



BRIEFING

# PRISONS AND PREVENTION

GIVING LOCAL AREAS THE POWER TO REDUCE OFFENDING

Jonathan Clifton

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IDEAS to  
CHANGE POLICY

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# SUMMARY

It is well known that England and Wales's prison system is not very good at reducing crime or rehabilitating offenders. It is hugely expensive, and delivers relatively little return for the taxpayer, making it a highly inefficient arm of the public sector. This is not sustainable in the current climate, in which the number of prisoners is projected to increase while the Ministry of Justice budget is earmarked for further cuts.

This paper argues that there is an inherent flaw in our criminal justice system: the people who could act to reduce offending have neither the financial power nor the incentive to do so. The reason for this is that many of the services and agencies that could act to reduce offending are organised and controlled at the local level, whereas the budget for prison places is held by central government. The challenge is therefore to 'unfreeze' the resources that are locked up in the prison system, and ensure that local services and agencies are enabled and incentivised to use those resources to both prevent crime and develop alternatives to custody.

At the moment, incentives work in precisely the opposite direction: if a local authority were to invest in high-quality services that kept people out of prison, the financial benefits would accrue to the Ministry of Justice (because its expenditure on prisons would fall as a result), while the local authority would end up with more people using community services, which are on their books. Economists in the US have described this as a classic problem of a 'common pool resource', in that local judges can send defendants to prison 'because it does not cost them anything' (Jonson et al 2015).

Recent moves to devolve power and resources to groups of local authorities and city mayors could hold the answer to this problem. The government has already successfully experimented with devolving elements of the youth justice system to local authorities, as well as granting greater powers over transport, skills and health services to some of England's major cities and counties. We propose that this approach be extended to the management of low-level adult offenders, who make up the bulk of 'churn' within the prison system. This could be achieved by giving city mayors or combined authorities a budget to cover the costs of this group of offenders, and then charging them for each night that an offender from their area is held in prison. This would unlock resource for local authorities to invest in preventative services and alternatives to custody, as well as giving them a strong financial incentive to do so. It would thereby ensure that money and responsibility for reducing reoffending are located where they can best be exercised.

## Key recommendations

In order to design an effective mechanism for devolving custody budgets for adult offenders, the government should take on board lessons from a number of effective programmes that have been run by youth justice systems in England and the US. The case studies presented in chapter 4 of this report reveal the following eight common lessons that should inform the design of any reform to the adult offenders budget.

- Focus on low-level offenders.
- Savings must be re-invested in the right activities.
- Resources must be held at the appropriate scale.
- Do not expect cashable savings to accrue immediately.

- Give local areas stability and mitigate risk.
- The funding formula matters.
- Devolution works when both sides share the vision.
- Sentencing and other levers are also important.

Bearing these design principles in mind, we recommend that the government devolves the custody budget in the following way.

- City mayors or groups of local authorities, in consortia with their police and crime commissioners (PCCs) should be allowed to bid for control of the custody budget for all offenders who come from within their area and are serving a sentence of less than 24 months. Ideally, the budget they are given would be set for a period of at least three to four years, and central government would commit to funding any unexpected spikes in the number of offenders in the system (if there were a repeat of the 2011 riots, for example). These features are important in terms of giving certainty for planning.
- In return for assuming financial control, the city mayor or combined authority could sign up to a headline target for reducing reoffending in their area. The custody budget they are given could take into account some modest assumptions about savings that will accrue over time, in order to ensure that reductions are made to the overall prison budget.
- In addition to being given a custody budget, the city mayor or combined authority should also be allowed to apply for a small amount of ‘transformation funding’ to enable them to make upfront investments in services and alternatives to custody that will deliver savings further down the line. Central government could, however, retain a right to ‘claw back’ this funding if the anticipated savings to the custody budget are not delivered.
- The city mayor or combined authority would then be charged by the National Offender Management Service (NOMS) for the cost of accommodating any of their residents who are sentenced to less than 24 months in prison. The running costs of a prison place would be covered by an agreed national tariff, based on the full cost of a prison place.
- The city mayor or combined authority would be free to spend any money that remains in their custody budget once prison costs for their residents have been deducted. They should choose to invest these savings in preventative services and/or alternatives to custody.
- The operational management of prisons would remain the responsibility of a central government agency (NOMS). This is important because of the need to move offenders around in order to manage flows in the prison population, and because local areas do not currently have the capacity or capital resources to take on these functions. The funding of offenders sentenced to *more* than 24 months in prison would also remain at the national level, given that they are higher risk and will have less contact with local services.
- In the longer term, central government should also devolve the funding for probation services for this group of offenders to city mayors or combined authorities (working in consortia with their police and crime commissioners). Many of the community sentences and community rehabilitation services used by these offenders currently fall under the probation budget, so it would make sense to align funding and incentives for these services in the same place as the custody budget. Such a move would not be possible in the short term, since probation services for this group of offenders have been contracted out to ‘community rehabilitation companies’, and it would be both expensive and disruptive to break these contracts. However, the Ministry of Justice should seek to devolve the funding and oversight of probation once existing contracts for probation services come up for renewal.

These proposals would give city mayors and other local leaders the necessary resources, capacity and financial incentives to invest in services that help keep low-level-adult offenders out of prison. The precise pace and scale of devolution should be determined by cities and local areas themselves: local areas should be able to bid for control of the custody budget if and when they have sufficient capacity and governance to take these functions on. It is likely that large urban areas like Greater London and Greater Manchester – which produce a large number of offenders and where a city mayor already has powers over policing – would be the first candidates.

# 1. THE AIM

That England and Wales's criminal justice system is not as effective as it could be in terms of reducing crime and rehabilitating offenders is well-known. The justice secretary, Michael Gove, has committed himself to trying to change this situation. In one of his first speeches as secretary of state, he described his aims as being:

*'to make our prisons places of rehabilitation which give those who have made the wrong choices opportunities for redemption; to help offenders when they leave custody to make the right choices and contribute to society; to rescue young offenders, and those who may be on the path to offending, from a life of crime.'*

Gove 2015a

The justice secretary's focus on reducing both the number of people committing crimes and the number of people going to prison is partly inspired by recent reforms in the US which have been led by leading Republicans associated with the Right on Crime organisation.<sup>1</sup> After years of being 'tough on crime' and incarcerating ever larger numbers of people, a number of US states are trying a different approach. Concerned at the large amounts of taxpayers' money being spent on ineffective prison bureaucracies that do little to reduce reoffending, they are turning to alternative models such as community rehabilitation programmes, specialist drug and alcohol treatment, and allowing offenders to earn the right to release if they attend education and training programmes to help get their lives back on track. These initiatives are all accompanied by swift action to return offenders to prison if they break the terms of their treatment programmes or parole (Nolan 2013, Allen 2015).

In England and Wales, rising prison numbers and government spending cuts are combining to create a similar impetus for reform. The prison population in England and Wales has risen steadily over the last decade, and these increases are projected to continue over the course of this parliament – official estimates show that the prison population will rise from 86,000 in 2015 to nearly 90,000 by 2021 (MoJ 2015a: 3). This growth in demand for prison beds is occurring in the context of substantial spending cuts. The Ministry of Justice (MoJ) saw its resource budget reduced by more than a quarter over the course of the last parliament, and it has been asked to find additional savings of £600 million (15 per cent of its budget) over the next four years (HMT 2015). It has already made substantial cuts to probation, the courts service and legal aid; it will, therefore, only be able to achieve the savings required of it by reducing the amount it spends on prisons, which make up an increasingly large share of its budget.

The current funding challenge has brought the failures of our criminal justice system into sharp relief. The proportion of prisoners who reoffend within a year of being released has remained between 45 and 50 per cent throughout the whole of the last decade, despite numerous different reforms and increasing numbers of people being locked up (MoJ 2015b) (see figure 1.1). This means that the system is not effective enough at preventing crime, protecting victims, or helping offenders to turn their lives around. The big challenge facing policymakers in this parliament is, therefore, how to prevent people from (re)offending.

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1 <http://rightoncrime.com/>



## Who to target?

If the government's aim is to prevent people from committing offences and reduce the size of the prison population, then it will have to decide which offenders to target. Society rightly demands that people who commit serious offences (such as violent crime, sexual offences and terrorism) and are a danger to society are punished and incarcerated for a long time. The number of prisoners on long-term sentences is, in fact, on the rise, partly as a result of the historic sexual offences being brought through the court system in the wake of the Jimmy Saville scandal (MoJ 2015a). It is clearly not possible or desirable to make significant inroads by targeting this group.

Instead, the government should target the 'revolving door' of relatively low-level offenders who cycle in and out of prison on short-term sentences of less than 24 months. These offenders place a burden on the system in two ways. First, they occupy a prison place which itself is very expensive, costing an average of over £36,000 a year (MoJ 2014). Second, they make up the bulk of 'churn' in the system – nearly half of people entering prison under sentence are serving a sentence of six months or less – and as a result they place a huge amount of pressure on the crown prosecution, courts and probation services (PRT 2015). As table 1.1 shows, in September 2015 there were 11,783 people in prison on sentences of less than 24 months, 6,541 of whom had received sentences of less than 12 months (MoJ 2015c). A rough estimate would put the costs of this to the taxpayer at some £427 million in terms of prison places alone,<sup>2</sup> with additional costs for the rest of the criminal justice system.

**Table 1.1**

Prison population on short-term sentences in England and Wales, by sentence length, September 2015

Sentence length	Number in prison
Fine defaulter	104
Less than or equal to 6 months	4,315
Greater than 6 months to less than 12 months	2,122
12 months to less than 2 years	5,242
<b>Total on short term sentences</b>	<b>11,783</b>

Source: MoJ 2015c

This group of offenders also has the highest reoffending rate of any group of prisoners, which suggests that prison sentences are not effective at rehabilitating them (or at protecting people who will become the victims of their crimes). As figure 1.1 illustrates, the reoffending rate for prisoners who serve a sentence of less than 12 months remained particularly high between 2002 and 2013, hardly changing at all despite a host of government initiatives.

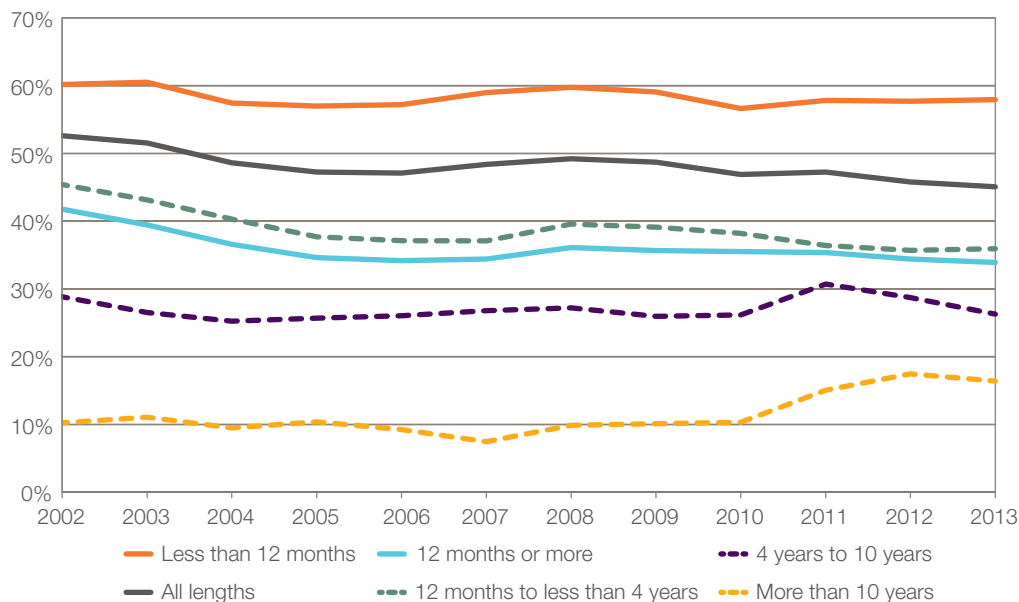
On a more positive note, the comparatively high reoffending rate for this group of prisoners suggests that there is considerable room for improvement. If their reoffending rate could be reduced to a level similar to those of offenders who have served longer sentences, then the number of offenders flowing through the courts, prison and probation services would be substantially reduced – thereby saving public money and ensuring that fewer people fall victim to low-level crimes. The government should therefore focus their reform efforts on this group of offenders.

<sup>2</sup> This calculation assumes that there are 11,783 people in prison on short sentences throughout the year (MoJ 2015b), and that the average cost of a prison place is £36,237 (MoJ 2014). This does not include the cost of 'churn' within this prison population, which will lead to higher costs for courts, probation and prison receptions. See MoJ (2014) for detailed data on prison costs for 2013/14.

**Figure 1.1**

*The reoffending rates of adult offenders sentenced to less than 12 months remain stubbornly high*

Proportion (%) of adult offenders released from custody who commit a proven reoffence, by custodial sentence length, 2002–2013



Source: Adapted from Ministry of Justice 2015b: figure 4

## 2. PREVENTING (RE)OFFENDING

As the previous chapter explained, locking up offenders on short-term sentences does not appear to help reduce either low-level crime or reoffending rates. It is hugely expensive and inefficient, and delivers very little return for the taxpayer. The government must therefore find more effective means of both dealing with this group of offenders, and preventing more of them from offending in the first place. Efforts to achieve these outcomes will need to focus on three things.

### 1. Local services to prevent crime

**First, it must be ensured that local services are available to support people who might fall into low-level crime as a result of mental health problems, insecure work and housing, drug and alcohol addictions or earlier abuse.**

A large number of people end up in prison as a result of these underlying issues. As table 2.1 shows, the proportions of the prison population that have, or have experienced, social problems of this kind are far higher than those of the general population. Relative to the average member of the general public, prisoners are four times more likely to show symptoms of psychosis; three times more likely to have been homeless; and 12 times more likely to have been in care as a child (PRT 2015).

**Table 2.1**

The social characteristics of prisoners as a percentage of the prison population and the general population\*

Characteristic	Proportion of prison population	Proportion of general population
Taken into care as a child	24% (31% for women, 24% for men)	2%
Experienced abuse as a child	29% (53% for women, 27% for men)	20%
Observed violence in the home as a child	41% (50% for women, 40% for men)	14%
Regularly truant from school	59%	5.2% (England) and 4.8% (Wales)
Expelled or permanently excluded from school	42% (32% for women, 43% for men)	In 2005 <1% of school pupils were permanently excluded (England)
No qualifications	47%	15% of working age population
Unemployed in the four weeks before custody	68% (81% for women, 67% for men)	7.7% of the economically active population are unemployed
Never had a job	13%	3.9%
Homeless before entering custody	15%	4% have been homeless or in temporary accommodation
Have children under the age of 18	54%	Approximately 27% of the over-18 population*
Have symptoms indicative of psychosis	16% (25% for women, 15% for men)	4%
Identified as suffering from both anxiety and depression	25% (49% for women, 23% for men)	15%
Have attempted suicide at some point	46% for women, 21% for men	6%
Have ever used class A drugs	64%	13%
Drank alcohol every day in the four weeks before custody	22%	16% of men and 10% of women reported drinking on a daily basis

Source: Prison Reform Trust 2015: 28

\*Note: In most if not all cases, the above data applies to England and Wales (unless stated otherwise in the right-hand column). The Prison Reform Trust (2015: 28) gives a full breakdown of data sources used in this table.

The importance of underlying drivers of crime can be seen very clearly in data on drug use. A recent study published by the Home Office showed that the rise in theft in the late 1980s and early 1990s was strongly linked to an explosion in the number of people using heroin and crack cocaine during this period (Morgan 2014). Similarly, when theft fell dramatically between 1995 and 2012, a major factor in that fall was found to be a fall in the number of people using heroin and crack – either because they had received treatment or were simply quitting drug use as they aged. The report calculated that between a quarter and a third of the fall in thefts over the 1995–2012 period can be accounted for by the drop in heroin and crack use, rather than any changes to policing or prisons policy (ibid).

Many of the underlying drivers of crime can be described as ‘complex’ social problems, in the sense that they have multiple and overlapping causes that do not fit neatly into single government service areas. Issues like mental ill-health, low skills, homelessness, drug abuse and domestic violence are inherently unpredictable – they often interact with each other, and many cannot be solved without changes in human behaviour. There are therefore no standard procedures that governments can rely upon to help solve these problems. What’s more, they generally require different services to work together in a holistic way that is tailored to the specific needs of individuals (Muir and Parker 2014).

In this context, it is clear that the criminal justice system itself does not hold all of the necessary levers to help reduce offending. Effective action to reduce the prison population will depend on local services that help to treat mental health problems, substance abuse and other social ills – many of which are commissioned or co-ordinated by local authorities and, increasingly, city mayors. As the then newly appointed justice secretary Michael Gove argued in his speech to the 2015 Conservative party conference, ‘the best criminal justice policies are good welfare, social work and child protection policies’ (Gove 2015b).

## 2. Diverting offenders from the courts

**Second, the criminal justice system will need to find more ways to mete out justice to low-level offenders outside of the courts system.**

At the moment, many offenders end up going through a lengthy court process. The average time between an offence being committed and a case being completed is now 156 days in magistrates’ courts, and 328 days in the crown court; both figures have increased substantially over the last two years (MoJ 2015d). This delays justice for the victim and punishment for the offender. As well as placing a large administrative burden on the system, these delays can mean that, because such a long time has passed since the offence was committed, the subsequent punishments are not very effective.

A number of effective programmes have been put in place with the aim of ‘diverting’ low-level offenders away from the court system in order to deliver swifter and more effective forms of justice. These include the introduction of on-the-spot fines; the enabling of police officers to negotiate some form of immediate reparation for the victim (such as a vandal agreeing to clear up damage and apologise); the use of cautions and other ‘out of court disposals’ by the police; and the introduction of ‘neighbourhood justice panels’, which act in place of courts and negotiate for an offender to undertake community work as a form of reparation. These approaches have been shown to save huge amounts of police and court time, freeing both up to focus on more serious offenders. They have also been shown to reduce the likelihood of reconviction and to be more satisfactory for victims (see Muir 2014 for a comprehensive review of the evidence on the impact of diversionary justice programmes). However, despite the evidence on the benefits of these sorts of ‘diversionary’ activities, they are not systematically used in England, and there is a lot of potential to expand these approaches.

### 3. Alternatives to custody

**Third, for offenders who do end up in court, magistrates and judges need to use alternatives to custodial sentences for low-level offenders.**

The English and Welsh criminal justice system tends to rely quite heavily on sending people to prison if they commit a low-level offence: as a result, we have the highest imprisonment rate in western Europe (PRT 2015). However, prison is not the only option for punishing and rehabilitating people who commit an offence. A number of alternatives can be used, which typically involve:

- the offender being supervised in the community by a probation officer
- requiring offenders to do unpaid work such as litter-picking
- imposing a curfew or banning offenders from participating in certain activities
- requiring offenders to enrol on an accredited rehabilitation programme such as anger-management or drug abuse treatment
- enrolling offenders on restorative justice programmes, wherein they must meet and make reparations to their victims.

The main benefit of using these sorts of community sentences is that offenders can be punished and enrolled on programmes that help to tackle the underlying causes of their criminal activity, while simultaneously being kept in the community near to their family and to jobs – precisely the things that are known to help to prevent reoffending. Conversely, a prison sentence makes it harder for offenders to keep their lives on track, as they often end up losing their job and family ties. Community sentences have been demonstrated to be more effective than prison for low-level offenders – in England and Wales, they have been found to have a reoffending rate that is 7 percentage points lower than that of similar offenders who served short prison sentences (PRT 2015: 4). They are also considerably less costly to the taxpayer.<sup>3</sup>

Despite the potential for ‘alternatives to custody’ to help reduce reoffending and save taxpayer money, they are not always used or delivered as effectively as they could be. This means that they have further potential to improve the criminal justice system. As figure 2.1 illustrates, the number of community orders has dropped substantially over the last decade, and fell by 8 per cent in the year to June 2015 alone (MoJ 2015e). This fall has largely been offset by an increase in the number of suspended sentences, which are also served in the community, although there are fewer of these in absolute terms. Meanwhile, the proportion of offenders being sentenced into custody has increased slightly over the last three years.<sup>4</sup>

Why are alternatives to custody not being used more often? This can partly be explained by sentencing guidelines, which ultimately determine whether offenders end up behind bars or are sentenced in the community. However, it is also possible that the quality or availability of alternatives to custody in some areas is too low, and that magistrates therefore do not have sufficient confidence in them to consider them an option. For example, there can be long waiting times for rehabilitation programmes in the community: offenders typically wait more than two months between receiving a community sentence and actually starting a programme (CSJ 2014). This means that we must invest in higher quality alternatives to custody in order to ensure that magistrates and judges feel confident in using them.

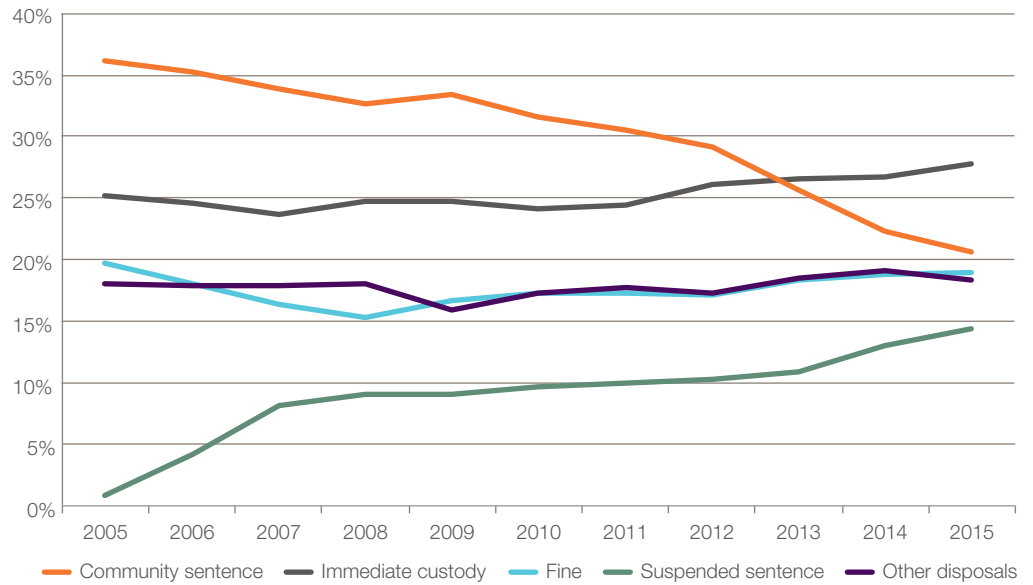
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3 The last comprehensive study of the cost of community sentences was conducted in 2008 and estimated that supervision orders cost £650, and alcohol and drug programmes cost between £1,670 and £1,920. [https://www.nao.org.uk/wp-content/uploads/2008/01/0708203\\_1.pdf](https://www.nao.org.uk/wp-content/uploads/2008/01/0708203_1.pdf)

4 Some of this recent increase in the number of sentences resulting in immediate custody has been driven by more serious offences such as historic sexual abuse coming through the court system (MoJ 2015).

**Figure 2.1**

*The proportion of community sentences has fallen markedly over the last decade*  
Trends in sentencing outcomes for indictable and triable-either-way offences in all courts, as a proportion (%) of all offenders sentenced, between the 12 months to June 2005 and 12 months to June 2015\*



Source: Adapted from Ministry of Justice 2015e: figure 5.4

\*Notes: All data pertains to the 12 months to June in each year 2005–2015.

For the purpose of this paper, it is important to note that under the current system, the costs for many of these ‘alternatives to custody’ generally fall under the probation budget rather than the custody budget. The previous, Coalition government reformed the probation service by commissioning out probation services for low-risk offenders (including those sentenced to less than 12 months) to a set of 21 community rehabilitation companies, which include a mixture of private and third-sector providers. These contracts are managed centrally by the MoJ, but their geographic boundaries are not coterminous with those of many other aspects of the criminal justice system (such as the 43 police force areas or 11 prison service regions); they therefore add a further layer of complexity to the system of funding and services that are targeted at reducing offending.

### 3. AN INHERENT FLAW

The previous chapter of this report described how England and Wales spend an extraordinary amount of money on prison places for low-level offenders, despite the fact that this spending does not always help to rehabilitate offenders, cut crime or protect victims in the way that people often expect. It also demonstrated that there are a number of ways in which money could be saved – both by reducing the number of people in prison beds, and by helping to reduce the level of churn in the prison population. These means of achieving savings largely rely on services and alternatives to custody that are often provided *outside* of the criminal justice system. So why aren't they used more often?

One reason is that the costs of prisons are largely borne by central government agencies, who pay for their running and upkeep, whereas most of the services that can actually help to reduce reoffending are held at the local level. This means that the people holding the policy levers that could reduce reoffending do not have the financial resources or incentives to use those levers. Money that could help to reduce reoffending is 'frozen' in the prison system, which is centrally funded. Meanwhile, local authorities have few resources at their disposal to invest in high-quality services capable of diverting people from custody, despite the fact that money from the prison system could be 'unfrozen' to invest in alternative local services and programmes.

At the moment, incentives work in precisely the opposite direction: if a local authority were to invest in high-quality services that kept people out of prison, the financial benefits would accrue to the Ministry of Justice (as its expenditure on prisons would fall as a result), while the local authority would end up with more people using community services, which are on their books. Economists in the US have described this as a classic problem of a 'common pool resource', in that local judges can send defendants to prison 'because it does not cost them anything' (Jonson et al 2015).

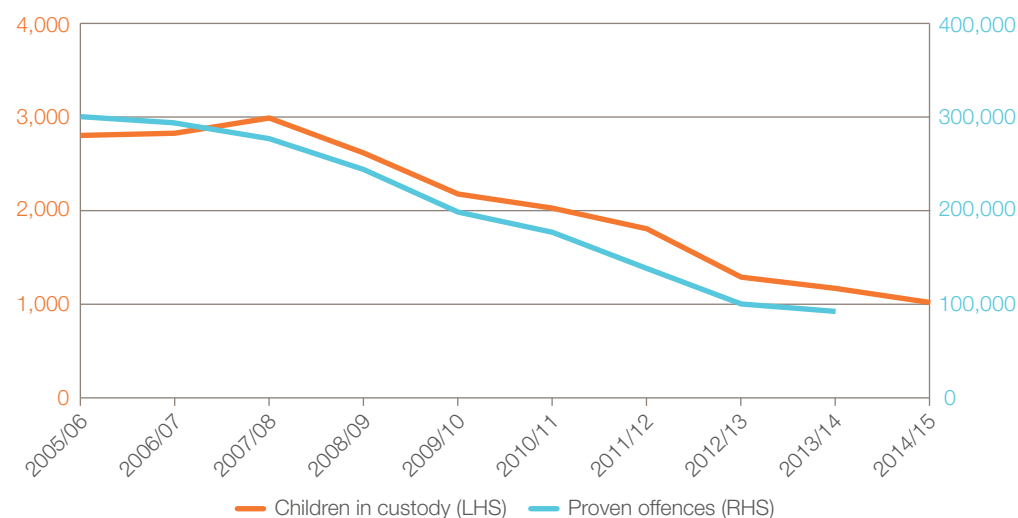
This is a longstanding problem with the criminal justice system of England and Wales, and recognition of that fact – and a will to resolve it – is what has motivated recent calls for greater use of 'justice reinvestment' approaches. A number of prominent organisations and researchers have argued that we need to find ways to unlock the money that is spent on prisons in order to 'reinvest' it in activities and services that will reduce the prison population (see for example Lanning et al 2011, Allen 2014 and Howard League 2015). However, the highly centralised nature of our prison system, in which the budget for prison places is held by a national agency – the National Offender Management Service (NOMS) – has made this difficult to achieve in practice.

## 4. LEARNING FROM YOUTH JUSTICE REFORMS IN THE US, AND IN ENGLAND AND WALES

Incentives and responsibilities for central and local governments to reduce reoffending are clearly ‘misaligned’. While this is currently a big problem in the *adult* prison system, the *youth* justice system is now much more effective at resolving these tensions. A number of innovative financing programmes in the youth justice system – both in England and Wales and in other countries – have managed to ensure that local services have the tools and incentives to reduce the number of young people who end up in custody. These innovations have proven to be astonishingly successful in terms of both reducing offending and saving money. As figure 4.1 illustrates, in England and Wales it has been possible to reduce the number of young people in custody at the same time as reducing overall youth crime.

**Figure 4.1**

*The number of children in custody has dropped significantly – and so has offending*  
 Number of children in custody, and proven offences by children, in England and Wales, 2005/06–2013/14



Source: Adapted from Prison Reform Trust 2015: 40

Reforms that have been implemented in the youth justice system could, therefore, hold some important lessons for how to reform the adult custody system in England and Wales. The following case studies describe how results have been achieved in youth justice.



## Youth justice reinvestment ‘pathfinders’ in England

In the early 2010s, the Youth Justice Board (YJB) was concerned about the high numbers of young people being placed into custody. Youth custody was known to be even more expensive and less effective (in terms of reoffending) than adult prisons. The YJB therefore introduced a ‘pathfinder’ project to test how local authorities could reduce the use of custody for young people under the age of 18. The rationale was to create a financial incentive for local authorities to focus on prevention and alternatives to custodial sentences, with a view to achieving savings to the prison budget further down the line. Practically, this involved the devolution of funding from central government to the pathfinder areas, to enable them to invest in better systems and activities that could help to reduce the number of young people ending up in prison.

The pathfinder areas took a ‘whole system’ approach to the problem. This involved identifying the key points at each stage of the criminal justice process at which actions could be taken to reduce reoffending, rather than focussing on individual programmes or on a single part of the system in isolation. The pathfinder areas invested in a number of things, including:

- better data analysis to identify where interventions should be targeted
- extending the work of integrated youth offending teams (YOTS)
- involving parents through family group conferences
- extending community-based alternatives to custody
- improving young offenders’ access to foster carers
- more intensive supervision to reduce the risk of breaches.

A key feature of the pathfinder projects was that they involved a group of local authorities coming together to form a consortium. This enabled them to pool resources and share best practice, as well as encouraging healthy competition between the YOTs in each local authority, as each was keen to play its part in meeting the overall target for reducing youth custody. It was necessary for local authorities to group together in this way because, on their own, they did not have a sufficient number of young people in custody to achieve the necessary efficiencies. At a larger scale, with four or five local authority areas pooling their resources, they were able to make sufficient gains.

There was also a strong financial incentive built into the pathfinder programme. Local authorities were given upfront funding from central government (via the YJB) to invest in these ‘whole system’ approaches to reducing youth custody. However, if they failed to meet agreed targets for reducing the number of nights that young people spent in custody, the YJB could ‘claw back’ that funding, in recognition of the fact that less savings would be made from their custody budgets than were anticipated. This gave local authorities a financial incentive to ensure that they achieved the necessary reductions in youth custody, rather than being penalised. The pathfinders were explicitly designed to release funding that was ‘frozen’ in the prison budget, and to reinvest it in activities that reduced the number of young people ending up behind bars in the first place.

Evaluating the impact of the pathfinder programme was difficult, because it did not take place in a vacuum. A number of other important changes were made at the same time which affected youth custody across England and Wales, most notably the Legal Aid, Sentencing and Punishment of Offenders (LASPO) act and the Troubled Families programme, which were both introduced in 2012.<sup>5</sup> These changes led to a substantial fall in the number of young people being held in custody across the whole of England and Wales.

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<sup>5</sup> The LASPO act gave local authorities a duty to care for young people on remand, which meant that many were found foster placements instead of being placed into custody. The Troubled Families programme provides intensive support to families with complex needs.

However, an evaluation of the pathfinder programme showed that it delivered a substantial decrease in the use of custody for young people, over and above these country-wide reductions. The pathfinder sites saw a reduction in custody bed nights of between 40 and 42 per cent over the two-year pilot period, compared to a 33 per cent fall in other parts of the country. It therefore seems reasonable to conclude that unlocking resources from the custody budget, and devolving them to local areas so that they can invest in reforms to reduce offending, led to significant gains, and has greater potential to do so in future.

*Source: Wong et al 2015*

### The RECLAIM Ohio initiative

In the early 1990s, the Ohio state government was concerned about overcrowding in state-run juvenile detention facilities. They were also concerned that these facilities were located a long way from the communities where young offenders came from, which meant that their families could not be involved in their rehabilitation.

In response to these concerns, the state introduced a funding initiative called 'RECLAIM Ohio'.<sup>6</sup> The initiative encourages juvenile courts to use community-based options for young offenders rather than sending them to more expensive state-run detention facilities. If courts are successful at reducing the number of young offenders being incarcerated, they are able to 'reclaim' funds that can then be spent locally.

The RECLAIM initiative essentially works by devolving a budget for the treatment of young offenders to the local courts, and then deducting money from that budget according to the number of young people that they send to institutions or detention facilities in order to cover the cost of their incarceration. Any money that remains in the local court's budget can be reinvested in community-based programmes and alternatives to custody. This means that local courts have a financial incentive to reduce the number of young people who end up in state-run facilities, and any savings from the custody budget are freed-up to be spent locally. It also ensures transparency in terms of the amount of taxpayer money that is spent as a result of the decisions taken by different courts.

An important design feature of the RECLAIM initiative is that local courts are not charged for young people who are placed into custody for more serious offences such as murder, rape, arson or gun crime. Local courts are not charged for these so-called 'public safety beds' under the programme, as local community-based programmes would not be appropriate in these circumstances.

The RECLAIM initiative was hugely successful when it was first piloted in nine counties in Ohio – within a year, it had led to a 40 per cent reduction in the number of young people sent to state detention facilities. It was then rolled out across the state, and has been operational ever since. The number of young people detained in custody by the state fell from a high of more than 2,600 in 1992 to less than 510 in 2013. The programme has been evaluated a number of times, and each time it has been shown that low- and medium-risk offenders are less likely to reoffend if they undergo a RECLAIM initiative than if they attend a state-run institution. Evaluations have also shown that RECLAIM programmes are considerably better value for money than sending young people to state facilities, costing a fraction of the sum.

*Sources: Latessa et al 2013 and 2014, ODYS (no date)*

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<sup>6</sup> RECLAIM stands for 'Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors'.

## Youth remand in England and Wales

At the start of the last parliament, the Coalition government was concerned about the number of children who were being held in custody while on remand and awaiting a trial. There had been a large increase in the number of children remanded into custody over the preceding decade, despite the fact that three quarters of these young people were ultimately either acquitted or given a community sentence. This issue became the focal point of campaigns by the Howard League (2009) and the Prison Reform Trust, who argued that ‘something is going very wrong when so many children are locked up on remand, but deemed safe enough to be released into the community if convicted and sentenced’ (Gibbs and Hickson 2009: 3). The Prison Reform Trust argued that while courts could be persuaded to use alternatives to custody for young people awaiting trial, such as intensive foster placements or supervision in the community, local authorities had no incentives to make them available. This was because central government paid for secure remands, whereas local authorities would have to pick up the tab if an alternative to custody was used (ibid). Meanwhile, the Howard League (2009) noted that local authorities did not have any legal requirement to support children entering custody on remand.

The government responded by devolving the financial responsibility for secure youth remands to local authorities. Local authorities are now given a budget and then charged for each night that a young person is held in custody on remand. The intention behind this reform was to introduce a financial incentive for local authorities to keep young offenders out of custody by offering alternatives – such as foster placements and community supervision – when the courts are making a decision about remand. Meanwhile, the commissioning and management of young offender institutions remains a central function overseen by the Youth Justice Board. The government also gave children on remand the same rights as a ‘looked-after child’, thereby placing a requirement on local authorities to support them by, for example, finding a foster place instead of prison place.

These reforms appear to be working. Government figures show that the number of ‘bed nights’ spent on remand in youth custody fell from 124,068 in 2012/13 to 90,128 in 2014/15 – a drop of 27.7 per cent over two years. The cost to the taxpayer of remand also fell, from £19.6 million in 2012/13 to £14.3 million in 2014/15 (Puffett 2015). It appears that local authorities have indeed opted to make greater use of alternatives to custody for young people on remand.

While the policy appears to have been successful, our interviewees<sup>7</sup> raised a number of concerns about the way it has been implemented which might offer useful lessons for any further devolution of custody budgets. Their main concern was that the way the funding formula has been calculated has led to councils ‘holding back’ any savings they make on the remand budget rather than reinvesting them in alternatives to custody or preventative work, in order to hedge against future risks. This is because councils are concerned that they bear the risk if central government makes any further cuts to their custody budget, or if there is an unexpected increase in the number of young people remanded into custody (if there was a repeat of the 2011 riots, for example). Any funding formula should, therefore, take into account these unexpected behaviours, and try to give local authorities more space to reinvest any savings they make. For example, central government could set budgets for a longer time period and guarantee that they will cover an unexpected spike in numbers, giving local authorities more confidence to re-invest savings made on the custody budget.

*Source: MoJ and YJB 2012*

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<sup>7</sup> Over the course of the *Whole-place justice* project of which this paper is part, IPPR researchers conducted in-depth interviews and focus groups with around 30 criminal justice experts and practitioners in five areas of England (three large rural local authorities and two large cities). The interviewees included a range of professionals, including those working in the offices of police and crime commissioners, police forces, probation services, courts, offender management services and local government.

## The Close to Home initiative, New York

In New York, there was a long-standing tension between the governments of the City of New York and the state of New York around the treatment of young offenders. Historically, the state government was responsible for running facilities (both secure and non-secure) for young offenders, while the city was responsible for many other services such as education and policing.

The youth custody system was built around the idea that the city's young offenders would be housed in large 'up-state' facilities. However, there were concerns that these facilities were too remote from the city, and so made it hard for young offenders to maintain contact with their families – something that has been shown to be important for reducing reoffending. It also meant that the facilities were not integrated with city-run services, which caused particular concerns around the quality and transferability of education and mental health services. These problems were causing poor outcomes in the city's youth justice system: a reoffending rate of 66 per cent after two years of being released.

After a long and politically sensitive set of negotiations, in 2012 the city and state agreed to launch a programme called 'Close to Home', which devolved the budget and operational management for youth custody from the state to the city. This has allowed the city to place more young offenders into smaller secure facilities, nearer to New York City itself, which are designed to support rehabilitation through therapeutic group-based interventions. They are also integrated with the city's education services, meaning that the education credits gained by offenders are recognised by schools, and a young offender's release is timed to fit with school enrollment. The city has also used some of the budget to invest in alternative-to-custody programmes that help to address offenders' complex underlying problems. While it is too soon to discern precisely what impact this programme is having, the number of young people being placed into custody has fallen and conditions are widely acknowledged as having improved. The state government has also been able to close some of its facilities, and realise savings as a result.

The Close to Home programme was only designed to cover low-risk young offenders: the state remains responsible for high-risk offenders. This is largely a practical consideration, since economies of scale mean that it makes financial sense to continue to operate a small number of higher security facilities that house high-risk young offenders from both the state and city. The city has also negotiated a 'stopgap' clause which means that they would not bear the full cost if there is a sudden spike in the number of young offenders flowing through the system, in the wake of mass riots for example. This gives the city the confidence to invest in alternative approaches to youth custody without feeling the need to save funds for an unexpected crisis.

Despite the initially positive reception that has greeted the Close to Home programme, it has not all been plain sailing. The devolution of power and money for young offenders means that the city has also taken on a considerable political risk. There have been a number of protests about the placement of youth facilities within the city, and an escape caused significant political fallout. There are also questions about the extent to which the programme has led to cashable savings for the taxpayer. While the Close to Home programme has allowed the state to close some of its facilities, the city has had to invest in alternatives, which means that it is unclear whether any short term savings have been achieved. Nevertheless, most commentators agree that the improved outcomes delivered by the programme will lead to savings to the public purse further down the line.

*Source: Estep and Bowen 2016 forthcoming*



The case studies above demonstrate that it is possible to find ways to ‘unfreeze’ the resources that are locked up in the prison system, and to use them more effectively to reduce the number of offenders who end up behind bars. This typically involves devolving the budgets for the prison population to local actors who have the power and services at their disposal to support rehabilitation and provide effective alternatives to custody, and who are in a position to benefit from this investment. This ensures that both power and incentives are aligned at the local level. However, not all attempts to align funding and incentives at the local level have been so successful: the following case study describes a programme that has had more mixed results.

### Local Justice Reinvestment pilots

In 2011, the Ministry of Justice introduced a pilot in six local areas across Manchester and London to try to incentivise local agencies to work together to reduce reoffending. The MoJ agreed to pay participating local authorities if they met a set of agreed targets for reducing court convictions in their area. The idea was that the MoJ would share any of the savings that accrued to them (through the prison and court budget) as a result of positive work done at the local level, and that this would give local areas more resources and a stronger incentive to reduce pressure on courts and prisons.

The pilots delivered mixed results. While Greater Manchester delivered a large reduction in demands on courts and prisons (receiving a £3.6 million payment in the first year), the London boroughs were less successful, and therefore received relatively small payments. In fact, in the second year of the pilot one borough failed to meet its target altogether, and therefore forfeited any payment at all.

Evaluations of the pilots identified a number of problems with the way they were designed. First, they did not provide any upfront resources for local authorities to invest in programmes to reduce offending. This meant that any initiatives had to be developed using existing scarce resources, which were not sufficient to have a major impact on overall offending rates. Second, the payments that local areas received if they achieved their targets were relatively small, because the government only shared with local authorities the marginal savings achieved by reductions in the prison population, rather than the full cost of a prison place.<sup>8</sup> This meant that ‘only a fraction of the savings produced for the prison system [found] their way back to the agencies whose work [brought] them about’ (Allen 2014). There was, therefore, only a weak incentive for local authorities to become involved in the first place, and only limited amounts of money were actually freed up from the prison system to be reinvested in community alternatives.

*Source: Allen 2014, Wong et al 2013*

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<sup>8</sup> The full cost of a prison place is, on average, £36,237 (MoJ 2014). However, the marginal savings achieved through a reduced prison population may be smaller than this, because prisons have certain overheads that are not necessarily reduced by a fall in the number of inmates. For example, the same levels of staffing and amenities will still be required, unless a prison achieves a reduction in numbers large enough to allow it to close an entire wing.

## 5. LESSONS FROM THE CASE STUDIES

A number of common lessons about how to devolve custody budgets emerge from the case studies presented in the preceding chapter.

### **Focus on low-level offenders**

Programmes are effective when they align services for low-level offenders, who are often in prison as a result of underlying complex social problems, and are therefore responsive to particular interventions (such as those that target substance misuse, anger management, mental health, low literacy, family abuse and so on). Given that these offenders tend to cycle in and out of prison, they tend to come into contact with local services every few months – and this is where the difference can be made. However, such programmes are generally unsuitable for more serious offenders, as society expects them to receive substantial custodial sentences, regardless of the financial cost.

### **Savings must be re-invested in the right activities**

Devolving budgets is not sufficient to guarantee that a process of ‘justice reinvestment’ occurs. There is a danger that local areas will instead invest savings from the prison budget in other areas that are under pressure. (This is a particular risk in England in the coming years, as local authorities face huge pressures on other areas of spending, notably social care.) It is therefore important that city mayors and combined authorities chose to invest devolved justice funding in activities and services that will help to bring down the prison population.

### **Resources must be held at the appropriate scale**

It is important to find the right scale for devolving custody budgets. On one hand, they need to be held at a geographical level that is small enough to be aligned with local services that can help to reduce (re)offending, such as housing, education, mental health and substance misuse services. On the other hand, they need to be held at a level that is large enough to ensure economies of scale that are sufficient to allow meaningful reforms. In England, devolving budgets to consortia of local authorities is likely to strike the right balance: they are both close enough to local services to ensure that incentives are aligned, but are also large enough to administer a budget that is of a size sufficient to reinvest in alternative approaches.

### **Do not expect ‘cashable’ savings to accrue immediately**

The case studies clearly demonstrate that devolving custody budgets can reduce the pressure on prison places in the long term. However, the evidence on whether they can deliver cashable savings in the short term is more mixed. This is partly because prisons have a certain number of fixed costs – including staffing and the physical estate – that still need to be met even if there is a small reduction to the headcount. It is not until there has been a substantial drop in the prison population that large cashable savings can be realised – by, for example, closing a whole prison wing or laying off staff. It is also clear that the most successful pilots require some initial upfront investment by local areas in order to deliver savings further down the line. For example, the ‘pathfinders’ initiative gave extra funding to local areas *before* they had actually realised any savings. Similarly, the YJB essentially funded the local initiatives and existing custody places at the same time, in the knowledge that savings could be ‘clawed back’ further down the line.

### **Give local areas stability and mitigate risk**

Local areas may be reluctant to invest in programmes if they fear that their budgets are likely to be cut, or that they will become liable for unexpected costs, in future. It is therefore important that local areas have as much stability in their funding streams as possible, in order to give them the confidence to invest in programmes that might deliver longer-term benefits. For example, a local area is more likely to invest in programmes that will deliver long-term savings if their budget has been set for a period of four or five years, and if central government has undertaken to assist them with unexpected fluctuations in demand. This would give them both the time and the stability to radically alter the way in which their services work. Without this stability, a local area might well decide that it is too risky to pursue an ‘invest-to-save’ model.

### **The funding formula matters**

Deciding how to transfer custody budgets to local areas is very complicated. The way that funding formulas are developed can lead to perverse incentives, and can unfairly penalise particular local authorities. The most logical way to develop a formula is to base it on the number of offenders who previously entered into custody in any given local area. This would, however, mean that local authorities who produce a lot of offenders get more money, while local authorities who have worked effectively to reduce the number of offenders end up with less money, and so could lead to not only resentment but perverse incentives. It is therefore important to ensure that any formula is based on a sufficient amount of lagged data (an average number of offenders over the previous three to five years, for example). It should also be reviewed regularly to ensure that those areas that currently have a high number of offenders, and therefore have the potential to achieve the greatest savings, do not benefit disproportionately. There may also be scope to gradually introduce other factors into the funding formula over time, so that it is not based solely on past performance – factors such as deprivation weightings and the size of the population could be taken into account.

### **Devolution works when both sides share the vision**

Devolution works best where both central and local agencies share a vision for what can be achieved. It requires the local agency to actively seek new powers and responsibilities and have a plan for how to use them effectively, rather than simply being a passive recipient of money. It also requires the central agency to share the belief that local actors can deliver better outcomes. In the example of Close to Home, both the city and state authorities bought into the evidence that holding young offenders in small facilities closer to their neighbourhoods reduces reoffending.

### **Sentencing and other levers are also important**

While the case studies in chapter 4 demonstrated that devolving custody budgets can help to reduce (re)offending, it is important to remember that it is not a panacea. Local authorities have a lot of tools at their disposal to help keep people out of prison, but ultimately it is the courts and legal system that dictate how many people end up behind bars. As the case study of youth remand in England and Wales showed, legal changes to the way in which children were classified as having ‘looked-after status’ were just as important to bringing down the number of children held on secure remand as the devolution of the remand budget to local authorities was. It is important to remember that devolving custody budgets is only one piece of a bigger jigsaw. A concerted effort to reduce the use of short custodial sentences by the courts would be another important way to drive down the prison population.

Policymakers should bear these lessons in mind when considering how to roll out this approach to other parts of the criminal justice system.

## 6. CONCLUSION AND RECOMMENDATIONS

### ADDRESSING THE INHERENT FLAW IN THE CRIMINAL JUSTICE SYSTEM

This paper has argued that the fact that many of the services and agencies that can reduce offending are held at the local level, whereas the budget for prison places is held by central government, represents an inherent flaw in the system: the people holding the policy levers by which offending could be reduced do not have the financial resources or incentives necessary to use those levers. The challenge is therefore to ‘unfreeze’ the resources that are locked up in the prison system and ensure that local areas are incentivised to use them to prevent crime and develop alternatives to custody.

Youth justice systems in both England and Wales and the US have set a number of precedents that demonstrate how this can be done. They largely involve the devolution of custody budgets to local areas, which then pick up the cost if a young person from their ‘patch’ is sent to prison. This tends to free up resources and give a clear financial incentive for local areas to invest in preventative services and alternatives to custody.

To remedy our extremely expensive and ineffective prison system, the government must now try to tackle the large number of *adult* offenders who cycle in and out of prison on short-term sentences for relatively low-level crimes. This group of offenders represents the biggest burden on the system, and is where the biggest gains can be made in terms of reducing reoffending.

Bearing in mind the lessons that can be learned from the youth justice reforms and initiatives outlined above, we recommend that the government pursues this objective in the following way.

- City mayors or groups of local authorities (in consortia with their police and crime commissioners) should be allowed to bid for control of the custody budget for all offenders who come from within their area and are serving a sentence of less than 24 months. Ideally, the budget they are given would be set for a period of at least three to four years, and central government would commit to funding any unexpected spikes in the number of offenders in the system (if there were a repeat of the 2011 riots, for example). These features are important in terms of giving certainty for planning.
- In return for assuming financial control, the city mayor or combined authority could sign up to a headline target for reducing offending in their area. The custody budget they are given could take into account some modest assumptions about savings that will accrue over time, in order to ensure that reductions are made to the overall prison budget.
- In addition to being given a custody budget, the city mayor or combined authority should also be allowed to apply for a small amount of ‘transformation funding’ to enable them to make upfront investments in services and alternatives to custody that will deliver savings further down the line. Central government could, however,



retain a right to ‘claw back’ this funding if the anticipated savings to the custody budget are not delivered.

- The city mayor or combined authority would then be charged by the National Offender Management Service (NOMS) for the cost of accommodating any of their residents who are sentenced to less than 24 months in prison. The running costs of a prison place would be covered by an agreed national tariff, based on the full cost of a prison place.
- The city mayor or combined authority would be free to spend any money that remains in their custody budget once prison costs for their residents have been deducted. They should choose to invest these savings in preventative services and/or alternatives to custody.
- The operational management of prisons would remain with a central government agency (NOMS). This is important because of the need to move offenders around in order to manage flows in the prison population, and because local areas do not currently have the capacity or capital resources to take on these functions. The funding of offenders sentenced to more than 24 months in prison would also remain at the national level, given they are higher risk and will have less contact with local services.

This proposal would give local authorities the necessary resources, capacity and financial incentives to invest in services that help keep low-level adult offenders out of prison. It would ensure that both the money and the responsibility for reducing reoffending are located where they can best be exercised. As a result, it should lead to long-term savings for the taxpayer, better protection for victims, and a much more efficient criminal justice system.

### The probation budget

The recommendation set out above should be seen as a ‘first step’ on the road to giving city mayors and groups of authorities (in consortia with PCCs) more responsibility for the management of offenders in their areas. It would make particularly good sense for a future government to also devolve greater responsibility for probation. The cost of many ‘alternatives to custody’, such as community orders and approved rehabilitation programmes, currently falls under the probation budget. Giving local areas control of this funding would enable them to pool resources across custodial and non-custodial sentences, and free up even more resource to invest in reducing offending. It would therefore make sense to devolve funding and responsibility for probation services, and incentives for improving them, to bodies that already have responsibility for the custody budget.

This should be a long-term aspiration: it would be difficult to implement this reform over the course of the current parliament, as the government is already locked into a set of contracts with private companies and third-sector organisations, known as ‘community rehabilitation companies’ (CRCs), for the delivery of probation services. While it would be disruptive and expensive to overturn these contracts in the short term, when they come up for renewal the government could consider making city mayors or combined authorities responsible for the financial management and commissioning of probation services. This would enable city mayors to pool probation and custody budgets, and commission probation services in an integrated way, co-ordinated with other services such as social care, housing and welfare. In the immediate term, however, the government should make it clear that local actors (such as city mayors, local authorities and PCCs) will be involved in the process of evaluating and renewing CRC contracts. This would send a clear signal to CRCs that they need to co-ordinate their services as part of an integrated plan with other local service providers.

## Devolution: where to start

While there is widespread support for the principle of devolving custody budgets to the local level, especially in the youth justice system,<sup>9</sup> there is some debate about which areas should be given these powers, and precisely which organisations they should be devolved to.

Under the government's high profile 'devolution revolution', it has invited local areas to bid for powers in a number of policy areas such as transport, skills and health. We believe this is a good approach to devolution, because it gives local areas some flexibility to determine which services they are able to manage effectively. Those areas that already have robust governance mechanisms in place (such as London and Manchester) are able to take ownership of a larger number of functions – something that a 'one size fits all' approach to devolution, in attempting to formulate a model of devolution that is equally suitable for all areas, would not allow. We recommend the government adopts a similar approach with regards to custody budgets – that is, inviting local areas to bid for control of the custody budget for low-level adult offenders within their geographies, provided that they are able to demonstrate that they have the capacity and governance mechanisms in place to do so.

Greater London and Greater Manchester would be the logical first candidates for the devolution of custody budgets, for three reasons.

- First, they have (or will have) robust governance and capacity through an elected mayor who can be held to account for the use of any devolved funding.
- Second, both mayors also act as a PCC, which would allow synergy with other parts of the criminal justice system and give them control of most of the levers by which crime and harm can be reduced in their area.
- Third, both are metropolitan areas that produce a large number of offenders. They can therefore take control of a budget that is large enough to allow them to try new approaches to reducing offending, and thereby make considerable progress towards reducing overall prison numbers.

Over time, however, we expect other areas of the country to bid for control of their custody and probation budgets. As with the current round of devolution deals, these areas would have to ensure that a robust governance system is in place to ensure proper accountability, and that public money is spent effectively and is properly accountable. Given the varied geography of England and Wales, it is not sensible to dictate a single 'model' for the devolution of these budgets. In some areas this might be newly elected mayors who also fill the role of PCC (a number of large cities and combined authorities, such as Leeds and the West Midlands, may opt to go down this route). In other areas, especially those that do not have an elected mayor, it might be more appropriate for a group of local authorities to form a consortium with their PCC (this would be particularly appropriate for rural authorities that already co-operate with their PCCs, such as Bedfordshire and Cambridgeshire).

A number of commentators have argued that PCCs, rather than city mayors and local authority leaders, should assume responsibility for offender management. The 2015 Conservative party manifesto gave a commitment to expand the role of PCCs, and a 2013 report by Policy Exchange argued that PCCs should play a greater role in crime reduction rather than focussing solely on policing (Chambers et al 2013). There are clearly gains to be made from aligning PCCs' responsibilities with offender management, and the creation of city mayors who are also PCCs will provide an effective means of achieving this. It would, however, be a mistake to sideline local authorities and city mayors in this process.

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<sup>9</sup> See for example calls for the full devolution of the youth custody budget by the Liberal Democrats (Hughes 2014), and earlier work by Lanning et al (2011), Allen (2014, 2015), Gibbs and Hickson (2009) and the Howard League (2015).

Local authorities already have responsibilities for youth offending, as well as for commissioning, co-ordinating or directly providing other local services such as housing, social services, employment support and education. Given that the main benefit of devolving the custody budget will be the ability to release funds from the prison system to invest in these sort of local services, it makes sense to ensure that local authority and city leaders are at the heart of any devolution deal.

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