

# 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 recent 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

The 2008 Perceptions 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, and particularly violent 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; and
- people underestimate the proportion of offenders sentenced to prison and the length of those prison sentences.

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.

### 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>9</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 emphasized treatment programs in sentencing to a greater extent than judges.

### **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>10</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>11</sup> Yet sentencing research discredits this perception of public opinion.

### **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:

- a public education program 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 produced on 25 May 2010*

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 available at [www.justice.vic.gov.au](http://www.justice.vic.gov.au).

4 Gelb, *Myths and Misconceptions*:

*Public Opinion versus Public Judgment about Sentencing* (2006), Sentencing Advisory Council, 11. 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 4, 15.

6 Gelb, above n 1, 5.

7 See Gelb, above n 1, v and Gelb, above n 4, 5.

8 See Gelb above n 1, 5.

9 Lovegrove, above n 2.

10 Roberts, *Public Opinion and Sentencing Policy* in Rex & Tonry, *Reform and Punishment: the Future of Sentencing* (2002), 25-26.

11 Lovegrove, above n 2, 772.