



PRISONERS' LEGAL SERVICE INC.

Justice Behind Bars

Criminal Law - Two Strike
Child Sex Offenders
Submission 006

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*Our Ref: MA LR
28 June 2012*

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Per email lacsc@parliament.qld.gov.au

Dear Committee members,

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

We write in order to make submissions to the LACSC Committee in relation to the abovementioned Bills. We note that the timeframe for response to these proposed changes was very short and respectfully request that future consultations provide longer time periods for response.

About Us

Prisoners' Legal Service is a community legal service providing advice to prisoners and their families about matters related to incarceration. We have been operating for 26 years. PLS exists to promote justice, equity and the rule of law in the administration of punishment. We provide and promote access to justice through:

- legal advice, information and assistance to prisoners and their families;
- community legal education;
- law reform and policy development.

Prisoners Legal Service offers free legal advice, information, assistance, and referrals to Queensland prisoners and their families on matters relating to their imprisonment. Most relevantly to this enquiry, we operate a Safe Way Home Program providing prisoners with assistance drafting parole applications, including relapse prevention and reintegration plans. As such, we hold a large amount of expertise in relation to parole and other gradual release mechanisms.

Our organisation endorses the attached submissions prepared by the INCorrections group. We share these views and trust that you will take them into account.

Thank you for this opportunity to comment in relation to these proposed changes.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Matilda Alexander', with a long, sweeping horizontal flourish extending to the right.

Matilda Alexander
Coordinator/Principal Solicitor
Prisoners' Legal Service Inc

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

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."

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

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.

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.

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

³ P82, SAC, 2011

⁴ P82, SAC, 2011

⁵ p37, SAC, 2011

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

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.