

Mandatory Sentencing – Impact on the incidence of crime and on vulnerable offenders

The jurisdictions which have engaged most readily with mandatory sentencing are the Northern Territory and Western Australia. Yet they have very high imprisonment rates. Statistical analysis is difficult, but after the introduction of mandatory sentencing in the Northern Territory, the prison population increased by 42% with little, if any, impact on the incidence of crime.

In more recent times (up until the introduction of the current government's "turn back the boats" policy), we experienced unprecedented numbers of people smuggling offences despite the existence of mandatory 5 year sentences for those offenders.

The Victorian Sentencing Advisory Council has undertaken research on the issue. The Chair of the VSAC, Professor Arie Freiberg, has been quoted in the Australian newspaper as saying, "There is absolutely no evidence that presumptive or mandatory minimums have any deterrent effect. They have the effect of increasing the jail population." In the VSAC paper, "Does Imprisonment Deter?" (April 2011), it was concluded that:

"The evidence from empirical studies suggests that the threat of imprisonment generates a small general deterrent effect. However, the research also indicates that increases in the severity of penalties, such as increasing the length of imprisonment, do not produce a corresponding increase in the general deterrent effect.

A consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant increase in the deterrent effect. This result is qualified by the need for further research that separates deterrable from non-deterrable populations. It has been suggested that the significance of certainty of apprehension exhibiting a deterrent effect may be overstated in studies that combine these populations.

The research shows that imprisonment has, at best, no effect on the rate of reoffending and is often criminogenic, resulting in a greater rate of recidivism by imprisoned offenders compared with offenders who received a different sentencing outcome. Possible explanations for this include: prison is a learning environment for crime, prison reinforces criminal identity and may diminish or sever social ties that encourage lawful behaviour and imprisonment is not an appropriate response to the needs of many offenders who require treatment for the underlying causes of their criminality (such as drug, alcohol and mental health issues). Harsh prison conditions do not generate a greater deterrent effect, and the evidence shows that such conditions may be criminogenic."

In his book, "*Law and Order in Australia. Rhetoric and Reality*", Dr Don Weatherburn, the Director of the NSW Bureau of Crime Statistics and Research, showed that a 10 per cent increase in the jail population produced about a 3 per cent decrease in serious crime; a 20 per cent decrease in serious crime would need the jail population to be increased by 67 per cent. This would cost an additional \$330 million a year in detention costs, plus about \$1.3 billion in new jails - money better spent on education, transport, health and the police.

The offences to which mandatory sentences apply are commonly committed by members of vulnerable groups in the community. The Northern Territory and Western Australian laws have been instrumental in the soaring rates of indigenous incarceration. In 2012 the Australian Bureau of Statistics reported that the rate of indigenous incarceration rose by 58.6% between 2000 and 2010 while the non-indigenous rate only changed slightly (from 129.5 per 100,000 to 133.5 per 100,000).

When mandatory sentences were introduced into the Northern Territory, aboriginal offenders were grossly over-represented in the figures. On 31 December 2000, 77% of juveniles in detention in the Territory were indigenous. In WA it was 64%. The national average was a still grossly unacceptable but

significantly lesser 40%. Mandatory sentencing disproportionately affected indigenous women. There was a 223% increase in the number of indigenous women incarcerated in the first year of the laws' operation in the NT.

The laws proposed in NSW include mandatory sentences for relatively low-level assaults (Assault occasioning actual bodily harm and assault police). These are offences (especially assault police) that are often charged against aboriginal offenders who resist arrest – often when they are arrested for low-level offences such as offensive language/conduct. Very few offenders are imprisoned for assault police. In the 4 years to September 2013 only 132 out of 901 offenders received a term of full time imprisonment in the Local and District Courts and, of those who were imprisoned, 90% received 12 months or less whereas the current proposal stipulates a mandatory minimum of 2 years for all offenders who have been drinking or taking drugs. This measure alone will disproportionately impact on communities in areas with high numbers of aboriginal and lower socio-economic group offenders.

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