ORFWORD

"The Consortium is very grateful to Professor Spencer for producing this paper, which we are pleased to publish as a contribution to the debate. Too little attention has been paid to the long-term consequences of current policies. We are drifting towards committing ever more resources to policies that cause social damage and do not make Scotland safe. Professor Spencer's disturbing paper shows clearly what these consequences will be. We should take heed."

Baroness Vivien Stern, July 2007

The Cost Of Unnecessary Imprisonment

Alec Spencer

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Acknowledgements

I want to thank The Royal Society of Edinburgh and Encounter for hosting a stimulating conference in December, 2006 on the theme of Alternatives to Prison. Although I had already thought and spoken about much of what I write in the paper below, the conference distilled some of these views and imparted in me the need to take some action on them. I am also grateful for the help and advice of Baroness Vivien Stern, Professor Jackie Tombs and for the helpful way in which Professor Andrew Coyle has over the years laid out his arguments on the issues surrounding the growth of imprisonment in the UK.

Preface

This briefing paper looks at a major problem facing Scotland in terms of the number of people being sent to prison, and also the projections for this number to rise significantly over the next couple of decades. It describes the enormous cost in terms of re-offending, of tax-payers' money and human misery that is the result of our present arrangements. The paper also contains 12 proposals for change to the criminal justice system in Scotland.

It is perplexing and also destructive to human lives that at a time when crime is decreasing the numbers locked up in prison are rising. Increasing rates of imprisonment do nothing to increase community safety. We know that in terms of reducing re-offending prison doesn't work. Nearly half of the prisoners released are reconvicted within 2 years, and for male young offenders the figure is 57 per cent ¹. Research evidence tells us that simply punishing by imprisonment is likely to increase reoffending by 1-3 per cent ².

The most recent Scottish statistics available for 2004/05 ³ show that of 16,511 persons receiving a custodial sentence, 83% (13,635) were sentenced to under 6 months – that means that they served

less than 3 months in prison. Indeed, 9,052 (55%) were sentenced to 3 months or less, which meant spending less than $1\frac{1}{2}$ months in prison.

So does this do any good?

- Scottish prisons cost the tax payer about £280 million to operate each year. With other charges, contracts and capital investment in new buildings the figure is considerably higher, getting on for £400 million. It costs about £40,000 a year for each prisoner place, or about £110 a day. It costs the tax payer £5,000 to send someone to prison for six weeks.
- Prison does not reduce reoffending.
 We know that there are more effective and much cheaper ways of reducing reoffending using community alternatives to prison.^A
- The experience of being imprisoned is unpleasant, dehumanising and negative. It does harm to those locked up and should only ever be used as a last resort. It also does harm to an estimated 13,500 others each year - the children of those imprisoned. (www.familiesoutside.org.uk)
- A similar situation exists in the use of remand imprisonment. In his review ⁴ of the conditions of remand prisoners, Clive Fairweather, then HM Chief Inspector of Prisons noted that only 46.3% of all remands in 1997 received a custodial disposal. At that time there were about 15,000 remand receptions. In 2006 the number was a staggering 19,593 ⁵.
- Additionally, in 2006 there were some 6,213 people were sent to prison for fine default⁶. The average length of sentence for them was 11 days and the value of the outstanding fine about £275.

A. "We understand how destructive custody is, especially when it is delivered for such short terms. There are no positive outcomes of short periods in custody. ... We know that if we use community-based alternatives for such offenders, we get much better outcomes in relation to reducing reoffending. ... The cost of keeping someone on a probation order in the community for one week is \$30." Chris Hawkes, Chief Officer, Lothian and Borders Community Justice Authority; Justice 2 Committee Official Report 28 November 2006, Col 3070

The saddest fact of all is that our prison population continues to rise unnecessarily. It was under 5,000 only 15 years ago, and remained around 6,000 till 2001. In 2005/06 the average was 6,857 and figures just published show that the average population for 2006 rose by 5% from the previous year to 7,1117. In 2007 the numbers have increased again and at times have been well over projections. Indeed, without the use by the Prison Service of early release on Home Detention Curfew, the number would have been over 7,500. When the Custodial Sentences and Weapons Act is implemented another 1,400 could be added to the system. Will this constant rise ever be halted?

Is Scotland such a bad and lawless place?

Scotland has areas of high deprivation, drug misuse, alcoholism and violence – but its level of crime is generally no worse than any other developed western society. A European Survey in 2005 showed that on all measures of crime Scotland is around the EU average and generally much lower than in England and Wales ⁸. Despite this, we imprison more people than nearly every other western European country. At about 137 per 100,000 of our population we lock up nearly twice that of Norway, Finland, Denmark, Sweden,

Northern Ireland or Turkey. Belgium, France, Germany and Greece all imprison less than 100 per 100,000. In recent research by Roger Houchin, taking a snapshot of the prison population in Scotland (on 30 June 2003), he noted that "the imprisoned population comes disproportionally from the most deprived communities" 9. The mean imprisonment rate for 23 year old men from the 27 most deprived wards in Scotland was 3,427 per 100,000 men. "That is, on the night on which our sample was taken 1 in 29 of all the 23 year old men in these communities was in a Scottish prison."10 The inescapable conclusion is that we are imprisoning the poor and the disadvantaged disproportionately.

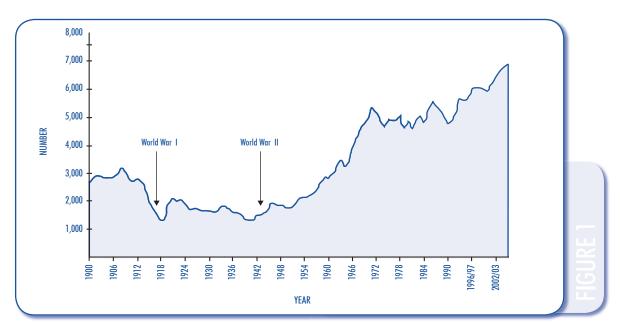
So why do we use imprisonment so much?

It is simply down to our culture, our traditions, the way we do things, and to our media, politicians and judges. When there is a crime committed and an accused convicted the tabloid media demand heavy punishment. Once convicted an offender is now much more likely to go to prison and for longer than in previous years ¹¹. It is right that violent offenders and sex offenders are put in prison for the protection of society, but this is not so justifiable for the petty criminal, the drug addict and the mentally disturbed.

Despite the courts imposing fines in 63 per cent of convictions (down 8 per cent from 1995/96)

Chart Showing the Average daily prison populationin Scotland

Chart reproduced by courtesy of Scottish Executive Criminal Justice Statistical Bulletin. Scottish Executive. Prison Statistics Scotland 2004/05. Edinburgh. 2005.



and giving community sentences in 16,952 cases, they still sent nearly the same number (16,531) to prison¹². Judges sometimes believe that alternatives to sending someone to prison are not available or ineffective, and this view persists ^B. It is up to the managers of the criminal justice system in Scotland to ensure that other options are available and to show that they are more effective than prison and, let us not forget, much better value. Scottish society needs to stop thinking that prison can cure the ills of society and instead to use some of the money we spend on prisons to improve and change lives in the community.^C Our politicians need to have the courage to act on the evidence and legislate to ensure courts stop sending to prison those who do not need to be there.

Imprisonment exists to punish the offender and protect society and only those whose crime is so severe that it warrants custody as a punishment or are so dangerous that incapacitation is required for the safety of the public should be sent there. People should not be sent to prison in order to sort out their housing problems, deal with employment and employability issues, life skills, to help with literacy and educational needs, to assist with relationships, to tackle the scourge of drug addiction or alcoholism and to cope with medical and mental health problems. Prison cannot make up for the deficits of poor parenting or the social conditions existing within society because that is not the purpose of prison.

Who should not be in prison?

Everyone agrees that the public need to be protected from murderers, rapists, armed robbers and the like. They should be in prison, should serve sentences of appropriate length and should only be released when it is safe to do so.

- We should not be imprisoning people with mental illness, those addicted to drugs and alcohol, the abused, weak and vulnerable, and the incapable. For them, the answer lies not in custody but in re-integration and support in their community. Community services, housing associations, health services, education and training should all feature.
- Stop locking up children under sixteen years of age in prison primarily because there is no room elsewhere in residential settings?
- We should not send petty criminals to prison and we should think more carefully before we send women to prison ^D.

Who goes to prison?

What we do know from the profile of those who come to prison ¹³ is that, compared to the average population, they are:

- 13 times more likely to have been in care as a child
- 13 times more likely to have been unemployed
- 10 times more likely to have truanted at school
- 20 times more likely to have been excluded from school
- 2½ times more likely to have a family member convicted of an offence
- 6 times more likely to be a young father
- 15 times more likely to suffer from HIV
- 70% of the prison population likely to suffer from two or more mental disorders

B. "Imprisonment is not the most effective punishment for most crime. Custody should be reserved as a punishment for very serious offences, especially when the offender is violent and a continuing risk to the public. But not every sentencer or member of the public has full confidence in the present orders which leave offenders in the community." Introduction to Green Paper "Punishment, Custody and The Community", (July 1988) Home Office, Cm 424. London: HMSO.

C. "Is it not surprising that what we know to be most effective gets the least resource, and what we know to be least effective gets the majority of the resource? There is a fundamental problem that needs to be addressed through

resource transfer and the transfer of people away from short-term custody into community-based disposals." Chris Hawkes, ibid. Col 3071

D. The Chief Inspector of Prisons for Scotland comments in his 2003-04 Annual Report (p.16) "This is not a cross-section of society: these are very damaged women. What will prison do for them?" In the Cornton Vale Inspection (2005) he found 98% had drug addiction problems, 80% had mental health problems and 75% had a history of abuse and very poor physical health. Also, see "Women in Prison in Scotland: An Unmet Commitment" Briefing Paper prepared by the Scottish Consortium on Crime and Criminal Justice (July 2006).

- A significant number have attempted suicide in the past
- Over 30 times more likely to have accommodation problems
- ½ were not registered with a doctor
- 70% had a drug misuse problem [In Scotland about 85% of men and over 95% of women who go to prison have a drug misuse problem.]
- 80% (of the above) did not access treatment for their drug problems
- A significant number did not have the literacy skills of an eleven year old (level 1). [Writing 82%, reading 48% and numeracy 65%].

The cost in taxpayers' money

Because contracts for private sector prisons now run for 25 years calculations have to be made for the whole project cost. The cost of £40,000 a year per prisoner place amounts to a staggering £1,000,000 for the life period of the contract. The total cost of each prison over this period is likely to be somewhere between £700,000,000 and £1,000,000,00 (£1 billion). Let us have a national debate on whether Scotland wants to commit the next generation to this burden.

The question we have to ask ourselves is whether we really want to pay this huge amount primarily to make things worse. It would be better value for money and for the community, victims and offenders to invest these huge sums to improve society, reduce re-offending, cut the prison population and in the longer term save on this enormous drain on resources.

Victims

People in Scotland are not more punitive than elsewhere. The evidence suggest that victims want three things:

- reparation for the damage or hurt,
- to understand why it happened, and
- to ensure that it doesn't happen again.

Punishment of the offender is not foremost in their mind. Neither should it be in anyone else's. Communities and victims do not benefit from petty offenders being sent to prison for short sentences. We know that people who are sent to prison are likely to:

- Lose their accommodation
- Lose their jobs
- Suffer increased financial problems
- Lose contact with family and external supports
- Suffer deteriorating mental and physical health; indeed, a number attempt selfharming and suicide, and tragically some succeed
- Be introduced to the drug culture
- Become de-skilled through eroding thinking and life skills

Do we really want to spend up to £1,000,000 on each prisoner place to assist in damaging lives when we know that probation and supervision in the community can be provided at 1/20th of the cost? It seems strange to offer this choice: we could assist 20 people in the community to regain a positive and crime free life for the cost of destroying one life in prison – and then opt to destroy the one. As a society we have to wake up to the choices and what we are doing.

However, in Scotland it is not all gloom. The Scottish children's hearings system, founded on considering primarily the needs of children rather than their deeds, is arguably the best of its kind in the world. Also, Scotland's prison system provides some good practices, has good relationships in its prisons and, although often hampered by over-crowding tries to contribute to reducing reoffending and improving the chances of social inclusion. Additionally, Scotland is contributing substantially to the development of much needed skills and expertise in restorative justice practices ¹⁴. There is strong evidence from recent research that highlights the success of restorative justice in reducing serious repeat offending and addressing important psychological needs of victims. 15 So there is a wealth of good-will to do things differently and more positively.

How might it be?

Everybody accepts prison is necessary for some. There are currently some 2,900 convicted long term prisoners in the Scottish prison system. These are people serving sentences of four years or over – which means they will serve at least two years in

custody. The figure also includes those serving life sentences. Let us assume that we need space for 3,000 such long-term sentenced prisoners. These prisoners require security but they are also in need of interventions and treatment programmes so that when they do finally emerge from prison they will pose less risk to the public.

For the others, let us try to think again. If they really require to be imprisoned let's try to house them as close to their homes and communities as possible. It makes sense because it is more likely to sustain family links, social work support, visits by lawyers and it also likely to reduce the costs of families visiting (which is sometimes met from the public purse for those who can ill afford to do so, for example those on benefits).

We should not imprison people unnecessarily. We don't need to spend more money, or to get new resources – it is about doing things differently, and where possible keeping people in the community and with their families where they belong and working with them. The new Community Justice Authorities which became effective in April 2007 need to be empowered to transfer resources from where they don't work to where they can make a real difference. Money will need to be redeployed to speed up the processes of justice, servicing courts, providing interventions and in providing support for youngsters ¹⁶.

In the longer term we can get three wins:

- reduced crime and reoffending
- reduced costs to the taxpayer
- fewer people in prison and fewer victims.

Let me make a few proposals as to how things might be:

12 Proposals For Change

Prison System Proposal 1

The Scottish prison service should be restructured into a two tier system. There would be a national system responsible for looking after the long-term convicted population (which currently sits at about 2,900). The national prison system would look after dangerous and long-term prisoners who require security and from whom the public require to be

protected. It would also be the task of the national system to assess risk and need and to provide programmes to address offending behaviour – such as sex offender and violence programmes. The national prison system would also sustain links with the local community from which the prisoner has come because his re-integration back into that community will be dependent upon proper throughcare being facilitated.

The remainder of the Scottish prison system should become a regional or local prison service providing local, community-based prisons whose primary function would be to facilitate remands for the court. It may be in time that large local prisons – which are arguably economically viable but not satisfactory at a personal level – should be reduced in size and, where necessary, small units opened in areas serving local communities.

Community Justice Authorities Proposal 2

The funding for local prisons should be routed through the 8 new Community Justice Authorities (CJAs). These CJAs service local communities and are responsible for ensuring provision of offenders services in their areas. The Authorities are constituted and managed by a convener and elected members of the constituent Local Authority Councils.

Proposal 3

CJAs should be given powers to manage the local prisons and remand institutions in their area. This involves the power to switch resources and to purchase bail, hostel or supported accommodation provision, programmes and other services required as an alternative to sending persons to custody.

Remand Prisoners Proposal 4

The level of the remand population required should be discussed between the CJA and the local Procurator Fiscal Service so that a working maximum figure of remands held can be agreed. If or when this figure is likely to be exceeded the procurator fiscal should determine which remand prisoner is least in need of custodial conditions and they should then be bailed and if necessary electronically tagged. In other words, the remand numbers for each CJA should be capped. Bail Supervision services can remove the need for remand in cases where the court has doubts about "ordinary" bail. It means work on reducing re-

offending starts immediately in the community, that the offender turns up in court on the due date, and can reduce the number of custodial sentences given positive reports to the court on the co-operation in the community during the period of bail. If these were available to a significant proportion of the almost 20,000 remands per annum, ther would be substantial savings on prison building proposals and prison management.

Overcrowding Proposal 5

Scottish Prisons' overcrowding has been repeatedly condemned by the Chief Inspector of Prisons.^E It adversely impacts in many ways, on the individual and on the capacity of the system to deliver. The Chief Inspector lists "the nine evils of overcrowding", and describes how they do harm. Prison Governors now enter into a form of contract with the SPS stating the number of prisoner places they can provide. They should declare the maximum they can hold in legally compliant and decent circumstances, ensuring basic services and human rights can be maintained. They should not be allowed to admit prisoners in excess of this ceiling.

Proposal 6

Criminal justice boundaries should be coterminous with other criminal justice agencies. Sheriffdoms, the Crown Office and Procurator Fiscal Service, Court Services, Criminal Justice Boards and, where appropriate prison organisational structures, should be realigned. It would also make sense to look more broadly at the linkages with Health Boards and Community Health Partnerships, other Local Authority functions, and the police.

Proposal 7

SPS requires to speed up its integration of health services, including mental health and addictions services, with the NHS. SPS should no longer provide a separate service and interventions provided in prison should be part of the 'patients pathway' determined by NHS practitioners and where appropriate followed up by provision in the community on release. Similarly, provision of education in prison should be the responsibility of the Scottish Executive Education Department working in conjunction with Local Authorities and Colleges of Further Education. In particular, local and remand facilities should be linked in to local educational provision.

Young Persons Proposal 8

Children under sixteen should no longer be admitted to prison on unruly certificates. This is contrary to the United Nations Convention on the Rights of the Child and an affront to humanity and decency.

Proposal 9

Consideration should be given to raising the age at which a young person can receive a custodial sentence from sixteen to eighteen years of age. Scotland should explore options for managing young people who have hitherto been imprisoned in other secure types of setting if these are required. This should be part of a broader examination of youth justice issues, with the possibility of raising the jurisdiction of the Children's Hearing System to the age of 18. It is recommended that the Justice Committee establish an Inquiry to consider whether the arrangements for juvenile justice should be changed so that, except in exceptional circumstances, young people under 18 years of age are not dealt with by the Criminal Justice system but are retained within the Children's Hearing system.

Women Proposal 10

Particular consideration should be given to ensuring that only those women who require custody are sent to a penal institution. There are only about 70 females who are serving long-term prison sentences and a small national resource may be required for them. If any women and girls must be kept in prison for remand or short-term sentences they to should be able to serve them in local facilities near to their communities and families. Women and girls should not be sent to prison just because the facilities provided by the prison service are deemed suitable and accessible ^F.

E. "Scotland's prisons are not full. Why? Because no matter how many people are crammed in to them, they cannot put up a "No Vacancies" sign. They have no option but to make more room somehow. Overcrowding is now so bad that every new prisoner admitted will certainly make things worse for all the others. Overcrowding makes things worse for everyone: for prison staff, prison managers, and prisoners. Yet again this year the prison population has reached record levels and is maintaining record levels." Overview: HM Chief Inspector of Prisons for Scotland Annual Report for 2005-06 (November 2006). SE/2006/198.

F. See SACRO's web site for two case studies from Cornton Vale prison highlighting the inappropriate use of prison for some offenders www.sacro.org.uk/research/research.html

Sentencing Proposal 11

The use of short-term prison sentences, i.e. those under 6 months (effectively under 3 months served in prison) should be abolished, unless for exceptional circumstances (e.g. public safety). Sentences under six months should be served in the community.

Magistrates and District Courts and New Community Courts Proposal 12

Magistrates or District Courts should be restructured and revitalized. They should be thought of as part of local community justice processes. There is a real role for lay Justices who are part of their communities.

- a) The Magistrates or District Courts should lose the power of sentencing to imprisonment;
- b) The court should be re-formed into a 'Community Court';
- c) The court should have wider powers of community sentencing, such as probation orders and community service orders;
- d) The court should have powers to seek advice, and to order services, from community services such as health, addictions, restorative justice, and employability/training;
- e) The court should be required to take into account the 'needs' of offenders as well as their 'deeds' and balance these when making sentencing decisions ^G;
- f) Enforcement of Community Court sentences should remain with Community Courts and imprisonment should not be a response to a breach when the original sentence did not consider a custodial sentence as necessary. (The same applies to Fines).
- g) The court should work swiftly.

G. The Kilbrandon Report [Children and Young Persons Scotland, Report. (April 1964), Cmnd. 2306. SHHD. Edinburgh, HMSO] and the establishment of the Childrens' Hearing System which followed it was based on understanding the 'needs' of the child. The Adult criminal court system is concerned with the 'deeds' i.e. offending behaviour of the offender. The new Community Court should take account of both deeds and needs to arrive at a disposal which recognises the impact of the offender's personal and social conditions on his capacity to change and reduce reoffending.

In conclusion

Is this what the future holds?

New prisons for Dundee, Dunfermline, Paisley, Glasgow and Hamilton. Cumbernauld and Cambuslang also likely sites.

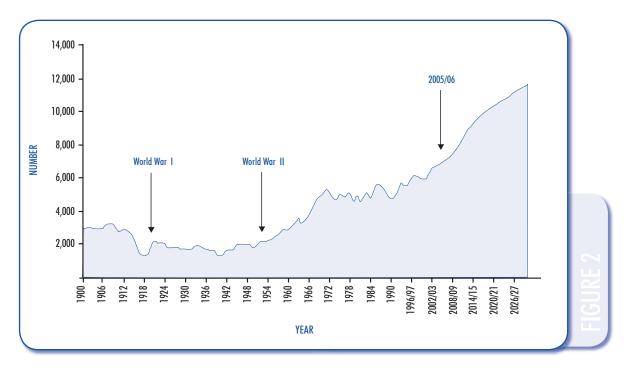
Scottish Ministers announce plans to build 5 extra new prisons to accommodate the additional 3,600 prisoners expected between now and 2030. Projections of Scottish prison populations show that by 2015-16 the population is likely to reach 8,300 and by 2030 10,500. These projections do not take account of recent changes proposed in the Custodial Sentences and Weapons (Scotland) Bill. This could see another 1,100 to 1,400 additional places required and 2 more prisons. The total prison population could well reach 11,900 and require 7 new prisons. This would see the cost of prisons for tax-payers rise by £200-£250 million a year, with a bill of over £6 billion extra over the following 25 years.

It is also planned that the prisons at Aberdeen, Inverness and Dumfries will be bulldozed and replaced by larger ones.

So might a newspaper article run. There is nothing far-fetched about this. Of course, it is unlikely to appear, because each new prison would be announced separately, a few years apart. However, this is what will happen if increasingly we continue to lock up people in prison. Our rate of imprisonment will rise from 137 to 233 per 100,000 of the population. Is this where we want to be in 2030? Do we really want to spend between £500-£700 million (at today's prices) each year on imprisoning men, women and young people?

Indeed, it is possible the figures could be even worse. The Prison Population, pre-Home Detention Curfew (HDC) is currently running between 450 and 600 more than last year. The average prison population in 2006 was 7,111. Without about 275 being released on HDC the number would be over 7,500. Explanations are difficult, but the use of remand, and the short term and young offender populations are up, while those serving long sentences for serious crime are down. Thus the figure of 233 per 100,000 is not unrealistic, and could, if present trends continue, be under-stated.

Possible prison population by 2030

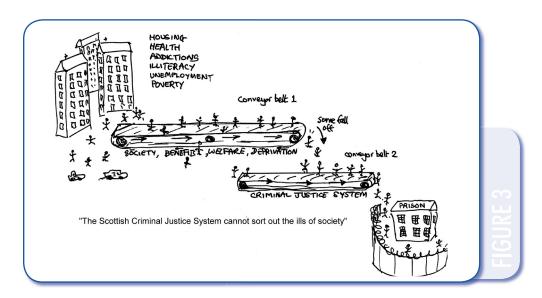


Or could it be like this ...

The Scottish criminal justice system cannot sort out the ills of society nor can it change social institutions or practices. It can, however, try to deal with those who are already in it. The image is of two conveyor belts. The first and larger of the two represents some of the processes which impact on communities and their members. The conveyor is filled with those who are unable to cope, who are vulnerable, have housing problems, suffer poor physical or mental health, are addicted to drugs or alcohol, are unemployed, have poor literacies or inadequate life skills. Many will be poor, some destitute and many on benefits. From this first conveyor some, but not by any means all, are drawn on to the second, smaller, Criminal Justice conveyor. Although some offenders are not from this background, and some are serious and dangerous offenders who warrant imprisonment, many others are a product of the society in which they find themselves. Some have poor experiences from their childhood, and have not much positive going on in their lives. What they have in common is that they end up in prison.

It would damage fewer lives and cost less to taxpayers if the number of people arriving on the second conveyor belt could be reduced, and it would make it a lot easier to work with those who do then end up as offenders. Society, and not the organs of the criminal justice system, has to sort out the first conveyor belt as it delivers many, far too many, into the hands of the second.

July 2007.



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- 15. 'Restorative Justice, the Evidence' Sherman & Strang. Smith Institute, London 2007.
- 16. Organisations such as Includem have demonstrated imaginative ways of turning round the lives of youngsters in trouble. Youth Restorative Justice projects are also examples of how Scotland is working with young people to reduce re-offending.

SCCCJ Publications List

June 2007: Giving up Crime: Direction for Policy

A report by Beth Weaver and Fergus McNeil from the Glasgow School of Social Work/Scottish Centre for Crime and Justice Research, Universities of Glasgow and Strathclyde. This sets out eight key principles for policy change to assist people in giving up crime.

• 2007: Crime and Justice in Scotland 2005/06: A Review of Progress

The second review of the progress of crime and justice in Scotland.

July 2006: Women in Prison in Scotland: An Unmet Commitment

A Briefing Paper: The first in a series of short briefing papers on criminal justice topics of current interest.

• 10 May 2006: Early Release from

Comments by SCCCJ on the Report of the Sentencing Commission for Scotland.

October 2005: Crime and Justice in Scotland 2004/05 A Review of Progress

This is the first in a series of annual reviews of the progress of crime and justice in Scotland. SCCCJ hopes it will promote discussion and debate and lead to more interest generally in defining, measuring and building on success.

2005: Reducing the Prison Population: Penal Policy and Social Choices

The Consortium's aim in this report is to further the debate about how best to reduce the prison population in Scotland whilst maintaining public safety.

2004: A Unique Punishment: Sentencing and the Prison Population in Scotland

A study of decision making by sentencers in Scotland by Prof Jacqueline Tombs.

• 2004: Re:duce Re:habilitate Re:form

Consultation -Consortium discussion paper. This discussion paper has been produced to encourage debate on the current consultation by the Scottish Executive.

• 2002: Making Sense Of Drugs And Crime

This report goes beyond an analysis of the 'drug problem' to indicate how a harm reducing and more principled and effective penal policy on drugs, alcohol and crime could be developed.

November 2000: Rethinking Criminal Justice in Scotland

This report argues for a broad integrated social policy approach to crime reduction, with an emphasis on early prevention, given the evidence that this is the best way to protect victims and communities.