



WAAMH

Western Australian Association
for Mental Health

Mandatory sentencing and assault of 'public officers' - unintended consequences

Amendments to the *Criminal Code* in 2009 were in response to a number of assaults on 'public officers' that had been highlighted in the media at the time. The amendment aimed to deter assaults on police officers, ambulance officers, transit guards, court security officers and prison officers. Under the amended Act, people charged with offences of assault or cause grievous bodily harm (to those public officers listed above) and found guilty, were liable to a mandatory jail sentence of six months for adults, and up to three months for juveniles (16-18).

Despite being credited recently in the media¹ with a thirteen per cent reduction in the number of assaults on police since this time last year, the amendment has had unintended consequences for people living with a mental illness and their families. People living with a family member or partner with a mental illness are now unlikely to call police when in a volatile situation out of a fear that their family member may assault the attending officer and be automatically jailed if they are charged and found guilty.

Having removed the discretion of the courts to determine an appropriate sentence with consideration of all the facts surrounding the issue, the legislation places discretion in the hands of police officers, who do not necessarily have the full picture.

Considering the intersection of mental illness and the criminal justice system, *The Health of Australia's Prisoners 2009*² wrote that there was a 'higher incidence of mental health problems in the Australian prison population than in the general population...' with the National Prisoner Census data reporting that

Over one-third of entrants (205 or 37%) reported having been told they have a mental health disorder... A total of 98 prison entrants (18%) reported being currently on medication for a mental health disorder... (Representing) 48% of those who reported ever having been told they have a mental illness.

The current Government has made a commitment to decriminalising mental illness, in relation to the introduction of mental health courts and Minister Morton has talked in depth on the matter of decriminalising mental illness more broadly, in Parliament.

...one of my first utterances was that one of the things I would be looking to do would be to decriminalise mental illness in this state...³

Mandatory sentencing is a punitive approach that removes the opportunity of a higher authority to use discretion in decision making. In regards to the mandatory sentencing of mentally impaired offenders, this discretion is a fundamental safeguard of the system.

¹.Mandatory sentencing credited with reducing assaults on police, Perthnow, 23 June 2011 <http://www.perthnow.com.au/news/western-australia/mandatory-sentencing-credited-with-reducing-assaults-on-police/story-e6frg13u-1226080579470>

².The Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2009* www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442459982

³.From Hansard 25 May 2011, p3903b-3919a



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WAAMH is concerned with the criminalisation of people who are unwell and with the already significant number of people with a mental illness in prison. WAAMH urges the Government to make changes to the *Criminal Code* to ensure that responsibility for sentencing is returned to the courts, who are qualified to use appropriate discretion when sentencing people with a significant mental impairment.

What you can do

- **Write a letter to the West Australian, and/or, write to your local community newspaper**
- **Write to your local member of parliament, or better still, make an appointment to see him**
- **Write to the Attorney General, and send a copy to the minister for Mental Health, and**
- **If you listen to talk back radio, phone in whenever matters like this are being discussed**

In all of the above, be clear and concise, use information from this leaflet and stories from your own experience if relevant and appropriate.