

28 June 2012

Criminal Law
Amendment Bill 2012
Submission 007



Research Director
Legal Affairs and Community safety Committee
Parliament House
George St.
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Director

**Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012
Criminal Law Amendment Bill 2012**

I am writing in response to correspondence received from your office on 25 June 2012 in relation to the above Bills.

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) is a not-for-profit community-based legal organisation that coordinates the provision of pro bono legal services for individuals and community groups.

QPILCH works in partnership with other community legal centres to advance access to justice for marginalised and disadvantaged Queenslanders. The Prisoners Legal Service is one such centre which works tirelessly to advocate on behalf of one of the most marginalised groups of people within our society, prisoners.

Attached to this email is a submission prepared by the InCorrections group, of which the Prisoners Legal Service is a member. Given the short consultation period in relation to the above Bills, QPILCH has been unable to prepare its own submission in response, however shares the views of the InCorrections group and endorses its submission.

If you have any questions, please do not hesitate to contact me on the above details.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andrea de Smidt".

Andrea de Smidt
Acting Director

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Queensland Public Interest Law Clearing House Incorporated

incorporating the Homeless Persons' Legal Clinic, Self-Representation Civil Law Service,
Refugee Civil Law Clinic, Administrative Law Clinic, QLS Pro Bono Scheme and Bar Pro Bono Scheme.

A Member of the PILCH Network

INCorrections Position Paper June 2012

Criminal Law Amendment Bill 2012

Criminal Law (Two Strike Child Sex Offender) Amendment Bill 2012

Mandatory Sentences

The proposed legislative amendments include significant increases to mandatory sentencing in Queensland. INCorrections is opposed to mandatory sentencing. We believe that mandatory sentencing removes the opportunity to sentence in proportion to the circumstances of the offence. Courts should be allowed to punish similar situations the same way and different situations with more or less severity. This is the job that judges are paid to do. Mandatory sentencing undermines the values that Australians hold dear: fairness, proportionality and respect for human dignity.

Mandatory Life Sentences

To sentence someone to imprisonment for life is the most serious sanction in the sentencing hierarchy. It should not be applied indiscriminately. Under mandatory life provisions the courts are prevented from taking relevant matters into account and so are bound to impose sentences disproportionate to the offence. INCorrections believes this is patently unjust. Discretion should be returned to the sentencing court so that in all cases the seriousness and circumstances of the offence are reflected in the severity of the sentence imposed. There is no evidence to support the premise that mandatory life sentences will deter others from committing the same offence.

In Queensland, life imprisonment is already the *maximum* penalty prescribed for about 34 offences and it is the *mandatory* sentence for several offences including murder. A life sentence is more than a minimum non-parole period. A life sentence lasts for the whole of a person's natural life until death. It literally means a lifetime of living under the control and supervision of Queensland Corrective Services. Even though a life sentenced prisoner *may* be released on parole to an approved address, they remain under the conditions of their parole until the day they die. If they breach even one condition they can be returned to prison. In other cases a prisoner serving a life sentence will *never* be granted parole and will die in prison. Being approved for parole after serving a long time in prison is an extremely difficult process. A prisoner will not be released unless they are able to convince the parole board that they have a suitable relapse prevention plan, reintegration plan, support, rehabilitation, accommodation and supervision. The average life sentenced prisoner will stay in prison about 5 years beyond the standard minimum non parole period because of the difficulty in gaining approval. ¹

Child Sex Offences

¹ P3, Explanatory notes to the Penalties and Sentences (Serious Violent Offences) Amendment Bill 1997.

INCorrections draws your attention to the extensive research and consultation undertaken by the Sentencing Advisory Council's position, noting that their view is "aligned with views expressed in consultations and submissions."

This view is that *"to improve current sentencing responses to sexual offending against children, what will be required is not simply additional guidance or increasingly more punitive responses to patterns of offending, but rather an integrated and 'end-to-end' approach to the sentencing and management of these offenders."*²

INCorrections supports this view. This view is based on the premise that the safety of children should be the primary concern in sentencing child sex offenders.³ There are three main reasons why the proposed legislative amendments fail to protect children.

1. Increased sentences discourage disclosure and reporting

As the Sentencing Advisory Committee notes, there are considerable limitations in the response of the criminal justice system to child sex offences.⁴ Increasing sentences will be a barrier to the disclosure and reporting of offences including low reporting rates, high attrition and low conviction rates. Increasing sentences will be a further barrier to disclosure and reporting of offences. This is especially the case where offences occur within a family or small community, such as a geographically isolated community or a community of interest like a sporting or religious community. Rather than discouraging offences being committed, increased sentences can encourage more extreme actions in order to conceal evidence such as intimidating or causing lasting harm to witnesses.

2. Mandatory sentences discourage guilty pleas- Mandatory life sentences discourage guilty pleas even more.

Since 2003 there has been an increase in guilty pleas for child sex offences and a corresponding increase in conviction rates.⁵ Guilty pleas usually attract a lower sentence in recognition of the reduced harm caused to the victim and the reduced costs and convenience to the courts.

The positive impact on victims when a person taking full responsibility for their actions cannot be underestimated, nor can saving them from appearing in court to tell a very difficult story again and again.

The offence of murder provides a useful example of the impact of mandatory life sentences on guilty pleas and conviction rates. It is our experience that persons charged with murder in Queensland are extremely unlikely to plead guilty to the offence, given that there is no possible incentive for such a plea. We believe that by making life sentences mandatory for more offences trend towards increasing guilty pleas and conviction rates will be abruptly reversed.

² P10, Sentencing Advisory Council Qld (SAC), 2011

³ P82, SAC, 2011

⁴ P82, SAC, 2011

⁵ p37, SAC, 2011

In 2008 the Victorian Sentencing Advisory Council commented that mandatory sentences “restricted the scope of judges and magistrates in choosing a sentence” leading to a shift of choice of sentence to prosecutors and lawyers.⁶ This then leads to a lack of transparency and accountability with sentences effectively being decided behind closed doors.

3. Increased sentences are expensive and inefficient means of addressing the causes of crime.

At the taxpayer funded cost of \$288 per prisoner per day, prison is a very expensive option. Queensland already has the highest population of prisoners serving life sentences in Australia, according to the Australian Bureau of Statistics. Despite a smaller prison population, Qld has more than three times as many life sentenced prisoners as NSW. We have more than double the number of life sentenced prisoners found in NSW and Victoria put together. Queensland should be listening to our southern neighbours, including NSW Attorney General Greg Smith who said, “Building more prisons...is expensive and does little to make a better society. This state cannot afford to keep incarcerating more people, and spending will have to shift to reducing incarceration rates.”

Instead of committing to investing huge amounts of money that we cannot afford into a system that is failing, we note that the Sentencing Advisory Council was of the view that further consideration should be given to:

“pre-trial programs (as diversionary measures or as part of a deferral of sentencing), new forms of targeted and specialised sentencing orders, and innovative approaches to the structuring and management of sentencing orders that give high priority to community safety and minimise the need for post-sentence detention.”

As a community we should be looking at what works in reducing the causes of crime and investing money to build a society that is engaged in prevention of crime, rather than throwing more and more money at expensive and ineffective punitive approaches.

Sentencing Advisory Council

This specialist advisory council provided vital research and consultation on important matters of sentencing policy, as well as acting in a pro active manner to inform the community about criminal justice. Their contribution to good governance should be recognised and continued.

⁶ P6, Sentencing Advisory Council Victoria, Mandatory Sentencing Information Paper, 2008.