

# Sentencing and Punishment: Proposals for Law Reform

*By Dave Gooley – Wenona*

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## Introduction

In undertaking the Core Crime study, students are asked to do the following:

- ***evaluate the effectiveness of sentencing and punishment as a means of achieving justice***
- ***evaluate the effectiveness of different types of penalties, including diversionary programs***

One of the more controversial penalties adopted under the sentencing and punishment regime is imprisonment.

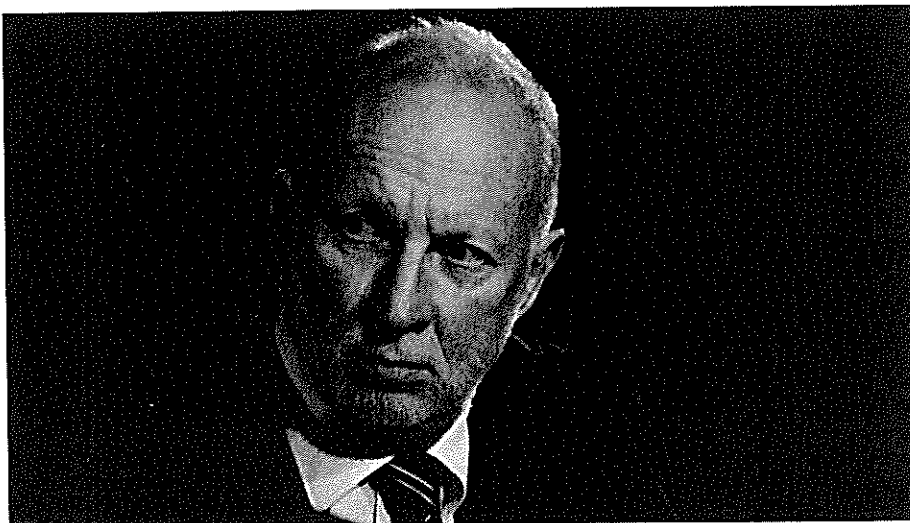
While imprisonment serves an important function in protecting the community from violent offenders, critics point to its overuse and argue that in many cases it achieves justice for neither the individual offender or the community.

One such critic has been Don Weatherburn, the Director of the Bureau of Crime Statistics and Research who recently called for sweeping reforms to the ways in which NSW approaches sentencing and punishment issues.

Many of the proposals for reform are outlined in the article below.

After reading the article, attempt the questions and activities attached.

Do you agree that major reforms are required?



BOCSAR director Don Weatherburn has called for a re-think on the approach to crime and imprisonment.

*Photo: Quentin Jones*

# BOCSAR crime stats boss Don Weatherburn calls for lighter prison sentences

By Rachel Olding, Reporter with SMH on 17 February 2016 (Graphics: Mallory Brangan)

**Exclusive**

The state's top statistician has called for a complete overhaul of the way crime and imprisonment is addressed in NSW, unleashing an unprecedented attack on political chest-beating and poor policy decisions that have led to a prison crisis.

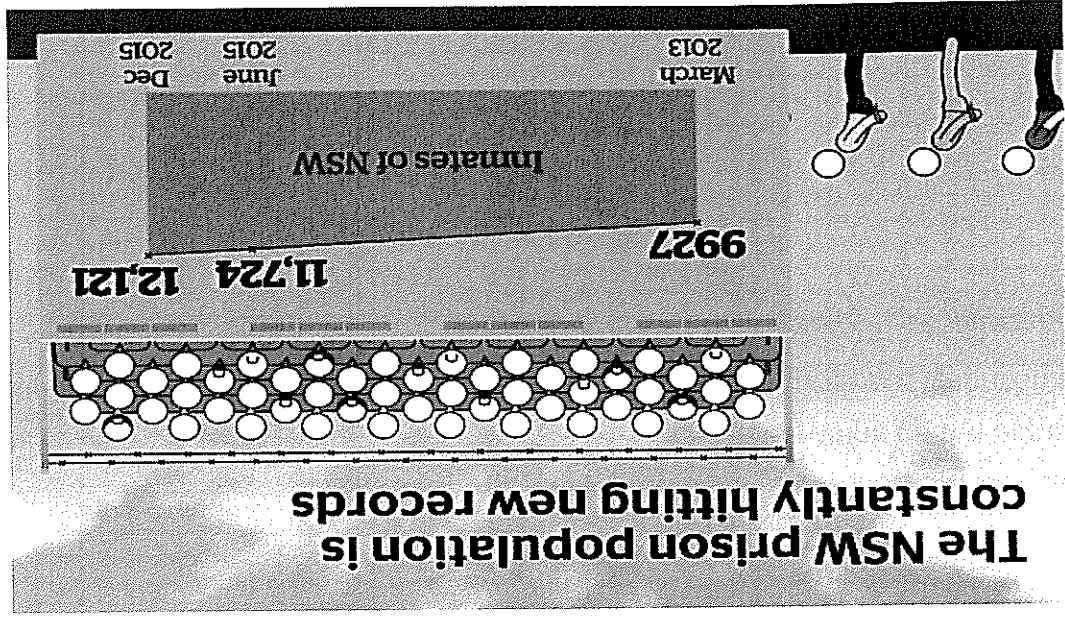
In an unusual departure from his usual impartial analysis, Don Weatherburn, director of the NSW Bureau of Crime Statistics and Research, has directly criticised the "fear and loathing" that drives public debate on law and order across Australia.

Dr Weatherburn will call for a five-pronged approach to reduce the prison population at a keynote address to be delivered at the Applied Research in Crime and Justice Conference in Brisbane on Friday. It includes abolishing suspended sentences, not locking up minor assault offenders and "toning down the political rhetoric".

"We need to completely re-think the way we approach crime because we're putting so much emphasis on prison when we could achieve the same result, for less money, by reducing reoffending," he told Fairfax Media.

"If politicians keep demanding tougher penalties ... courts will eventually deliver them. This is what's been happening over the last 30 years. We can keep doing this for another 30 years or we can offer Australians are more rational, more considered approach."

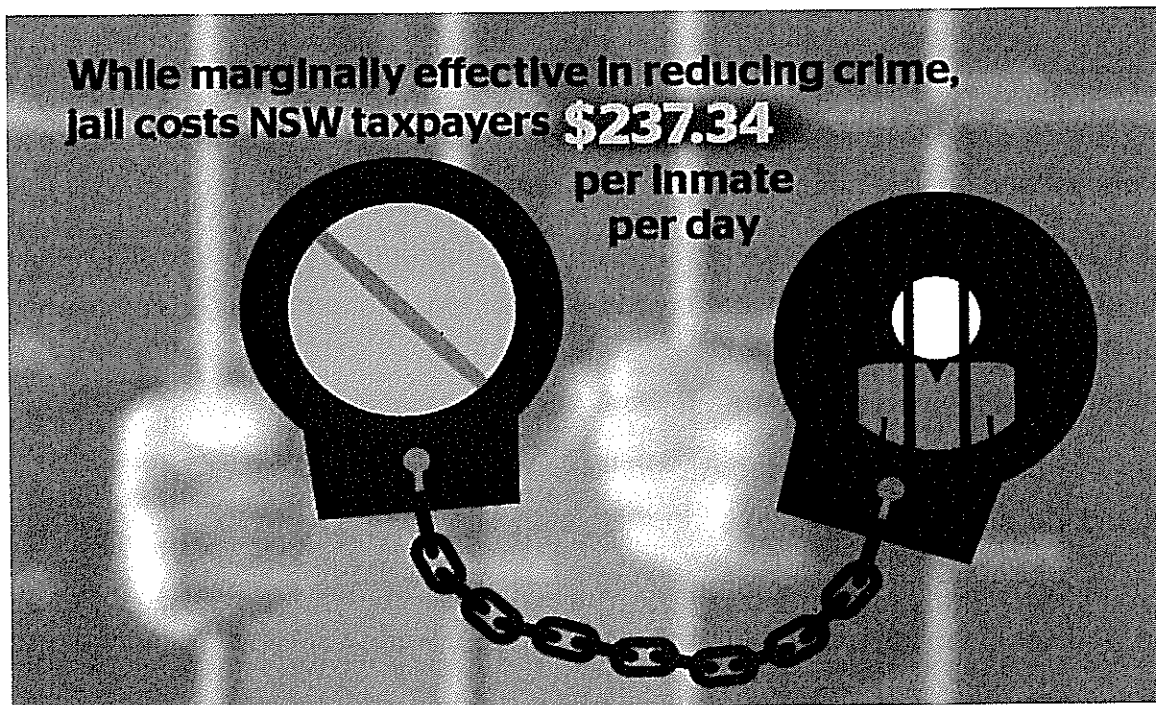
The NSW prison population hit another record in January, rising 12 per cent in a year to reach 12,121. Within three years, Australia will have more than 43,000 prisoners, costing \$3.5 billion a year.



Successive state and federal governments have perpetuated a "tough on crime" approach, despite crime rates falling since 2000, largely due to heroin shortages and rising incomes.

*"You'd think this dramatic fall in crime would bring with it a dramatic fall in imprisonment rates and a dramatic turnaround in public attitudes towards offenders, but you'd be wrong," Dr Weatherburn said.*

*"Having pushed the law and order merry-go-round as hard as they could for more than 15 years, politicians found to their surprise that it was hard to get off. So the tougher laws kept coming."*



In the paper based on decades of data, Dr Weatherburn said a 10 per cent increase in imprisonment only delivers a 1-2 per cent fall in crime.

It is also vastly more expensive than rehabilitative programs like Drug Courts which are effective but have never been rolled out widely, prompting him to call for a "wholesale transformation" of the approach to rehabilitation.

Non-custodial options, like suspended sentences and periodic detentions, have failed because courts are using them as alternatives to fines and bonds, not prison. When offenders breach the orders, they end up in jail.

*"They're really just speed humps on the way to jail," he said. "They're not a deterrent, they don't incapacitate offenders and they don't rehabilitate them."*

Dr Weatherburn's five-point plan also includes giving judges the discretion to set the relationship between a maximum sentence and its non-parole period and changing the approach to community corrections order by skewing resources towards

detecting breaches and making the penalties lower.

But the cheapest and easiest solution was to "tone down the political rhetoric";

John Dowd, QC, former Liberal attorney general and Supreme Court judge, said politicians continually towed the same line on crime because it was "populist and easy". "The result is that magistrates and judges set heavier sentences," he said.

Mr Dowd, president of prison reform advocacy group Community Justice Coalition, said he had never seen the prison system in such a bad state. He said parolees needed to be better monitored and more judges needed to be hired to stop "appalling" delays in prosecutions.

Sarah Hopkins, a managing solicitor for the Aboriginal Legal Service and chair of Just Reinvest NSW, said workers in the justice system had reached "an all-time high level of frustration".

"We have this entrenched public conversation around ... the need to punish and the power of punishment to deter crime. When you look at the evidence, it simply isn't true. Harsh punishment does not deter people from committing crime," she said.



Just Reinvest, a pilot project in Bourke, re-aligns money that would have been spent on the criminal justice system towards education, treatment and other services to tackle the causes of crime.

"With rates of incarceration of indigenous people, it's such an urgent problem and it would be such a development if people could just start embracing a commonsense approach," she said."

She said there was a myth that victims of crime want harsher punishment. "Everybody would agree what victims of crime want is that the crime doesn't happen at all."

The Productivity Commission found 44.3 per cent of adult prisoners released in 2012-13 returned to prison within two years, an increase from 39.9 per cent in 2010-11. In NSW, the average cost per inmate, per day, is \$237.34.

A spokeswoman for the NSW government said they would consider the contents of Dr Weatherburn's paper. "Community safety is the government's number one priority and this requires an efficient and effective justice system," she said.

Read more: <http://www.smh.com.au/nsw/weatherburn-comes-out-swinging-20160216-gmvavn.html#ixzz40OS6oZ7m>

### **Student Activities by Dave Gooley**

**As you answer the questions below, consider the relevance of the following themes:**

- **The role of law reform in the criminal justice system**
- **The effectiveness of legal and non-legal measures in achieving justice**

1. *What does Dr Weatherburn believe drives law and order policy in NSW?*
2. *What are some of the proposals for reform put forward by Dr Weatherburn?*
3. *Cite statistics from the article on the increasing cost of incarceration/imprisonment in NSW. What implications does this have for achieving justice for the community in terms of resource efficiency?*
4. *Outline why Dr Weatherburn feels that current penalties such as suspended sentences are currently being misused?*
5. *How does John Dowd QC explain the tough 'law and order' approach pursued by politicians?*
6. *How does the involvement of advocacy groups such as Community Justice Coalition and the role of the media in this debate illustrate the important of non-legal measures in contributed to criminal law reform?*
7. *How do non-legal bodies such as Just Reinvest NSW want to see resources allocated in the criminal justice system?*
8. *Cite statistics from the Productivity Commission on current rates of recidivism. With reference to these figures, discuss whether the current approach is achieving justice for the individual offender AND the community.*