

Why is the NSW prison population falling?

Jacqueline Fitzgerald & Simon Corben¹

Aim: After steadily increasing for more than a decade, from mid 2009 the NSW prison population started falling. This paper aims to identify why this has occurred.

Method: The study relied upon administrative data. Corrections data was considered to gauge the size, timing and nature of changes in the prison population. Police recorded crime and court data were analysed to measure changes in offending and sentencing which eventually have a bearing on prison numbers.

Results: Corrections data showed that the decrease in the prison population was limited to sentenced prisoners and was driven by a reduction in the number of offenders serving sentences for Assault, Break and enter, Theft and Traffic offences. Break and enter, Theft and Assault, prisoners appear to have decreased, in part, because the incidence of these offences have fallen. There have also been moves away from the use of imprisonment as a penalty for each of the four offences whether because fewer offenders are being imprisoned or because the average sentence length has fallen.

Conclusion: In 2011, fewer offenders were serving prison sentences for Assault, Break and enter, Theft and Traffic offences. This appears to be due to both a reduction in the number of offenders in court and changes in sentencing practices for certain offences. It is beyond the scope of this paper to ascertain whether changes in sentencing practice reflect a move towards more lenient sentencing or whether they have resulted from changes in the severity of offences themselves. The reduction in the number of offenders for some offences appears to be due, at least in part, to a reduction in the volume of crime.

Keywords: prison, incarceration, imprisonment, sentencing

Introduction

While prison is an expensive and, some argue, relatively ineffective way to respond to offending (Weatherburn, 2010) it has been very popular in New South Wales. NSW has the third highest rate of imprisonment in Australia behind the Northern Territory and Western Australia (Productivity Commission, 2012). Correspondingly, due to its large population, NSW manages the largest prison population in Australia, accounting for 35 percent of prisoners nationally and close to double the number managed in the next largest jurisdiction.

Figure 1 shows the trend in the NSW prison population since January 1998. The most striking feature of this series is how much and how steadily the prison population has grown over almost all the fifteen years shown. Between January 1998 and its peak in July 2009 the total NSW prison population increased from 6,261 to 10,322 representing a 65 percent increase.

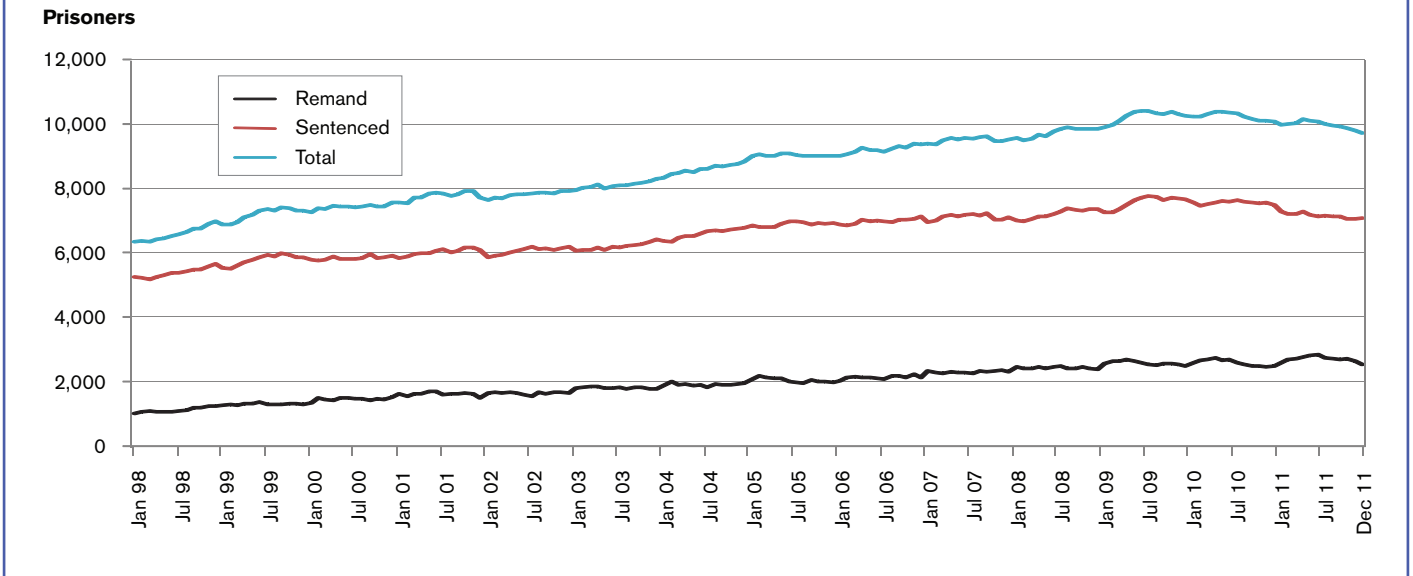
The second notable feature of Figure 1 is that in mid-2009 the prison population stopped rising. From that time it appears to have steadied before falling in the past year. In the 29 months from July 2009 to December 2011 the prison population decreased from 10,322 to 9,626, a fall of 696 prisoners or 6.7 percent.

The downturn in the prison population marks a discontinuation of the consistent upward trend that has dominated the past fifteen years. This paper considers some of the factors behind the recent decrease in the prison population, in particular:

- Whether the fall is due to a decrease in remand and/or sentenced prisoners
- What offence categories are showing the largest decreases in prisoner numbers

¹ Corporate Research, Evaluation and Statistics, Corrective Services NSW

Figure 1: Trends in NSW prison population by legal status; January 1998 to December 2011



- Whether the fall is due to a decrease in the number of offenders convicted and/or the proportion of convicted offenders sentenced to prison, and/or a decrease in the average length of a prison sentences.

Changes in remand and sentenced prisoner populations

The prison population is comprised of two main sub-populations; remand prisoners awaiting the finalisation of matters at court, and sentenced prisoners serving a sentence of imprisonment. At any one time, roughly a quarter of the NSW prison population are remand prisoners. The remand and sentenced prisoner populations are governed by different factors and, as such, any meaningful analysis of prison population trends needs to consider the two populations separately.

Figure 1 shows the trend in the remand and sentenced prisoner populations, in addition to the total prisoner population. The figure shows that the decrease in total prisoner numbers has resulted from a decrease in sentenced prisoners. Between mid-2009 and December 2011 the sentenced prisoner population decreased by close to 690 prisoners or 8.8 percent¹. Further evidence of the decrease in sentenced prisoners is evident in trends for sentenced prisoner receptions, which decreased by 15 percent over this same period (from 8941 in 2008-09 to 7600 in 2010-11, Corrective Services NSW, 2011).

In contrast to the decrease in sentenced prisoners, over the same period the remand prisoner population increased by 11.6 percent (close to 300 prisoners), reaching its highest point of 2,852 remand prisoners in June 2011. As the recent decrease in the prison population has arisen from a decrease in sentenced prisoners, the rest of the paper will focus on trends in sentenced prisoners only.

Changes in the offence profile of sentenced prisoners

Table 1 compares the principal offence profile for sentenced prisoners in June 2009 and June 2011. The largest decrease in sentenced prisoners was for prisoners whose principal offence was for Assault (Acts intended to cause injury), followed by Traffic (Traffic and vehicle regulatory offences), Theft (Theft and related offences) and Break and enter (Unlawful entry with intent/burglary, break and enter). These four offence categories alone accounted for a total decrease of 486 prisoners.

This result is supported by the sentenced prisoner reception figures (see Appendix). The fall in sentenced prisoner receptions for these four offence categories accounted for 75 percent of the total decrease in sentenced prisoner receptions over a similar period.

Table 1 also shows that the decrease in sentenced prisoners was not uniform across offences categories, with some, such as Fraud, deception and related offences (down 1.5%) and Sexual assaults and related offences (down 0.1%), showing very little change. In fact, the number of sentenced prisoners in some offence categories incorporating more serious offences actually increased across the period. For example, Homicide and related offences increased by 5.1%, Robbery, extortion and related offences increased by 3.8% and Illicit drug offences increased by 2.1%. These small increases, however, were outweighed by the larger decreases in the more common offence categories identified above.

Changes in the number of offenders convicted

The decreases in prisoners serving sentences for Assault, Traffic, Theft and Break and enter offences could be a result of

Table 1. Principal offence for sentenced prisoners as at 30 June 2009 and 30 June 2011

ASOC Category of principal offence	June 2009	June 2011	Change	% Change	% of total decrease
Homicide and related	668	702	34	5.1	-8
Acts Intended to Cause Injury	1,290	1,097	-193	-15.0	43
Sexual Assault and related	764	763	-1	-0.1	0
Dangerous or Negligent Acts Endang. Persons	101	136	35	34.7	-8
Abduction, Harassment and Related Offences	93	94	1	1.1	0
Robbery, Extortion and related	766	795	29	3.8	-6
Unlawful Entry With Intent/Burglary, B&E	790	717	-73	-9.2	16
Theft and related	393	304	-89	-22.6	20
Fraud, Deception and related	197	194	-3	-1.5	1
Illicit Drug Offences	891	910	19	2.1	-4
Weapons and Explosives	81	71	-10	-12.3	2
Property Damage and Environmental Pollution	60	66	6	10.0	-1
Public Order Offences	102	81	-21	-20.6	5
Traffic and Vehicle Regulatory Offences	423	292	-131	-31.0	29
Offences Against Justice Procedures etc.	1,042	998	-44	-4.2	10
Miscellaneous Offences	95	87	-8	-8.4	2
TOTAL	7,756	7,307	-449	-5.8	100

Source: NSW Inmate Census 2009, 2011 data file.

fewer offenders being convicted of these offences or a smaller proportion of those convicted being given a prison sentence. Table 2 shows recent trends in the number of offenders convicted in NSW Local and District Courts for Assault, Traffic, Theft and Break and enter offences over three separate 12 month periods. The table also presents the total number of offenders convicted of any offence over these periods.

Between April 2009 and March 2012, there were sizeable, statistically significant decreases in the number of offenders convicted in all four offence categories. The total number of offenders found guilty over the period decreased (down 13%) and the decrease in the four selected offences accounted for 73 percent of that decrease. Traffic offences (down 19.2%) and Break and enter (down 15.3%) showed the most marked decrease in convictions. It is also important to note the large

differences between the number of convictions across the offence categories. For example, the 19.2 percent decline in convictions for Traffic offences represents a decrease of more than 9300 offenders compared to the decrease of 294 offenders represented by the 15.3 percent fall in offenders convicted of Break and enter offences.

Changes in the percentage of offenders sentenced to prison

Table 3 shows the proportion of offenders convicted in NSW Local or District Courts who were sentenced to imprisonment for the selected offences over the three year period from April 2009 to March 2012. Within the offence categories that contributed most to the decrease in sentenced prisoners, two have shown reductions in the use of imprisonment.

Table 2. Number of offenders found guilty^a of selected offences, NSW Local and District Courts

Offence category	Number of offenders found guilty			3 year trend
	Apr 2009 - Mar 2010	Apr 2010 - Mar 2011	Apr 2011 - Mar 2012	
Assault	16,734	16,243	15,753	Down 5.9%
Break and enter	1,917	1,587	1,623	Down 15.3%
Theft	6,451	5,958	5,806	Down 10.0%
Traffic	48,722	42,573	39,367	Down 19.2%
Total (all offences) ^b	117,183	106,961	101,892	Down 13.0%

^a offenders who were found guilty and who pleaded guilty

^b all offences, not just those presented in the table

Table 3: Percentage of guilty offenders sentenced to imprisonment for selected offence categories, NSW Local and District Courts

Offence category	Apr 2009 - Mar 2010	Apr 2010 - Mar 2011	Apr 2011 - Mar 2012	3 year trend
Assault	13.6	12.2	12.0	Down 11.7%
Break and enter	51.1	53.1	51.0	Stable
Theft	18.2	17.7	15.4	Down 15.2%
Traffic	2.3	2.1	2.2	Stable
Total (all offences) ^a	8.9	8.7	8.6	Stable

^a all offences, not just those presented in the table

Table 4. Mean sentence length (months) for offenders sentenced to imprisonment for selected offence categories, NSW Local and District Courts

Offence category	Apr 2009 - Mar 2010	Apr 2010 - Mar 2011	Apr 2011 - Mar 2012	3 year trend
Assault	6.9	6.1	6.0	Down 13.0%
Break and enter	9.3	8.7	8.3	Down 11.1%
Theft	4.9	4.8	4.9	Stable
Traffic	6.5	6.1	6.0	Down 7.2%
Total (all offences) ^a	6.0	5.8	5.7	Down 5.5%

^a all offences, not just those presented in the table

Table 5. Summary of conviction and imprisonment outcomes for selected offences

Offence category	Sentenced prisoners ^a	Offenders found guilty ^b	Percent of offenders sentenced to prison ^b	Sentence length ^b
Assault	Down 15.0%	Down 5.9%	Down 11.7%	Down 13.0%
Break and enter	Down 9.2%	Down 15.3%	Stable	Down 11.1%
Theft	Down 22.6%	Down 10.0%	Down 15.2%	Stable
Traffic	Down 31.0%	Down 19.2%	Stable	Down 7.2%

^a compares prison population at June 2009 with June 2011

^b compares court data from April 2009 to March 2012

The proportion of offenders convicted of Theft who were imprisoned fell by 15.2 percent between 2009 and 2012 while the proportion convicted of Assault fell by 11.7 percent. Such changes may reflect a decrease in the seriousness of offences rather than simply a move towards more lenient sentencing.

Changes in sentence length

Table 4 shows the trend in mean prison sentence imposed for the selected offence categories in the three years to March 2012 as well as the overall trend for all offences.

Table 4 shows that sentence lengths within three of the four offence categories (and Total all offences) trended down over the three year period. The mean sentence length fell for Assault (down 13.0%), Break and enter (down 11.1%) and Traffic offences (down 7.2%). Shorter prison sentences could, in part, explain the decrease in prisoners as prisoners are held in prison

for shorter periods. For example, in 2009-10 prisoners sentenced for Assault were sentenced to an average 6.9 months in prison, compared to only 6.0 months for those sentenced in 2011-12. Again, whether these results reflect changes in sentencing or in the seriousness of offences is unable to be determined here.

Summarising the changes

Table 5 summarises the overall trends in conviction, imprisonment and sentence length for the offence categories which showed the most significant decrease in sentenced prisoner numbers.

The table indicates that the decrease in sentenced prisoners cannot be explained by a single trend in convictions or outcomes. One key factor contributing to the decrease, however, appears to be that the number of offenders found guilty fell significantly for each of the four offences considered. In addition

to that decrease, each of the four offence categories considered showed a general reduction in the use of imprisonment as a penalty, whether in the form of fewer offenders being sentenced to imprisonment (as was the case for Assault and Theft offences) or in the form of shorter average prison sentences (as was the case for Assault, Break and enter and Traffic offences).

Conclusion

Between July 2009 and December 2011 the adult sentenced prisoner population in NSW decreased by 8.8 percent or close to 690 prisoners. Comparison of the populations between these points in time revealed that the prison population has fallen in large part because fewer prisoners are serving sentences for (in order) Assault (Acts intended to cause injury), Traffic (Traffic and vehicle regulatory offences), Theft (Theft and related offences) and Break and enter (Unlawful entry with intent/burglary, break and enter) offences.

Analysis of conviction and sentence data suggests that the sentenced prisoner population has decreased in these offence categories mainly due to the combination of a decrease in the number of offenders being proven guilty for these offences, decreases in the proportion of offenders being sentenced to full-time imprisonment (for Assault and Theft) and decreases in the mean sentence imposed for Assault, Break and enter and Traffic offences.

As noted above, it is important to note that reductions in the use of imprisonment, either as the proportion of offenders imprisoned or as a reduction in sentence length, do not necessarily indicate a reduction in severity of penalties imposed by courts. Although we have looked at changes in penalties across broad categories of offence, substantial changes in offence seriousness can occur within a particular category. This is particularly true of Assault offences, where the seriousness (and resulting penalty) can vary greatly. It is possible, therefore, that it was changes to the nature and/or seriousness of offences within these categories that are reflected in the change in court outcomes rather than a more lenient justice system response to them.

Sentencing options relating to full-time custody were also been amended over the period of study. From October 2010 sentences of imprisonment may no longer be served by way of periodic detention. At the same time a new sentencing option (the Intensive Correction Order or ICO) was introduced as an alternative to full-time custody (*Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*). While the introduction of the ICO post-dates the commencement of

the decrease in sentenced prisoners, it is possible that this legislation may have contributed to the on-going decrease in sentenced prisoners. However, more detailed research is required to determine if the new sentencing option had some or any effect on the decrease in the prison population.

Lastly, the results above indicate that the decrease in sentenced prisoners resulted in part from a reduction in the number of convictions for specific categories of offences. This raises the question of whether the decrease in convictions is a result of falling crime rates.

Recorded crime statistics indicate that there has been a reduction in three of the four offence categories identified above. Comparing the 12 months to March 2009 with the 12 months to March 2012 recorded crime rates for fell for Assault (down 6,027 or 8.5%), Break and enter (down 10,401 or 15.7%) and Theft (down 12,631 or 7.3%). Whilst the number of driving offences increased (by 11,075 offences) only a small proportion of these offences result in imprisonment. The fall in crime is therefore also likely to have made a significant contribution the decline in prison numbers.

Notes

1. Note that in September 2008 the NSW sentenced prisoner population included approximately 100 prisoners held on behalf of the Australian Capital Territory (ACT). Following the opening of the first ACT prison in September 2008, all but a very small number of these ACT prisoners had been transferred out of NSW prisons to the ACT. The ACT prisoners are included in Figure 1, however they have been excluded from the more detailed analyses that follow.

References

- Corben, S. (2009) NSW Inmate Census 2009: Summary of characteristics. Corrective Services Statistical Publication No. 34. Corrective Services NSW, Sydney.
- Corben, S. (2011) NSW Inmate Census 2011: Summary of characteristics. Corrective Services Statistical Publication No. 38. Corrective Services NSW, Sydney.
- Corrective Services NSW (2011) *Statistical Report 2010-11*. Corrective Services NSW, Sydney (Table 11 p.17)
- Productivity Commission (2012) *Report on Government Services*, Productivity Commission (<http://www.pc.gov.au/gsp/rogs/>)
- Weatherburn, D. (2010) *The effect of prison on adult re-offending* (Crime and Justice Bulletin No. 143). NSW Bureau of Crime Statistics and Research, Sydney.

Appendix

Table A1. Trends in sentenced prisoner receptions for selected offences, 2008-09 to 2010-11

Offence category	2008-09	2009-10	2010-11	Total decrease (2008-09 to 2010-11)	Percent of total decrease	Percent decrease in this category
Assault	2,074	1,838	1,641	-433	32.9	-20.9
Break and enter	762	696	609	-153	11.6	-20.1
Theft	811	784	687	-124	9.4	-15.3
Traffic	970	802	697	-273	20.8	-28.1
Total (all offences)	8,914	8,424	7,600	-1,314	100.0	-14.8

Source: Corrective Services NSW datafile. Sentenced prisoner receptions is a count of prisoners commencing a unique episode of imprisonment under sentence.