HSC Legal Studies

Sentencing and Punishment – Lesson 3

Presented by Natasha Isbel

Syllabus Dot Points:

- Alternative methods of sentencing including circle sentencing, restorative justice
- Post sentencing considerations
Learn about/learn to:

You will learn about:

– alternative methods of sentencing including circle sentencing, restorative justice (including diversionary programs)
– post-sentencing considerations, including security classification, protective custody, parole, preventative detention, continued detention, sexual offenders registration, deportation

You will learn to:

– Assess the roles of alternative methods of sentencing
– Examine the implications of post-sentencing considerations in achieving justice
– Evaluate the effectiveness of sentencing and punishment as a means of achieving justice
Alternative methods of sentencing
(including diversionary programs)

- Themes and challenges = discretion, balancing rights, effectiveness
- Aim = rehabilitate the offender by making it a sentence condition they undertake specific programs e.g. drug/alcohol treatment
- The Crimes (Sentencing Procedure) Act 1999 = court has discretion to discharge an offender:
  - if satisfied that treatment will reduce likelihood of further offending; and
  - on condition they agree to participate in an intervention program
- Nicholas Cowdrey, DPP stated in 2007: ‘prosecutors are generally supportive of diversionary schemes that are principled and publicly acceptable; but after sufficient ‘trial’ or ‘pilot’ periods and after positive evaluation, they should be extended statewide (if they are not to be abandoned)’
Diversionary programs

Court and offender programs

– Domestic Violence Intervention Court Model;
– Forum Sentencing (restorative justice)
– Adult Drug Court
– MERIT (substance abuse)
– Traffic Offender Intervention Program (education for drivers)

Specific Aboriginal programs

– Aboriginal Client Service Program
– Aboriginal Community Justice Groups
– Aboriginal Justice Plan
– Circle Sentencing
Do these programs work?

• Arguments both for and against
  • For:
    – Divert offenders away from a life of crime = better for society and individual
    – Reduces court time = cost efficient
    – BOSCAR review shows positive outcomes of some programs e.g. Adult Drug Court and Circle Sentencing
  • Against:
    – Not all programs are accessible e.g. not available regionally
    – BOSCAR review shows less favourable outcomes for Forum Sentencing
    – Costly and might not be effective
Circle sentencing

- For indigenous offenders
- Only available after offender pleads guilty
- Aim:
  - offender to appreciate harm done to victim and focus on rehabilitation
  - tackle high rates of over representation in prisons
- Break down mistrust between offenders and court = increase indigenous confidence in judicial process
- Involves offender, victim, local Aboriginal Elders and a magistrate = all have a say in sentencing of offender
- Must operate within normal sentencing guidelines prescribed by legislation

Restorative justice

- Commonly used with juvenile offenders = diversion away from crime e.g. youth justice conferences
- Offenders given opportunity to talk about what happened, take responsibility and gain an understanding of the impact their behaviour had on others
- Offender, victim and their supporters attend but really only effective if all agree to participate
- May occur after conviction or sentencing, before release or during probation and parole.
Post-sentencing considerations

Include:
1. Security classification
2. Protective custody
3. Parole
4. Preventative detention
5. Continued detention
6. Sexual offenders registration
7. Deportation
1 Security classification

- On imprisonment offenders given a security ranking determined:
  - largely by the severity of their crimes
  - by Department of Corrective Services = responsible for management of inmates and prisons

- 3 basic security levels:
  - Maximum Security – 17.3% prisoners, e.g. Goulburn
  - Medium Security – 23.1% prisoners, e.g. Parklea
  - Minimum Security – 56.1% prisoners, e.g. Emu Plains

- Maximum security = least amount of freedom

https://upload.wikimedia.org/wikipedia/commons/thumb/9/96/FremantlePrisonMainCellBlockMap.jpg/640px-FremantlePrisonMainCellBlockMap.jpg
2. Protective custody

- The Crimes (Administration of Sentences) Act 1999 (NSW) = prisoners in danger from other prisoners placed into protective custody e.g. child sex offenders, former police officers, mentally ill
- Mechanism = balancing rights of offenders

3. Parole

- **Aim** = encourage offenders to rehabilitate; incentive of early release
- **For prisoners:**
  - with non-parole period < 3 years, can be released at the end of parole period if assessed as eligible = not posing a risk to society;
  - for serious offenders, Parole Board must consider sentencing court comments and recommendations and have regard to the safety of the community
- **Cases:** *R v Bayley (2014)* – offender on parole when he committed the crime
- **Query** – if parole is appropriate for serious offenders?

4. Preventative detention

- Aimed at offenders with entrenched criminal behaviours who are a serious threat to society e.g. terrorism, repeat violent/sexual offenders
- Controversial
  - takes place before an offence occurs = human rights issues
  - Tension in balancing rights of offender to be innocent until proven guilty and society to be safe
  - can occur post-sentencing e.g. continued detention
- Crimes (Serious Sex Offenders) Act 2006 NSW
- Part 2A of Terrorism (Police Powers) Act 2002 = Dr Haneef was detained and questioned without charge for 12 days in 2007

http://www.smh.com.au/ffximage/2007/08/09/DrHaneef_wideweb__470x348,0.jpg
5. Continued detention

- Criminals assessed as likely to reoffend serious offences can be ordered by court to continue to be detained
- Controversial as per preventative detention
- 2 NSW laws that specify continuing supervision and detention orders can be applied to high risk offenders:
  - The Crimes (High Risk Offenders) Act 2006
  - The Crimes (Serious Sex Offenders) Act 2006
6. Sexual offenders registration

• Under Child Protection (Offenders Registration) Act 2000 (NSW), serious sex offenders’ names placed on Child Protection Register accessible by police.

• For a specified period of time, offenders against children must keep the state police informed of relevant details e.g. address, employment, motor vehicle registration, travel arrangements, etc.

7. Deportation

Under the Migration Act 1958 (Cwlth), non-citizens who are imprisoned for > 1 year and Australian residents for < 10 years fail the character test = may be deported.

Case – after 21 years in jail, Victor Chang’s killer deported to Malaysia once released on parole.

Fact Check

A known offender is not released after his sentence has been served. What type of detention is this?

A. Home  
B. Periodic  
C. Weekend  
D. Continued

(BOSTES 2012 Exam Q6 Multiple choice)