

Impact of Abolishing Short Prison Sentences

Addendum to Presentation

by

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“No Imprisonment – Mandatory Imprisonment”

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Summary of Issues Identified by the 2004 NSW Sentencing Council Discussion Paper

Abolishing Prison Sentences of Six Months or Less

1. “Sentencing creep” – if short prison sentences are abolished, some offenders will be inappropriately sentenced to longer periods of imprisonment, particularly if funding is not provided for increased alternative programs. Sentencing creep would have cost ramifications and raises issues of proportionality of the sentence to the crime committed.
2. The intention to abolish prison sentences of 6 months or less presupposes that they will be replaced by alternatives to full-time custody but these are not uniformly available throughout NSW. Priority should be given to making presently existing sentencing options available throughout NSW. If such options were made available, it could be expected that there would be a further reduction in the number of short sentences imposed, thereby removing the need to abolish short prison sentences.
3. It would be inequitable to abolish short sentences until viable sentencing alternatives are available state-wide. It is clear that in areas where alternatives are available the rate of imposition of short sentences is lower.
4. The use of periodic detention as an alternative to full-term imprisonment has declined in recent years. s65A *Crimes (Sentencing Procedure) Act 1999* (“the Act”) means periodic detention is not available to those who have previously served terms of 6 months + full-time. This restriction could be removed, resulting in less full-time inmates.
5. If the nexus were broken between full-time imprisonment and alternatives such as suspended sentences, periodic detention and home detention (ie that those are only available once a determination is made that full-time gaol is warranted), this may lead to “net widening”: ie a risk that offenders will be given suspended sentences or periodic or home detention when less severe penalties such as CSO’s or fines would have been appropriate.
6. The abolition of short sentences would mean they’re not available when a person breaches the terms of periodic or home detention or a suspended sentence.
7. s5 of the Act could be amended to tighten up the circumstances under which a short sentence could be imposed (eg to restrict them to those offenders who cannot be trusted to comply with non-custodial orders) or to provide that such sentences are automatically suspended (see Annexure F to the Discussion Paper).

8. s46 disallows a non-parole period for a short sentence, thereby denying short-term prisoners the benefits of post-release and other programs possibly aggravating the low rehabilitative effectiveness of short sentences. Short sentences without post-release supervision may exacerbate family and community issues which are often related to offending behaviour.
9. The geographical unavailability of sentencing options is an issue which disproportionately affects aboriginal people, who are most commonly imprisoned because of criminal histories of public order and fine default offences.
10. If short sentences are to be abolished it should not happen before a pilot and evaluation take place (preferably in a rural area with a high indigenous population, targeting aboriginal people).
11. Abolition of short sentences will have particular ramifications for vulnerable sectors of the community, notably indigenous people, juveniles, intellectually disabled and mentally ill people.
12. In WA, instead of short sentences, some maximum penalties were simply increased to more than 6 months, while many offences had the fine amount increased, leading to increased imprisonment of aboriginal offenders for fine default.
13. Options such as the Circle Sentencing pilot should continue to be expanded.
14. Short periods of detention should remain available for juveniles.
15. Many people being given short sentences are intellectually impaired or mentally ill. Abolition of short sentences will adversely affect them – eg what to do if they breach the terms of a CSO? Should diversion programs be available to all with cognitive impairment, rather than just the mentally ill, developmentally disabled or those suffering a mental condition for which treatment is available as presently defined in the *Mental Health (Criminal Procedure) Act 1990*?
16. We should await review of the WA legislation before making any move.
17. It has been suggested that in WA, most of the offences which no longer attract imprisonment were the minor ones that were unenforced, irrelevant and in practice didn't attract prison sentences, while the enhanced maximum penalties now apply to all the offences that in practice used to attract short sentences. This will not result in lower numbers of prisoners and the expected resultant cost saving the abolition of short sentences might otherwise have been expected to be achieved.
18. The UK review of this issue rejected the abolition of short sentences and resulted in the system of "Custody Plus" (ie short prison terms followed by tailored

supervision in the community) and “Custody Minus” (ie tailored supervision without the initial period in prison).

19. Electronic monitoring could be considered as an option in lieu of short sentences (not limited to home detention), eg release after a short term or without any term into programs or transition centres.
20. Any abolition should be limited to full-time short sentences.
21. There is a conflict between the policies behind recent legislative amendment restricting the availability of bail and the desire to abolish short sentences, and there is concern that remands may be used (deliberately or otherwise) in a manner amounting to a short sentence.
22. The remand population has increased by 12.2% in the past 6 months following recent amendments to the *Bail Act* 1978. These amendments mean that many repeat offenders will be refused bail, but if short sentences were abolished, convictions for many offences would not result in gaol. In those circumstances bail refusal would be difficult to justify.
23. Abolition should not be entertained or considered for budgetary reasons alone.
24. There must be a preparedness to put funding into alternate programs in anticipation of them leading to savings elsewhere in the justice system.
25. It is undeniable that there are offenders and offences whose circumstances may warrant the imposition of a short sentence.
26. To take away the short term imprisonment option leaves a “yawning chasm” in the sentencing ladder between the last available option (CSO’s) and a sentence of more than 6 months.
27. The Court should be given more rather than fewer sentencing options.

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