

## The prison spiral

Australian Prison Reform Journal

Volume 1, Issue 3, Article 1, 2022

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URL: [www.aprj.com.au/articles/APRJ-1\(3\)-1-The-prison-spiral.pdf](http://www.aprj.com.au/articles/APRJ-1(3)-1-The-prison-spiral.pdf)

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### Abstract

This article provides an overview of factors contributing to the downward spiral towards prison that is disproportionately affecting disadvantaged sections of the Australian population. It discusses the present penal pandemonium in Australia as well as a number of feasible avenues for prison reform.

### The Prison Spiral

The “Tough on crime” approach is a recurring theme for both major political parties in Australia, as well as the media (Cowdery 2017:7-9; Baker 2013:1), especially prior to elections when a “soft on crime” reputation can bring down a government (Baker 2013:1,5,6). The main sponsors of criminological research are governments (who are often in “lock ‘em up” mode) and corporations (who support a tough line on property infringers and hackers, and who might be interested in supplying expanded prisons or even building and operating private prisons). While criminologists will tend to criticize contrived “policy-based evidence” for ever-expanding prisons, the fact that the funders often commission research that favours the prison industrial complex (Rock 2010:764) has had a huge impact (Shore 2020:141-142), including via an increasingly destructive spiral that unnecessarily sucks more and more systemically disadvantaged people down to prison in multiple ways (7:30 Report; Vinson 2007:vi,1-47; Vinson and Rawsthorne 2015:6-11).

The prison spiral starts with disadvantage (7:30 Report; Vinson and Rawsthorne 2015:27-43;115). The Victorian Ombudsman, Deborah Glass, reported in 2015 on the rehabilitation and reintegration of prisoners, finding that the rapid growth in prisoner numbers was overwhelming the capacity to rehabilitate and reintegrate prisoners. The Ombudsman also

described the links between disadvantage and imprisonment: 'A quarter of Victoria's prisoners come from just 2 per cent of the state's postcodes and half from just 6 per cent. High school completion rates are negligible... The average prisoner was unemployed at the time of committing the offence and has a history of substance abuse. Many female prisoners have a history of abuse, and over 40 per cent are homeless upon release. Children of prisoners are six times more likely to be imprisoned than their peers.' (2015:5). In addition, Glass noted the over-representation of Indigenous people in the criminal justice system; that 40% of all Victorian prisoners had a mental health condition; and that prisoners were 10 to 15 times more likely to have a psychotic disorder than someone in the general community (2015:32,34).

Just as sick, addicted and otherwise disadvantaged people are initially drawn into the prison spiral (7:30 Report; Vinson 2015:7-9), that same disadvantage heightens the issues and complexities experienced by these cohorts, with legal proceedings geared against them and limited options due to financial constraints. Innocent people plead guilty because they will get a discount on sentence, get out earlier and save money compared with waiting for trial, paying for defense lawyers (if affordable) and potentially getting a harsher sentence (Bagaric and Brebner 2003:1). Guilty people often plead guilty to more offences than they committed because they rely on every-changing Legal Aid lawyers. If they had been properly informed about the collateral consequences of pleading guilty (Murray 2020:1032-1035), many may not have decided to 'get it over with' to their detriment. Then in prison, there is a myriad of forces that have a criminogenic effect (Borzycki & Baldry 2003:2-3). Exiting from prison, people are now even more disadvantaged. They are institutionalized (Doyle 1999:30), demoralized and depressed (Pękala-Wojciechowska et al. 2021:1-2), traumatized (Vaisman and Einat 2021:307-312; 319-325); tempted to revert to old ways (Halsey 2010:545), and poorer, with lost housing (Collins 2011:17), lost jobs (Harrison and Schehr 2004:5), health (Pękala-Wojciechowska et al. 2021), family and friends (Vinson and Rawsthorne 2015:6-10,118). Society treats them worse because of their criminal record (Baier 2020:221-222,229-230), making it even harder to find accommodation, work and hope. Unless they receive significant and sustained support in all these areas, people will return to crime, drugs and prison (Baldry et al. 2003:i,12-18; Graffam et al.

2014:223,224,232). The impact of disadvantage and a criminal record, as well as how deep-rooted disadvantage may be tackled will be further discussed in topics 4 and 5. In some cases, the disadvantage of prisoners is even more pronounced. Most notably, Aboriginal and Torres Strait Islander prisoners have the worst imprisonment rate in the world (Anthony and Baldry 2017); are jailed at 13.3 times the rate of non-Indigenous prisoners (ABS 2021a); and make up 30.33% of the prison population, even though they constitute only 3.4% of the Australian population (878,998 Indigenous people in an Australian population of 25,776,900 as at 30 September 2021 - ABS). This is discussed in greater detail in Topic 3, as well as Topic 12 for Indigenous ex-prisoners. Other areas of disadvantage include prisoners (and ex-prisoners) with a mental condition (Smith-Merry 2018:189-190), comprising 40% of those incarcerated which is two to three times the rate in the general community (Glass 2015:6,34). Children as young as 10 are incarcerated in Australia, which will be looked back on as absolutely barbaric. Young detainees and ex-detainees are generally disadvantaged by background, (Vinson 2007; Vinson and Rawsthorne 2015). Being a female prisoner (or ex-prisoner) also has unique additional disadvantages due to a 'multitude of personal, relational, structural, and institutional barriers' given their higher rates of mental and substance abuse disorders; FDV history; and low level of education and employment skills (Blitz 2006:1).

The way out of the spiral involves a sustained and coordinated response by all stakeholders, including families, friends, community groups and the entire local community, governments, researchers, charities, support service providers (including bringing together 'employment, housing, disability services, drug and alcohol treatment, mental and general health care, education and vocational training, and generic social services' – Graffam et al. 2017:3) to eliminate all areas of disadvantage, starting with the most disadvantaged communities first for maximum effect (7:30 Report; Vinson and Rawsthorne 2015:27-43;115).

Courses and education and counselling are needed within prison and post-release, as well as intervention for people who are just entering the prison spiral to avert incarceration. More alternatives to incarceration are needed to prevent people from being criminalized in the vicious environment of prison. Within prison, industries are crucial to help prevent

institutionalization, boredom and assaults, as well as to provide the skills, knowledge and experience for a job and positive future upon release. Sustained support for accommodation and employment are also essential for desistance rather than recidivism, especially for young people (Nally et al. 2014).



The prison downward spiral, then is like the whirlpool on the left, involving ‘...those processes and mechanisms through which social inequality is transmitted into unequal criminal punishment, and how criminal punishment reproduces inequality’ (Karstedt 2021:5). The willy willy diagram on the right presents an alternative pathway for those who are ‘more equal than others’ (Orwell 1945), but it also presents a way of reversing the downward spiral by providing real opportunities for the most disadvantaged sections of the community.

As with whirlpools and whirlwinds, the state of our prisons affects the deepest and highest reaches of our society. It is a political issue when we fund mass incarceration but not all the training, education, housing and employment support agencies, programs, halfway houses, shelters, sexual abuse organizations, rape crisis centres and legal advocates that keep people from entering prison or reoffending, and that care for and heal survivors (Bellknap 2015:1).

One might think that governments would be interested in decarceration since expenditure plus depreciation for prisons and community corrections was \$5.09 billion in 2019-2020, a real increase of 5.1% from the previous year. However, firstly (as has been noted) ‘Tough on Crime’ plays well in the media (Cowdery 2017:7-9; Baker 2013:1). Secondly, prison reform is not a popular thing to fund even though it might actually

save much more money in the long term (Baldry and Homel 2021; VCOSS 2013:3; ALRC 2018:4.39-48; JSS 2013:6). Thirdly, Garner describes the political expediency of prisons as a means of social control:

‘The creation of a recidivist delinquent class is deemed... useful in a strategy of political domination because it works to... divide the working classes against themselves, to enhance their fear of prison, and to guarantee the authority and power of the police. By creating a well-defined delinquent class, the prison ensures that habitual criminals are known to the authorities and can be more easily managed, while the powers of surveillance, which this group necessitates, can be easily used for wider political purposes ... [T]he prison does not control the criminal so much as control the working class by creating the criminal ...’

(Garner, cited in Halsey 2010: 551-552)

Carolyn Atkins of VCOSS observed that the ineffectual and detrimental ‘tough on crime’ vicious cycle is driven by inaccurate and misleading evidence derived to support political agendas. She pointed to the hundreds of millions of dollars wasted on constructing more prisons, which fails vulnerable people and undermines programs to address the causes of crime (VCOSS 2013:3).

The combination of risk-averse and populist politicians (Freiberg 2021:27,28); sensationalist journalism (Cowdery 2017:1-2); judges pressured by the media’s “screaming headlines” (Gray 2012:9); a public duped by media fearmongering (Baker 2013:13,14) and self-interested corporations (Chang & Thompkins 2002:60-65) and establishment generally (Halsey 2010: 551-552) has led to a dramatic expansion of prisons, numbers imprisoned and a general tolerance for a high prison population.

## **Recommendations**

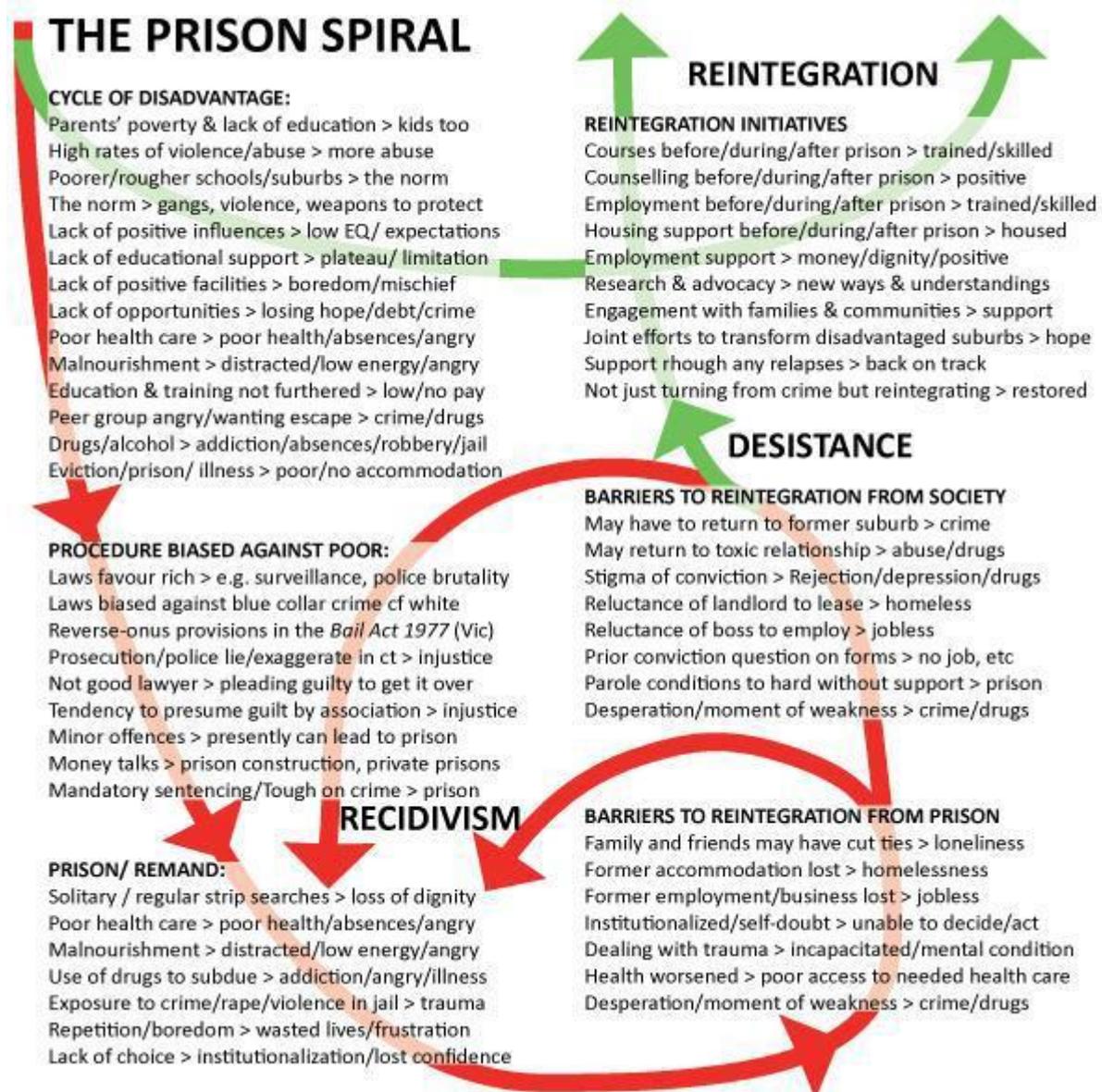
1. To establish a National Federation Reform Council (NFRC) taskforce on Disadvantage Elimination and Decarceration covering all jurisdictions (PMC 2020).
2. To divert a percentage of each Corrections budget to justice reinvestment (JR) and the NFRC taskforce’s action plan, addressing disadvantage and other causes of crime (preferably with the percentage increasing each year as less people are entangled in the prison spiral). Outcomes to date have show that JR not only diverts people away

from the justice system but saves the community money, each dollar spent saving significantly more (ALRC 2018:4.39-48; JSS 2013:6).

3. Providing all jurors with a crime and sentencing booklet and with the reasons for the judge's sentence as one step towards fairer informed public opinion
4. For emergency meetings in each State and Territory involving the media, politicians, criminologists, educators, support agencies, Indigenous and other community groups and the general public aimed at decarceration, including a call for truth and fairness in reporting about sentences; being smart (rather than tough) on crime; and alternatives to incarceration (as was done in Norway prior to major reforms - Johnsen 2011; Benko 2015).
5. Legislate to remove a custodial sentence as an option for minor offences, but allowing for judicial discretion. Greater use of community orders, drug and alcohol courts and other alternatives would free up existing prisons and save hundreds of millions of dollars which could be redirected to providing rehabilitative services and addressing the causes of crime, including alleviating poverty, poor health and lack of education.
6. Ten privately-operated prisons in Australia hold 8,823 prisoners or 20.5% of the prison population (Productivity Commission 2021: Table 8A.4). This is the highest proportion of prisoners in private prisons in the world (the United States only has around 8% - The Sentencing Project 2019). The first major study of the effectiveness of private prisons found that there was no evidence that the private prisons delivered the benefits that were originally envisaged (Andrew et al. 2016). The private prisons generally lacked transparency, making assessment difficult. For example, the monitor of each prison is not required to make their reports available to the public. Similarly, information on prisoner health and complaints are not available to the public. The authors concluded that there is insufficient evidence to support prison privatisation in Australia and they recommended that no further privatisations take place before an appropriate level of information is made available to policy makers and the public. In addition, there is a need for more independent research on the prisoners and prison employees. A more recent study found the same lack of

transparency and data, making proper evaluation of private prisons impossible (Sands et al. 2019).

7. Bail laws, conditional release on bail and judicial decision-making have moved from the presumption of innocence to a risk-averse concentration on public safety where bail is considered a 'privilege' (Bartels 2019:1,3-5). It is recommended that the burden of proof be moved back to presumption of innocence and that reverse onus/show cause provisions in the bail laws be repealed (2019:4).



## Notes

**Note 1:** The common portrayal is that politicians and the media adopt penal populism because the public demands law and order. The media also notes a public backlash whenever a judge is considered to have ruled too leniently. The public is said to regard the judge as soft and out of touch with public opinion. A number of Australian studies have, however, found that jurors and members of the public are on the whole more lenient than judges when they have the same facts and sentencing knowledge as the judge. The public also mostly agree with the judge's actual decision once it is revealed (Freiberg 2021:26; Gray 2012:9; Warner et al. 2011; Gelb 2006, 2008, 2011; VCOSS 2013:4-6; SAC 2018a, 2018b). As Ian Gray, former Chief Magistrate of Victoria noted, the courts and media share an obligation to accurately inform the public (Gray 2012:9). Sentencing in the courts is too often reduced to attention-grabbing headlines, and accompanied with coverage that pays no regard to the inherent complexity of sentencing (Gray 2012:9). Even with the influence of the media (which causes fear which causes public punitiveness), the Australian public still favours alternatives to building more prisons, especially for mentally ill offenders (91.7% of interviewees); young offenders (87.9%); and drug-addicted offenders (83.5%); and non-violent people (74.9%) (Gelb 2011:25).

**Note 2:** Norway, which has very low incarceration and recidivism rates, began with restorative justice experts and the Ministry of Justice agreeing (in 1998 with further reforms in 2007) on decarceration and restoration of any prisoners, and the generous funding of this by politicians. Since then, neither the media nor the politicians try to gain popularity by pushing the sensationalist neoliberal line – instead they stay out of it, leaving corrections to the experts (Johnsen et al. 2011; Benko 2015). Instead of an 'us versus them' relationship between correctional officers and prisoners (as we have in Australia), the relationship between guards and guarded in Norway is one of mutual respect, dignity, trust and openness, with opportunities for growth, rehabilitation and reintegration (Johnsen et al. 2011).

**Note 3:** A marked increase in the number of remand prisoners in Australia; tough on crime policies (such as mandatory sentencing; reverse onus for bail; imprisonment for minor

charges; and more prisoners being sentenced to more time – Freiberg 2021; Halsey 2010); and the rise of the prison industrial complex in the past 40 years have led to significant overcrowding in the prisons (Biles 1990:1-6; Wahlquist 2020; Halsey 2010: 551-552). Two adults commonly share a cell built for one adult (Wahlquist 2020), sometimes with two adults in a cell originally built for one teenager (e.g. as at John Morony CC, NSW – Hart: 2019). Besides being inhumane (Mackay 2015), an increase in overcrowding is directly related to rises in prisoner and staff assaults (OICS 2016:vi,16; Gaes and McGuire 1985:41,62-63; Wordsworth 2018).

**Note 4:** A 2018 analysis by the Australian Institute of Criminology was the first to compare the cost of imprisonment with the cost of community orders. It was found that imprisonment was nine times more expensive than the community-based sentences (Morgan 2018:66), with additional costs of imprisonment such as impact of prison on the prisoner’s physical and mental health and the intergenerational effects of imprisonment (neither of which were measured) (Morgan 2018:66). In addition, the evidence that prison has a criminogenic effect while community orders can reduce reoffending was not considered in the calculations, so the savings of the community corrections pathway would be even greater (Morgan 2018:66).

The national net operating expenditure on corrective services in 2019-20 was \$3.88 billion for prisons, five times that of community corrections at \$0.76 billion (Productivity Commission 2021: Table 8A.1). Net operating expenditure plus capital costs was \$5.09 billion (or \$118,171 per inmate). This massive expenditure is net of operating revenues and excludes capital costs, payroll tax, transport/escort services and prisoner health.

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