

SCRAP the myths
and
SPARC the change

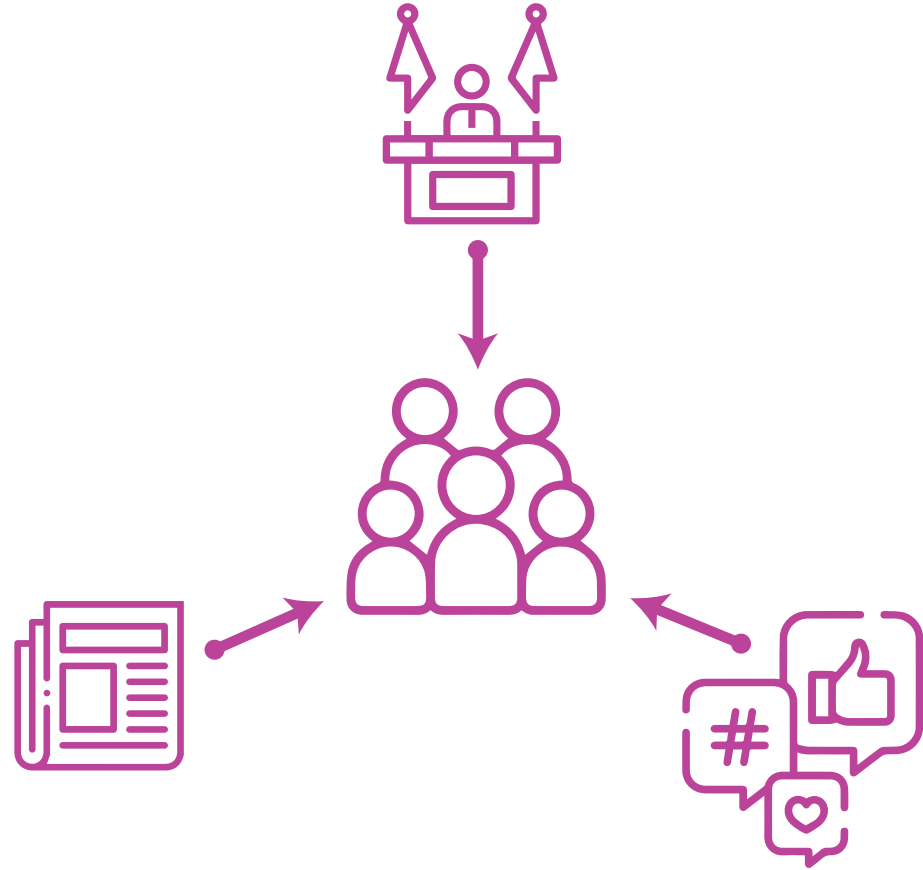
Community attitudes to the criminal justice system



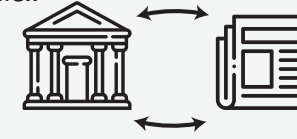
This resource provides information to address some common myths about the criminal justice system in Australia generally, and more specifically in the Victorian context.

The CIJ tested the relevance of the myths via an online survey with a number of respected and expert practitioners who participated in other CIJ projects. We thank the practitioners who contributed in this way to the development of the resource.

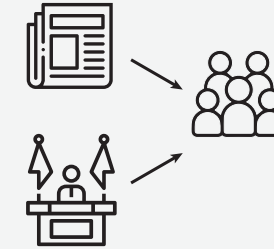
The way in which public attitudes to the criminal justice system are formed is not clearly understood, but the **media, politics and popular culture** all play a role in informing public opinion. These produce and reinforce particular ideas and **attitudes about the criminal justice system** and the people involved.



To an extent, the **media** and the **courts** also have “an important and symbiotic relationship.”¹ The media is invested in engaging the **public**, and the courts “have an interest in their decisions being reported,”² while **politics** is in turn played out through the media.



Given that the **majority of the population do not have direct contact or experience of the criminal legal system**,³ this means that most people form their ideas about the justice system through the lens of the media and politics.



For that reason, **evidence-based information** which can inform community attitudes **is crucial** – information which can **debunk some of the harmful myths** that persist about the legal process and replace these **with facts and context**.



Myth #1



The law is experienced as fair and equal by everyone

Fact

Most people who go to prison do not have fair or equal resources and come into contact with the criminal justice system because they have experienced trauma or disadvantage.

Myth #2

Prison is a deterrent – people will think twice before committing a crime



Fact

Most people who commit an offence do not choose to do so. Prison does not address the drivers of crime, which are usually trauma and disadvantage.

Myth #3



Women in the criminal justice system are there for the same reasons as men

Fact

Women are generally charged with low-level and non-violent offences, and most women in prison have gendered experiences of trauma and victimisation.

Myth #4



Do the crime, do the time – criminals need to be punished

Fact

Even a short period in custody can have lifelong impacts. Further, in Victoria people are often spending more time on remand than they would have spent if sentenced.

Myth #5



Sending people to prison works – people get rehabilitated and the community is safer

Fact

Prison and tougher sentences are not working to address the drivers of offending. In fact, the use of incarceration may be making the community *less* safe.

Myth #6



Victoria has a law-and-order problem – more people are committing crime than before

Fact

Crime is not going up, people are instead getting recycled through the justice system.

Myth #7

Sending people to prison is the only solution to crime



Fact

Multiple alternatives exist that are more effective than prison.

Myth #1 The law is experienced as fair and equal by everyone

Fact

Most people who go to prison do not have fair or equal resources and come into contact with the criminal justice system because they have experienced trauma or disadvantage.



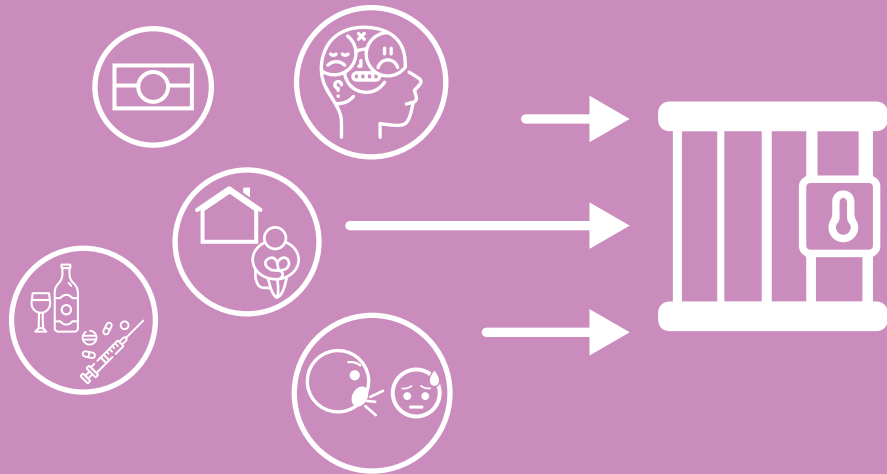
- Our legal system is not experienced as fair and equal by everyone. The legal process may work for people with resources, but a significant proportion of people in contact with criminal justice processes have experienced **systemic disadvantage & marginalisation**.
- ‘Systemic’ means issues are not specific or individual factors. The issues are a consequence of structures, such as social and economic systems. **More than half of the people who enter prison are unemployed & about 1 in 3 are homeless.**⁴ **Low levels of education**, experiences of trauma and disability are also disproportionately high.⁵ For example, evidence shows that between 70 – 90% of women in custody have experienced sexual abuse or family violence and between **60 – 70% of young people in detention have a history of child abuse or neglect.**⁶ At least a **third of people in prison have an acquired brain injury.**⁷
- Data shows that **Aboriginal and Torres Strait Islander people are the most incarcerated group in the world,**⁸ illustrating the ongoing impacts of **colonisation**. The compounding effects of colonisation and gendered violence mean that Aboriginal women are pushed into contact with the criminal justice system at increasing rates, **currently making up over a third of female prison populations.**⁹
- High rates of incarceration are directly linked to **policing practices and bail laws** which have a disproportionate impact on disadvantaged groups.¹⁰ **Discriminatory practices** can involve excessive use of prosecution, with Aboriginal women particularly likely to face imprisonment for minor offences.¹¹
- People from some **marginalised** communities, such as **criminalised women**, refugee or queer communities, are often the subject of disproportionate police attention and prosecution and **less likely to be believed** if they have experienced harm themselves.¹²
- People with disability, poor mental health or substance use disorder are also **more likely to receive a punitive response** from criminal justice agencies. For example, recent coronial findings found that people with a substance use disorder are likely to receive discriminatory treatment when in fact they need support.¹³

Key message: Providing adequate social supports and addressing discriminatory approaches to certain groups in the community can help to make the law fairer and break the cycle of repeat incarceration.

Myth #2 Prison is a deterrent – people will think twice before committing a crime

Fact

Most people who commit an offence do not choose to do so. Prison does not address the drivers of crime, which are usually trauma and disadvantage.



- **Prison does not deter offending** because it does not address the drivers of contact with the criminal justice system. People who are in contact with the criminal justice system are usually there because of disadvantage, rather than a deliberate decision to break the law.
- Social determinants feature prominently in the profile of prison populations. **Two in five people entering adult prisons have a mental health condition,¹⁴ almost a third have a chronic health condition or disability¹⁵ and one in three people detained by police indicated that illicit drug use contributed to their offending.¹⁶** For many, substance use is directly linked to their experiences of trauma. Research indicates that failure to recognise trauma symptoms can **increase the risk of re-offending and compound** lifelong support needs.¹⁷
- The ongoing **impacts of colonisation, including systemic racism, child removal and intergenerational trauma can also be drivers of contact with the criminal justice system, with Aboriginal and Torres Strait Islander people making up 38% of the national prison population.¹⁸**
- Women are also imprisoned at a faster rate than men, while the number of Aboriginal women entering prison in Victoria has more than tripled between 2012 and 2018.¹⁹ **The majority of women in prison are victims of violent crime and trauma, experiences which drive them into poverty and low-level offending.²⁰**
- **Many individuals who commit low-level offences are simply recycled through the criminal justice system because of punitive bail laws and because they do not have access to much needed supports. Cycling through the justice system in turn makes people more likely to commit crime.**

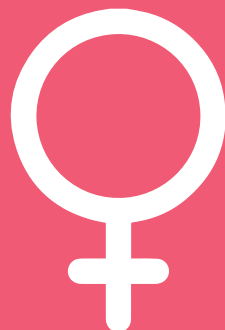
Key message: The drivers of most types of crime are trauma, poverty and disadvantage, not choice.

Myth #3

Women in the criminal justice system are there for the same reasons as men

Fact

Women are generally charged with low-level and non-violent offences, and most women in prison have gendered experiences of trauma and victimisation.



- Women make up a small proportion of the overall prison population (**7% in Victoria**)²¹ and enter prison for **less serious offences than men**,²² spending short, disruptive periods in custody.²³
- Studies suggest that anywhere between **70 – 90% of incarcerated women are victims of sexual, physical or emotional abuse**.²⁴ Research confirms strong links between childhood sexual abuse, mental illness, lack of housing and substance dependence – suggesting that substance dependence is one step on the path from victimisation to offending, not a ‘cause’ of offending itself.²⁵ In fact, **90% of offences committed by women serving a second/subsequent sentence are related to drug and alcohol dependence**.²⁶
- Specific to Victoria, **restrictive bail laws** have made it harder for women charged with non-violent and low-level offences to qualify for bail. Beyond policing and legislative levers, the reasons for the growing female imprisonment rate are complex and inter-related. **One significant driver is the way in which social and economic structures create barriers for women needing housing**. A lack of safe and stable accommodation has been identified as **“the most overwhelming problem”** facing criminalised women,²⁷ in part because a lack of access to stable housing impacts on women’s ability to secure bail and comply with bail conditions.²⁸
- Women in jail are more likely than men to be the primary carer of dependent children.²⁹ Short periods of separation can have a devastating impact on the mother-child bond and fuels the ‘care to custody’ pipeline, where children of incarcerated parents are taken into out-of-home care, from which they are more likely to progress into criminal justice system contact themselves. Inter-generational impacts of imprisonment include that **almost one in five people entering prison report that one or more of their parents or carers had been in prison** during their childhood.³⁰
- The United Nations **Bangkok Rules** emphasise that prison is an inappropriate response for women, particularly those with children.³¹

Key message: Recognising the distinct profile of women with histories of trauma, compounded by social and economic disadvantage, highlights that prison is a particularly inappropriate response for women.

Myth #4

Do the crime, do the time –
criminals need to be punished

Fact

Even a short period in custody can have lifelong impacts. Further, in Victoria people are often spending more time on remand than they would have spent if sentenced.



- Victoria's current bail laws mean that a significant number of people are currently in prison for substantial 'time' without even having been convicted of the crime with which they have been charged. For example, over 50% of women currently in custody are there on remand, rather than having been convicted and sentenced.³²
- Further, **many people serve so much 'time' on remand that, even if eventually convicted**, they are sentenced to 'time served'.³³ In other words, many people spend longer in custody unsentenced than they would have if convicted, including when their alleged offence would not usually attract a custodial sentence at all.
- Whether or not someone has 'done the crime,' even short periods in custody can have far reaching effects. Being remanded in custody can compound existing trauma as well as sever people's ties with housing, support for substance use and health services, with rehabilitation, with medication and with family.³⁴
- Inter-generational impacts of imprisonment can be seen in that almost one in five entering prison report that one or more of their parents or carers had been in prison during their childhood.³⁵
- **Time in custody also has a particularly damaging impact on children. Victoria's age of criminal responsibility starts with children from age 10** but data indicates that, the younger a child is at their first sentence, the more likely they are to reoffend.³⁶ Evidence shows "that the experience of prison causes further trauma...making it more likely that children will re-offend after their release, creating a 'revolving door' in and out of the criminal justice system."³⁷
- A basic premise of a custodial sentence is that it should not be imposed unless no other penalty is sufficient to reflect the seriousness of the offending. With Australia's incarceration rate higher than other Western European countries and continuing to grow without a corresponding increasing crime rate, it is unlikely that our prisons are functioning as intended and as **'a last resort'**.

Key message: The negative impacts of being taken into custody for a crime extend well beyond the 'time' spent in jail.

Myth #5

Sending people to prison works – people get rehabilitated and the community is safer

Fact

Prison and tougher sentences are not working to address the drivers of offending. In fact, the use of incarceration may be making the community *less* safe.



- Evidence shows that **imprisonment is actually increasing the cycle of reoffending**.³⁸ Prison is not designed or resourced to be a genuinely rehabilitative environment, with few effective supports to address the factors that contribute to offending for people entering or exiting prison.³⁹ Incarceration can result in severing of ties in the community and existing supports.
- More than 50% of people imprisoned in Victoria return within two years.⁴⁰ Similarly, about 70% of people entering prison have been in prison before.⁴¹
- The community may assume that a key purpose of incarceration is to protect the community and to give people the confidence that they are safe. With **punitive sentencing options actually increasing the likelihood of re-offending, however, evidence confirms that the use of prison is not making us safer.**
- **Evidence also points to the value of pursuing more effective options** – options which are more likely to contribute to community safety by ensuring that the causes of offending are addressed and that cycles of offending are broken.
- Recent **cost benefit analysis indicates that incarceration costs Australia over \$4 billion annually**,⁴² demonstrating that imprisonment is not an effective use of public resources. With substantial evidence available about more effective options, resources are more usefully spent on measures which are proven to work in preventing reoffending.

Key message: Sending people to prison is costly and does not work to make the community safer.

Myth #6

Victoria has a law-and-order problem – more people are committing crime than before

Fact

Crime is not going up, people are instead getting recycled through the justice system.



- Evidence shows that the crime rate in Victoria not going up,⁴³ despite common beliefs to the contrary.⁴⁴ Rather, **the number of people in prison is rising** because people are cycled in and out of prison as a result of low-level offending and a lack of supports.
- Evidence also shows that the predominant profile of people in prison in Australia consists of vulnerable and disadvantaged people. **More than half of people leaving prison expect to be homeless or don't know where they will stay.**⁴⁵ **The impacts of trauma, alcohol and other drug dependence, lack of employment and lack of secure housing, can also all contribute to contact with the law,** with engagement with the criminal justice system acting as a **revolving door.**
- Because prison does not rehabilitate people, governments are **in a cycle** of funding more police and building more prisons to warehouse disadvantaged people, instead of providing adequate social services, housing and supports which can actually prevent crime.

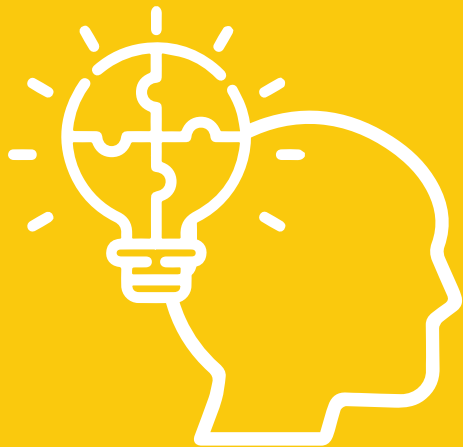
Key message: The number of people in prison is rising while the crime rate is not.⁴⁶ **Understanding what causes crime at a systems level helps to explain this growth more accurately.**

Myth #7

Sending people to prison is the only solution to crime

Fact

Multiple alternatives exist that are more effective than prison.



- Effective alternatives to prison are available. Rather than prescriptive and mandatory sentencing, research points to the value of **trauma-informed and culturally-responsive approaches** that can address needs of the groups over-represented in the justice system.
- For example, diversion of young people away from the formal justice system through warnings, cautions and restorative justice conferencing has contributed to a low rate of youth justice involvement.⁴⁷ **Non-adversarial approaches such as specialist drug, mental health and Koori Courts as well as the community-focused Neighbourhood Justice Centre, were also established in response to evidence about what works.**
- **Therapeutic justice approaches** address the causes of an individual's behaviour and take into consideration how the justice system can positively and negatively impact outcomes.⁴⁸ This means that the offender has the opportunity to engage with, rather than against, the process.
- Alternatives to prison can often meet the needs of victims of crime more effectively given that the mainstream adversarial process is often protracted and – in the case of violent crime – highly **re-traumatising for a victim survivor**. Nor does the mainstream adversarial process provide many opportunities for victims to receive acknowledgment, even where a conviction is secured, or to feel confident that future offending will be prevented. Victims of crime do not necessarily want more punitive measures, with studies showing that **victims of crime often simply want a 'voice' in the process and to address the drivers of offending.**⁴⁹
- **Restorative justice approaches** are centred around repairing a harm, rather than only imposing a consequence for an offence. Unlike the adversarial approach, parties impacted are able to participate. This way a victim survivor has the opportunity to have their justice needs met, such as having a voice, restoring relationships, feeling validated, seeking and receiving information, feeling that the wrongdoer has been held accountable and that further wrongs might be prevented.⁵⁰ Restorative justice approaches are now considered as a valid addition or alternative to conventional criminal justice processes.⁵¹

Key message: Therapeutic and restorative approaches can offer effective alternatives to prison.⁵²



S Stop

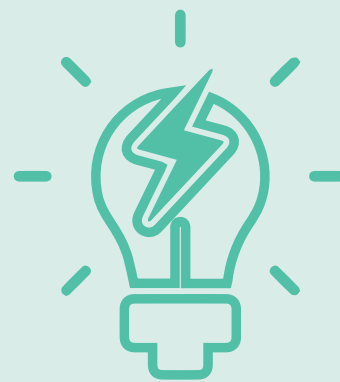
C Challenge and

R Re-think

A Attitudes to

P Punishment

the myths



S Seek and

P Provide

A Alternatives

R Redirect towards

C Change

the change

Commonly used words and terms in relation to the criminal justice system

Bail – A process by which a person who has been arrested and charged with a crime is released from custody until their trial. A person released on bail is usually required to comply with additional conditions, such as abiding by a curfew; not associating with certain people; or not residing at a certain address.

Colonisation – Means a process that led to the displacement of the Indigenous peoples of Australia, dispossession of land, disruption of cultural and kinship, social exclusion, and entrenched poverty.

Community-based sentences – Non-custodial sentences ordered by the court and administered by state and territory adult corrective services. Examples include restricted movement orders; reparations; supervision in the community; parole; sentenced probation orders; and post-sentence supervision orders.

Criminalised women – The term ‘criminalised women’ is used in order to avoid reducing people solely to their status in the system, to recognise that many people held in prisons have not yet been convicted of the offence for which they have been charged, and to acknowledge the reasons propelling women into contact with the justice system are associated with their previous experiences of trauma and victimisation.

(Criminal) justice system – Theoretically a system of laws, institutions, and practices in place to uphold social order. This system includes law enforcement agencies, courts, correctional facilities, as well as the laws and procedures that govern their operations. Note: a critique of this term is it implies the system is fair, when in reality it has been shown to disproportionately harm marginalized communities. Additionally, the system is criticized for focussing on punishment and mass incarceration as a solution to societal issues.

Culturally-informed approach – Recognises the importance of cultural heritage and identity. It emphasises the need for cultural awareness and competence among providers and helps create a more inclusive/equitable environment, and using that understanding to inform/tailor services and supports.

Decarceration – The policy of moving away from imprisonment as the main sanction for criminal offences, with greater emphasis on diversion and community-based sentencing.

Diversion – Formal or informal interventions aimed at avoiding an individual’s further involvement in the criminal justice system, generally available to young people and first-time offenders facing less serious charges. Diversion can occur at the policing or court stage and can include conditions intended to address factors behind offending.

Early intervention – Refers to programs and initiatives that aim to address the underlying issues that may lead to criminal behaviour. Its goal is to prevent people from entering the criminal justice system in the first instance, or diverting them away from it once they have entered.

Feminisation of poverty – Refers to the phenomenon of where women are disproportionately affected by poverty, and means when women are sent to prison for offences that are a direct result of socioeconomic marginalisation or need.

Intersectionality – Describes how different components of a person’s gender, socioeconomic and cultural identity intersect to create unique experiences of discrimination and privilege.

Juvenile detention – Refers to the confinement of young people under the age of 18 who have been charged with or convicted of offences.

Parole – A form of supervised release for people who have served part of their sentence. It allows them to serve the remainder of their sentence in the community under conditions. The goal of parole is to prepare individuals for reintegration into society and reduce the likelihood of reoffending.

Recidivism – A return to offending behaviour by an individual after having been sanctioned for a similar offence.

Rehabilitation – Refers to programs/services designed to help offenders address the underlying issues that may have led to their criminal behaviour, with the goal of reducing the likelihood of reoffending. It may include substance abuse treatment, educational/vocational training, and counselling.

Remand – The period of detention of a person pending the outcome of their court hearing e.g., before the trial (where they are unconvicted); before sentencing after the trial has concluded (convicted and remanded for sentencing); or remanded pending appeal. Remand prisoners (also known as unsentenced prisoners), can include people who have not applied for bail; those who have been refused bail; or those who have been granted bail but are unable to meet the conditions of bail. In Victoria, persons held in an adult prison pending deportation are also included in this category.

Sentencing – Refers to the process of determining the punishment for a person found guilty of a criminal offence. Sentences can include fines, imprisonment, community service, probation and home detention. The purpose of sentencing is to hold offenders accountable while also considering factors such as rehabilitation, public safety, and the principles of proportionality and retribution. A judge or magistrate is responsible for sentencing.

Symbiotic – A mutually beneficial relationship between groups.

Trauma-informed approach – Recognises the impact of trauma and the role trauma can have on a person’s life, and emphasises physical, psychological and emotional safety for both the individuals and providers of services and supports.

References

Context and Introduction

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² Sentencing Advisory Council (2022), *Should Media Coverage Affect Sentencing?* p.4.

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Myth # 1: The law is experienced as fair and equal by everyone

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Myth # 2: Prison is a deterrent – people will think twice before committing a crime

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Myth # 3: Women in the criminal justice system are there for the same reasons as men

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Myth # 4: Do the crime, do the time – criminals need to be punished

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³³ Walker, S., Sutherland, P., & Millsteed, M. (2019) 'Characteristics and offending of women in prison in Victoria 2012-2018' Crime Statistics Agency, p.3; see also Caruana, C., Campbell, E., Bissett, T & Ogilvie, K. (2021). Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems Centre for Innovative Justice, RMIT University, Melbourne, p.54.

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Myth # 5: Sending people to prison works – people get rehabilitated and the community is safer

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<https://www.pc.gov.au/ongoing/report-on-government-services/2018/justice>

Myth # 6: Victoria has a law-and-order problem – more people are committing crime than before

⁴³ Productivity Commission (2021). *Australia's prison dilemma*, Research paper, Canberra.

⁴⁴ Crime Statistics Agency, Homepage | Crime Statistics Agency Victoria

⁴⁵ Australian Institute of Health and Welfare (2019). The health of Australia's prisoners 2018, Canberra: AIHW, p.viii.

⁴⁶ Productivity Commission (2021). *Australia's prison dilemma*, Research paper, Canberra.

Myth # 7: Sending people to prison is the only solution to crime

⁴⁷ Evarn, J. O., & Rahman, S. NSW Bureau of Crime Statistics and Research (2022). The impact of the NSW Youth Koori Court on sentencing and re-offending outcomes and Caruana, C., Campbell, E., Bissett, T & Ogilvie, K. (2021). Leaving custody behind: Foundations for safer communities and a gender-informed criminal justice systems Centre for Innovative Justice, RMIT University, Melbourne, p.69.

⁴⁸ Wexler, D. B., Therapeutic Jurisprudence: An Overview. Thomas M. Cooley Law Review, Vol. 17, pp. 125-134, 2000, Available at SSRN: <https://ssrn.com/abstract=256658>

⁴⁹ Note recommendations for restorative justice schemes page 252, and for a more detailed discussion of the role of the victim see the Victorian Law Reform Commission (2016). The role of victims of crime in the criminal trial process: report and

Sentencing Advisory Council (2008), More Myths and Misconceptions, p.10.

⁵⁰ For further discussion see RMIT University. Centre for Innovative Justice (2020). *Strengthening Victoria's Victim Support system – Victim Services Review Final Report*. Centre for Innovative Justice, RMIT University.

⁵¹ Latimer, J., Dowden, C., & Muise, D. Research and Statistics Division Methodological Series (2022). The effectiveness of restorative justice practices: a meta-analysis.

⁵² For further discussion see RMIT University. Centre for Innovative Justice (2014). *Innovative justice responses to sexual offending: pathways to better outcomes for victims, offenders and the community*. Centre for Innovative Justice, RMIT University.