CONTEMPORARY ISSUE CENTERING ON JUSTICE, JUDICIAL PROCESS AND LEGAL POWER: MANDATORY SENTENCING

STUDENT PRE-VISIT RESOURCE

In your Politics and Law course you are expected to study one contemporary issue. 'Contemporary' in School Curriculum and Standards Authority's (SCSA) interpretation is within the last 3 years. This topic aligns with SCSA's interpretation due to the 2015 amendment of the Criminal Law Amendment (Home Burglary and Other Offences) Act 2015 assented to on 24 September 2015 amendment.

A brief outline of the amendments is as follows:

Criminal Law Amendment (Home Burglary and Other Offences) Act 2015

- **Minimum term of two years for repeat offenders aged 16 years and above;**
- **Minimum term of fifteen years imprisonment for offenders who commit murder, manslaughter or unlawful assault causing the death of a person this include during the course of a home invasion with aggravated circumstances;**
- **Minimum term of three years imprisonment for offenders aged 16 years and above who commit murder, manslaughter or serious physical or sexual assaults in the course of a home invasion with aggravated circumstances;**
- **Minimum term of imprisonment to be 75 per cent of the maximum penalty for offenders who are adults and commit unlawful assault causing death, grievous bodily harm or sexual offences against an incapable person.**

In assessments, when asked to identify or discuss a contemporary issue, you are required to establish the contemporary nature of the issue. For example, if you were to talk about mandatory sentencing, you would need to identify the year in which the relevant Act of Parliament was implemented, or assented to, and it must be within the last three years.

Mandatory Sentencing

The Sentencing Act WA (1995) states that "A sentence imposed on an offender must be commensurate with the seriousness of the offence."[1] In other words, the punishment must be proportional to the offending act.

There are a number of principles in sentencing:

- To punish for the offence;
- Rehabilitation: To try and persuade the offender to stop their bad behaviour;
- Personal and General Deterrents: To show the offender and others what will happen if they do the same;
- Denunciation: To condemn the offence;
- To protect the community; and
- Restorative Justice: To provide an opportunity to repair the damage.

"The seriousness of an offence must be determined by taking into account —

[1] Sentencing Act 1995 (WA) s6(1).

a) the statutory penalty for the offence; and
b) the circumstances of the commission of the offence, including the vulnerability of any victim of the offence; and
c) any aggravating factors; and
d) any mitigating factors."[2]

'Aggravating' and 'mitigating' factors are factors that affect the culpability of the offender. Aggravating factors make the offence more serious. Mitigating factors reduce the culpability of the offender.

Mandatory sentencing is where parliament has decided, through legislation, a specific penalty for a particular offence. In other words, regardless of the principles of sentencing, a judge must impose the penalty irrespective of the circumstances to a case.

Western Australian and the Northern Territory both have mandatory sentencing laws. NSW and Queensland have mandatory sentences in some circumstances."[3]

Law Society of Western Australia Letter to the Premier
In April 2014, the President of the Law Society of Western Australia sent a letter to the Honourable Colin Barnett MLA, Premier of WA. In the letter he expressed concerns about the impact of mandatory sentencing. Click on the following link and read the letter to answer the following question. Letter to the Premier

1. What are the main arguments that the Law Society of Western Australia gives in its opposition to mandatory sentencing?

_____

_____

_____

_____

_____

_____

_____

_____

_____

[2] Ibid. s6(2).
[3] Creative Spirits. *Mandatory Sentencing*. (2014) >http://www.creativespirits.info/aboriginalculture/law/mandatory-sentencing#toc0<.

Attorney General's response on Mandatory Sentencing

In response to the letter from the President of the Law Society of Western Australia, the Attorney General, the Honourable Michael Mischin MLC outlined his arguments for mandatory sentencing. Letter of Response

2. What are the main arguments that the Attorney General gives in support of mandatory sentencing?

3. Briefly describe your own view on Mandatory Sentencing and give your reasons why.

What are some of the mandatory sentencing laws in WA?

4. Click on the following link and identify at least three offences in Western Australia that have mandatory imprisonment.

   Mandatory Sentencing Laws
   (Note: the *Criminal Law Amendment (Home Burglary and Other Offences) Act* legislation was assented to on 24 September 2015 and currently the updated information has not been included in the above link. Therefore please note the proposed amendment for February 2013 has now been enacted and a brief outline of the amendments is referred to at the beginning of this paper.)

Optional Activities

a) Read the information in Mandatory Sentencing and answer the following questions

(i) What is mandatory sentencing?

(ii) Give some examples of how mandatory sentencing could be seen as disproportionate and discriminatory?

(iii) Describe at least one problem that is a direct result of mandatory sentencing.

(iv) What are some alternatives to mandatory sentencing?

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License