

Repeat Juvenile Offenders

The Failure of Selective Incapacitation in Western Australia

Edited by Richard Harding; Crime Research Centre, University of Western Australia, 1993; 155 pp; \$20.

In 1992 the Labor Government of Western Australia took measures to deal with 'hard-core juvenile criminals'. The result was a hastily drafted legislative package, the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*. From their inception, the new laws were embroiled in controversy – with deep concerns expressed in the WA community, and nationally, about the nature, effectiveness, equity and justice of the legislation. As several articles in this journal were to attest, the new laws represented a kneejerk reaction to local political pressures, and were criticised by a wide range of people in the legal, welfare and human rights fields.

'Repeat Juvenile Offenders' presents a sustained, coherent and systematic analysis of the 1992 legislation. It does so in a manner which combines the tools of legal research, examination of statistics, evaluation of procedural mechanisms, review of fundamental principles and a sociological exposition of crime prevention strategies. Written in the main by present and past associates of the Crime Research Centre, the book focuses on specific aspects of the *Sentencing Act* in the context of overall juvenile crime patterns and criminal justice policies. Each chapter provides discussion of a discrete issue (sentencing, human rights, crime statistics), with the overall result being a comprehensive and very useful picture of the problems and dilemmas associated with the legislation.

Several chapters deal with legal aspects of the *Sentencing Act*. Chapter Two, for example, analyses the nature of the penalties for serious offences, demonstrating that a change in court decision-making toward harsher sentencing had been in train before the new laws were enacted. Rather than being 'too lenient', it points out that the courts were in fact 'doing their job'. In the next chapter, the same author, Neil Morgan,

discusses established sentencing principles and the problems in the Act relating to definitions of 'seriousness' and 'conviction appearances'. In addition to definitional ambiguities, he also argues that the likely practical impact of the legislation is to increase the true meaning of custodial sentences more for the least serious than for the most serious offenders. In a later chapter, Morgan considers at length the relative roles and procedures of the parole board and Supreme Court in dealing with indeterminate sentences and release of juveniles.

Another chapter examines statistical data as a means to test the validity of the idea that the legislation will act as a general deterrent for hard-core offenders. Rod Broadhurst and Nini Loh demonstrate that, statistically, youth crime patterns are driven by something other than either incapacitation or deterrence. They argue that enhanced crime prevention efforts by potential victims, and a reduction in police car chases, had more of an impact on selected crime rates than did the Act. The next chapter, by Rod Broadhurst and Anna Ferrante, examines trends in juvenile crime and justice. The chapter attributes a significant decline in convictions of juveniles to the introduction of police cautioning. On the other hand, the chapter shows how the overall use of custody is increasing and, what is particularly worrisome, that Aboriginal young people are 48 times more likely to be incarcerated than non-Aboriginal juveniles.

The final three chapters place the issues and debates into a wider international legal and social context. Meredith Wilkie explores Australia's international legal obligations, particularly in the light of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The WA legislation is seen to contravene the spirit and letter of a number of international legal instruments and to breach Australia's human rights obligations as they apply to children and young offenders. Richard Harding then discusses the impact of the debate about international standards on the law making process. In essence, the development of and disputes over the *Sentencing Act* are used as a case study to illustrate how national compliance with more recently developed international standards actually does or does not take place. In the final chapter Harding explores the nature and causes of juvenile offending, and reviews potential short and long-term strategies which could be adopted as alternatives to the 'get tough' approach

of the *Sentencing Act*.

Overall this report from the Crime Research Centre provides an excellent survey of the many difficulties, inconsistencies and injustices of the WA response to repeat juvenile offenders. The contributions to the book are, by and large, well argued, thoroughly researched and clearly written. The book represents an important analysis of, and intervention in, an issue which has tremendous implications for young people, the criminal justice system and Australia's human rights record.

Unfortunately, recent amendments (late 1993) to the *Crime (Serious and Repeat Offenders) Sentencing Act* under the Liberal Government do little to constructively address the problems identified in the Report. The amended Act continues to offend United Nations provisions and to bypass the recommendations of the Royal Commission into Aboriginal Deaths in Custody. And a tightening up of sloppy drafting has in fact meant that the application of the amendments could significantly increase the number of offenders who could be dealt with under the *Sentencing Act*. It is tragic indeed that current attitudes among both government and opposition members in WA could well mean that the analysis and arguments contained in 'Repeat Juvenile Offenders' are ignored, even though they show that the Act 'failed according to every criminological criterion by which they can properly be evaluated'.

ROB WHITE

Rob White teaches criminology at the University of Melbourne.

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