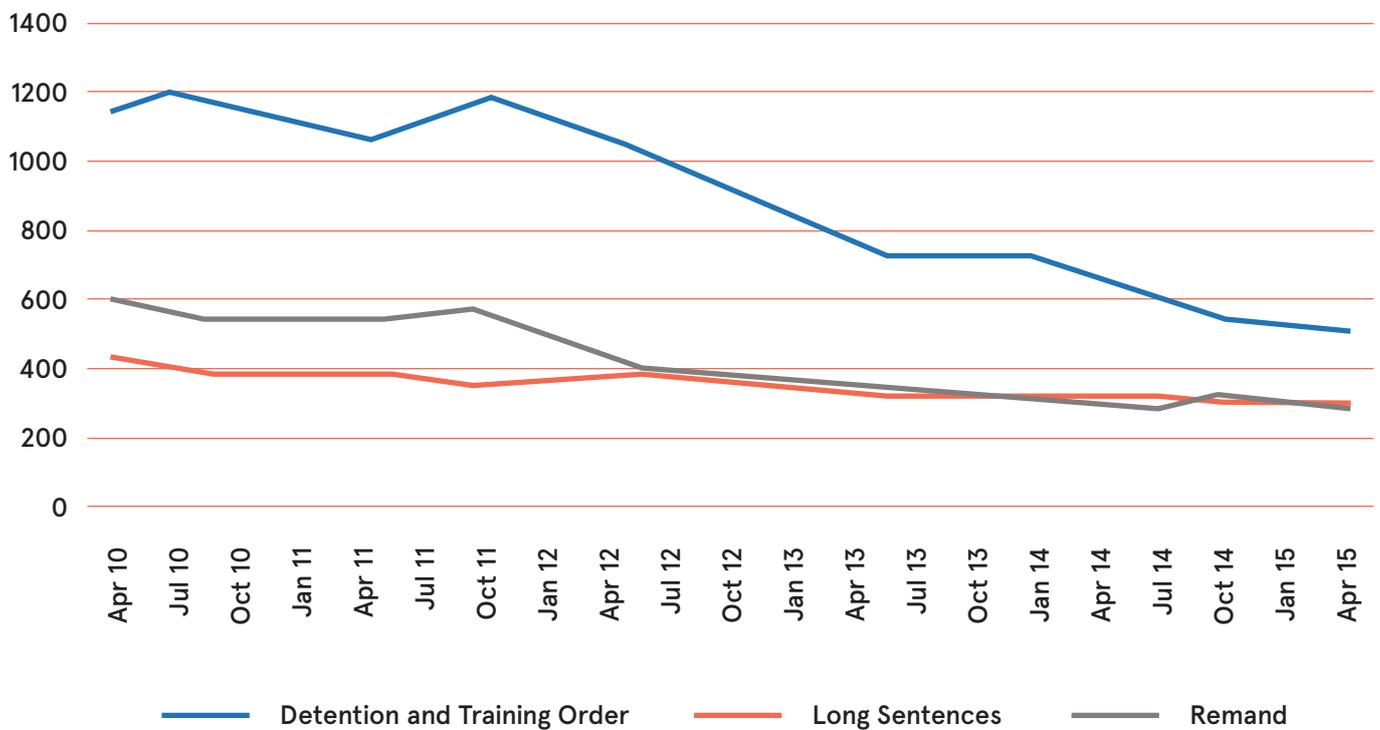
- Better presentation of pre-sentence reports at court and an improved relationship between youth offending teams and judges
- “Risk of custody meetings” to ensure appropriate alternatives were offered in the highest risk cases, and reviews to learn lessons from cases of imprisonment
- Supporting defence appeals to reduce duration of sentences in appropriate cases
- Strengthening alternatives to remand by offering community bail support and remand foster carers in high risk cases
- Compliance panels and more creative measures to reduce breaches – a key driver of custody

These approaches were underpinned by careful collection and analysis of data to ensure that the young people most at risk of being imprisoned were identified, net widening avoided, and the outcomes of alternatives kept under close review.

¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414123/youth-justice-reinvestment-custody-pathfinder-final-evaluation-report.pdf

¹⁸ custody bed nights used during year one were not counted

Under 18's in Secure Estate 2010-15



Source: Youth Custody
<https://www.gov.uk/government/statistics/youth-custody-data>

The evaluation concluded that “The use of a commissioning model with upfront funding and a ‘claw back’ mechanism in the event of under-performance seemed to provide an effective way of incentivising sites to achieve their targets”, confirming research on behavioural economics, which suggests that avoiding losses is typically seen as a greater driver of behavioural change than making gains.¹⁹

The lessons from the delegation of the costs of under 18’s remanded to custody (transferred to local authorities in April 2013), are more mixed. The intention of shifting the entire costs of secure remands to local government was to “provide a powerful incentive for local authorities to invest in alternative strategies for this group of young people”. The incentive is that they are allowed to keep any surplus from the remand budgets which have been devolved to them by the Ministry of Justice.

It was too early for the 2014 Transform Justice JR report to assess the impact of the change. The numbers of under 18’s remanded in custody fell in the first six months from 308 in April 2013 to 261 in September 2013. The downward trend has slowed slightly recently with 204 children on remand in September 2015. The number of bed nights spent on secure remand fell from 124,068 in 2012-12, to 95,292 in 2013-4 and 90,128 in 2014-5.

A number of YOT managers have attributed the reduction in secure remands to legal changes which from December 2012 made it harder for courts to lock up children, rather than the change in financial responsibility which came in to force in April 2013. Under LASPO 2012, the qualifying criteria for a remand became significantly more stringent, and a child must now have a real prospect of receiving a custodial sentence before they can be remanded. Given the increasing reluctance of courts to impose custodial sentences since 2008, this provision may have shifted the focus of their decision-making.

The 2014 Transform Justice report noted that many local authorities had already spent more than their year’s allocation for the service and “will have to subsidise it by making further cuts elsewhere”. While it has not been possible to make a full assessment of how the financing arrangement is working, a number of YOT managers think that the sums devolved have been too small to fund alternative provision, particularly in smaller local authorities. In 2015-6, £14.3 million in total is allocated for child remand, but in 75 out of 165 local authorities the allocation is less than £50,000²⁰.

Another reason for the unpopularity of remand delegation amongst some local authorities is that it that there is little genuine financial incentive – if remand use goes down, so does the budget. In the few, largely urban, areas where savings have been substantial, local authorities have banked the money in case of a spike in numbers, or even used it to meet shortfalls in other budgets.

The Government’s decision to scrap plans for a new secure College, and the systemic problems facing Young Offender Institutions, show that the juvenile custodial sector is ripe for reform. The review of Youth Justice being undertaken by Charlie Taylor should look at the possibility of further devolution – not only of costs of custody but also of commissioning responsibilities – to a local or regional level.

The lessons from the pathfinder and remand devolution are that local agencies need to be carefully involved in how the changes are planned and implemented. Financial transfers need properly to reflect the costs involved (rather than be solely a way of saving money) and consideration must be given to the most appropriate level to which costs and responsibilities might best be devolved. For example, in London, custodial budgets could become the responsibility of the Mayor’s Office for Police and Crime, consortia of local authorities or individual authorities, or combinations of these. Outside London, new machinery involving local government and Police and Crime Commissioners may be needed.

19 Page 29

20 <http://www.theyworkforyou.com/wrans/?id=2015-09-16.HL2263.h&s=lord+beeceham#gHL2263.q0>

b) Adult Justice

On the adult side, Local Justice Reinvestment Pilots in six areas have experimented with rewarding agencies which work together locally to reduce demand on the criminal justice system.²¹ The final report published in July 2015, found that four sites in year 1 and five sites in year 2 achieved the targets for reducing demand required to receive a reward payment.

This may look like a promising result but, somewhat perversely, the evaluation found relatively little relationship between the activities which were funded by the project areas, and the reductions in demand. Indeed, some of the areas which established or extended Integrated Offender Management or alternative to custody programmes saw the number of convictions leading to short prison sentences go up. The largest contributors to the reduction in demand, and therefore to the reward payments, were falls in the numbers of minor convictions. These were largely unrelated to the work undertaken by the interagency groups in the pilot sites. The reward value of reductions in these minor cases (£300 per case) seems very high compared to the value for reductions in custodial convictions (£360). As a result of the way the metrics were established, Greater Manchester was able to claim a substantial reward payment at the end of year one, because its minor convictions reduced by 8,032, although custodial convictions for under 12 month convictions, related custody months, and community orders and suspended sentence orders showed an increase of 508.

There are currently other pilots offering a potential model for reducing the unnecessary use of prosecution. Three police forces are piloting a simplified approach to out of court disposals, although the intention behind this is not primarily to divert more cases from criminal proceedings.²² A more promising approach is being piloted in Birmingham, where Operation Turning Point is a randomised controlled trial designed to compare the relative effectiveness and cost benefit of police prosecuting low harm offenders, with a treatment,

a "turning point contract". This contract combines a deferred prosecution with a set of conditions agreed with the offender, which are intended to support desistance.

The offenders in the experiment were randomly selected only after the police had made the decision to prosecute, based on the evidence in the case and their clearing the threshold for prosecution. Offenders were not, as with a caution or conditional caution, required to admit the offence. The approach was based on research showing that holding a deterrent sanction over an offender – in this case a "deferred prosecution" – can be effective.²³ In this experiment, deterrence was combined with conditions, which were matched to the offenders' pathways to crime and designed to encourage desistance. The model was wholly managed by the police during the experiment, but could also be run in conjunction with third sector partners.

The first year data indicate that the Turning Point has been at least as good as court prosecution for all offenders, at a very significantly reduced cost, including a more than 300% reduction in court cases. Moreover, it would appear that Turning Point is substantially better at reducing violent offending.

The lessons from these initiatives is that it is possible to reduce demand on the criminal justice system, if local agencies and communities are given responsibilities and funds to prevent crime, prevent prosecution and re-offending. This requires a sea change in thinking about power and responsibility. As the Director of the Prison Reform Trust has written: "the most radical and arguably most effective measure would be to devolve the criminal justice budget.... This would enable local leaders to decide how much to spend on community penalties, tagging and prison in order to free public monies for reinvestment in drug and alcohol treatment and mental healthcare."²⁴

21 Kevin Wong, Dan Ellingworth and Linda Meadows 2015 Local Justice Reinvestment Pilot: Final process evaluation report

22 <https://www.gov.uk/government/news/putting-an-end-to-soft-option-cautions>

23 Neyroud, P.W. and Slothower, M.S. (2014). Operation Turning Point: Second Interim Report. Institute of Criminology, University of Cambridge.

24 Letter to the Times October 6th 2015

Section 5

The Way Forward

Last year the Justice Select Committee proposed that “the Treasury should seriously question whether taxpayers’ money is used in ways most likely to reduce future crime and victimisation, including evaluating that spent on custodial sentencing, and develop a longer-term strategy for the use of resources in this manner”.²⁵ Right on Crime in the USA put it more succinctly, “ultimately, the question underlying every tax dollar that is spent on fighting crime ought to be: is this making the public safer?”²⁶

This analysis of initiatives taken forward under the banner of Justice Reinvestment suggests a real opportunity to give local agencies in England and Wales a substantially greater role within the criminal justice system.

The principles that should underpin such an expansion include:

- a) Ensuring that local communities and agencies take greater financial and organisational responsibility for preventing and treating crime in their areas, and creating incentives to minimise the use of “national” resources such as prisons and courts.
- b) The encouragement of local leadership to develop effective criminal justice responses, working with the widest possible range of stakeholders in partnership with central government departments.
- c) Effective use of high quality research and data collection to inform policy and practice development, and the use of resources and the management of risk at a local level.

Specific options which could be considered include:

1. Transferring responsibility for meeting the entire costs of custody for under 18’s to local authorities and PCCs from 2017
2. Planning for local authorities (possibly in consortia) and PCCs to be responsible from 2018 for commissioning secure and other accommodation for under 18’s rather than simply purchasing what is currently available.
3. Working to identify the best ways of transferring responsibilities to a more local level for young adult and/or women offenders with a view to devolving budgets by the end of the parliament. A pilot JR initiative on women combining up front money and reward payments (drawing on the learning from earlier pilots) should be started.
4. Analysing the likely costs and benefits of placing, (a) the National Probation Service and, (b) the Prison Service under more local financial and organisational control; and of the options for increasing the role of Community Rehabilitation Companies in a localised justice system.
5. Inviting PCC's to chair new Justice and Safety Partnerships with CRC’s, local government, health and judicial participation which would give a greater regional voice in the system and create a commissioning vehicle to which criminal justice budgets might be devolved. They could oversee the national roll out of Operation Turning Point (led by West Midlands Police), which reserves prosecution to those cases which cannot be diverted, and they might be given a role in re-investing any savings.

²⁵ Justice Committee para 135 rec2

²⁶ <http://rightoncrime.com/the-conservative-case-for-reform/>

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