

# Why does NSW have a higher imprisonment rate than Victoria?

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## INTRODUCTION

A study carried out by the New South Wales Bureau of Crime Statistics and Research in 1992<sup>1</sup> explored the differences in imprisonment rates between two demographically similar Australian States - New South Wales (NSW) and Victoria. It found that the NSW prisoner population rate was much higher than that of Victoria, and had been so for at least the previous ten years.

The issue of why this is so has important implications for public policy. There is a high economic cost associated with high prisoner populations, and there may also be social problems if prisons are overcrowded. It is therefore preferable, other things being equal, to have a smaller rather than a larger prisoner population. There is a difference, nevertheless, between having a high prisoner population because of higher serious crime (and therefore arrest) rates and having a higher prisoner population because of tougher penal policies. The former situation may be unavoidable without compromising public safety or confidence in the rule of law. Where tougher sentencing policies alone account for the difference in imprisonment rates between two jurisdictions, there may be value in assessing the costs of such policies against their putative social benefits.

In the previous Bureau study of this issue, the prisoner population rates in 1980 were estimated at 57.8 per 100,000 population for NSW, as opposed to 43.0 per 100,000 population for Victoria. By 1990, the NSW figure had risen to an estimated 70.2 per 100,000 population, while Victoria's rate had remained stable,

at 43.9 per 100,000 population. Population data for sentenced prisoners<sup>2</sup> were combined with data on the average number of sentenced prisoners received each month to provide an estimated average length of stay for sentenced prisoners in each of the two States in 1990. These estimates indicated that Victorian prisoners served an average sentence length of 11.7 months, compared with 8.7 months for NSW. It was therefore concluded that the higher prisoner population rate in NSW was due to its higher monthly sentenced prisoner reception rate, calculated at 8.1 per 100,000 population - more than double Victoria's rate of 3.8 per 100,000 population.<sup>3</sup>

The study also found that in both States, comparable proportions of offenders appearing before higher and lower courts were given gaol sentences. It therefore concluded that the best explanation for the different prisoner reception rates in NSW and Victoria appeared to be a higher volume of criminal cases entering NSW courts. However, following publication of the results, the Victorian Bureau of Crime Statistics and Research indicated that the statistics on sentenced prisoner receptions (as provided by the Victorian Office of Corrections, and published in *Australian Prison Trends*<sup>4</sup>) were misleading. When counting sentenced prisoner receptions, Victoria does not include those prisoners initially received on remand who are subsequently given a prison sentence. Thus the number of sentenced prisoners received is underestimated. To rectify the problem for the current study, new Victorian data on receptions were obtained directly from the Correctional Services Division, Victorian Department

of Justice,<sup>5</sup> for the year 1992-93, and used to replicate the Bureau's earlier analysis of the difference between the NSW and Victorian imprisonment rates. The present study, however, is confined to sentenced prisoners, and does not discuss prisoners on remand.

## METHOD

The size of a prisoner population is a function of the rate of entry to it and the length of time prisoners stay. From data on prisoner population and receptions, it is possible to calculate an average expected length of stay for all prisoners received over the period studied. Assuming a stable institutional population<sup>6</sup> the average length of stay (L) is derived from the prisoner population (P), divided by the number of prisoner receptions per unit of time (R).<sup>7</sup> The average expected length of stay (converted to months) is calculated for the year 1992-93, for both NSW and Victoria.

## RESULTS

Sentenced prisoner populations can consist of different types of prisoners. Usually, sentenced prisoners are held in custody each day for the duration of their sentence. Some of these prisoners are fine defaulters - people who have failed to pay a fine. In addition, there are periodic detainees who are placed in custody for two days of each week for the duration of their sentence.

Sentenced prisoner populations in NSW and Victoria differ in their profiles partly as a result of different sentencing policies in the two States. Firstly, because

**Table 1: Sentenced prisoner populations, receptions and estimated length of stay for the year 1992-93, NSW and Victoria<sup>8</sup>**

	Average monthly prisoner population (P)	Average monthly prisoner population rate per 100,000 resident population	Annual prisoner receptions (R)	Annual prisoner reception rate per 100,000 resident population	Estimated length of stay -months (L)
<b>All sentenced prisoners</b>					
NSW	6579	110.0	10093	168.8	7.8
Victoria	1901	42.6	2220	49.8	10.3
Ratio - NSW / Victoria	-	2.6	-	3.4	0.8
<b>Sentenced prisoners (excluding periodic detainees)</b>					
NSW	5393	90.2	8672	145.1	7.5
Victoria	1901	42.6	2220	49.8	10.3
Ratio - NSW / Victoria	-	2.1	-	2.9	0.7
<b>Sentenced prisoners (excluding periodic detainees and fine defaulters)</b>					
NSW	5292	88.5	4752	79.5	13.4
Victoria	1900	42.6	2079	46.6	11.0
Ratio - NSW / Victoria	-	2.1	-	1.7	1.2

periodic detention is a sentencing option in NSW but not in Victoria, periodic detainees contribute to the sentenced prisoner population in NSW only. Secondly, unlike NSW, Victoria imprisons very few fine defaulters. These differences in sentencing policy obviously contribute to the larger sentenced prisoner population rate in NSW. In order to determine the extent of their contribution and also to explore the contribution of other factors, such as reception rate and length of prison stay, Table 1 presents comparisons between NSW and Victoria for (i) all sentenced prisoners; (ii) sentenced prisoners excluding periodic detainees; and (iii) sentenced prisoners excluding both periodic detainees and fine defaulters. When all sentenced prisoners are examined, including periodic detainees and fine defaulters, the NSW prisoner population rate is about two and a half times that of Victoria. This is solely due to higher reception numbers, NSW having more than three times the sentenced prisoner reception rate of Victoria. The average length of stay for

all sentenced prisoners is shorter in NSW, 7.8 months compared with Victoria's 10.3 months.

Periodic detainees, however, account for almost one-fifth of the NSW sentenced prisoner population. When this group is excluded from the analysis, the NSW sentenced prisoner population rate drops considerably, as does its sentenced prisoner reception rate. While the population rate is still twice that of Victoria, it is clear that a significant contributor to the difference is the fact that NSW uses periodic detention as an option, while Victoria does not. Again the difference is confined to the reception rate, which is now just under three times as great in NSW. The estimated average length of stay is still shorter in NSW.

Excluding fine defaulters as well as periodic detainees from the analysis does not reduce the NSW prisoner population rate markedly. Although the number of fine defaulters sent to prison in NSW each year is large, the population of fine defaulters in gaol at any one time is small, due to their very

short sentences. Removing fine defaulters from the flow of sentenced prisoners received into prison each year, however, markedly increases the estimated average length of stay for NSW. In this case, NSW prisoners spend about 20 per cent longer in custody than their Victorian counterparts, 13.4 months as against 11.0 months. Thus, the revised analysis excluding both periodic detainees and fine defaulters suggests that the larger sentenced prisoner population rate in NSW is *partly* due to longer sentences in NSW. Excluding fine defaulters as well as periodic detainees from the analysis also has the effect of considerably reducing the NSW reception rate. Despite the reduction, the NSW reception rate is still 70 per cent higher than that for Victoria. Thus, this analysis suggests that the difference between the two States in their sentenced prisoner population rates is *primarily* due to a large difference in sentenced prisoner reception rates.

In summary, the *most appropriate comparison* between NSW and Victoria,

is the third comparison which takes into account different sentencing policies in the two States by excluding periodic detainees and fine defaulters. The results in that case suggest that the larger sentenced prisoner population rate in NSW is partly due to longer prison sentences in NSW, but is primarily due to higher prisoner reception rates in NSW.

### EXPLAINING THE RECEPTION RATE DIFFERENTIAL

The higher prisoner reception rate in NSW could reflect higher serious offending rates. Alternatively, the higher reception rate in NSW could be because it has a more punitive approach to dealing with convicted criminals, so that a larger percentage of convicted criminals in NSW are imprisoned, whereas in Victoria more use may be made of non-custodial sentences. In the Bureau's previous study, evidence was provided suggesting that the proportion of convicted criminals who were imprisoned in the two States was comparable. It was therefore suggested that the difference in reception rates was due to more people coming before the courts in NSW, due to either a higher arrest rate, a higher crime rate, or both. At that time there were no nationally comparable crime or court data which could be used to explore these possibilities. There are still no nationally comparable court data, but as a result of work done by the Australian Bureau of Statistics (ABS), there are now nationally comparable data on a range of serious offences. The data have been published in the first National Crime Statistics report<sup>9</sup> and the Crime and Safety survey.<sup>10</sup> The data shown in Tables 2 and 3 are drawn from these reports.

Tables 2 and 3 show that in most categories of crime where comparable data are available, NSW has higher rates of offending than Victoria. In the categories of crime where this is not the case, the recorded rate of offending in the two States is very similar. These data therefore provide some evidence of a higher crime rate in NSW than in Victoria. It seems reasonable to assume that this higher level of crime results in a higher arrest rate and hence a higher court appearance rate. If one accepts Babb's argument<sup>11</sup> that the two States convict and sentence (to prison) roughly

**Table 2: Selected offence<sup>12</sup> profiles, NSW and Victoria, 1993: Number of offences per 100,000 population Data from ABS National Crime Statistics<sup>13</sup>**

Offence	NSW	Victoria	Ratio NSW / Vic
Murder	1.95	1.17	1.67
Attempted murder	1.36	1.46	0.93
Manslaughter	0.10	0.09	1.11
Sexual assault	63.19	70.42	0.90
Kidnapping/abduction	5.21	1.52	3.43
Robbery - overall	99.89	42.67	2.34
Robbery - armed	38.49	22.19	1.73
Robbery - unarmed	61.40	20.48	3.00
Unlawful entry with intent	1838.17	1803.25	1.02
Motor vehicle theft	650.17	618.05	1.05

comparable proportions of defendants, the reception rate differential would appear to be due, at least in part, to higher crime rates in NSW.

### EXPLAINING THE LENGTH OF STAY DIFFERENTIAL

The longer estimated length of stay in NSW could arise either because NSW courts impose longer terms within each category of offence, or because NSW courts encounter a more serious profile of offenders than Victorian courts, or both. A question of interest, then, is whether this pattern of a longer length of stay is consistent across categories of offence. Unfortunately there are no available data to allow a direct offence-based comparison between the sentence lengths of prisoners received in NSW and Victoria.

### CONCLUSION

Our previous bulletin on this issue asserted that the difference in prisoner population rates was solely due to differences in reception rates, for which the best explanation was more cases coming before the courts (as opposed to relatively more convicted persons being given gaol sentences in NSW). Using revised data it has now been established that NSW sentenced prisoners spend about 20 per cent longer in custody than their Victorian counterparts. The difference between the two States' sentenced prisoner population rates, however, is due in much greater measure to a difference in reception rates of sentenced prisoners, than it is to a difference in the length of time spent in prison.

To summarise, then, the higher prisoner population rate in NSW is partly due to

**Table 3: Victimization rates (per cent of households/persons) for selected offences,<sup>14</sup> for 12 months to April 1993 Data from ABS Crime and Safety Australia<sup>15</sup>**

Offence	NSW	Victoria	Ratio NSW / Vic
<b>Personal crime</b>			
Assault	2.6	2.2	1.18
<b>Household crime</b>			
Break and enter	3.7	3.3	1.12
Attempted break and enter	2.6	2.6	1.00

the existence of periodic detention in NSW, and this State's greater use of imprisonment for fine default. When these two groups of prisoners are excluded, the population difference appears to be partly because NSW prisoners spend longer in custody, but mainly because sentenced prisoners are received into custody at a much greater rate in NSW than in Victoria.

This conclusion will doubtless surprise some observers, given the impact the *NSW Sentencing Act 1989*<sup>16</sup> has had in increasing periods spent in custody by NSW prisoners and therefore the size of the NSW prisoner population.<sup>17</sup> There is a difference, however, between explaining the *growth* in the NSW prisoner population over time, and the *difference* between NSW and Victoria in the size of their respective prisoner population rates at any given point in time. If sentenced prisoners in NSW are serving periods in custody approximately 20 per cent longer than Victorian prisoners, and the periods served in custody by NSW prisoners are now longer because of the Sentencing Act, one can only assume that, prior to the introduction of the Sentencing Act, the lengths of stay of NSW and Victorian prisoners may have been more comparable.

While the results reported in this Bulletin go part of the way towards explaining the large difference between the NSW and Victorian imprisonment rates, some important questions remain unanswered. Due to the absence of nationally comparable data on the offence profile and sentence length of prisoners received into custody, for example, we cannot determine whether NSW prisoners spend longer in custody than Victorian prisoners (a) because NSW courts impose longer terms of imprisonment for comparable offences, or (b) because NSW courts deal with a more serious profile of offenders. The Australian Bureau of Statistics is soon to assume responsibility for publishing national correctional data. It is to be hoped that the provision of data bearing on (a) and (b) will be high on its list of priorities.

## NOTES

1 Babb, L. 1992, *Imprisonment Rates in NSW and Victoria: Explaining the Difference*, Crime and Justice Bulletin No. 14, NSW Bureau of Crime Statistics and Research, Sydney.

- 2 Sentenced prisoners excluded prisoners on remand.
- 3 These rates were based on estimates of total population given each month in the publication Australian Institute of Criminology 1990, *Australian Prison Trends*, Nos 164 to 175, January to December 1990, AIC, Canberra.
- 4 Australian Institute of Criminology, op. cit.
- 5 The Bureau gratefully acknowledges the contribution made by Mr Stuart Ross, of the National Criminal Court Statistics Unit, Australian Bureau of Statistics, in obtaining accurate data for Victoria. The Bureau also thanks Mr John Walker, formerly of the Australian Institute of Criminology, for his helpful advice at the planning stage of the Bulletin.
- 6 A stable institutional population is one where the mean arrival rates and lengths of stay are constant, that is, do not change over time, and hence the population also remains constant. Although prisoner populations are not always stable over time, only 12 months' data were included in the analysis reported here. For this short period of time, it was considered reasonable to assume a stable prisoner population in both States. The prisoner populations were in fact quite stable over the period in NSW and Victoria. Between July 1992 and June 1993 there was a 1.7 per cent increase in NSW and a 4.8 per cent increase in Victoria.
- 7 For a derivation of this formula, see Greenberg, D.F. 1979, *Mathematical Criminology*, Rutgers University Press, New Brunswick, New Jersey.
- 8 Prisoner population data are based on the average monthly prisoner populations for the year July 1992 to June 1993: Victorian data are from the Australian Institute of Criminology publication *Australian Prison Trends*, AIC, Canberra; NSW data are from the NSW Department of Corrective Services. Prisoner reception data are for the year July 1992 to June 1993. Data were provided by the NSW Department of Corrective Services and the Corrective Services Division, Victorian Department of Justice. Population data (as at 31 December 1992) for the rate calculations were obtained from the Australian Bureau of Statistics publication *Australian Demographic Statistics, March Quarter 1994*, Cat. no. 3101.0, ABS, Canberra.
- 9 Australian Bureau of Statistics 1994, *National Crime Statistics, January to December 1993*, Cat. no. 4510.0, ABS, Canberra.
- 10 Australian Bureau of Statistics 1994, *April 1993 Crime and Safety Australia*, Cat. no. 4509.0, ABS, Canberra.
- 11 Babb, op. cit.
- 12 The offence categories 'driving causing death' and 'blackmail/extortion' have been excluded from the Table due to concerns about the comparability of the data.
- 13 See note 9.
- 14 Where the Crime and Safety report and the National Crime Statistics report cover the same offences, the National Crime Statistics data have been used because they give a clearer picture of differentials in the rate at which offences are coming to the notice of police.
- 15 See note 10.
- 16 The NSW Sentencing Act 1989 implemented the 'Truth in Sentencing' legislation, the purpose of which was to ensure that prisoners actually served the sentence handed down to them.
- 17 Gorta, A. 1989, *Truth in Sentencing*, Research Publication No. 22, Department of Corrective Services, Sydney; Matka, E. 1989, *NSW Sentencing Act 1989*, NSW Bureau of Crime Statistics and Research, Sydney.

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