

INDEPENDENT **A**CADEMIC **R**ESEARCH **S**TUDIES

MEREPS – UK Restorative Justice & the Secure Estate: Alternatives for Young People in Custody

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Starting from the end

*“Punish me now – and I won’t do that again today ...
Teach me how not to offend and I am sorted for a lifetime”*

Restorative justice in prison settings and the juvenile secure estate is **widespread**, but piecemeal, inconsistent and often invisible. While there is thorough evaluation of restorative justice with certain offences, in others areas, including its application within prisons, the evidence is still accumulating.

Evidence base: the focus of researchers should not be on the superiority of restorative justice, but on the development of its processes and principles.



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The current picture

- In October 2010, the prison population in England and Wales stood at **85,494** (2,150 places above the usable operational capacity).
- In September 2010, there were 1,637 juveniles (15-17 years) in prison, 273 children (12-15) in privately run secure training centres (STCs) and 160 in local authority secure children homes (SCHs). In addition, there were 10,114 young adults (18-21) in prison.
- Compared to other Western European countries, England and Wales comes at the top with 143 people per 100,000 population.
- Compared to the rest of the world, England and Wales comes 10th with the US at the top.



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Arrests posts August riots

- Metropolitan: **1,802**
- West Midlands: **509**
- Greater Manchester: **282**
- Merseyside: **216**
- Nottinghamshire: **109**
- Avon & Somerset: **24**
- West Yorkshire: **23**
- Leicester: **14**
- Cambridge: **5**
- Gloucester: **3**

TOTAL: 2,987 arrested
TOTAL: 1,715 in court
(52% below 20 yrs)



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Is there a problem?

Country	Prison population	Population per 100,000	Jail occupancy level %	Un-sentenced prisoners %
ENGLAND/WALES	80,002	148	112.7	16.4
GERMANY	77,166	94	96.5	17.1
SPAIN	63,991	144	129.5	23.5
ITALY	61,721	104	131.5	35.9
FRANCE	52,009	85	109.9	31.5
NETHERLANDS	21,013	128	95.6	30
PORTUGAL	12,765	120	103.7	23.8
BELGIUM	9,597	91	110.6	37.2
AUSTRIA	8,766	105	107.2	22.6
SWEDEN	7,450	82	102.7	20.3
SCOTLAND	6,872	134	107.5	21
SWITZERLAND	6,111	83	93.4	39
FINLAND	3,954	75	112.4	11.6
NORWAY	3,048	66	92.1	15.9
N IRELAND	1,375	79	91.5	37.4

Is there a problem?

According to 2010 Ministry of Justice data, **the reoffending rate post-custody is high** compared with other disposals. While the overall reoffending rate across all disposals is **40%**, the reoffending rate post-custody is almost **50%**, meaning that approximately half of all offenders sentenced to prison will go on to commit a further offence.

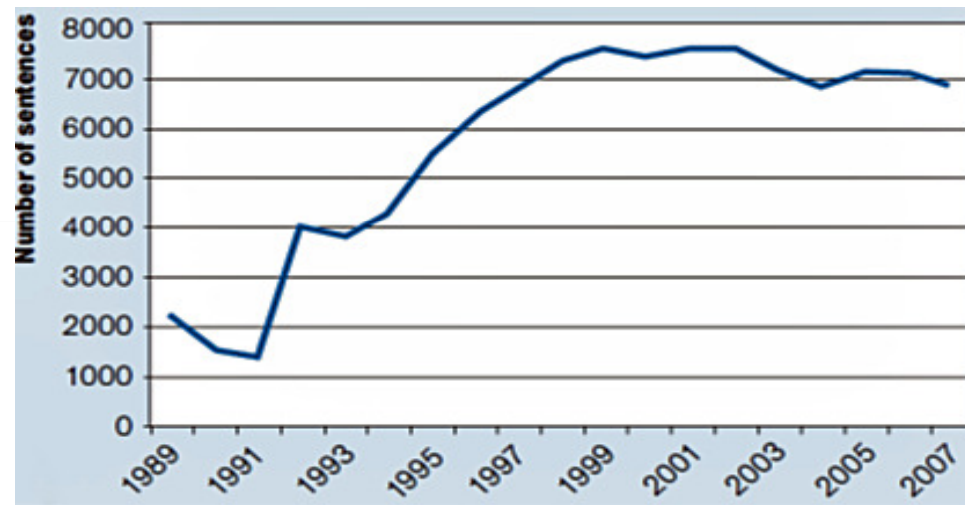


Figure: 10-17 year old receiving a custodial sentence in 1989-2007 rising from just above 2000 to almost 8000 (HoC)



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The changing picture?

“Banging up more and more people for longer is actually making some criminals worse without protecting the public”, *Justice Secretary, June 2010*

Green Paper: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, **Dec 2010**

Gov Response: “We are proposing using restorative justice interventions *at each stage* of the justice system. Most responses to the consultation welcomed our emphasis on greater use of restorative justice as long as it is used appropriately, interventions are of sufficiently high quality and there are sufficient safeguards in place for victims”, **June 2011**

Past attempts

- 2004 YJB report *Restorative Justice in the Juvenile Secure Estate*. It concluded “The YJB should devise and publicise a strategy for RJ in secure institutions for young people”
- 2006 YJB Action Plan *Developing Restorative Justice*. It concluded “[we want] to broaden, develop and extend the practice of RJ within the youth justice system”.
- 2006 YJB Behaviour Management Code for the Secure Estate
- Home Office 2003 Strategy on Restorative Justice – consultation
- Youth justice system/ YJB/ secure estate: reforms & restructure



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IARS Project & Methodology

- 2009-11 research project, which formed part of the larger *Mediation and Restorative Justice in Prison Settings Project* (MEREPS) funded by the European Commission, see <http://mereps.foresee.hu/index.php?L=2>
- Partners: Hungary, Belgium, Germany and the UK via IARS
- IARS, an independent, social policy think-tank with a mission to empower young people to have a voice so that they can participate equally in society and help change policy and practices affecting them, see www.iars.org.uk
- Methodology: 3 day Hungarian visit, desk research, fieldwork with practitioners/ academics/ policy makers, fieldwork with victims & offenders, half day expert seminar.



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What is restorative justice?

Restorative Justice is “an *ethos* with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue” (Gavrielides 2007: 139).

Restorative Justice Practices:

- Mediation (direct-indirect)
 - Family Group Conferencing
 - Healing & Sentencing Circles
 - Community Restorative Boards
-
- **It does *NOT* include Victim Support Schemes (e.g. VIS, compensation, community service) YOTs, YOPs, caution**

Key findings

1st Compatibility issue of the RJ philosophy within the practice and theory of imprisonment.

- Is RJ itself a form of punishment?
- Does RJ have common features with retribution & rehabilitation?

Extant literature's answer:

- 1st group: RJ measures cannot be punitive
- 2nd group: RJ is not alternative to punishment but alternative punishment
- Gavrielides (2005) – “Restorative Punishment”
 - Ποινή = punishment = pain
 - Pain:
 - (1) sentence
 - (2) direct/ indirect experience = Restorative Punishment. This is compatible with imprisonment.



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Key findings

2nd If RJ is to be mainstreamed, it will have to be **implemented within** the criminal/youth justice system. However, caution must be taken to maintain **the RJ ethos** which is at risk by entrenched practices and mindsets. The debate on standards and accreditation is timely and necessary.

3rd The research illustrated the malleability of restorative justice both in the prison and community settings. This created a gap between what is **perceived** to be restorative justice and what is **stated**. Despite genuine efforts to map these practices, **their majority remain in the shadows**. We argue that even though these practices do not identify themselves as “restorative”, it should not mean that they aren’t.



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Key findings

4th The obstacles and challenges faced when implementing RJ in prison settings are considerable. These tend to stretch from simple funding challenges to more structural obstacles such as “the prison culture”. However a number of **enablers** are identified that can act as levers in the design and implementation of a strategy for RJ in the secure estate.

5th What seemed to be consistent throughout the research was the **absence of institutional opposition** about the viability and applicability of restorative justice in prison settings.

6th While it appears that it is **economically advantageous** to society to adopt a restorative approach to crime, our research suggests that an appeal solely on this basis **may undermine restorative justice in the long run**. There was consensus among the interviewed practitioners that this could lead to “quick fix” policies, a lack of a coherent and long term strategy and unrealistic expectations.

Cost-benefit analysis

According to the 2010 House of Commons cross party Justice Committee, in 2007-8 the average cost of a prison place for one adult was £39,000. Jailing one young offender costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released).

- “RJ can deliver cost **savings of up to £9 for every £1 spent**” (Shapland *et al* 2008).
- “If RJ were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system - as a result of a reduction in reconviction rates - would amount to at least **£185 million over two years**” (Victim Support/ RJC 2010)
- “RJ practices would likely lead to a net benefit of over **£1 billion over ten years**” (Matrix Evidence 2009).

Cost-benefit analysis

House of Commons Justice Committee

“We have grave concerns about the impact of efficiency savings on practice at the frontline for both prisons and probation, which will undoubtedly undermine the progress in performance of both services. Neither prisons nor probation have the capacity to keep up with the current levels of offenders entering the system. It is not sustainable to finance the costs of running additional prison places and greater probation caseloads from efficiency savings in the long-term” (2010: 10).

Key recommendations

1st Definitional challenges: A fixed delineation of restorative justice is not advised. The only way to understand the thrill of driving is by driving!

2nd Philosophical challenges: Caution must be taken while assessing what makes restorative justice practices work in a different philosophical environment such as prisons.

3rd Research challenges: The obscurity, *ad hoc* nature and short life of many restorative practices in prisons render quantitative studies impossible.

4th Develop & Deliver a strategy for the implementation of restorative justice in the prison estate: a clear understanding and a mutual agreement between practitioners, politicians and researchers must be reached as to where resources will need to be focused. Implementation must also be measurable. The auditing and the development of self-assessment tools are structures that do not need to be reinvented, but simply capitalised through the adaptation of inspection standards and existing processes.

5th “The Big Society”: The shrinking state and the reduction in public services present an opportunity for the voluntary and community sector.



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Key recommendations

6th Reconciling the local with the global: The government's emphasis on locality favours restorative justice. It is questionable whether a solution through a national strategy alone may fulfil the challenges faced by local communities. Also look elsewhere: Europe, US, Canada, Australia.

7th The restorative justice movement: One of the biggest strengths of RJ is the passion and commitment that exists among its practitioners. Given the many policy, legislative and institutional changes that are taking place, let it be a warning that if this passion is tampered with, there is a real danger that restorative justice may lose its authenticity. The study continues to be sceptical about top down approaches that attempt to define the future of restorative justice. The study also remains dubious about the reasons that drive current legislative and institutional proposals for a change in the philosophy and practice of sentencing and crime control. **It is recommended that the bottom up structure of restorative justice practice, its focus on locality and the underlying values that characterise its core ethos are maintained and respected by government, funders, policy makers and stakeholders.**

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