



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Western Australia's rapidly increasing remand population

October 2015

The reviews undertaken as part of the Office of the Inspector of Custodial Services' *Snapshot Series* are designed to provide a brief summary of an issue or trend in the Western Australian custodial population. This is first of these reviews and it examines trends relating to people who are being held on remand in Western Australian prisons and in the state's sole youth detention centre, Banksia Hill. The review also gauges overall trends in remandee numbers in Western Australia against other Australian jurisdictions.

The information examined is obtained through the Department of Corrective Services' (the Department) offender database, Total Offender Management Solution (TOMS), and other open source data. The Department has reviewed this report and a number of sections have been modified to incorporate feedback that was provided.

This report does not make any recommendations but raises some important questions that require further analysis by government departments in conjunction with the judiciary and the legal profession.

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This report is available on the Office's website and will be made available, upon request, in alternate formats.

Contents

1	Inspector’s overview	i
	Legal principles	i
	Growing numbers and a gender imbalance	i
	Housing remandees and the impact on prisons	ii
	What does it cost?	iii
	Time on remand	iv
	Accounting for the changes and looking ahead	iv
2	Background	1
	Bail legislation: adults.....	1
	Bail legislation: children	2
	Legislation governing custodial facilities.....	2
	Data limitations	2
3	Western Australia’s remand population	4
	Comparison with other Australian jurisdictions	7
4	Time on remand and costs.....	9
	Time on remand	9
	Costs	10
	Multiple remands.....	10
5	Court flows	12
6	Charges – nature and number.....	13
7	Behaviour in custody	15
8	Young People	17
	Remand population	17
	Time on remand	17
	Charges.....	18
	Behaviour in custody	20
	Appendix A: Key findings	21
	Adults.....	21
	Young People	22
	Appendix B: Methodology	23

1 Inspector's overview

Western Australia is experiencing large increases in its prisoner population, and this is costing the state a great deal of money. By far the biggest increase in recent years has been in the remand population, not in the sentenced prisoner population. Despite this, very little information is publicly available on the remand population, and most members of the criminal justice professions appear unaware of the trends or are very surprised by the speed at which change has occurred.

This report attempts to address the public information deficiencies, and to promote further debate and research. Better data and better cross-agency collaboration will be required if the reasons behind the trends are to be better understood. Growing remand numbers are not just a 'Corrective Services' problem – they are also a problem for the courts, the Police and Treasury.

Legal principles

Prisoners are classified into two legal categories: those who have already been found guilty and sentenced ('sentenced' prisoners), and those who are still awaiting the final outcome of their court case ('remand' prisoners or 'remandees'). A small number of remandees are awaiting sentence, and have already been convicted, but the vast majority have not yet been found guilty.

The majority of remandees are in prison because the court has refused to grant them bail. However, around ten per cent have been granted bail and are in prison because they have not yet been able to meet the conditions set by the court.

Our criminal law is based on the unequivocal presumption that an accused person is innocent unless the prosecution can prove they are guilty. In addition, the standard of proof in a criminal case is high: the state must prove 'beyond a reasonable doubt' that the person committed the criminal act. These rules lie at the heart of our concepts of freedom, and of the appropriate relationship between the individual and the state.

Given these principles, it should be of concern to everyone that remand numbers have increased dramatically, to the point where one in four people in Western Australia's prisons is now on remand.

Growing numbers and a gender imbalance

This report focuses primarily on the period from July 2009 to July 2014. Over that five year period, remand numbers grew by 70 per cent. Over the following year, remand numbers have continued to rise.

At the time of writing this Overview (early September 2015), remand numbers stand at around 1,400. In July 2009, there were fewer than 700. Remand numbers have therefore grown by more than 100 per cent in six years. By contrast, the number of

sentenced prisoners has grown by just 13 per cent (around 480 people) over the same period. Put another way, remand prisoners account for 60 per cent of the rise in prisoner numbers. They comprise a rapidly growing proportion of a rapidly growing population (25% today compared with 15% in July 2009).

The growth in the proportion of remand prisoners is all the more unexpected because in 2009, the Prisoners Review Board abruptly adopted a more stringent approach to parole. Far fewer prisoners were granted parole and there was a much more stringent approach to enforcing parole conditions. Only sentenced prisoners are eligible for parole. It would have been expected that clamping down on parole would have seen an increase in the proportion of sentenced prisoners, and a decline in the proportion of remandees.

The proportion of remand prisoners has been increasing across the country, with Western Australia sitting slightly below the national average. However, this does not in any way detract from the need to understand the extraordinary trends in this state.

The impact of the growth has not been even, and there are some disconcerting gender differences. In mid-2009, roughly equal proportions of men and women were on remand (15-17%). The situation has changed. At the time of writing, 29 per cent of women in prison are on remand, compared with around 24.5 per cent of men (Aboriginal and non-Aboriginal). The growth in the number of Aboriginal women on remand has been especially sharp and alarming (over 150 per cent).

Housing remandees and the impact on prisons

In theory, remandees have a different legal status from sentenced prisoners, but the two groups are frequently intermingled in the prisons. Remand prisoners are not housed in separate parts of the prisons but routinely share accommodation blocks with sentenced prisoners. It is also quite common for remand and sentenced prisoners to share cells. Sometimes this will be for family and support reasons but more often it is simply due to pressure for prison beds. As remand numbers have risen, it has also become necessary to house remandees in prisons that were intended only for sentenced prisoners, notably Casuarina Prison.

Remand prisoners tend to pose more complex challenges and demand a higher level of service than their sentenced peers. Remandees are quite likely to be unsettled, unwell or recently under the influence when they arrive in prison. Many are stressed about their upcoming court appearances or about matters that they have left unaddressed in the community. Not surprisingly, we found that remand prisoners are more likely than sentenced prisoners to be involved in incidents, and especially in assaults on staff or other prisoners.

Obviously, prisoners must be carefully screened as soon as they are admitted in relation to matters such as risk to themselves, risk to other prisoners and staff, health risks and escape risks. Then, until such time as their matters are finalised, the prison must

facilitate links to the courts (either in person or by video-link), and access for lawyers to speak with their clients. Reflecting their legal status, remandees also have additional entitlements in relation to matters such as family visits. These factors generate additional requirements for prisons.

The Department of Corrective Services must service not only the needs of remand prisoners but also the requirements of the wider justice system. There is probably no other government agency where demand is so much driven by the decisions and actions of other agencies, including the courts and the police.

Unfortunately, the required resources have not been provided to the prisons to meet service needs. A simple and telling example is video-link facilities to the courts. By reducing the need for people to be transported to the courts, video-links enhance security and save the state enormous amounts of money. However, the video-link facility at the state's main male remand prison, Hakea, is too small; Bandyup Women's Prison has wholly inadequate facilities; and although Casuarina Prison is now one third remand, it has not been given commensurate resources.

What does it cost?

Obviously, there are some very significant 'up front costs' when people arrive at a prison, as well as ongoing costs in relation to the needs of remand prisoners. This can impact on matters such as the cost per prisoner per day at a prison.

In early February this year, we requested the Department for a breakdown of the costs of short stays by different prisons. In June, it advised that it 'estimates that the cost per person in prison for less than a week can cost up to \$770 a day'. In a recent report on bail, the Auditor General also relied on the Department's figure of \$770.¹

Unfortunately the Department's figures are imprecise, out of line with other data, and extremely limited:

- \$770 is only an 'estimate'
- the words 'can cost up to \$770 a day' suggest this is an upper limit, not an estimate of average costs. However, other Departmental data show the daily cost of imprisonment at some prisons is more than \$770.²
- no breakdown is available by prison. In June 2015, in response to the Auditor General's report on bail, the Opposition sought information on 'what it costs to accept a prisoner into prison; an outline of additional costs on a case-by-case basis that would make that initial cost of accepting a prisoner more expensive; and also a breakdown on that prison by prison across the state.' The Minister agreed to provide this information but subsequently advised Parliament that the

¹ Office of the Auditor General. *Management of Adults on Bail* (June 2015).

² Economic Regulation Authority, *Inquiry into the Efficiency and Performance of Western Australian Prisons, Issues Paper* (November 2014), 13.

Department had advised that the ‘information requested is not recorded in a manner that is easily retrievable in the timeframe required.’³

In short, we know that imprisonment is very expensive, we know that many of the stays on remand are short (see below), and we know that imprisoning a person for a short period will be far more expensive per day than holding them for a longer period. But the Department has not been able to provide Parliament, the Auditor General, the ERA, or us with a robust estimate of system-wide costs or of individual prison costs.

The absence of robust data on such issues is concerning in itself. It is all the more so at a time when comparisons are being drawn between the relative costs of different prisons, and the focus is on ‘costing models’, ‘comparators’ and ‘contestability’. The absence of robust data on key issues impacts negatively on political debate, public understanding, and the capacity for evidence-based decision making.

Time on remand

This report confirms the ‘roll-in/roll-out’ nature of much of the remand population. The average stay for a woman is less than three weeks and for a man it is less than four weeks. A quarter of people are held for less than a week. In part these figures probably reflect the fact that some prisoners have been granted bail but take some time before they can meet the conditions attached by the court, but this is unlikely to be the full picture. The social as well as the financial costs of these short term remands can be very high.

Accounting for the changes and looking ahead

For more than three years now, I have been highlighting the ever-escalating number of remand prisoners,⁴ and talking to a range of people about them. The vast majority of people, including members of the legal profession who deal with bail applications in the courts, were either unaware of the change or unaware of its scale.

Unfortunately, as the Hon Wayne Martin AC pointed out in a letter in response to a draft of this report, ‘convincing explanations for the increase appear elusive,’ and I end this overview with more questions than answers.

While the courts are dealing with more defendants and more charges, this does not explain why the number of remandees has escalated whereas the number of sentenced prisoners has only slightly increased. It is also unclear why the increase in women remandees has been so big, why the nature of the charges against women has changed, and why, in the juvenile area, the trend in remandees has been down.

It is particularly concerning that key government agencies do not have the capacity to jointly analyse data holdings to determine the drivers behind the growing trend of

³ Hansard Western Australia, Legislative Assembly Estimates Committee A, 11 Jun 2015, page E29.

⁴ See OICS Annual Reports from 2011-2012 onwards.

remandees. The trends have been apparent for a number of years and we should know more. Anecdotally, possible drivers could include:

- increased seriousness of offences being committed
- increasing use of violence in committing offences
- misuse of alcohol and drugs, in particular the growing scourge of the 'ice' epidemic
- prevalence of mental health issues which may exacerbate drug misuse
- increased waiting and processing times in courts due to resourcing issues

I urge that immediate research is taken to determine underlying factors leading to the large increase in Western Australia's remand population. It is only when there is a comprehensive understanding of causes, that preventative actions can be identified to address a growing and costly problem.

2 Background

- 2.1 Broadly speaking the term ‘remand prisoner’ refers to a person who has not yet been sentenced by the court. While there are some exceptions, most remand prisoners have not been convicted of an offence and enjoy the presumption of innocence.⁵ People who are already serving a prison sentence but are facing further charges are classified as ‘sentenced’ prisoners, not as remand prisoners.
- 2.2 Remand status prisoners fall into two main groups: those who have been denied bail (around 90%), and those who have been granted bail but are unable to meet their bail conditions (around 10%).
- 2.3 Remanding a person into custody is the most severe action the courts can take prior to determining someone’s guilt or innocence. A period of remand can put severe strain on the individual mentally, financially and socially. It can adversely affect the person’s relationships, their health, their employment status, and education. It can also isolate people from their support networks, particularly when the accused is from a remote or regional location.⁶

Bail legislation: adults

- 2.4 The *Bail Act* 1982 creates two main categories of alleged offence. First, there are cases where the courts exercise a broad discretion in relation to the granting of bail. Secondly, there are cases where the court must remand a person in custody unless there are exceptional reasons to the contrary.
- 2.5 Where there is no presumption against bail, the *Bail Act* gives courts a discretion as to whether to grant bail and the conditions they will impose to ensure compliance. The courts must weigh up the following matters:
- whether the alleged circumstances of the offence are so serious that bail is not appropriate
 - ensuring the person attends future court appearances
 - protecting witnesses
 - ensuring the conduct of the trial is not prejudiced
 - ensuring public safety
 - preventing future offending
 - protecting the accused person themselves
- 2.6 The ‘presumption against bail’, usually called ‘Schedule Two Cases’ by lawyers, is particularly important in trying to understand the trends. Schedule Two cases cover situations where the accused person has been charged with a ‘serious offence’ when already on bail or parole for another ‘serious offence’. In such

⁵ A small number of remand prisoners have already been convicted, but the court has remanded them in custody to await sentencing in circumstances where a custodial sentence is likely.

⁶ Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report 84 (September 1997), 18.165

cases, the court must not grant bail unless persuaded that exceptional circumstances exist. The term ‘serious offence’ is broadly defined and includes offences such as burglary and assault occasioning bodily harm. There is a similar presumption against bail in cases of murder.

Bail legislation: children

- 2.7 Children have a ‘qualified right’ to bail under the *Bail Act*. This means that they are to be granted bail, unless there are reasons to the contrary. The system of ‘supervised bail’ for children, notably through the Metropolitan Youth Bail Service, is particularly significant in reducing the number of children who might otherwise be kept in Banksia Hill Detention Centre.

Legislation governing custodial facilities

- 2.8 According to the *Prisons Regulations 1982* (the Regulations), the legal status of adults on remand entitles them to be treated differently to their sentenced peers. The Regulations state that remand prisoners are eligible to receive daily visits from family and friends and to wear their own clothing where it is appropriate. As far as practicable, they should also be kept separate from other prisoners.⁷ Remand prisoners are not required to work although they are able to do so should they want, and should work be available.
- 2.9 Given that all of the Regulations are qualified by words such as ‘as far as practicable’, the letter of the law is being met. However, with the exception of the fact that remand prisoners enjoy increased access to visits, the spirit of the law is being routinely breached.⁸ Conditions at the main remand prisons are generally poorer than conditions at the main prisons for sentenced prisoners, and remand prisoners are being routinely mixed with sentenced prisoners. In late May 2015, 14-23 per cent of occupied cells in Bandyup Women’s Prison, Hakea and Casuarina prisons were shared by remand and sentenced prisoners. At all three facilities, almost every accommodation unit was being occupied by a mix of sentenced and remand prisoners.
- 2.10 There are no legislative entitlements in the *Young Offenders Act 1994* or the *Young Offenders Regulations 1995* for young people who are being held on remand. Remanded youth are held alongside sentenced youth at the state’s only juvenile detention centre, Banksia Hill.

Data limitations

- 2.11 The data available for this report was drawn from the Department of Corrective Services’ database (TOMS) and open source data.

⁷ *Prisons Regulations 1982* (WA).

⁸ Office of the Inspector of Custodial Services (OICS), *Report of an Announced Inspection of Bandyup Women’s Prison*, Report No. 93 (October 2014); OICS, *Report of an Announced Inspection of Hakea Prison*, Report No. 81 (November 2012).

- 2.12 TOMS identifies whether prisoners were denied bail by the courts or whether bail was set but they were unable to meet the imposed conditions. TOMS also provides details of the conditions of bail and the alleged offences of each person remanded into custody. However, TOMS does not provide information on the rationale behind the court's decision to set or deny bail.
- 2.13 It is likely that additional relevant information for understanding bail and remand trends is contained in databases outside the Department of Corrective Services, but it was not within the scope of this report to go beyond TOMS data. For example, the Auditor General recently drew attention to the Bail Module which has been developed by the Department of the Attorney General (DotAG). The original intent was that information would be shared across DotAG, Corrective Services, and Police.
- 2.14 However, the Auditor General found that Corrective Services had no access to the DotAG Bail Module and that Police had only limited access. DotAG also advised the Auditor General that:
- ‘[I]t does not intend to analyse operational level bail data. If either the Police or Corrective Services wish to analyse such data then they will need to collaborate with DotAG and decide what information is needed.’⁹
- 2.15 This is most unfortunate: in order to fully understand what is driving trends in remand numbers, and to target potential reforms, improvements are required in data analysis and sharing of information between government agencies.. For example, this report is not able to quantify the impact of Schedule Two; the impact of delays in cases getting to trial; or whether the nature of offending has changed, and the impact of drugs such as ‘ice’ on judicial decisions.

⁹ Office of the Auditor General. *Management of Adults on Bail* (June 2015), 21.

3 Western Australia's remand population

- 3.1 The prison population in Western Australia has been rising quickly. This report examines in detail the period from July 2009 to July 2014. The upward trend in prisoner numbers and in the number of remandees has continued since then.
- 3.2 From July 2009 to July 2014 the average daily adult prisoner population rose by 17 per cent, from 4,463 to 5,223. There are numerous factors contributing to this increase, many of which are outside of the Department's control. They include changes in the practices of police, courts and the Prisoners Review Board.
- 3.3 The increase in Western Australia's remand population has been particularly pronounced. Over two thirds of the increase in the total prisoner population from 2009 to 2014 was attributable to the growing number of people held on remand; an increase from 678 to 1,151 prisoners (70%).
- 3.4 The large increase in remand numbers has radically altered the proportion of people in custody who are on remand. At the end of 2009, 15 per cent of the adult prison population was made up of people on remand. By July 2014 this had increased to 22 per cent.
- 3.5 Over the following year, remand numbers have continued to move sharply upwards. On 10 September 2015, there were almost 1,400 remand prisoners, making up 24.8 per cent of the total prisoner population. This is an increase of 20 per cent in just over 12 months.
- 3.6 In other words, a quarter of Western Australia's prisoners have not yet been proved to have committed the offence which justifies their incarceration. Many of them will be convicted and sentenced to a term of imprisonment. If this happens, their sentence will be 'backdated' to take account of their time remanded in custody. However, some will be acquitted and others may receive a non-custodial sentence.
- 3.7 The growth in the proportion of remand prisoners is surprising given that the period from 2009 to 2012 saw a clampdown on parole following the appointment of a new Chair of the Prisoners' Review Board. Logically, it would have been expected that a sharp drop in the number of people on parole would lead to an increase in the proportion of sentenced prisoners in the system, and a corresponding decline in the proportion of remand prisoners. This did not happen. In fact, if the parole system had not tightened up so dramatically in 2009, the increase in remand numbers would have been even more marked than it is, and remand prisoners would now constitute well over 25 per cent of the prisoner population.

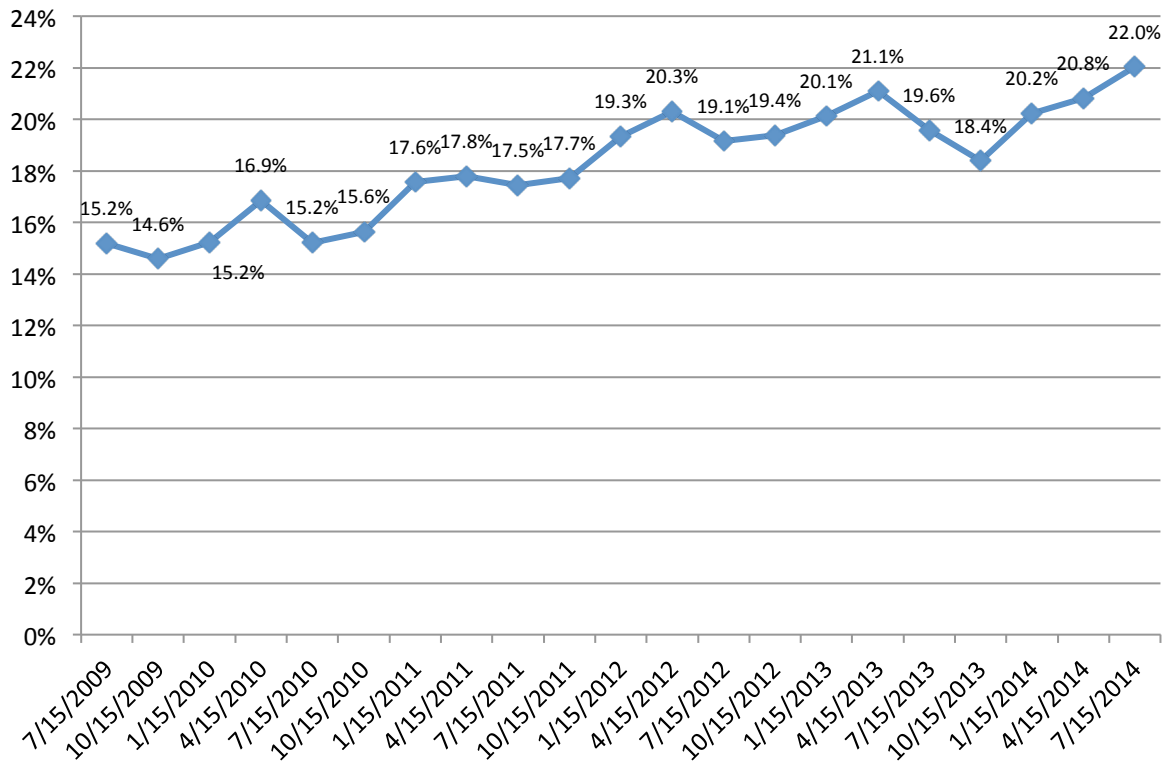


Figure 1

Percentage of adults in custody who are held on remand on the 15th day of each quarter in 2009-2014

- 3.8 The proportion of women on remand is increasing faster than the proportion of men. This is primarily due to an extraordinary increase in the number of Aboriginal women on remand. A comparison between the number of Aboriginal women in remand on 15 July 2009 and 15 July 2014 shows an increase from 27 to 73, or 170 per cent.

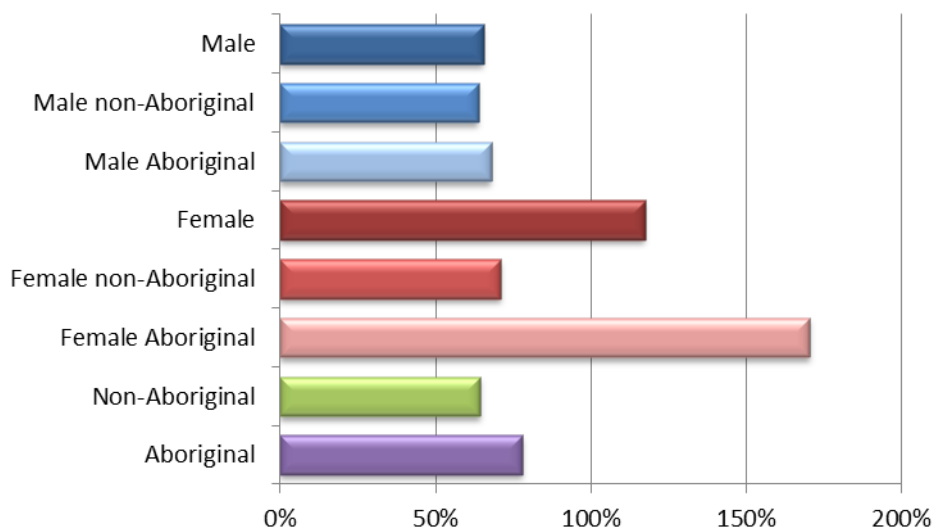


Figure 2

Increase in the number of adults held on remand by demographic group from 15 July 2009 to 15 July 2014¹⁰

- 3.9 There is no specialist remand centre for adult females and therefore Bandyup Women’s Prison (Bandyup) has absorbed the majority of the increasing numbers of women on remand. Bandyup has been provided with very limited investment to meet the legitimate needs of its increasing number of remand prisoners. Specifically, our most recent inspection of the prison found it has a poor official visits facility for lawyers to consult with clients, lawyers have reported difficulty with contacting clients by phone, and legal resources in the library were wholly inadequate.¹¹
- 3.10 The government has accepted the key findings of this Office’s reports on women’s imprisonment. First, there have been some improvements at Bandyup, though it remains overcrowded, stressed, and under-resourced. Secondly, in December 2014 the Minister for Corrective Services announced that some parts of Hakea Prison (Hakea) would be used as a women’s remand facility.¹² The new facility will include construction of a separate gate house, an Outcare facility and other buildings. No timeframes were provided in the announcement but it is not expected to open before late 2016.
- 3.11 The increasing numbers of male remandees (44%) have been mostly absorbed at Hakea, the primary remand and reception prison for adult males in Western Australia. However not all remand prisoners can be sent to Hakea. Men in need of specialised medical care are sent to Casuarina Prison (Casuarina) to access the infirmary. In addition, people in custody may need to be separated into different

¹⁰ Note that due to methodological differences, there are discrepancies between OICS and Departmental data. The Departmental data indicates a 93% increase in the female remand cohort, and a 132% increase in the Aboriginal female remand cohort.

¹¹ OICS, *Report of an Announced Inspection of Bandyup Women’s Prison*, Report No. 93 (October 2014); *Female Prisons in Western Australia and the Greenough Women’s Precinct*, Report No. 91 (July 2014)

¹² The Hon Joe Francis, Minister for Corrective Services, *Major revamp for women’s prison estate*, media statement (15 December 2014)

prisons for management purposes, a need which is increasing due to the growing challenge of managing people with organised gang affiliations.

- 3.12 Over a quarter of the increase in people on remand has been absorbed by Casuarina, Prison. This was intended to be a prison for sentenced prisoners and was not designed to hold substantial numbers of people on remand. Two south-west regional prisons, Albany and Bunbury, have also seen their daily average populations for remandees almost double, since 2009-2010.

Table 1

Proportion of remandees in adult population by facility

Facility ¹³	% of total remandee population	
	2009-2010	2013-2014
Acacia	0.1	0.0
Albany	1.5	2.4
Bandyup Women's	6.8	9.0
Broome	2.6	0.9
Bunbury	2.3	3.2
Casuarina	7.1	12.8
Eastern Goldfields	2.7	1.2
Greenough	5.9	4.2
Hakea	65.9	60.6
Roebourne	4.8	4.2
West Kimberley	0.0	1.5
Wooroloo	0.1	0.0

Comparison with other Australian jurisdictions

- 3.13 Between 2009 and 2014, Australian Bureau of Statistics data shows considerable growth in the overall Australian prison population by approximately fifteen per cent from 29,317 people in custody to 33,791. The growth occurred in all states except for New South Wales and Tasmania.
- 3.14 During this time the national remand population increased by 28 per cent, from 6,393 in 2009 to 8,210 in 2014. This increase was not evenly distributed in all states. A quarter of the Australian rise in remand numbers occurred in Western Australia. This was the second largest increase in the number of prisoners on remand, following Queensland. In stark contrast, Tasmania reduced the number of people on remand.

¹³ Minimum security facilities, Boronia Pre Release Centre for Women, Wandoo Reintegration Centre and Karnet, Pardelup and Wooroloo prison farms rarely hold remand prisoners. For example, in 2013 only 0.006 per cent of the daily average population were minimum security prisoners on remand held at minimum security facilities. This is approximately one person every three months.

3.15 The proportion of prisoners on remand in Western Australia is still less than the national average of 28.4 per cent, and South Australia, Northern Territory, New South Wales and Queensland all have higher rates. However, this does not in any way detract from the importance of understanding our numbers and trends.

Table 2

Prison population and number of people held on remand, by jurisdiction 2009-2014¹⁴

		WA	NSW	Vic	Qld	SA	Tas	NT	ACT	Aust
Total prisoner population	2009	4,419	11,127	4,350	5,667	1,960	535	1,056	203	29,317
	2010	4,772	10,947	4,537	5,615	1,963	489	1,097	280	29,700
	2011	4,648	10,040	4,737	5,574	2,026	509	1,270	302	29,106
	2012	4,964	9,645	4,884	5,593	2,077	494	1,411	313	29,381
	2013	4,924	9,897	5,340	6,076	2,266	483	1,436	353	30,775
	2014	5,242	10,566	6,112	7,049	2,488	448	1,494	392	33,791
Remand population	2009	719	2,592	815	1,154	695	128	237	53	6,393
	2010	782	2,499	804	1,156	703	111	236	76	6,367
	2011	834	2,629	876	1,222	636	104	302	120	6,723
	2012	971	2,476	996	1,250	650	88	349	91	6,871
	2013	972	2,765	954	1,346	767	116	364	90	7,374
	2014	1,179	2,745	1,139	1,676	868	98	417	88	8,210
Change from 2009-2014										
No. of remandees		460	153	324	522	173	-30	180	35	1817
% remand increase		63.90	5.9	39.8	45.2	24.9	-23.4	75.9	66.0	28.4
% of prisoner population on remand in 2014										
		22.5	26.0	18.6	23.8	34.9	21.9	27.9	22.4	24.3

¹⁴ Adaption from Australian Bureau of Statistics *Prisoners in Australia* for years 2009 to 2013 from Prisoner Characteristics tables.

4 Time on remand and costs

Time on remand

- 4.1 The length of time people are held on remand varies greatly. A large number are remanded for short periods: around 55 per cent are held for less than one month and almost a quarter are held for less than one week.
- 4.2 There is evidence that people who are working towards meeting their bail conditions account for a large number of the shorter remand periods. The Office of the Auditor General (OAG) conducted an investigation of adults on bail in 2014. Their report states that 1,356 individuals who were granted bail by the courts spent time in prison waiting to satisfy their bail conditions, with the majority spending less than one week on remand.¹⁵
- 4.3 Men were held on remand for longer periods of time than women. The median length of time on remand for males was 26 days whereas the median length of stay for women was 19 days. Men were more likely to be on remand for over a month compared to women.

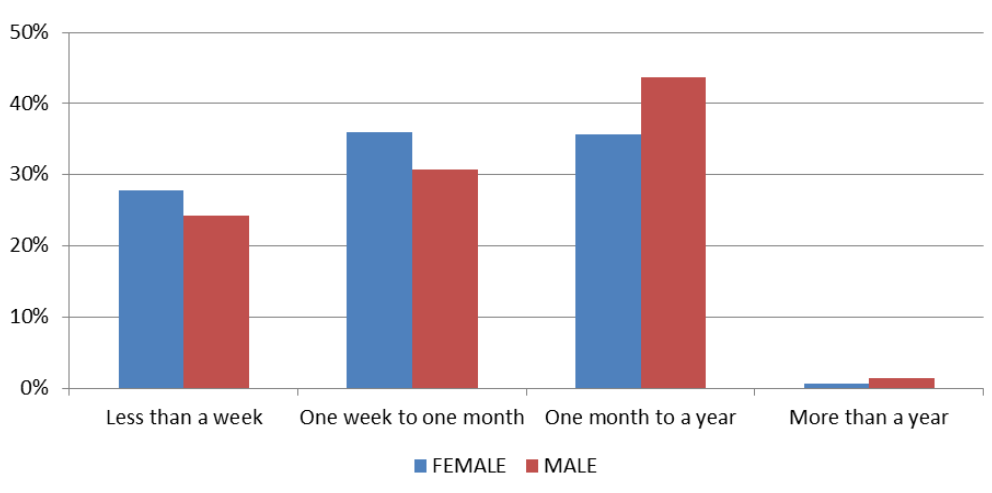


Figure 3

Length of time on remand by gender, 2009-2013¹⁶

¹⁵ Office of the Auditor General. *Management of Adults on Bail* (June 2015).

¹⁶ People held on remand after July 2013 were omitted from the analysis to enable the calculation of prisoners held in prison for over a year.

Costs

- 4.4 It is not possible to determine the cost of holding a person in prison on remand. On average, it cost \$334 per day to hold an adult in a prison facility in 2013-2014.¹⁷ For a combination of reasons, the average cost of holding remandees will be considerably more than the overall average \$334:
- The state's largest prison, and the one which appears to have the lowest costs (Acacia) is only for sentenced medium security men.
 - Many remandees are only held for a short time.
 - It is a costly exercise to process a person into prison: this requires essential health screening, risk assessments, and the provision of additional support to manage the risks posed by new arrivals.
- 4.5 In response to a request made in February 2015, the Department advised us in June 2015 that it 'estimates' that the cost for keeping a person in prison for less than a week 'can be up to \$770 per day', approximately double the cost for longer term prisoners.¹⁸ The wording ('estimate' that it 'can' cost 'up to' \$770) is extremely imprecise and the Department is not able to provide any breakdown by different prisons.¹⁹
- 4.6 It is of concern that so little is known about actual costs. However, some rough calculations can be provided. There were 7496 occasions when prisoners were held on remand for less than one week between July 2009 and July 2014 and only 16 per cent of this cohort spent additional time in custody as a sentenced prisoner. Using this figure, it cost an estimated \$3.1 million in the 2013-14 financial year to hold people on remand for less than a week. This figure does not include the costs of court appearances, and transport to and from court and prison.

Multiple remands

- 4.7 In the five year period examined, over half the people who were held on remand were held on multiple occasions.

Table 4

Number of times prisoners have been held on remand from 2009-2014

No. of times on remand	No. of people	%
Once	6,846	48.6
2-5	6,521	46.3
6-10	685	4.9
11-20	36	0.2

¹⁷ Department of Corrective Services, *Annual report 2013-2014* (September 2014)

¹⁸ Information provided by the Department on 5 June 2015. The Auditor General has recently used the same figure: see Office of the Auditor General. *Management of Adults on Bail* (June 2015).

¹⁹ Hansard Western Australia, Legislative Assembly Estimates Committee A, 11 Jun 2015, page E29.

No. of times on remand	No. of people	%
21+	1	0.0
Total	14,089	100.0

5 Court flows

- 5.1 One of the factors in the increase in remand numbers has been an increase in both the number of people facing charges, and the number of charges they have been facing.
- 5.2 The majority of charges for adults are heard through the Western Australian Magistrates Court. From 15 July 2009 to 15 July 2014 the number of people heard in this court each day increased by 95 per cent, from 436 people to 850 people.
- 5.3 The number of charges rose even faster than the number of people, with total charges increasing by 130 per cent during the same time period. The number of charges per person increased from 4.4 to 5.1.

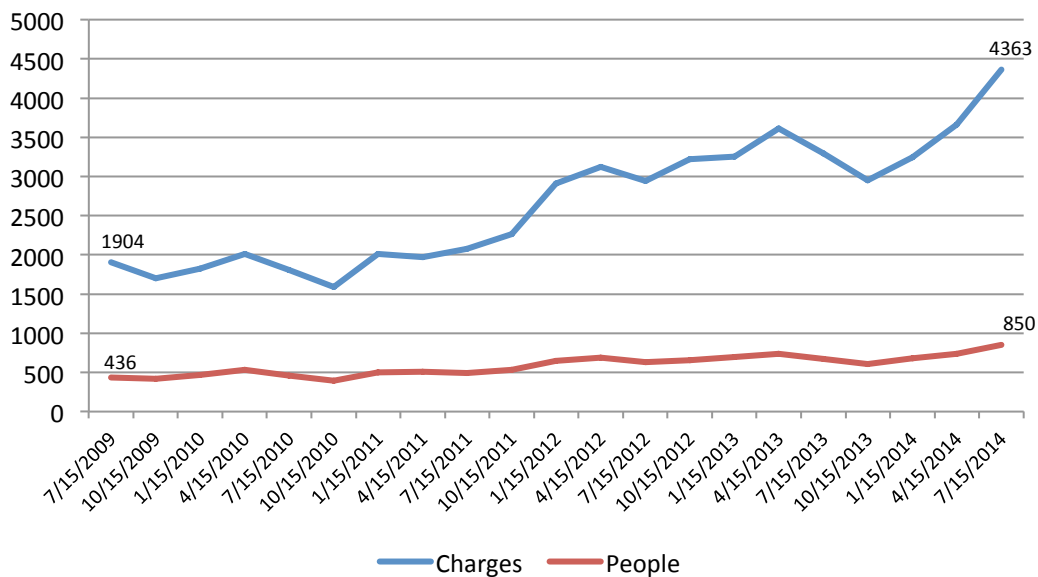


Figure 8

Number of people and charges heard through the Magistrates Court, on the 15th day of each quarter in 2009-2014

- 5.4 Considerable growth was also observed for people and charges heard at the Supreme Court. The number of people facing charges before the Supreme Court in 2014 was 2.5 times the figure recorded in 2009, and the number of charges tripled over this time. A smaller increase was observed at the District Court. Between 2009 and 2014 there was a 30 per cent increase in the number of people on remand with charges heard at the District Court. However, unlike the other courts, the number of charges did not grow faster than people, increasing by only 16 per cent.

6 Charges – nature and number

- 6.1 It is rare for a person to be remanded in custody for a single offence. Ninety per cent of all adults on remand from July 2009 to July 2014²⁰ were held for multiple charges. One person received charges for 189 offences over the five years.
- 6.2 More than 60 per cent of people on remand were charged with offences against property, and over 60 per cent were charged with offences against the person which includes homicide, assault, deprivation of liberty and other grievous or negligent acts which endanger people.
- 6.3 Around half of remanded adults were charged with ‘justice procedure’ offences where a court order, such as bail conditions, had been breached. Justice procedure offences also include escaping legal custody and acts of obstruction. It is possible that the higher number of justice offences may relate to an increasingly strict approach to the enforcement of conditions rather than an increase in actual criminality, however further research is required to determine whether this is the case.

Table 5

Number of people on remand by offence type

Offence type	% of remandees
Against property	62.9
Against the person	62.2
Justice procedures	50.3
Weapons/drugs	27.5
Traffic	21.2
Fraud	14.4
Public order	8.3
Unknown/Other	1.7

- 6.4 Corresponding with the increasing number of remandees, the number of charges in each offence type has risen since July 2009. The rise in the number of charges has been relatively proportional for male remandees, with offences against property and offences against the person being the most common.
- 6.5 The trends for female remandees were different. They experienced increases in all types of charges, but a disproportionately sharp increase in the number of justice procedure offences since the end of 2013. This made justice procedures the second most frequent offence for women in 2014, overtaking offences against

²⁰ Due to the limitation on TOMS, data on charges was only available on a daily basis. To make the sample, data was pulled from 21 data points during the five year period namely (15th day of July, October, January and April for the 2009-2010 through to 2013-2014 financial years). This data is therefore a representative subset of the entire period. For further information refer to the methodology section.

the person. Over half the justice procedure offences were for breaching bail conditions and a further 13 per cent were for breaching a community based order.

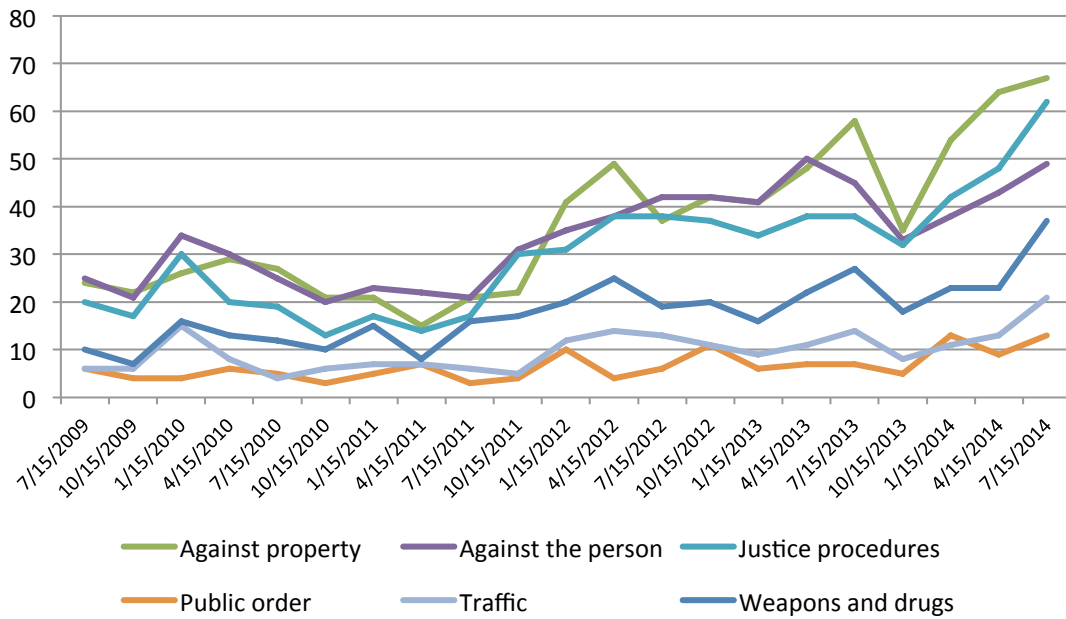


Figure 4
Increase in the number of charges faced by female remandees from 15 July 2009 to 15 July 2014

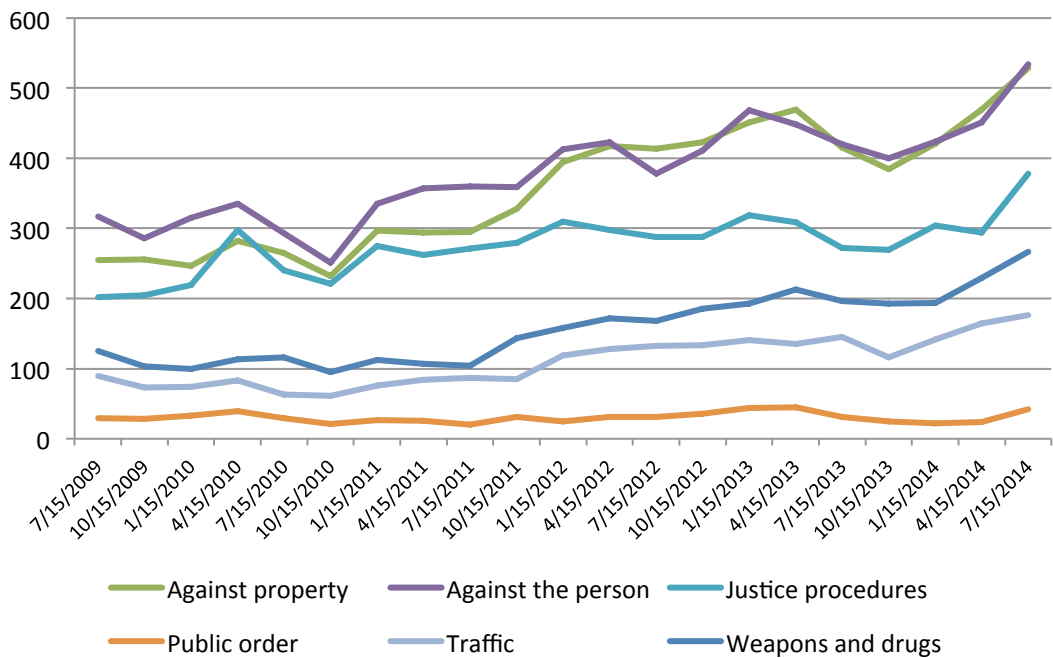


Figure 5
Increase in the number of charges faced by male remandees from 15 July 2009 to 15 July 2014

7 Behaviour in custody

7.1 People who are held on remand are considered less predictable than their sentenced peers. This is due to a number of reasons including:

- being unfamiliar with the custodial environment and its regime
- the possibility that they may be ‘coming down’ from alcohol, drugs or other illicit substances
- the uncertainty of upcoming court matters and procedures
- the possibility of undiagnosed or unmedicated mental health concerns

7.2 This unpredictability is reflected in the elevated number of adults on remand who were involved in all types of incidents during their time in custody. An incident describes any event that occurs in a prison where an incident report is generated. Appendix B provides methodology for examples of incidents and how they were categorised.

7.3 Since 2010 the proportion of remandees involved in all types of incidents has outweighed their proportion in the custodial population by more than four per cent, with the biggest difference observed in 2011 (6.5%).

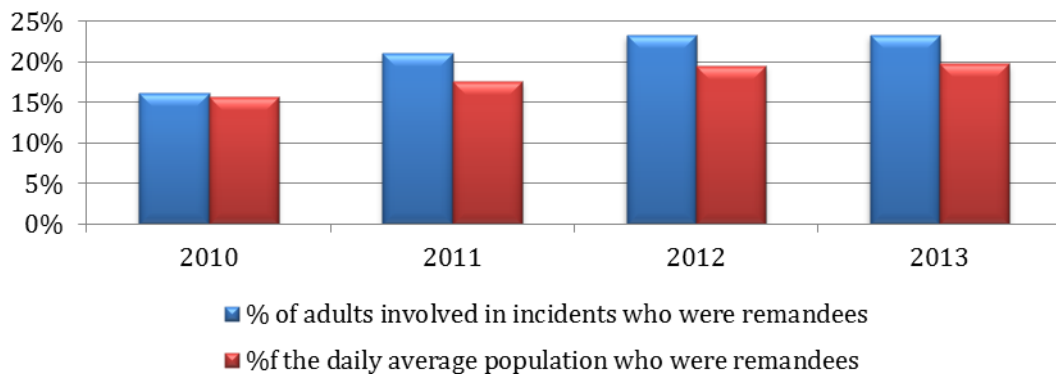


Figure 6

Proportion of adult prisoners on remand involved in incidents, 2010-2013

7.4 It is of particular concern that adult remandees were almost twice as likely as their sentenced counterparts to be involved in an assault incident. They were also twice as likely to be involved in an incident needing risk management, such as prisoners having conflicts with other prisoners or not following policy (such as being within visual range of prison officers).

7.5 Remandees were disproportionately more likely to be involved in incidents of actual or threatened self-harm. On the other hand, despite trends observed

elsewhere,²¹ the number of deaths in custody of adult remandees was lower than their proportion of the population. However, the number of deaths was very low, so these comparisons should be interpreted with caution. There were five deaths of remandees in custody, each caused by hanging.

Table 6

Proportion of remandees involvement in types of incidents, from 15 July 2009 to 15 July 2014

Incident type	% of incidents involving remandees
Risk management	35.7
Physical assault	32.0
Self-harm	28.4
Contraband	26.9
Proportion of remandees in prison population	17.0
Unlawful absence	14.7
Substance/drugs	13.4

- 7.6 Unexpectedly, remandees were less likely to be involved in incidents of being suspected to be under the influence of a substance or drug.
- 7.7 Remandees were less likely to be involved in incidents of unlawful absence. This is expected as remandees are not able to access the additional freedoms of having a minimum security rating, freedoms which elevate the risk of unlawful absence.

²¹ Lyneham, M. & Chan, A. *Deaths in custody in Australia to 30 June 2011- Twenty years of monitoring by the National Deaths in Custody Program since the Royal Commission into Aboriginal Deaths in Custody* (2013), xx

8 Young People

- 8.1 Prior to October 2012, the majority of Western Australia's young people being held on remand were located at Rangeview Remand Centre. This facility was decommissioned to make way for a young adults' facility and subsequently, all detainees were relocated to Banksia Hill Detention Centre (Banksia Hill). This left Banksia Hill as the only custodial facility for people aged 10 to 18 years in Western Australia. It holds girls and boys of all ages, both sentenced and remand.
- 8.2 Due to the low numbers of young people in custody it is difficult to determine patterns in the remand population, as a small number of people may substantially alter the statistics. However, even with this limitation the data identifies some issues with young people on remand which are worthy of note.

Remand population

- 8.3 While the adult system has experienced a marked increase in remands over the last five years, the picture in youth justice is more stable. Over the last five years the number of young people on remand, and the proportion of those on remand compared to those sentenced, has remained relatively steady. However, this proportion is much higher than adults, generally over 40 per cent.

Table 7

Proportion of remandees in the juvenile population, 2009-2014

Financial year	Average number of detainees	Average number of people on remand	Remand proportion
2009-10	165	77	46.8%
2010-11	184	86	46.5%
2011-12	179	78	43.5%
2012-13	187	74	39.4%
2013-14	159	69	43.6%

Time on remand

- 8.4 People under 18 years of age were held on remand for less time than the adults. In the five year period 2247 young people were held on remand in detention, five of whom were held for over a year. Over a third (35%) were held for less than a week, and a further 46 per cent were held for less than a month.
- 8.5 Girls and non-Aboriginal detainees were held for shorter periods than young Aboriginal males. The median length of time on remand for Aboriginal males was 12 days whereas the median length of stay for girls and non-Aboriginal males was only 7 days.

- 8.6 Only 16 per cent of the young people who had been held on remand were sentenced to a term of detention. As with the adults, some would have been found not guilty but the majority were probably given other orders, based on community supervision.
- 8.7 Over half the young people were held on remand more than once during the five year period. Two detainees were held on remand 17 times.

Table 8

Number of times detainees have been held on remand from 2009-2014

No. of times on remand	No. of detainees	%
Once	921	41.0
2-5	1013	45.1
6-10	256	11.4
11-17	57	2.5
Total	2247	100.0

Charges

- 8.8 Only six per cent of young people were held on remand for a single charge.²² The maximum number of charges for one detainee was 91 charges over the five years.
- 8.9 Offences against property were by far the most common offences for young people, with over 90 per cent of detainees having a charge for this offence. Half had charges against the person and almost a third had a justice procedure charge.

²² Due to the limitation on TOMS, data on charges was only available on a daily basis. To make the sample, data was pulled from 21 data points during the five year period namely (15 Jan, April, July and October each year). This data is therefore a representative subset of the entire period. For further information refer to the methodology section.

Table 9

Number of detainees on remand by offence type

Offence type	% of detainees
Against property	93.0
Against the person	58.0
Justice procedures	33.6
Weapons/drugs	18.0
Traffic	23.6
Fraud	15.2
Public order	14.7
Unknown/Other	0.6

8.10 There was little change over time in the types of charges applied to young people.

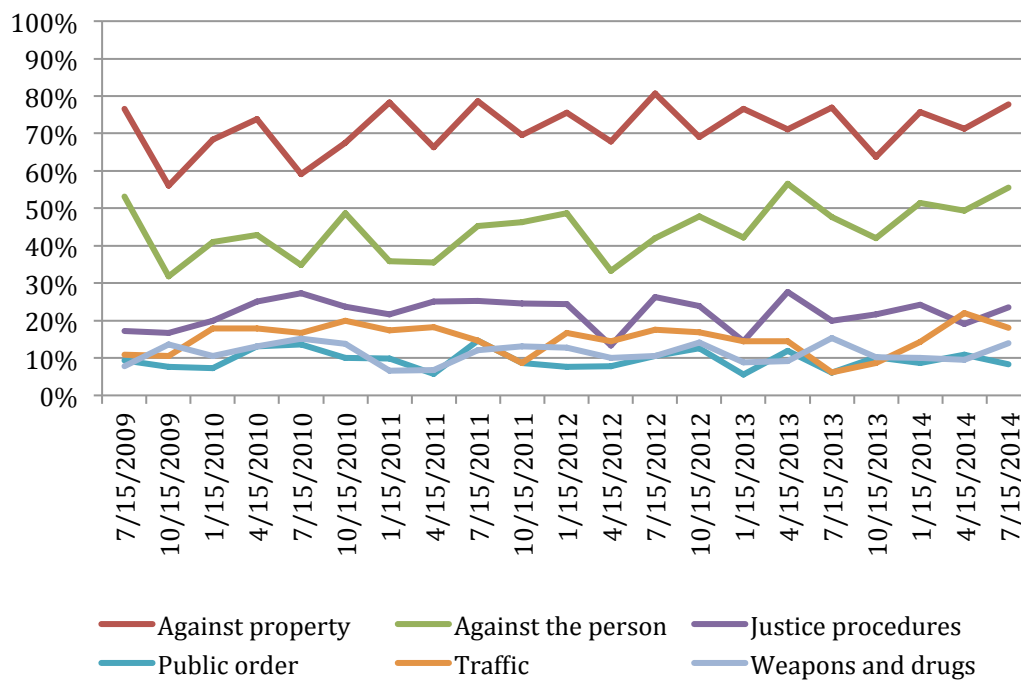


Figure 10

Increase in the number of charges faced by detainees from 15 July 2009 to 15 July 2014

Behaviour in custody

- 8.11 Young remandees were even more disproportionately involved in incidents than their adult counterparts. While 44 per cent of the juvenile detention population was on remand, they accounted for 54 per cent of incidents. Table 10

Proportion of young people on remand involvement in types of incidents, from 15 July 2009 to 15 July 2014

Incident type	% of incidents involving remandees
Physical assault	61.1
Self-harm	57.2
Risk management	56.6
Proportion of remandees in prison population	44.0
Substance/drugs	36.2
Contraband	28.6
Unlawful absence	26.1

Appendix A: Key findings

Adults

- Currently more than one in five people in Western Australian prisons is on remand.
- Around ten per cent of prisoners being held on remand at any given time have been granted bail by the courts but are not able to meet the conditions set by the court. The other 90 per cent have not been granted bail.
- The number of people in prison on remand is going up much faster (over 100% in six years) than the sentenced prisoner population (13% in six years).
- The largest remand population increase has been seen in the Aboriginal female prison population.
- The proportion of remand prisoners in Western Australia is lower than the national average but the number of people on remand is growing faster than other states.
- Remand prisoners have a different legal status from sentenced prisoners, and have additional entitlements and needs (including links to courts). The prisons that have been most impacted by the changes are Casuarina, Bandyup, Albany and Bunbury prisons.
- The length of time on remand tends to be short: 55 per cent of stays are for less than one month and a quarter are for less than one week. Men were held on remand for longer periods of time than women. The median length of time on remand for males was 26 days whereas the median length of stay for women was 19 days.
- It costs considerably more to keep a person in prison on remand for a short time than it does to keep a sentenced person in prison for a longer period. However, the Department is unable to provide robust costings.
- The number of people appearing in the courts has increased markedly in the past few years.
- Almost all adults on remand were held for multiple charges, and the average number of charges has also increased.
- In relation to males, the most common charges are, in rank order: offences against property, offences against the person, and offences against justice procedures.

- In relation to females, up until 2013, the most common charges followed the same order as for males. However, in the case of women, justice procedure offences now significantly outstrip offences against the person.
- People on remand were more likely to be involved in more incidents than their sentenced counterparts, in particular for incidents of physical assault and self-harm.

Young People

- Over 40 per cent of young people in detention are on remand (compared with 25% of adult prisoners).
- Unlike adults, however, there has been no increase: in fact the trend is down in terms of both the number on remand and the proportion.
- Up to late 2012, young people on remand were generally housed separately from sentenced children. That is no longer the case; all are housed at Banksia Hill Detention Centre.
- Young people were held on remand for less time than adults. Girls and non-Aboriginal detainees were held a median of 7 days and young Aboriginal males were held for a median of 12 days.
- As with adults, almost all the young people on remand were held for multiple charges.
- Offences against property and offences against the person were the most common charge types.
- Like their adult counterparts, young people on remand were more likely to be involved in more incidents than their sentenced counterparts, in particular for incidents of physical assault and self-harm.

Appendix B: Methodology

Using structured query language (SQL) data extraction, data was obtained from the Department's database, Total Offender Management Solution (TOMS) for the period between July 2009 and July 2014. Three distinct data sets were created.

Remand population

To measure the changing demographic profile of remandees over the five year period quarterly extractions were performed on the 15th day of July, October, January and April for the 2009-2010 through to 2013-2014 financial years. The person's status as remand, sentenced or other on this day was used to determine the proportion of the prison population which were on remand.

Data on adults and data on young people under 18 years old was examined separately.

Time on remand

The period of remand were calculated between July 2009 and July 2013. People held on remand after July 2013 were omitted from analyses to enable the calculation of prisoners held in prison for over a year. The length of time they were on remand was calculated by measuring the days between the date the person was classified as remand and the date the person had their status changed (to release, sentenced etc.).

In total, 23 973 adults had a status of remand during this period. This included people who had come into the system on remand multiple times. Accounting for multiples there were 11 765 individual people who were on remand from July 2009 to July 2013.

Charges and court flows

Similar to the data extraction for the remand population, quarterly extractions were performed on the 15th day of July, October, January and April for the 2009-2010 through to 2013-2014 financial years.

This information included offence descriptions, aligning with the Australian Standard Offence Classification (ASOC) categorisation scheme, which was recoded into eight categories namely:

- offences against property
- offences against the person
- justice procedures
- weapons or drugs offences
- traffic offences
- fraud
- public order offences
- unknown or other offences

Examples of the type of charges included in these categories are:

Charge type	Examples include
Against property	<ul style="list-style-type: none"> • property damage • environmental pollution, dumping • illegal use of property (except motor vehicle) • receiving or handling proceeds of crime • robbery, extortion, theft (excluding motor vehicle) and related offences • unlawful entry, trespass
Against the person	<ul style="list-style-type: none"> • abduction and kidnapping • assault • attempted murder • dangerous or negligent operation of a vehicle • deprivation of liberty/false imprisonment • harassment, threatening behaviour and causing fear/terror • manslaughter and driving causing death • murder • non-assaultive sexual offences, indecent recording • other acts intended to cause injury • other dangerous or negligent acts endangering persons • sexual assault, carnal knowledge and indecent dealings
Justice procedures	<ul style="list-style-type: none"> • breach of bail • breach of community based orders • breach of custodial order offences • breach of other orders (non-restraining) • breach of violence and non-violence restraining orders • offences against government operations (obstructs/hinder/impede authorised person) • offences against government security (brought non-citizens-harboured illegal immigrants, without lawful excuse trespass defence establishment) • offences against justice procedures (escaping lawful custody, wilfully destroy evidence, corruption of witness, failure to supply information)
Public order	<ul style="list-style-type: none"> • unlawful assembly did not disperse in accordance with an order • disorderly behaviour • improper use of the emergency call service • remain on a licensed premises • street drinking

Traffic	<ul style="list-style-type: none"> • driver licence offences • driving and other road traffic offences • offences relating to use of conveyances (unlawful use of a conveyance)
Weapons and drugs	<ul style="list-style-type: none"> • prohibited and regulated weapons and explosives offences (possession, failure to ensure safe-keeping, not being a holder of licence) • prohibited drug and other substance offences (deal, traffic, import, export, manufacture, possess)

Behaviour in custody

Quarterly data extractions of every incident occurring in every facility, were performed on the 15th day of July, October, January and April for the 2009-2010 through to 2013-2014 financial years.

In total 33424 incidents involving remandees occurred in adult facilities and 9344 incidents occurred in juvenile facilities. Examples of what was examined as an ‘incident’ and how they were categorised is listed below.

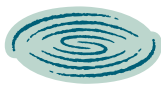
	Critical	Examples from TOMS (may not be critical incidents)
Assault	Includes: <ul style="list-style-type: none"> • assault • serious assault • sexual assault 	
Contraband	Includes: any item that may have a significant impact on the good order and security of a prison, for example: <ul style="list-style-type: none"> • firearms or ammunition • devices constructed or modified for the purpose of firing ammunition • significant weapons (ie sword, machete, spear gun etc) • large amount of drugs or alcohol • mobile phones/data devices • any item that could reasonably aid an escape from custody • any other item that may place the security of the prison or any person under significant risk 	

Death	<p>Applies when there is a:</p> <ul style="list-style-type: none"> • death of a prisoner in legal custody • death of any other person in a prison facility or on prison property • death of any person who at the time of death was carrying out official prison duties 	
Environment	<p>An incident or event that results in the loss of essential services or serious damage to prison infrastructure. For example:</p> <ul style="list-style-type: none"> • natural disasters (earthquake, flood, cyclone, bush fire) • loss of power that may result in a significant impact to the security of the facility • explosion or release of airborne contaminant (ie gases/toxic fumes) • fire in a building or cell that requires external assistance. • breached/damaged water mains affecting water supply to the prison • blocked/damaged sewerage lines disrupting the disposal/removal of human waste (this does not include incident of a blocked toilet) 	<ul style="list-style-type: none"> • broken window • pond damage • door lock jammed
Fighting		
Health	includes injury, illness	
Injury	<p>A serious injury can be defined as an injury to a person (prisoner / staff / visitor) which requires external medical assessment or treatment and/or overnight hospitalisation as a result of an industrial accident (workplace injury), an unnatural occurrence / accident (ie. falling out of bed, building defect etc), or a suspicious injury.</p> <p>Note: where the serious injury is the result of a serious assault, the incident is to be reported as a serious assault.</p>	

<p>Injury – Self-harm</p>	<p>Self-harm includes self-injury and self-poisoning and is defined as the intentional, direct injuring of body most often done without suicidal intentions.</p> <p>Serious self-harm relates to the act of self-harm that requires either:</p> <ul style="list-style-type: none"> • overnight hospitalisation in a medical facility (including prison clinic/infirmary), or • ongoing medical treatment <p>Note: Self-harm which does not fall under the definition of serious self-harm is to be categorised as a Non-Critical incident, Injury (Self-Harm), Self-Harm.</p> <p>Attempted suicide is the act of self-harm whereby a person attempts to take their own life. Attempted suicides include such examples as: attempted hanging, attempted drug overdose, attempted poisoning (other than drugs), serious self-harm (ie extensive mutilation of ones own body) and/or jumping from an elevated platform where the intent of the act was to cause self-harm or death.</p> <p>Self-harm also includes voluntary starvation.</p>	
<p>Insulting language</p>		
<p>Misconduct</p>		<p>Any incident that cannot be otherwise categorised and results in a loss of privileges. If it does not result in a loss of privileges it should only be recorded as an offender note.</p>

Risk Management	Includes: <ul style="list-style-type: none"> • security equipment (loss theft, removal) • security system failure • bomb threat • break in or attempted break in • civil demonstration • detained in error • discharge of a firearm • industrial action 	
Searches		
Self-harm	Includes: <ul style="list-style-type: none"> • injury – self-harm • voluntary starvation 	
Substance/drugs		<ul style="list-style-type: none"> • testing • suspected under the influence
Unlawful absence	<p>Escape:</p> <p>An escape occurs when a prisoner breaches physical security; flees from an authorised escort; or flees from any facility, hospital or location whereby they are lawfully meant to be. Examples of an escape is when a prisoner flees from a:</p> <ul style="list-style-type: none"> • maximum, medium or minimum security facility • court complex • public hospital • secure escort vehicle • leave of absence whilst under guard • authorised activity whilst outside the main prison facility (ie. s 95 activity, work camp). <p>Escape (attempted): An attempted escape is an attempt to escape as defined above.</p> <p>Note: all attempts of escape, regardless of success, are to be reported as critical. This includes situations where an attempt has been terminated before the perimeter has been breached.</p>	

	<p>Preparation to escape is also to be recorded as an Attempted Escape where planning appears to be well progressed.</p> <p>Released in error: Where a prisoner has been released from custody prior to the date he is lawfully entitled to be released, as a result of an administrative error. Generally follows discovery of:</p> <ul style="list-style-type: none"> • a warrant not entered • miscalculated term detail • release without signing release order, etc 	
Use of force	<p>Use of force is the application of DCS approved control, restraint and physical force techniques to maintain security and good order (in line with Policy Directive 5 – Use of Force).</p> <p>Critical Incident reporting is required when, during the use of force, any of the following applies:</p> <ul style="list-style-type: none"> • chemical agent is deployed • a baton is used • a TASER is deployed • planned use of force (ie cell extraction) is conducted • restraints bed is utilised • a staff member or prisoner receives an injury requiring external (to the prison) medical assessment or treatment and/or overnight hospitalisation <p>Note: the planned routine use of restraints for movement purposes is not a reportable incident.</p>	



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

**Level 5, Albert Facey House, 469 Wellington Street
Perth, Western Australia 6000
Telephone: +61 8 6551 4200
Facsimile: +61 8 6551 4216**

www.oics.wa.gov.au