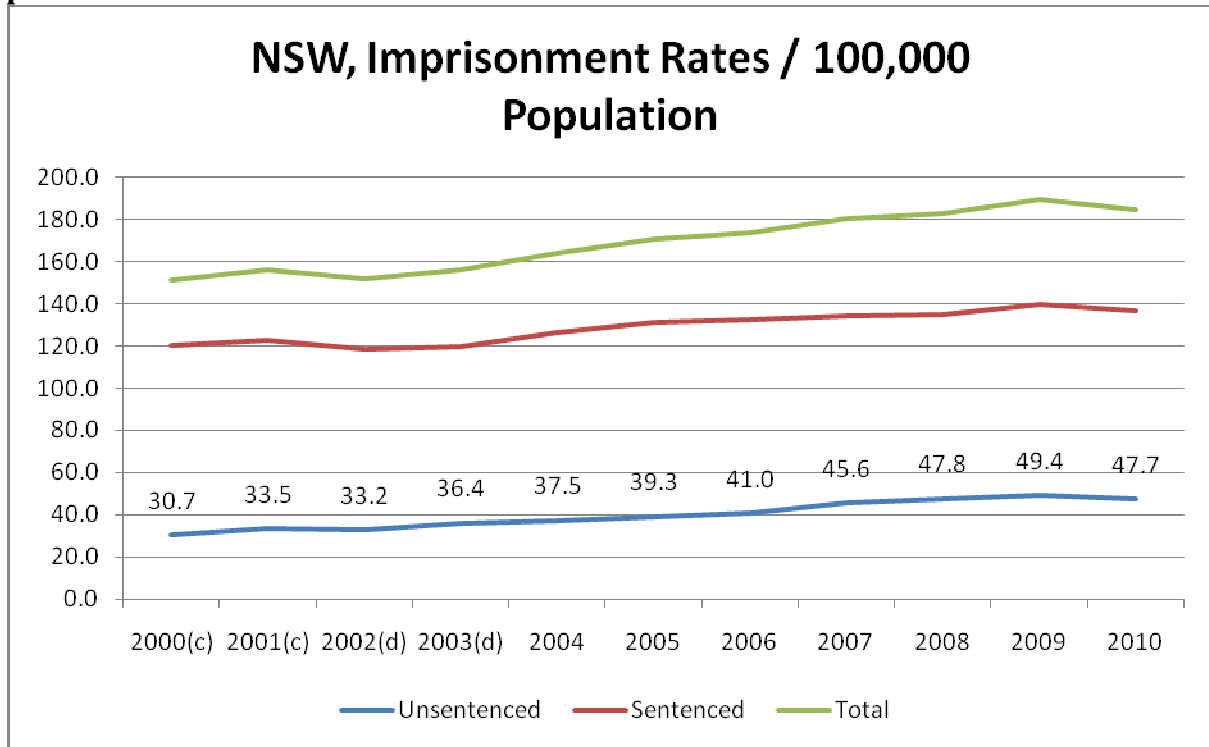


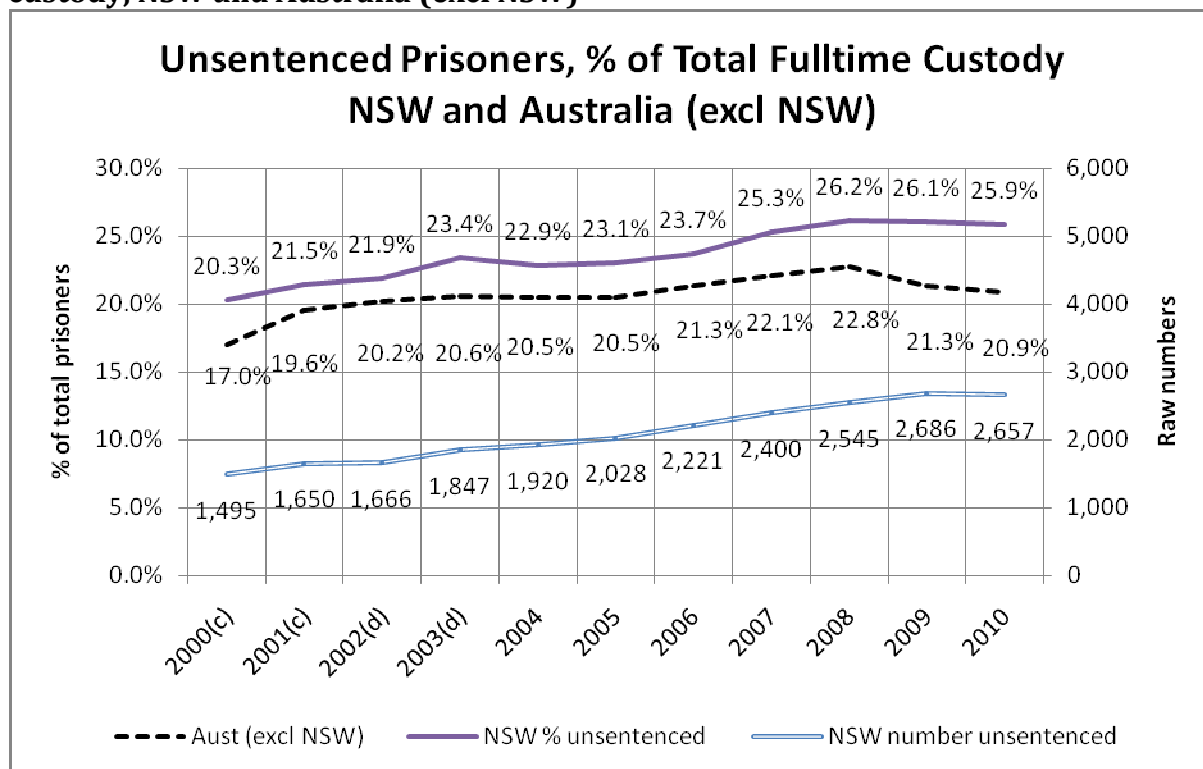
The following graphs show trends in the unsentenced prisoner population in NSW and in bail application outcomes.

**Figure 1: NSW imprisonment rates per 100,000 population by legal status of prisoner<sup>1</sup>**



<sup>1</sup> Source: Australian Bureau of Statistics, *Corrective Services, Australia* (March 2011 and earlier releases), publication no 4512.0, Table 9: Imprisonment Rates, by legal status. These figures represent the number of sentenced, unsentenced, and total prisoners held in custody for every 100,000 adult population of NSW.

**Figure 2: Unsented prisoners as a percentage of total prisoners in full-time custody, NSW and Australia (excl NSW)<sup>2</sup>**

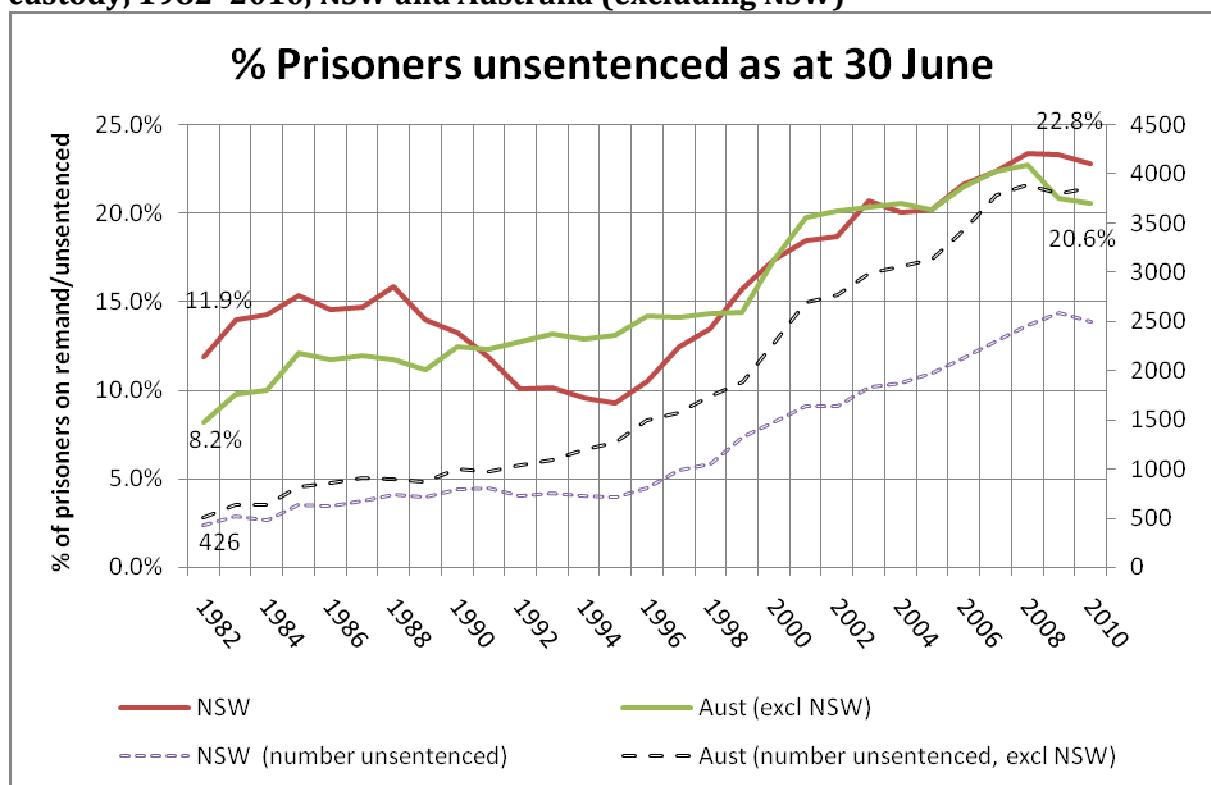


Figures 1 and 2 show that over the period 2000–2010, while the overall rate of imprisonment has increased in NSW, there is clearly an increasing trend in the proportion of prisoners held on remand. In raw numbers, the NSW unsented prisoner population has increased steadily from 1,495 to 2,657 (approximately 78%, or an average of 116 prisoners per year). The number of unsented prisoners per 100,000 resident population has increased from 30.7 to 47.7 (approximately 55%). The proportion of unsented prisoners to sentenced prisoners has increased from 20.3% to 25.9% (an increase of approximately 28%).

<sup>2</sup> Calculated from: Australian Bureau of Statistics, *Corrective Services, Australia* (March 2011 and earlier releases), publication no 4512.0, Table 8: Persons in full-time custody, by legal status. These figures represent the number of unsented prisoners in NSW as a percentage of total full-time prisoners, and as raw figures. The percentage figures for Australia (excluding NSW) are also included for reference.

**Figure 2** also shows that over the last ten years, NSW has increased its distance from national trends in the ratio of sentenced to unsentenced prisoners, moving from a difference of 3.3 points up to 5.<sup>3</sup>

**Figure 3: Unsented prisoners as a percentage of total prisoners in full-time custody, 1982–2010, NSW and Australia (excluding NSW)<sup>4</sup>**



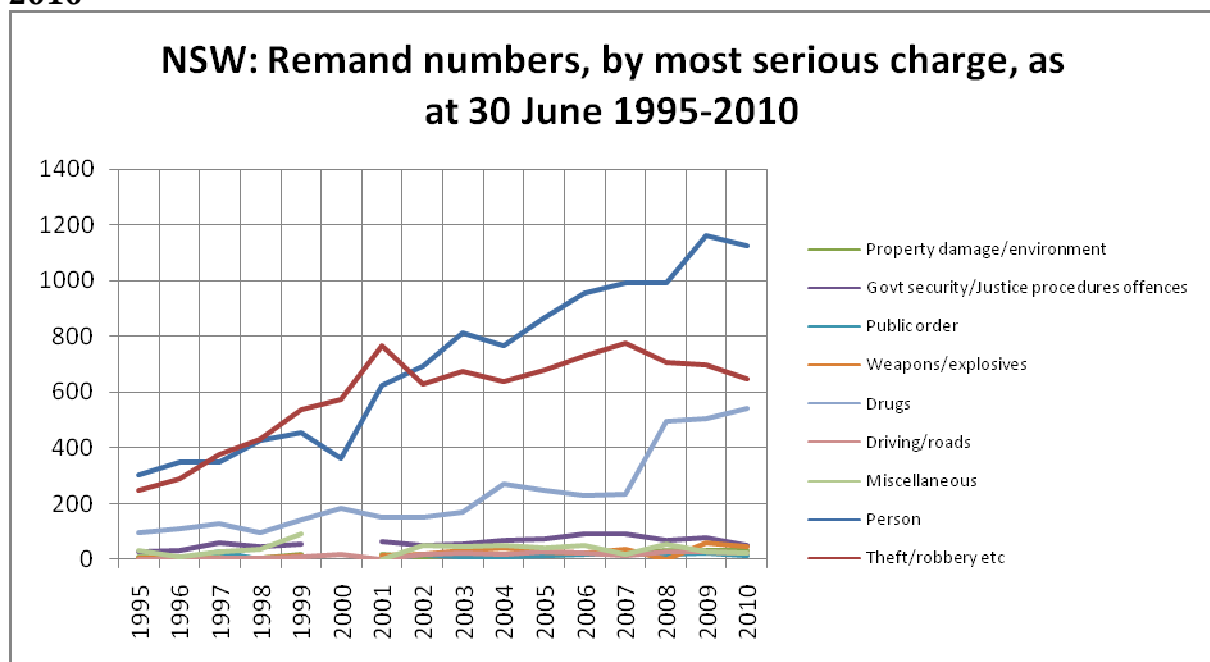
<sup>3</sup> SA has even higher proportions of unsentenced prisoners than NSW (see appendix).

<sup>4</sup> Sources: Australian Institute of Criminology, *Australian Prisoners (1982–1988)*; ABS, *Prisoners in Australia (1999)*, Table 24: Historical Summary; ABS, *Prisoners in Australia (2010)*. These figures represent the number of unsentenced prisoners in NSW as a percentage of total full-time prisoners, and as raw figures. The percentage figures for Australia (excluding NSW) are also included for reference.

Figure 3 shows that since 1982, the proportion of unsentenced prisoners has almost doubled from 11.9% to 22.8%, with a dip in the early/mid 1990s (which can be explained by an explosion in total imprisonment numbers) and a sharp rise from 1995 to 2007. This graph suggests that NSW has fairly consistently followed Australian trends. From 1992, the rate of imprisonment has increased from 12.08 to 34.48/100,000 total population (approx 185%).<sup>5</sup> The trend in Australian unsentenced imprisonment rates (excluding NSW) shows an even greater proportional increase from 8.4/100,000 population to 25.56 (up 204%). However, in absolute terms, the gap between NSW and the rest of Australia continues to widen (from 3.68/100,000 to 8.92 /100,000 in 2010).

A possible explanation for the slight inconsistency between the trends for 2000–2010 in figs 2 and 3 is that data for the latter comes from the National Prison Census, which is a point-in-time assessment (at 30 June), whereas data for fig 2 is based on annual averages calculated from numbers on the first day of the month. Because of the much more short-term nature of remand, it is likely that there would be considerable fluctuation in numbers over an entire year. However, both sets of data clearly show that that the NSW unsentenced imprisonment rate is increasing as against the sentenced prison population, the general population, and trends across the nation.

**Figure 4: NSW remand numbers, by most serious charge, as at 30 June 1995–2010<sup>6</sup>**

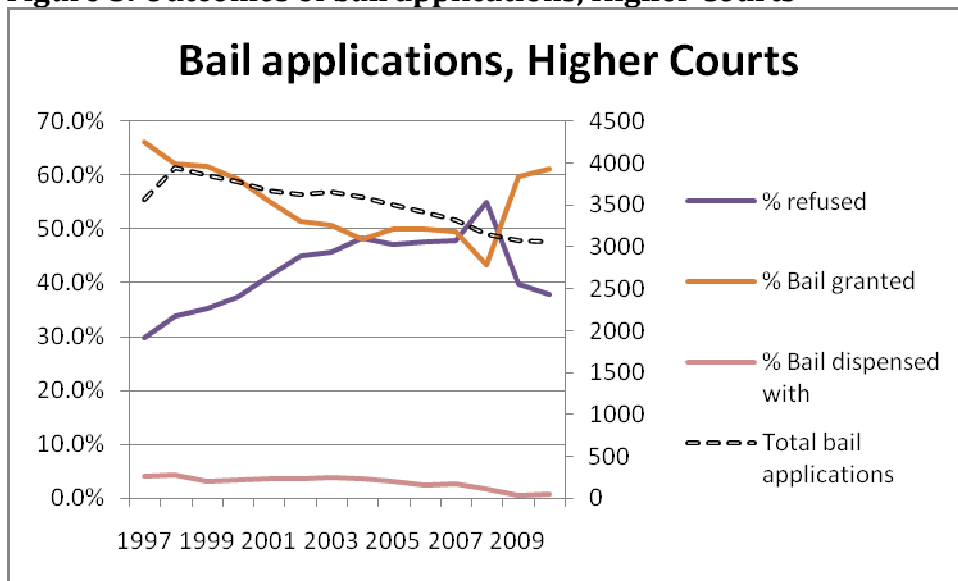


<sup>5</sup> See Appendix (3<sup>rd</sup> graph). In order to exclude NSW figures from the national rate, figures for both NSW and Australia (excl NSW) have been calculated according to the estimated resident population for each year. However, these figures are based on all ages, rather than the usual per 100,000 adult population.

<sup>6</sup> Source: ABS, *Prisoners in Australia* (1995–2010) Table 2.1: Prisoners, selected characteristics by selected most serious offence/charge. The categorization of offences has varied over reporting years. For comparability, figures have been grouped into the categories shown. A key to what offences fall into each category for each reported year can be found in the source document.

Figure 4 shows that from 1995–2010, the number of prisoners in remand for offences against the person, theft/robbery, and drugs has risen steadily.

**Figure 5: Outcomes of bail applications, Higher Courts<sup>7</sup>**



**Figure 6: Outcomes of bail applications, Local Courts**

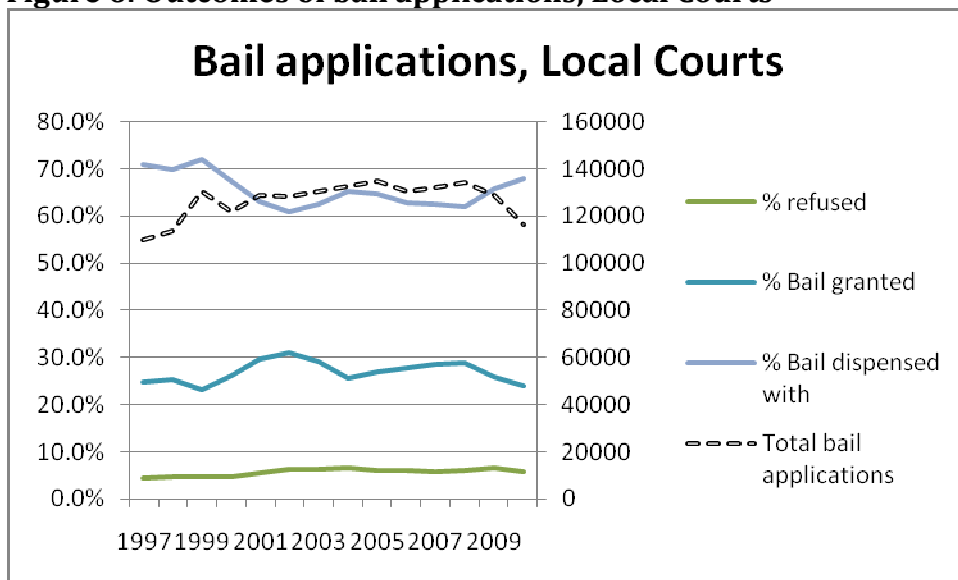


Figure 5 shows that there has been a steady increase in the proportion of bail refusals in the higher courts, while cases where bail was dispensed with have diminished to almost none. This should be interpreted in the context of a general decline in bail applications in the higher courts.

Figure 6 shows that in local courts the number of cases where bail has been dispensed with has been declining annually, though this option still accounts for the majority of decisions. At the same time, there has been an increase in the number of cases where bail has been imposed (with or without conditions) and where bail has been refused.

<sup>7</sup> Source: BOCSAR, *NSW Criminal Courts Statistics (1997–2010)* Tables 1.6, 3.12. The statistic “total bail applications” is calculated as the total number of cases where bail was granted, refused, or dispensed with. The number of persons in custody for a prior offence has not been included in this figure, except where it was not incorporated into the figures for “bail refused” in the source.

The raw number of bail refusals per year in the local courts increased from 4884 in 1997 to 7012 in 2010, peaking at 9092 in 2004. However, there is no clear trend in the number of bail applications; if anything, it is rising.

The difference in higher and lower court trends for the overall number of bail applications may be explained by s 22A of the *Bail Act 1978* (NSW), which restricts additional bail applications.

**Figure 7: Percentage of persons refused bail (other than after a plea of guilty) whose charges were dismissed.<sup>8</sup>**

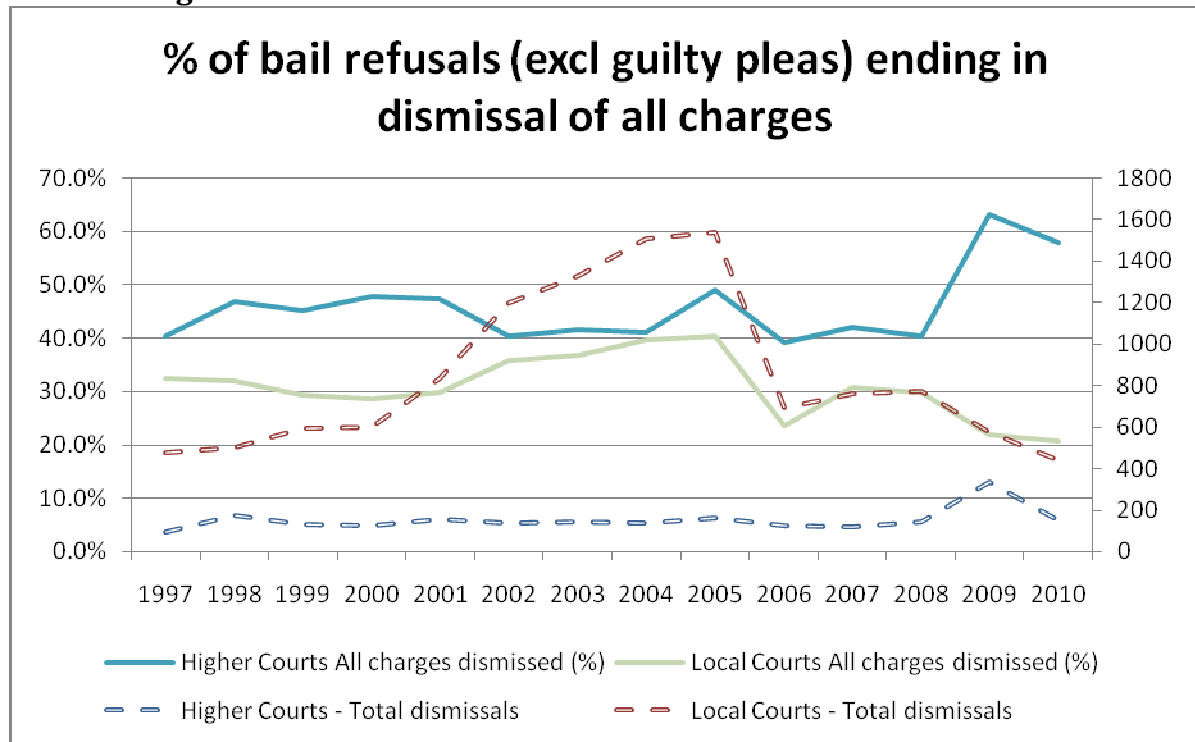


Figure 7 shows trends in the proportion of cases where prisoners have been refused bail (other than after a plea of guilty) and have subsequently had all charges dropped, either after a defended hearing or without proceeding to hearing. There appears to have been little overall change in the number of such cases. While there was a sharp rise in 2009 in the higher courts, in 2010 the number had already begun to recede, suggesting something peculiar to that year. It should be noted that the majority of the higher court cases resulting in dismissal of all charges occur after a contested hearing. It is somewhat disturbing that the proportion of such cases in both higher and lower courts is as high as 40%,<sup>9</sup> and seems inconsistent with the bedrock principle that an accused is presumed innocent until proven guilty. This figure does not appear in the BOCSAR

<sup>8</sup> Source: BOCSAR, *NSW Criminal Courts Statistics* (1997–2010) Tables 1.6, 3.12. These figures are calculated from cases where the accused has not pleaded guilty. Bail status is based on status of accused at final appearance. The number of persons in custody for a prior offence has not been included in this figure, except where it was not incorporated into the figures for “bail refused” in the source. It should be noted that changes in counting occurred in 2004 (reporting of prior custody) and in 2006 (local court figures merged withdrawn charges with associated charges finalised on later date). “All charges dismissed without hearing” includes charges pending at end of year. Also, in 2009, the data source changed to JusticeLink. This might account for a sudden change in numbers in 2009 and 2010.

<sup>9</sup> See graphs in appendix.

statistics, which show non-conviction outcomes as a percentage of all bail refusals, which figure is heavily affected by the number of cases where bail has been refused after a plea of guilty.

### **Conclusion**

The number of prisoners being held in remand in NSW has been increasing markedly over the last two decades. Statistics for 2000–2010 show that the number of unsentenced prisoners in NSW (as a proportion of the total prison population) is well above the average of the other Australian jurisdictions combined, and that this gap has been increasing.<sup>10</sup>

NSW court bail statistics show that, in relation to offences tried in the higher courts, proportionally fewer prisoners are being granted bail or having bail dispensed with, and even fewer are applying for remand at all.

These trends are not simply due to a general rise in imprisonment, but reflect a consistent increase in the proportion of unsentenced prisoners in the prison population. The increase is attributable – among other things - to progressive legislative amendments making bail more difficult to obtain for various offences (particularly against the person, or relating to drugs, theft and robbery), and restricting repeat bail applications in the higher courts.

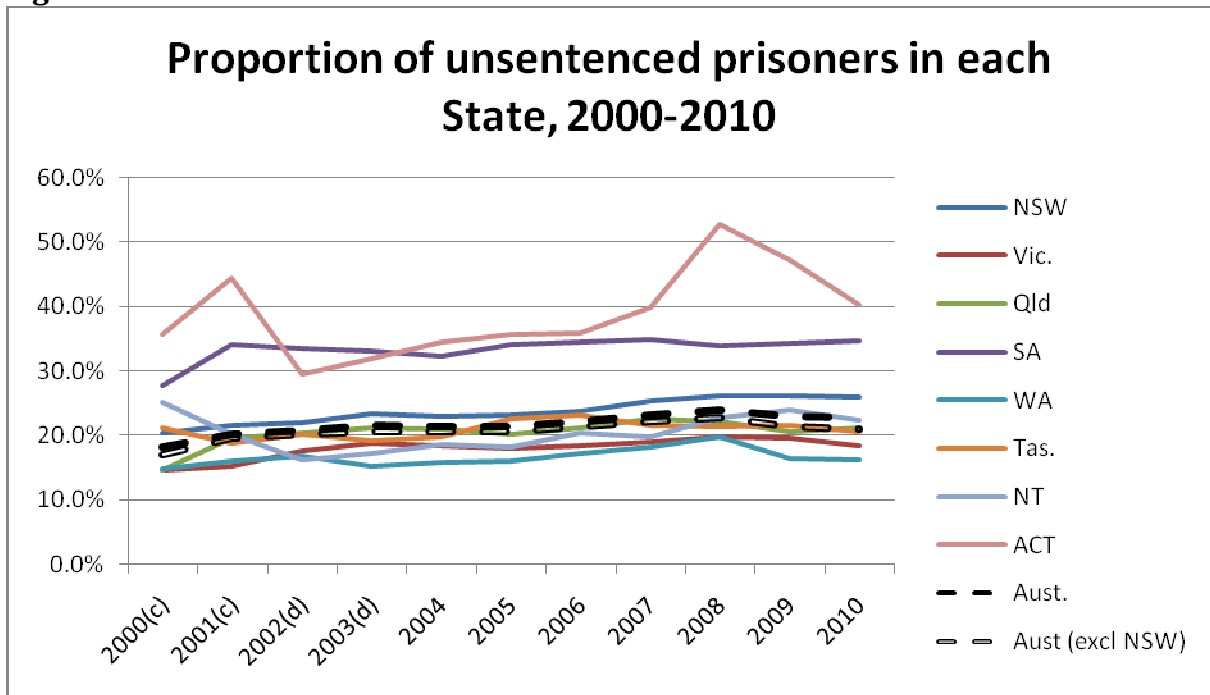
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<sup>10</sup> See Figure 10.



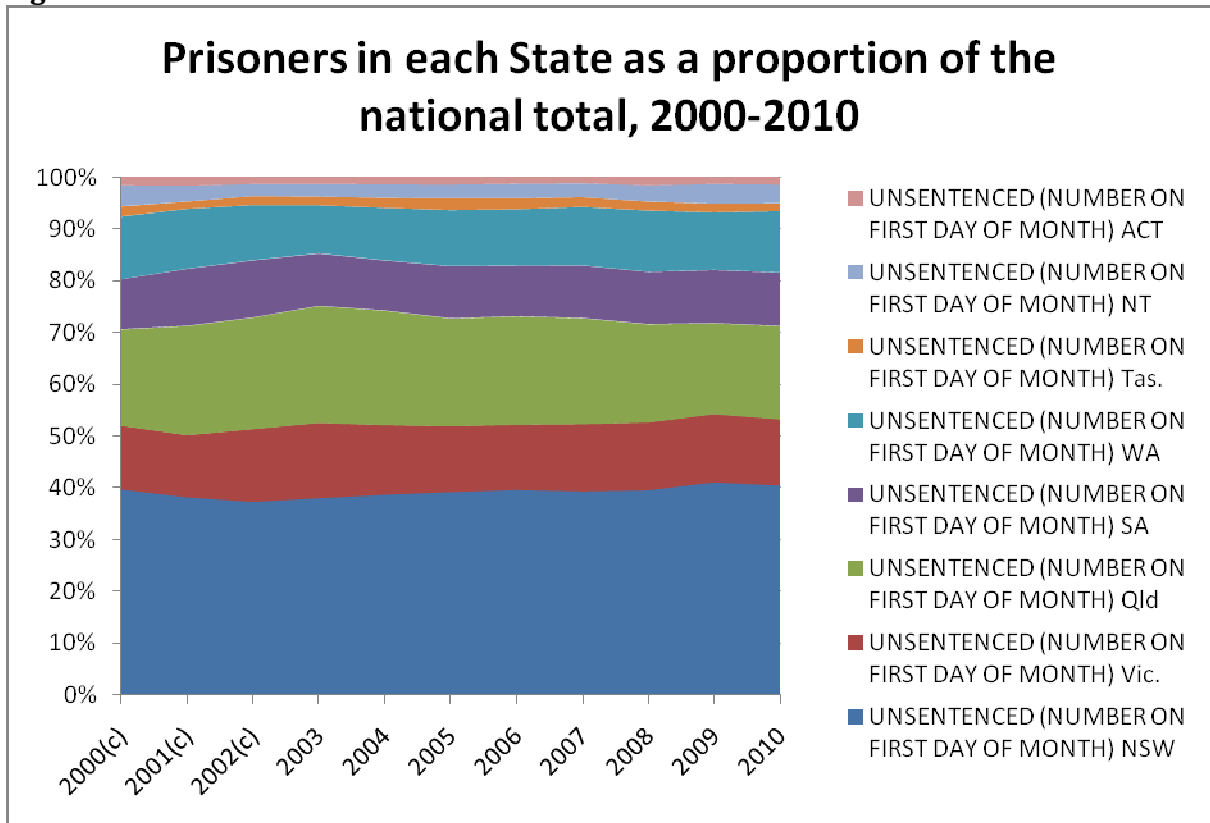
APPENDIX

Figure 8



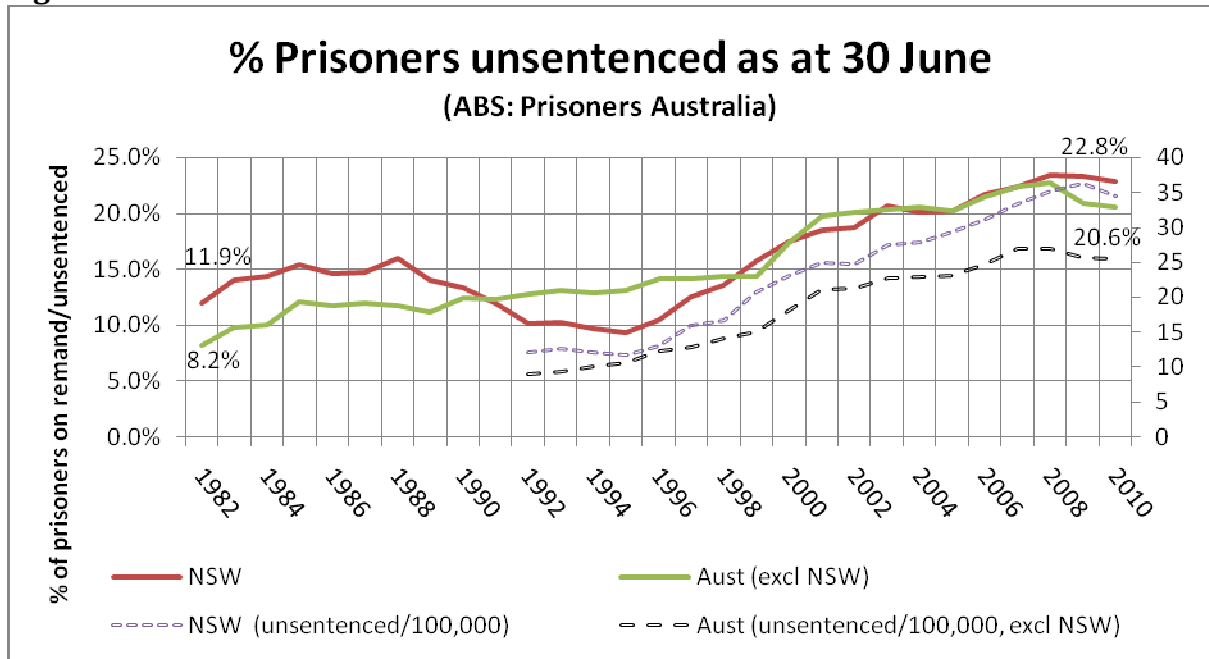
(Source: (Calculated from) Australian Bureau of Statistics, *Corrective Services, Australia* (March 2011 and earlier releases), publication no 4512.0, Table 8: Persons in full-time custody, By legal status)

Figure 9



(Source: (Calculated from) Australian Bureau of Statistics, *Corrective Services, Australia* (March 2011 and earlier releases), publication no 4512.0, Table 8: Persons in full-time custody, By legal status)

**Figure 10**



(Sources: Australian Institute of Criminology, Australian Prisoners (1982–1988); ABS, Prisoners in Australia (1999), Table 24: Historical Summary; ABS, Prisoners in Australia (2010). These figures represent the number of unsentenced prisoners in NSW as a percentage of total full-time prisoners, and as raw figures. )

N.B. In order to exclude NSW figures from the national rate/100,000, figures for both NSW and Australia (excl NSW) have been calculated according the estimated resident population for each year. However, these figures are based on all ages, rather than the usual per 100,000 adult population.