

# Smart Justice

“Smart action for a safer community”

## Public opinion and sentencing

### When put in a judge’s shoes, the public would give similar or lower sentences

Sentencing attracts a lot of public debate. While public surveys show that, in abstract terms, most people think that sentences imposed by the courts are too lenient, research demonstrates that:

- public opinion about sentencing is largely built on widely held misconceptions about crime and sentencing; and
- when people are provided with more information on a particular case – similar to the information a judge would have – they would impose a very similar sentence to the judge.<sup>1</sup> In fact, a detailed study showed that, when provided with more information about four actual cases, the public would have given lower sentences in 3 out of the 4 cases.<sup>2</sup>

This research discredits calls for harsher penalties to satisfy perceived public opinion of sentencing as lenient. Evidence shows that harsher sentences are unlikely to improve public confidence in the courts or to change public attitudes to sentencing. The message from sentencing research is clear – the public needs better information about sentencing and criminal justice policies, not simplistic calls for harsher sentencing.

### Public opinion about sentencing

A Department of Justice Survey in Victoria showed that, in abstract terms, almost 64% of Victorians surveyed felt that sentences in criminal cases were too lenient.<sup>3</sup> These results are generally consistent with overseas studies. In similar surveys conducted in Western countries in the past thirty years, 70%-80% of respondents have consistently said that sentences are too lenient.<sup>4</sup>

At first glance, these results would suggest that reform is needed to make sentences harsher and bring them into line with community expectations. Evidence suggests that this is not the case.

### Public opinion is based on misconceptions about sentencing

Most people form their views about crime and justice from the mainstream media. Research shows that mass media coverage of crime focuses disproportionately on a small number of dramatic and violent cases and leaves out relevant information about perpetrators that judges use to give an appropriate sentence.<sup>5</sup> This leads to the public having a “grossly inaccurate” picture of crime and justice.<sup>6</sup>

Some of the common misconceptions about crime and justice include:<sup>7</sup>

- people think that crime is constantly increasing, even when this is not the case;
- people overestimate the proportion of crime that involves violence;
- people overestimate the proportion of offenders who re-offend;
- people underestimate the proportion of offenders sentenced to prison and the length of those prison sentences; and
- people are highly punitive in terms of sentencing for crimes.

Research shows that people who have these misconceptions about crime are also likely to have punitive views about sentencing.<sup>8</sup> By contrast, the more information people have about sentencing, the less likely they are to support harsher sentences. A recent study has shown that when given the opportunity to consider expert knowledge and different perspectives about people who offend and responses to offending, people are less supportive of punitive approaches and favour a more holistic approach that is informed by fairness and prevention.<sup>9</sup>

### When put in the judges’ shoes, the public would give similar or lower sentences

Studies show that where the public is given the same information as judges, they tend to give similar or lower sentences than judges.

From 2004-2006, in a Melbourne University study, more than 450 people from across Victoria were surveyed on actual sentencing cases involving serious crimes.<sup>10</sup> Members of the public were given the same information about the crime and the defendant that sentencing judges had.

In half the cases, the average sentence given by members of the public was lower than that given by judges. In the other cases, the sentences were much the same. In no case was the actual sentence given by the judge lenient compared with the average sentence of the public. The average sentences given by the public also emphasised treatment programs in sentencing to a greater extent than judges.

In 2011, the results from the first study to use actual jurors from real trials were released. It found that more than half the study participants suggested a more lenient sentence than the one that was actually imposed by the judge.<sup>11</sup>

### **Making sentences harsher will not change public opinion on sentencing**

Evidence shows that making sentences harsher is unlikely to change public opinion about sentencing.

In the United States in 1980s and 1990s, sentencing and parole guidelines became significantly harsher – including the introduction of new sentencing guidelines, mandatory sentencing legislation, ‘three-strikes’ legislation and a reduction in non-custodial sentencing. As a result of these policies, the prison population increased by 70%. Despite these changes, the proportion of Americans who thought that courts were too lenient remained high -between 70% and 85%.<sup>12</sup>

### **Sentencing by misconception and media?**

Research suggests that sentences in Victoria and elsewhere have become harsher, at least partly due to the perception of public opinion. This is driving large increases in imprisonment rates with attendant human, social and economic costs.<sup>13</sup> Yet sentencing research discredits this perception of public opinion. Recent research from Victoria found that almost three quarters of survey participants favoured increasing alternatives to prison over building more prisons.<sup>14</sup>

### **Smart Justice solutions: better information, not simplistic calls for harsher sentences**

The message from sentencing research is clear – the public needs better information about sentencing and criminal justice policies, not simplistic calls for harsher sentencing. Smart Justice solutions are:

- public education programs about crime and sentencing
- courts communicating better with the public around sentencing; and
- making sentencing and parole easier to understand by simplifying terminology and structures.

*This factsheet was last updated on 23 July 2015.*

1. Gelb, *More Myths and Misconceptions* (2008), Sentencing Advisory Council, 7.
2. The study methodology and results are set out in detail in Lovegrove, *Public opinion, sentencing and lenience: an empirical study involving judges consulting the community*, [2007] *Criminal Law Review*.
3. *Perceptions of Justice Survey Results 2008*, Department of Justice. In 2010, the Department of Justice conducted another survey in the Herald Sun newspaper. Results were published in *Sentencing Survey Results of community consultation* (2011). At the time, we warned that the poll was self-selecting and likely to produce skewed results: see Munro, ‘Sentencing expert criticises government’s ‘flawed’ crime poll’ *The Age* 5 June 2011. See also Media Watch, *What’s wrong with this sentence*, ABC on line 22 August 2011.
4. Gelb, above n 1, 4. In the United States, a higher proportion of respondents think sentences are too lenient (up to 85%), while recent results in Canada are lower (60-70%). See also Roberts & Indermaur, *What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes* (2009) Australian Institute of Criminology.
5. Gelb, above n 1, 6.
6. Gelb, above n 1, 5.
7. See Gelb, above n 1, 4, and Gelb *Sentencing matters: Alternatives to imprisonment: community views in Victoria* (2011), Sentencing Advisory Council (Vic).
8. See Gelb above n 1, 5 and Gelb, *Sentencing matters: Predictors of confidence: community views in Victoria* (2011).
9. The study methodology and findings are set out in detail in Simpson, et al, *Views on Alternatives to Imprisonment: A Citizens Jury Approach*, Report prepared for the Lowitja Institute, 2014.
10. Lovegrove, above n 2.
11. Warner, *Public judgement on sentencing: final results from the Tasmanian Jury Sentencing Study*, AIC (2011), 1. An ARC Jury Sentencing Study is underway in Victoria. Preliminary findings were presented in late 2014 and the remaining results are due to be published in late 2015.
12. Roberts, *Public Opinion and Sentencing Policy* in Rex & Tonry, *Reform and Punishment: the Future of Sentencing* (2002), 25-26.
13. Lovegrove, above n 2, 772.
14. Gelb, above n 7.9.