

HSC Legal Studies

Sentencing and Punishment – Lesson 3

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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)'*

Diversionsary 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



<https://pixabay.com/en/chairs-circle-library-discussion-358404/>

- 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:

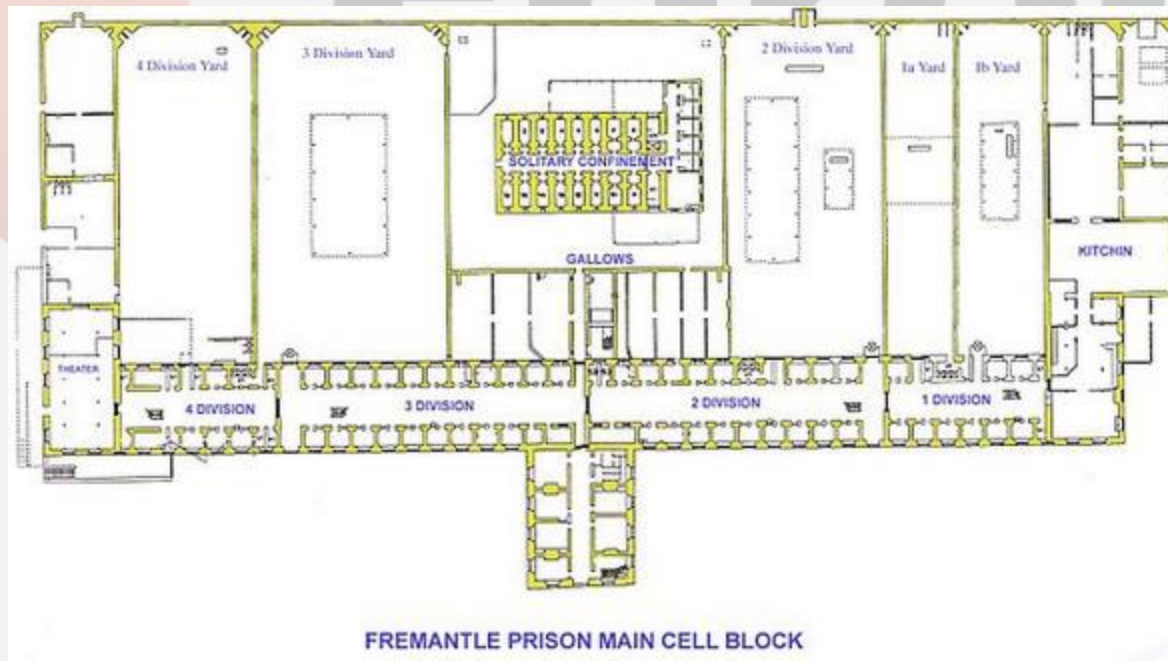
1. Security classification
2. Protective custody
3. Parole
4. Preventative detention
5. Continued detention
6. Sexual offenders registration
7. Deportation



https://upload.wikimedia.org/wikipedia/commons/e/e4/Recreation_of_Martin_Luther_King's_Cell_in_Birmingham_Jail_-_National_Civil_Rights_Museum_-_Downtown_Memphis_-_Tennessee_-_USA.jpg

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



<http://www.mako.org.au/Kristi-Abrahams-child-killer.html>

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?



<http://www.abc.net.au/news/2015-06-25/murderer-adrian-bayley-appeals-latest-rape-convictions/6572122>

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



<http://www.cyberadvisoryservice.co.uk/hard-drive-containing-prisoner-details-lost-ministry-justice/>

- 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.



<http://cdn.mamamia.com.au/wp-content/uploads/2012/10/sex-offenders-registry.jpg>

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.



https://en.wikipedia.org/wiki/Victor_Chang#/media/File:Victor_Chang.jpg

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

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(BOSTES 2012 Exam Q6 Multiple choice)



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