



# The Open Prisons Initiation and Development Bill 2019 (NSW)

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## A Bill for

An Act to introduce the open prison system in NSW, in order to rehabilitate detainees by preparing them for reintegration into society; to ultimately reduce the rate of recidivism.

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# Explanatory Notes:

The explanatory notes relate to this Bill as introduced into Parliament.

## RELEVANCE IN OUR WORLD TODAY

*“People do make mistakes and I think they should be punished. But they should be forgiven and given the opportunity for a second chance. We are human beings.”*

– David Millar

Those who commit acts that are in violation of our laws are subject to punishment through the judicial system. The rise of the prison population is a continued threat to the societal construct. Imprisonment is the most simple form of punishment and not at all what our justice system aims to achieve. Yet we continue to see the rates of incarceration rising at an alarming rate. It is with certitude, that rehabilitation is the solution to the rise of imprisonment in NSW and Australia.

## WHAT THE BILL AIMS TO ACCOMPLISH

### This bill will:

- a) Reduce the rate of recidivism
- b) Rehabilitate detainees
- c) Moderate the strain placed on NSW Corrective Services
- d) Offer a solution to the rise of incarceration in NSW
- e) Enforce successful reintegration of convicted felons into society
- f) Aid in exemplifying development of education, work and training for detainee
- g) Assist with the rehabilitation of offenders into communities; in order to reduce the rate of recidivism

# Part 1 Preliminary

## 1. Long Title

An Act to introduce the open prison system in NSW, in order to rehabilitate detainees by preparing them for reintegration into society, ultimately reducing the rate of recidivism.

## 2. Short Title

The Open Prisons Initiation and Development Bill 2019 (NSW)

## 3. Commencement

This Act shall commence 31 days after Royal Assent from the NSW Youth Governor.

## 4. Objects

1. To encourage offender reintegration into society
2. To reduce the rate of recidivism.
3. To improve prospects for inmates post release in relation to getting jobs and buying property.
4. To encourage and aid in the development of responsibility, both personal and community, in prisoners.
5. To increase prisoner participation in rehabilitation programs
6. To improve offender and community relations.

## 5. Definitions

- (a) **NSW** - The state of New South Wales.
- (b) **Detainee** - A person held in custody, for reasons ranging from summary offences to indictable offences.
- (c) **Recidivism** - The act of reoffending, committed by an individual who has previously committed undesirable behaviour.
- (d) **Incarceration** - The state of being confined in a space; Imprisonment.
- (e) **Open Prison** - A detainment centre that allows it's prisoners some freedoms to focus their rehabilitation and reintegration into society.
- (f) **Rehabilitation** - The action of restoring an individual to a positive and healthy lifestyle.
- (g) **Reintegration** - The action or process of integrating an individual back into society.
- (h) **Dr. Weatherburn** - Donald James Weatherburn has been the director of the NSW Bureau of Crime Statistics and Research in Sydney since 1998 to 2019.

## Part 2 Substantive

### 6. Structural Prison Reform

- 1) An open prison is a correctional facility in which the detainees are trusted to serve their sentences with minimal supervision and perimeter security. Prisoners may be permitted to take up employment while serving their sentences. This bill outlines proposals to reform the NSW correctional system, allowing for the construction of open prisons.
- 2) NSW recidivism rates are worst of all Australian states, with 48% of inmates returning to gaol within two years, as of 2016, outlined by government statistician Don Weatherburn. Despite the dramatic drop in crime rates since 2001, the prison population has only increased. An open prison aims to reduce this population through the means of inmate rehabilitation and reintegration into society.
- 3) This proposition will be largely pursued among detainees with convicted summary offences. Alterations to the current structure of the prison system in NSW would allow for a move towards the reversal of the future present trends of incarceration. This program would be available to those that are seen fit by a magistrate/judge, a trained psychologist or medical practitioner and Corrective Services NSW.
- 4) Another visionary goal for this proposition is to transfer detainees, convicted of minor crimes, towards more sustainable approaches, such as community service. Diversionary programs such as Youth Justice Conferencing, Circle Sentencing and the MERIT program have all been very effective in combating recidivism. This proposed legislation is similar, aiming to achieve a significant reduction in repeated criminal activity. Offering community service as an alternative form of punishment for participants of the program allows for much more productive punitive measures, as it provides a benefit to the economy, as opposed to a detriment.
- 5) This bill incites an increase in mental health practitioners in open prisons, in an effort to combat widespread issues in NSW. The lack of healthcare in prisons is not a concealed truth of Corrective Services NSW. With multiple risk factors

including poor physical and mental health, those incarcerated experience disadvantage and are cared for well below the general population. The introduction of higher rates of permanent healthcare staff is vital to providing safe and smart societal reintegration.

## **7. Employment**

- 1) The program is designed to encourage Detainees to find work and prepare themselves for life after prison.
- 2) Detainees are to decide where they wish to work and what skills they wish to acquire outside of correctional facilities. The Open Prison System offers detainees a chance to obtain employment during and after their sentence has been served.
- 3) A detainee will be able to decide where they wish to find employment, as every individual in society would.
  - a) This is made possible with the use of ankle bracelets, which are to be worn by the prisoners to keep account of their location on a daily basis. This system would allow for more freedom for detainees, as to prevent their constant supervision by correctional staff. While retaining and protecting public safety, as they can be monitored from a distance by Correctional Services NSW.

## **8. Education & Training**

- 1) Throughout a detainee's involvement in the program, they will be granted several opportunities to pursue their career ambitions through education and training, provided by open prison facilities and exterior partners
- 2) For those choosing to pursue education through facilities outside of the open prison, supervision and monitoring would apply, similar to how those seeking external employment would be supervised
- 3) Within the facility education would also be provided to assist prisoners in reintegration into society. An emphasis on rehabilitation of detainees would be prioritised, and achieved through mandatory sessions with professionals. For

example, those that were charged with a violent criminal offence may be forced to attend sessions supporting them to combat anger management issues or find non-violent means of ending a conflict. These sessions would equip prisoners with resources and essential knowledge to ensure they don't reoffend once released.

## 9. Application Process

- 1) The applicant will be required to create an application with [Corrective Services NSW](#)
- 2) The applicant will have their behaviour assessed, along with the severity of the offence they have committed; they will have several weeks of conversations with psychologists and a member of Corrective Services NSW, to ensure that the applicant passes all the relevant criteria, and that this program would be “the most beneficial” to that particular applicant
- 3) This program may be accessible for offenders who have committed summary offences and/or minor indictable offences that carry short sentences
  - a) Applicants with prison sentences greater than 10 years will be designated to apply directly through the NSW government Justice department, via the agency responsible for their current correctional centre
- 4) This program will initiate on a small-scale basis, therefore the criteria to apply is strict and regulated
  - a) Psychologist analysis is necessary for every applicant to ensure that the prisoner is capable of being rehabilitated and integrated into society

## Part 3

### 10. Eligibility

- 1) This bill is specifically intended to initiate open prisons for non-violent detainees that have committed summary offences and minor indictable offences, as deemed by judicial discretion
  - a) Detainees who have committed crimes that are “deemed too serious for rehabilitation” will be explicitly exempt from the open prisons scheme
  - b) Detainees who have presented aggression towards government workers, officers or other inmates will also be exempt from the program, as well as detainees with an unwillingness to cooperate
- 2) The eligibility to participate in an open prison must be henceforth a decision made in relation to the detainee’s criminal record; taking into account their history of behaviour and conduct in correctional facilities

### 11. Termination of Program

Termination of the program will be the due course of action if participants fail to meet certain obligations. These obligations are set forth in the initial contract, preempting the commencement of the program:

- 1) The obligation to not recidivate; including criminal convictions of both summary and indictable offences
- 2) The obligation to present good behaviour at all times; whether it be in relation to other detainees, correctional officers or members of the public
- 3) The obligation to refrain from any unlawful/immoral activity, as decided by judicial discretion from the Supreme Court of NSW
- 4) There are also various other obligations that may be indicated in the contract, depending specifically on the criminal offences previously committed (for

example the breach of an Apprehended Violence Order by a domestic violence offender)

- 5) Upon termination of the Open Prison scheme for the participant, that participant may not reapply