

Francis Burt Law Education Programme

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9 April 2014

The Honourable Colin Barnett MLA
Premier
1 Parliament Place
WEST PERTH WA 6005

Dear Premier Barnett

MANDATORY SENTENCING

On 12 March 2014 the Government announced that it is to introduce tough new mandatory minimum jail terms for adult offenders who commit serious physical or sexual assault during a home burglary.

The Law Society of Western Australia understands that the legislation mandates minimum jail terms of 75 per cent of the maximum available for an adult offender who committed serious physical or sexual assaults in the course of a home burglary. This means:

- An offender who breaks into a house and violently rapes someone will face a minimum of 15 years jail
- An offender who breaks into a house and seriously physically assaults someone will face a minimum of 7 years, 6 months jail
- An offender who breaks into a house and indecently assaults someone in aggravated circumstances will face a minimum of 5 years, 3 months jail

A three-year mandatory minimum period of detention will apply to juveniles aged 16 and above who commit serious offences of physical or sexual violence in the course of a home invasion.

Adult offenders who commit multiple burglaries over several days must be sentenced to a minimum of two years imprisonment.

The Law Society of Western Australia opposes mandatory sentencing in any form for the reasons set out below.

One of the fundamental principles of justice is that punishment should fit the crime. Mandatory minimum sentencing obligations interfere with the idea of a judiciary independent of prosecuting authorities and executive government because it restricts the ability of the judiciary to determine a just penalty that fits the individual circumstance of the offender and the crime.

It should be remembered that the courts have developed “guideline judgments”, that are intended to ensure consistency and appropriateness in sentencing practices within a broad discretionary framework. Here the judge is not simply a technician or a robot, but has the active role of weighing up all of the factors and principles relevant to each case. Mandatory sentencing obligations are discriminatory and do not permit consideration of the circumstances of an offence. They therefore frequently require the imposition of sentences on minor offenders which are out of step with their crimes. I note, for example, that the new laws mandate that adult offenders who commit multiple burglaries over several days must be sentenced to a minimum of two years imprisonment.

Of particular concern is the severity of the punishment under this mandatory sentencing regime. Because the minimum sentences are more than or close to the maximum an offender could expect to receive in any event, there will be no ability for a discount to be given by the courts for an early plea of guilty. Accordingly, accuseds will be advised and/or will make the decision not to plead guilty, but will be advised or will make the decision to actively contest any charges with which they have been accused. This will lead to increased workloads for courts, with a consequent increase in the cost of administering justice. It will also be a major drain on legal aid services. It will also impose more trauma on victims and witnesses who will have to give evidence at trial. Those witnesses will include the police, who will be tied up giving evidence in court rather than doing field work preventing and investigating crime.

An unintended consequence is that people may plead guilty to lesser non mandatory sentencing offences in order to avoid being charged with mandatory sentencing. Trade-offs may be made that are manifestly unjust and inappropriate.

Research has shown that mandatory sentencing does not have a deterrent effect. In the Northern Territory, for example, where mandatory sentencing has been introduced crime rates have risen. The proliferation in recent decades of mandatory minimum penalties for federal crimes in the US has seen a tremendous increase in the prison population. This has forced those concerned with criminal justice in America, including advocates of mandatory sentencing, to reconsider the issue.

The average cost of keeping someone in prison is around \$150 per day; the yearly cost is around \$60,000. Putting people into prison is expensive. Putting greater numbers of people into prison for longer periods of time is even more expensive. Nationally, prisoner populations are increasing significantly. In places with mandatory sentencing, the increase is even greater. This imposes costs on society and the taxpayer.

Moreover, the Law Society believes that harsh mandatory sentencing does very little if anything for victims. Scarce funds are necessarily directed to pay increased administration costs, judicial costs and costs associated with offender punishment rather than victim support programmes.

Finally, there is no evidence which suggests that this latest raft of mandatory sentencing is required. The fact of the matter is that an offender who breaks into a house and violently rapes someone, an offender who breaks into a house and seriously physically assaults someone or an offender who breaks into a house and indecently assaults someone in aggravated circumstances will be jailed. There is no need to mandate minimum sentences as there is simply no evidence that the courts are in some way "soft on crime" in these circumstances and are not discharging their judicial functions appropriately. Highly trained and paid judges should be permitted to assess all of the relevant circumstances without being hamstrung by mandatory sentencing obligations.

The Law Society urges that the proposed laws be reconsidered.

Yours sincerely

Konrad de Kerloy
President