
PRIVATE MEMBERS' MOTION IN THE HOUSE

OF REPRESENTATIVES ON REDUCING CRIME

AND INCARCERATION RATES

by Dr Andrew Leigh, Federal Member for Fraser

Monday 21st November 2011.

I move:

That this House:

- (1) recognises that:
 - (a) the Australian incarceration rate has risen from 117 prisoners per 100,000 adults in 1991 to 172 prisoners per 100,000 adults in 2010;
 - (b) since the Indigenous Deaths in Custody Report was released in 1991, the Indigenous incarceration rate has risen from 1739 prisoners per 100,000 adults to 2303 prisoners per 100,000 adults; and
 - (c) an increasing number of Australian children have a parent behind bars; and
- (2) encourages governments at all levels to pursue innovative policies to reduce crime and incarceration rates, including:
 - (a) investing in early intervention programs to deter young people from crime;
 - (b) where appropriate, considering alternatives to incarceration such as weekend detention, periodic detention, restorative justice and drug courts;
 - (c) employing smart policing strategies, such as using real-time crime statistics to identify and target crime hotspots;
 - (d) establishing in-prison education, training and rehabilitation programs aimed at reducing recidivism and improving family relationships for prisoners with children; and
 - (e) implementing randomised policy trials (akin to the 1999 NSW Drug Court randomised trial) to rigorously evaluate the impact of criminal justice interventions.

When the Indigenous Deaths in Custody Report was released in 1991, there was widespread shock at the level of Indigenous incarceration in Australia, at 1,739 prisoners per 100,000 Indigenous adults. Yet over the past 20 years the Indigenous incarceration rate has increased by about 30 per cent. Today, 2,303 out of every 100,000 Indigenous adults are behind bars. By their mid-20s, 40 per cent of Indigenous men have been formally charged by police with a crime.

This reflects a general increase in incarceration in Australia, with the national imprisonment rate rising from 117 prisoners per 100,000 adults in 1991 to 172 prisoners per 100,000 adults now. For the most part, the growth in Australia's prison population has been driven not by a rise in crime but by law changes, such as tougher bail conditions and mandatory non-parole periods. These policies can sometimes cost society a lot without much changing the incentives for offenders. Increasing sentence lengths from 10 to 15 years may sound tough, but if you are dealing with someone who lives from day to day—or,

in economic jargon, a person with a high discount rate—it could have no impact on crime rates. Indeed, Steven Durlauf and Daniel Nagin argue that the certainty of the punishment matters more than its size.

There are many admirable things about the United States, as President Obama reminded us in this chamber last week. But one concerning trend is increased incarceration. US jails currently hold over two million people, more than one per cent of the adult population. Among men aged 20-34 who did not complete high school, the US imprisonment rate is a jaw-dropping 12 percent for whites and 37 percent for blacks. And that is just the proportion behind bars on any given day. If you are an African-American man who does not finish high school, the odds are two in three that you will see the inside of a prison cell by the time you reach your mid-30s.

Another feature of persistently high incarceration rates is its intergenerational impact. In the US today, two per cent of white children and 11 per cent of African-American

children have a parent behind bars. In the US, there are as many children with a jailed parent as there are prisoners. In Australia, the Australian Bureau of Statistics does not count the number of prisoners with children—although I think they should—but, if the US pattern holds up, that would mean that there are about 30,000 Australian children with a parent in jail today. We know that children with a parent in jail are more likely to commit crimes themselves. If you believe in family values, you should be committed to reducing Australian incarceration rates. I commend organisations such as SHINE for Kids for their work with children of prisoners.

This motion is not the first to recognise such a parlous state of affairs. In its report *Doing Time - Time for Doing*, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs described Indigenous incarceration rates as a 'shameful state of affairs', and made 40 recommendations to government for addressing the issue. I commend the chair of the committee, the member for Blair, and the members of the committee for their analysis of this issue, which was discussed at last week's meeting of Commonwealth, State and Territory Attorneys-General, the body formerly known as SCAG. The Neumann Report will be an important document in shaping this debate over years to come.

I know this is also an issue that concerns the Attorney-General personally. In his Lionel Murphy lecture at ANU in September, the Attorney referred to Lionel Murphy's great 1982 High Court judgment of *Neal v R*. Mr Neal, an Aboriginal man from Queensland, had been sentenced to six months hard labour for swearing and spitting at a store owner. Arguing for the conviction to be overturned, Murphy wrote, 'Mr Neal is entitled to be an agitator.' Yet, if he were alive today, Lionel Murphy would be appalled to know how much the incarceration rate has risen in the ensuing three decades.

A number of public figures have spoken on this issue, including judges Stephen Rothman, Stephen Norrish, my former employer Michael Kirby, and Western Australian Member of the Legislative Assembly, Paul Papalia, who promotes what he calls 'justice reinvestment'. As head of the NSW Bureau of Crime Statistics, Don Weatherburn has done a great deal to promote an evidence based debate. And while I am acknowledging people, I thank Jess Woodall, who interned in my office and is here in the gallery. She wrote the motion we are debating today. I am also very glad Jess has brought her mum Robyn Woodall along.

Over the past year, I have also appreciated the chance to visit the ACT's Alexander Maconochie Centre and Bimberi Youth Justice Centre, which struck me as very different from my visit to the old style Parramatta and Long Bay jails as a student journalist in 1993.

I have also appreciated learning about the community policing work being led by ACT Attorney-General Simon Corbell and ACT chief police officer Roman Quaedvlieg. For example, ACT policing are drawing on mental health experts and local Indigenous leaders such as Duncan Smith. They are also using case officers to work intensively with the 12 families who are responsible for a quarter of all property crimes in Canberra.

Nationwide, the total cost of Australia's prisons is nearly \$3 billion a year or about \$100,000 per prisoner. By spending money on addressing the underlying costs of crime, society gets to avoid the costs of both the crime and the punishment.

Criminologists describe four reasons for incarceration: retribution, deterrence, incapacitation and rehabilitation. Yet for some, the criminogenic effect of prisons outweighs any rehabilitative effect. The median sentence length in Australia is three years, so released prisoners find it hard to get a job and often discover that the only friends who have not deserted them are the ones they made inside. Sexual violence in prison probably is not as common as in the 1990s when New South Wales Magistrate David Heilpern estimated that one-quarter of young male prisoners were raped, but the rate is likely higher than in the outside world.

In the short time available, it is impossible to do justice to the evidence on what works to reduce crime and incarceration, but I commend to the House a 2006 paper prepared by the Washington State Institute of Public Policy, which reviewed 571 evaluations. Among the programs that they found to have the largest effect are prevention programs such as nurse-family partnerships and high-quality early childhood programs targeted at very disadvantaged families. For juveniles, education programs and aggression replacement training were effective, while the 'Scared Straight' program actually increased offending. For adults, vocational training and programs for offenders with mental illness were particularly effective.

On this issue, as with others, we need to raise the evidence bar. To illustrate this, let me tell a story. When I was 22, I clashed with Bob Carr over the issue of criminal justice. Carr, as opposition leader, had complained publicly about

gangs roaming the streets of Sydney, 'their baseball caps turned back to front'. As a Labor candidate in the 1995 New South Wales election, I spoke at the New South Wales Australian Labor Party conference—wearing a baseball cap turned back to front. My argument was that a tough-on-crime strategy ends up incarcerating the poor. Bob Carr's argument was that it is the poor who are most likely to be victims of crime. Both arguments are right. While we can point to examples of white-collar crime, most offences involve a low-income victim and a low-income perpetrator. If you care about reducing hard-core poverty, you should be interested in smarter criminal justice policies.

Yet it was the Carr Government who in 1999 put in place one of the most innovative criminal justice strategies—a drug court. Offenders are referred to the drug court from local or districts courts, undergo a detoxification program and are then dealt with by the drug court instead of a traditional judicial process. At the time it was established, the number of places in detoxification was limited, so participants in the evaluation were randomly assigned either to the treatment or control group. They were then matched to court records to measure reoffending rates. The evaluation found that the drug court was effective in reducing the rate of recidivism. The drug court was more expensive than the traditional judicial process, but it more than paid for itself in lower crime.

Another Australian randomised evaluation is the trial of restorative justice conducted by John Braithwaite and Heather Strang in Canberra. Together with other international randomised trials, this has helped build the evidence that for low-level offences, restorative justice makes victims feel better and reduces overall crime levels.

As a public policy 'randomista', I firmly believe that we need more randomised evaluations of criminal justice policies if we are to figure out what works and what does not. Some of our justice policies clearly do not work—the trouble is, we are not sure which ones. We need to raise the evidence bar. Getting justice policy right is not easy, but if there is one country that can show the way, it should be Australia: the nation that showed the world that if they are given a chance, convicts can do just as well as anyone.

Dr Andrew Leigh Fraser is the Federal Member for Fraser. Andrew holds a PhD in public policy from Harvard, having graduated from the University of Sydney with first class honours in Law and Arts. He has previously worked as a lawyer, including a period as associate to former High Court Justice Michael Kirby, and as a principal adviser to the Australian Treasury.

The full debate is available online at: <<http://www.aph.gov.au/hansard/reps/dailys/dr211111.pdf>>.

Wandjina Tree 2005
Jack Dale

Natural ochres & acrylic on cotton
755mm x 900mm

