

# PUBLIC OPINION ABOUT SENTENCING

## A RESEARCH OVERVIEW

Over the last decade, a number of studies have been published on public opinion about sentencing – and public confidence in sentencing – in Australia. This paper provides an overview of that research.

### WHY DOES PUBLIC OPINION ABOUT SENTENCING MATTER?

Public attitudes to sentencing matter for at least three reasons (Warner et al., 2010; Mackenzie et al., 2012):

1. attitudes to sentencing affect public confidence in the criminal justice system as a whole;
2. sentencing practice is often responsive to public opinion; and
3. perceptions of public opinion can lead to changes in law and policy.

### WHAT IS PENAL POPULISM?

In the late twentieth century, numerous studies from various countries found that surveyed members of the community typically believed sentencing courts were ‘too lenient’ and ‘not severe enough’. The term *penal populism* describes the practice of politicians taking these public expressions of punitiveness at face value and creating criminal justice policy in response. The rise of penal populism led criminal justice researchers to ask: Are members of the community as punitive as they seem?

### DO INFORMED MEMBERS OF THE COMMUNITY SENTENCE SIMILARLY TO JUDGES?

In order to address this question, researchers began investigating the accuracy of the opinion polls by giving members of the community access to all the facts of a case and asking them to sentence specific offenders, just like judges do. Researchers then compared the sentences imposed by members of the community with the sentences imposed by judges and identified whether they were more severe, about the same or more lenient. If they were more severe, this would support the notion that the public considers judges ‘too lenient’.

### WHAT ARE THE FINDINGS OF THESE STUDIES?

The studies outlined in this paper all point to a consistent finding: informed members of the community are slightly *more lenient than judges*, not the other way around.

- In the Melbourne Criminology Study, participants sentenced four of the six offenders more leniently than the judge.
- In the Tasmanian Jury Sentencing Study, 52% of participants imposed more lenient sentences than the judge, and 90% thought that the judge’s sentence was appropriate.
- In the National Sentencing Survey, participants were more confident in courts and less punitive after considering general information about crime, courts and sentencing and specific information about a case; however, those changes in attitude were short-lived.
- In the Victorian Jury Sentencing Study, 62% of participants imposed more lenient sentences than the judge, and 87% thought that the judge’s sentence was appropriate.

#### Melbourne Criminology Study

67%



#### Tasmanian Jury Sentencing Study

52%



#### Victorian Jury Sentencing Study

62%



**The majority of participants in every study imposed a more lenient sentence than the judge**

What follows is an overview of each study of public opinion and sentencing, incorporating both large-scale research projects and stand-alone studies. Each overview includes the aims, methodology and key findings of the study, as well as a descriptive summary and list of publications.

# MELBOURNE CRIMINOLOGY STUDY

## AIMS

The Melbourne Criminology Study had two general aims:

1. to determine the validity of the populist view that judges are lenient; and
2. to devise a method of challenging the beliefs underpinning the populist view of sentencing.

## METHODOLOGY

Victorian judges gave presentations on four cases to 471 participants at 32 workplaces around Victoria. The judges had personally sentenced the six offenders in those cases. The offenders had been sentenced for armed robbery, rape, intentionally causing serious injury and theft of goods valued at about \$1 million. The study occurred over two sessions.

### *First session*

A sentencing expert gave each group a talk on sentencing (70 minutes), after which one of the judges made general observations about sentencing and took questions.

### *Second session*

A week later, the judge presented an edited version of their sentencing judgment, as well as information about maximum penalties and sentencing practices (40–55 minutes). The participants then wrote down what they considered to be the appropriate sentence for the offence (15 minutes). After that, they were given the actual sentence imposed by the judge. Participants then rated the judge's sentence (for example, too harsh, too lenient) and discussed the matters that they considered relevant when they sentenced the offender.

## KEY FINDINGS

- Judges are not more lenient than the community.
- The community does not share a unified view of sentencing; the community has a range of views.
- The community is prepared to take mitigating factors into account, where relevant.
- Participants who sentenced more harshly were less willing than participants who sentenced more leniently to accept the judge's sentence as reasonable.

## DESCRIPTIVE SUMMARY

Participants in this study sentenced four of the six offenders more leniently than the judge. Another offender was sentenced similarly to the judge, and the final offender was sentenced slightly more harshly, receiving an average of 3.2 years' imprisonment, compared with the 3 years imposed by the judge (Lovegrove, 2007). The study concluded that these results 'cast doubt on the populist view of sentencing as lenient'.

The study also found that participants treated sentencing as a 'humane process', taking into account a wide range of factors about the specific offender who committed the offence, including background circumstances unrelated to the offending (Lovegrove, 2011). It was concluded that members of the community were more willing to acknowledge the *importance of personal mitigation* when encouraged to feel responsibility for real people and given detailed information about both the offender and the offending.



**Participants sentenced 4 of the 6 offenders more leniently than the judge**

Finally, the study found a correlation between the seriousness of the sentence that participants imposed and the confidence of jurors in their position (Lovegrove, 2013). Participants who imposed harsh sentences were less likely to be satisfied with the judge's sentence than participants who imposed lenient sentences.

## PUBLICATIONS

Lovegrove, 2007, 2011, 2013.

# TASMANIAN JURY SENTENCING STUDY

## AIMS

The Tasmanian Jury Sentencing Study was the first of its kind in the world to ask jurors about their views on sentencing, both generally and in the case in which they had served on the jury. The study had three main aims:

1. to investigate a new method of ascertaining public opinion about sentencing (using jurors);
2. to investigate the potential usefulness of jurors to inform the public about sentencing; and
3. to ascertain attitudes to sentencing from informed members of the community.

## METHODOLOGY

Between September 2007 and October 2009, researchers surveyed 698 jurors from 138 trials in which a person was found guilty by a jury. The most serious crimes in those trials were violent offences (36%), drug-related offences (23%), sex offences (17%), property offences (15%) and other offences (9%). The research had three stages.

### Stage 1

After delivering a guilty verdict, jurors who agreed to participate stayed and listened to sentencing submissions by the prosecution and defence. Participants then answered a questionnaire about their initial opinion about an appropriate sentence for the offender based on their knowledge of the case (698 participants out of 1,944 jurors).

### Stage 2

Researchers prepared a package of materials for the judge to read to those who agreed to participate. The materials included information about criminal trends, sentencing and the judge's reasons for sentence. Participants were then asked for their views on the appropriateness of the judge's sentence (445 participants out of 614 who had agreed to participate).

### Stage 3

The researchers interviewed a predetermined number of participants, exploring their reactions to the case, the reasons for their opinions about the particular sentence and sentencing matters in general. The interviews lasted 40–90 minutes (50 participants out of 212 who agreed to participate).

## KEY FINDINGS

- Jurors are willing to participate in research about public opinion.
- The community is not as punitive as public opinion polls suggest.
- The community does not believe that judges are 'out of touch'.
- Specific knowledge of a case moderates harsher sentencing attitudes *in that case*, to the point that sentences imposed by jurors are similar to those imposed by courts.
- Specific knowledge of a case does not, however, necessarily moderate harsher sentencing attitudes *generally*: most jurors still considered sentences to be too lenient despite considering the judge's sentence in their own case very or fairly appropriate.
- More punitive respondents were less likely to consider the judge's sentence appropriate, or to change their views, than less punitive respondents.
- Jurors place more weight on aggravating factors than on mitigating factors.

## DESCRIPTIVE SUMMARY

Participation rates and the demographics of participating jurors showed that recruiting jurors was a feasible means of exploring public opinion about sentencing (Warner et al., 2010; see also Warner et al., 2011). More than one-third of the jurors who were invited to participate in the study agreed to do so (36%). Many used the interview as an opportunity to 'unburden themselves' and debrief about their experience (Davis et al., 2011). Participants were fairly representative of the general population in terms of age, gender and occupation. However, participants were slightly more likely than the general community to have completed a bachelor's degree or above (24% versus 12%), to have been born in Australia (91% versus 83%), to be married or partnered (72% versus 54% married only) and to be employed full-time (49% versus 34%) (Warner et al., 2010).

The first major finding of the research was that 52% of Stage 1 participants imposed a *more lenient sentence* than the judge, while 44% imposed a more severe sentence than the judge. The remaining 4% imposed a similar sentence. There was some variation by offence type; for example, jurors were more severe than the judge in 48% of cases involving sex offences but in only 30% of cases involving property offences.

The second major finding was that 90% of Stage 2 participants rated the judge's sentence in their case as very or fairly appropriate. Despite this, 46% of Stage 2 participants maintained that sentencing practices in general were too lenient for property offences, and 70% maintained that sentencing practices were too lenient for sex offences (Warner et al., 2010; Warner and Davis, 2012). Interviews with Stage 3 participants explored this disparity. Researchers found that participants' general perceptions were:

based on a knowledge of crime and sentencing that is distorted first by the media, which selectively reports crime, and then by a biased process of recall, which ensures people remember the violent and the extreme rather than the ordinary (Warner et al., 2010).

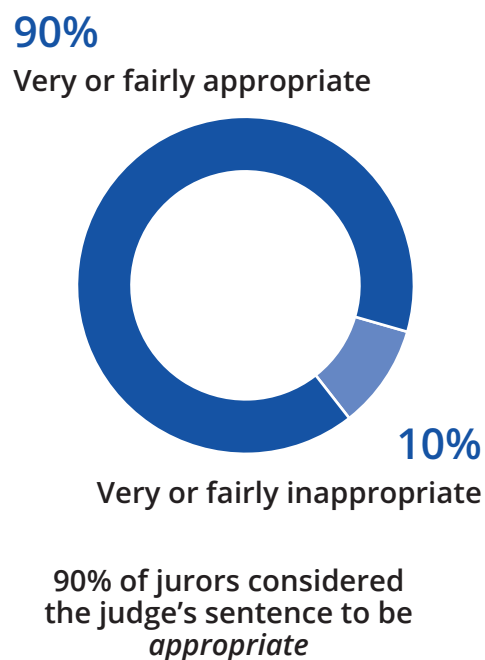
In addition, most participants considered the offender in their own case to be an *exception*, and believed that other cases involved *real* criminals committing *real* crimes. The researchers concluded that 'one experience [with the criminal justice system] may not be enough to change wider perceptions' (Davis et al., 2011).

A substantial majority of Stage 1 participants (70%) and Stage 2 participants (83%) thought that *judges were in touch with public opinion* (Warner et al., 2010; Warner et al., 2011), despite the high rate at which participants considered sentencing to be too lenient. Jurors who thought judges were 'out of touch' were much more likely to consider sentencing in general to be too lenient (Warner et al., 2014).

Stage 2 participants were also asked which aggravating and mitigating factors were present in each case, and how much weight they gave to each factor in deciding the sentence they would have imposed. The three aggravating factors they gave the most weight to were the use of a weapon (76% considered this a very important factor), the use of actual or threatened violence (70%) and an abuse of trust or authority (58%). The three mitigating factors they gave the most weight to were remorse (29% considered this a very important factor), a lack of criminal history (27%) and a low chance of reoffending (24%).

## PUBLICATIONS

Davis et al., 2011; Warner et al., 2009, 2010, 2011, 2014; Warner and Davis, 2012.



# NATIONAL SENTENCING SURVEY

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## AIMS

The National Sentencing Survey was designed as the first ever Australia-wide survey of public opinion about crime, the courts and sentencing. The Australian Research Council provided primary funding, and the Victorian Sentencing Advisory Council ('the Council') provided additional funding to allow an extra 1,200 Victorians to participate. The study had three overarching aims:

1. to measure public confidence in sentencing;
2. to determine the factors most relevant to public confidence in sentencing; and
3. to analyse and examine whether public confidence and punitive attitudes change over time.

## METHODOLOGY

The study proceeded in four phases.

### *Phase 1*

Between December 2008 and April 2009, the researchers conducted telephone surveys with 6,005 Australians (aged 18 or over) drawn randomly from an online telephone directory: 400 from the Australian Capital Territory, and 800 from each of the other states and territories. An additional 1,200 Victorians were surveyed but not included in the primary dataset. Respondents were asked a number of questions about their confidence in courts and sentencing, as well as their attitudes towards punishment, in order to establish a baseline of community views.

### *Phase 2*

In October 2009, the researchers conducted a follow-up survey with a randomly selected sub-sample of 815 respondents from the primary pool of Phase 1 participants (100 per state and territory) as well as with 300 of the Victorians from Phase 1. Researchers examined the effect of information on people's perceptions of the purposes of sentencing, using eight brief crime scenarios and two policy issues (alternatives to imprisonment and mandatory sentencing). Respondents were first given some information about crime rates, the cost of imprisonment and evidence about the deterrent effect of prison before being asked for their views. Respondents were then asked the same questions from Phase 1 to measure any changes in attitudes.

### *Phase 3*

Four focus groups were held – one in Brisbane (QLD), one in Melbourne (VIC) and two in Perth (WA) – with 39 participants who watched two videos: one with an expert explaining opposing policy positions on mandatory sentencing, and the other with an expert explaining opposing policy positions on alternatives to imprisonment. In order to examine the effect of information *plus* deliberation, participants engaged in facilitated discussions on each of the topics. Participants were then asked the same questions from Phase 1 to measure any changes in attitudes.

### *Phase 4*

Nine months later researchers recontacted participants from each of the earlier phases. In order to examine the durability of any changes in attitudes, participants were asked the same questions from Phase 1 (859 Phase 1 participants, 717 Phase 2 participants and 35 Phase 3 participants).

## KEY FINDINGS

- Respondents were slightly more confident in courts and less punitive *immediately* after being provided with information about courts and sentencing.
- Any change in public confidence and punitiveness resulting from that information was short-lived, however, to the point where, months later, respondents had almost returned to the levels they had prior to being provided with the information.
- Respondents took an individualised approach to sentencing, which varied based on the facts and circumstances of each offence and offender.
- There was strong public support for alternatives to imprisonment, especially for vulnerable offenders (young, mentally ill, drug-addicted and first-time offenders).

## DESCRIPTIVE SUMMARY

The participants in Phase 1 were broadly representative of the Australian population, including by gender. They were, though, slightly older (their average age was 53 years compared with 46 years for the general population), and they were twice as likely to live in a metropolitan area (61% compared with 32%). Phase 1 participants' levels of confidence in courts and sentencing were broadly *consistent with past top-of-the-head research*: 59% considered sentencing to be too lenient, especially for violent crimes, and 58% considered judges to be 'out of touch' with what ordinary people think (Mackenzie et al., 2012). There was, however, broad support for alternatives to prison if the offender was mentally ill (82% of participants), young (80% of participants) or drug addicted (66% of participants). Public confidence in sentencing and attitudes to punishment were relatively consistent across each of the states and territories, with just 2% variance by jurisdiction (Roberts et al., 2011).

The researchers found that when Phase 2 participants determined which *purposes of sentencing* were most important in each case, they took into account a number of factors, including the type of offence and the offender's age and criminal history (Spiranovic et al., 2011). Rehabilitation was considered the most important purpose of sentencing for 50% of first-time offenders, 30% of young offenders and 30% of offenders convicted of burglary offences. In comparison, punishment was considered the most important purpose for 40% of repeat offenders, 31% of adult offenders and 28% of offenders convicted of serious assault offences. There was also some support for community protection as the most important sentencing purpose in some cases, but there was very little support for specific or general deterrence.

Using a slightly reduced pool of Phase 1 participants (5,571), the researchers explored the factors most strongly associated with *punitiveness*, that is, a desire for harsher penalties (Spiranovic et al., 2012). Three variables were found to be the strongest predictors of punitiveness: perceptions of crime levels (as increasing), lower levels of education and reliance on commercial media for news and information. The researchers concluded that together these three factors illustrate the important role that 'knowledge and perceptions' play in accounting for punitive attitudes.

The researchers then conducted small group deliberations in order to further test the finding that knowledge and perceptions affect community punitiveness and confidence in courts. This phase (Phase 3) allowed for a more thoughtful and considered approach to issues around sentencing. Researchers then conducted a follow-up survey with participants from each of Phases 1, 2 and 3 to determine whether participating in this research changed any of their views of courts and sentencing. The hypothesis was that participants exposed to more information would be less punitive (Indermaur et al., 2012).

The qualitative findings (Stobbs et al., 2014) of the *small group deliberations* were published separately from the quantitative findings (Mackenzie et al., 2014). Researchers observed only a small reduction in punitiveness immediately after deliberations and a small reduction in confidence in courts, contrary to the hypothesis. Nine months after the deliberations, participants' punitiveness had almost returned to the levels prior to deliberation, as had their views on alternatives to imprisonment (Mackenzie et al., 2014).

**“ ‘... information combined with an attempt to encourage deliberation can make a difference on attitudes towards sentencing. However, these observed effects [are] short lived.’**

(Indermaur et al., 2012)

Indeed, the researchers found that while both Phases 2 and 3 participants had become more confident in courts and less punitive, by Phase 4 (after nine months), both groups had *almost entirely reverted* to the attitudes they held in Phase 1 (Indermaur et al., 2012). The researchers therefore concluded that neither information nor deliberation had a significant effect on participants' levels of punitiveness or their confidence in courts, but they suggested that this could have been because participants were not provided with details of specific cases.

## PUBLICATIONS

Indermaur et al., 2012; Mackenzie et al., 2012, 2014; Roberts et al., 2011; Spiranovic et al., 2011, 2012; Stobbs et al., 2014.

## NATIONAL SENTENCING SURVEY: THE VICTORIAN SAMPLE

As mentioned, the Council provided additional funding for the National Sentencing Survey so that a larger sample of Victorians could be surveyed. The Council published four papers reporting the results. The first and third papers were premised on responses from all additional 1,200 Victorians surveyed. The second and fourth papers were premised on responses from a smaller sub-sample (300 respondents) surveyed in October 2009.

In the first paper (Sentencing Advisory Council, 2011a), the Council found clear community support for alternatives to prison, particularly for vulnerable groups. For example, when asked whether prison overcrowding was best addressed by building more prisons or by increasing the use of alternatives to imprisonment, 74% of respondents supported alternatives. Further, 51% of respondents considered it *very important* to find alternatives to prison in order to reduce the high costs to the community of keeping people in prison, and 69% considered it *very important* to spend taxpayer money on programs to reduce crime in the first place rather than on prisons. Alternatives to prison were most supported for offenders who were mentally ill (92%), young (88%), drug addicted (84%) and non-violent (75%).

In the second paper (Sentencing Advisory Council, 2011b), the Council examined how much weight respondents gave to each of the various *purposes of sentencing*. Rehabilitation and punishment were the most likely purposes to be classified as ‘most important’, followed by specific deterrence and incapacitation; general deterrence was last. The complexity in respondents’ answers led the Council to conclude that ‘like the judges and magistrates themselves, people adopt an individualised approach to sentencing, tailoring their preferences for the main purpose of sentencing to the circumstances of each specific case before them’. For example, rehabilitation was the most important purpose in sentencing young offenders (40%) and first-time offenders (51%), while punishment was the most important purpose in sentencing adult offenders (40%) and those with a criminal history (47%).

74%

Alternatives to prison



26%

Build more prisons

Three-quarters of respondents supported *alternatives to prison* rather than building more prisons

“ ‘... like the judges and magistrates themselves, people adopt an individualised approach to sentencing ...’

(Sentencing Advisory Council, 2011b)

In the third paper (Sentencing Advisory Council, 2011c), the Council found that the following factors were most strongly associated with a high level of punitiveness: low confidence in courts, a perception that sentences were too low, a belief that sentences should reflect public opinion, a perception that crime was increasing, a reliance on commercial media and lower levels of tertiary education. People were also found to be more punitive when discussing crime and sentencing in the abstract, and less punitive when discussing specific offenders or offences. Notably, victims of crime were no more punitive than non-victims.

In the final paper (Sentencing Advisory Council, 2011d), the Council examined which factors were most strongly associated with public confidence in courts. There was some discrepancy in respondents’ answers. While only 28% reported being satisfied with courts’ decisions, nearly twice as many (54%) were confident that judges imposed an appropriate sentence most of the time. Despite these discrepancies, the following attributes were most likely to be associated with a higher level of confidence in courts: youth, higher income, some level of tertiary education, living in a metropolitan area, not perceiving crime to be increasing and using non-commercial media as their main source of information. There was little difference in confidence between genders. The most significant factor affecting confidence in courts was punitiveness: high punitiveness strongly predicted low confidence, and vice versa.

### PUBLICATIONS

Sentencing Advisory Council, 2011a, 2011b, 2011c, 2011d.

# VICTORIAN JURY SENTENCING STUDY

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## AIMS

The Victorian Jury Sentencing Study is a follow-up to the Tasmanian Jury Sentencing Study and has similar aims:

1. to determine how similar (or dissimilar) sentences imposed by judges and jurors are;
2. to identify which sentencing purposes jurors deem most important; and
3. to determine which aggravating and mitigating factors judges and jurors consider most important in sentencing, and how much weight judges and jurors give to those factors.

## METHODOLOGY

The study proceeded in four stages.

### Stage 1

After delivering a guilty verdict, jurors from 124 trials were invited to participate in this research. The principal offences in those trials were sex offences (39%), violent offences (32%), property offences (8%), drug offences (6%), culpable driving causing death (4%) and other (11%). Without having heard the sentencing submissions, 987 participants were asked what sentence they would impose on the offender in their case and which sentencing purpose was most important in imposing that sentence. They were also asked questions about their perceptions of sentencing in general and invited to participate in Stage 2.

### Stage 2

For Stage 2, 423 participants were provided with the judge's sentencing remarks, as well as some information about sentencing law and practice. They were then asked if they thought the judge's sentence was appropriate. They were also asked which aggravating and mitigating factors were present in their case and how much weight they gave those factors. In order to provide a point of comparison, judges were asked to identify which factors were present and how much weight they gave them. In cases where the judge did not return the form, sentencing experts analysed the judge's sentencing remarks to identify the presence of sentencing factors and weight given to each. Participating jurors were then invited to take part in Stage 3.

### Stage 3

In-depth, semi-structured interviews were conducted with 50 participants. The interviews explored each juror's reasons for their responses during the first two stages and their reaction to the judge's sentence.

### Stage 4

Participants from each of Stages 1, 2 and 3 were resurveyed to explore the durability of any possible changes in attitudes. The results of Stage 4 are yet to be published.

## KEY FINDINGS

- Jurors are willing to participate in research about public opinion.
- The community is not as punitive as public opinion polls suggest.
- Specific knowledge of a case moderates harsher sentencing attitudes *in that case*, to the point that sentences imposed by jurors are similar to sentences imposed by courts.
- Specific knowledge of a case does not, however, necessarily moderate harsher sentencing attitudes *generally*. Most jurors still considered sentences to be too lenient despite considering the judge's sentence in their own case very or fairly appropriate.
- Both judges and jurors place more weight on aggravating factors than mitigating factors, and both give most factors a similar amount of weight.
- Judges' and jurors' views differ on the importance of the various purposes of sentencing, particularly general deterrence.



## DESCRIPTIVE SUMMARY

Stage 1 participants were fairly representative of the Victorian population, but they were slightly more likely to be aged 35–64 (64% of participants compared with 51% of the general population), to be male (58% compared with 48%) and to have obtained a post-secondary qualification (81% compared with 53%). Approximately 66% of potential participants agreed to participate (Warner et al., 2017).

Consistent with the findings of the Tasmanian Jury Sentencing Study, the researchers found that 62% of participants were *more lenient than the judge*, 36% were more severe and 2% were equally severe (Warner et al., 2017a). Jurors (16%) were also twice as likely as judges (8%) to impose a non-custodial sentence. There was some variation by offence; while jurors imposed more lenient sentences than the judge in 71% of violent offence trials, a smaller proportion imposed a more lenient sentence in sex offence trials (50%). A much smaller proportion imposed a more lenient sentence in child sexual assault trials where the victim was aged under 12 (36%). After hearing what sentence the judge imposed, the vast majority of Stage 2 participants considered the sentence to be very appropriate (55%) and fairly appropriate (32%), while just one in eight thought that the sentence was very inappropriate (3%) or fairly inappropriate (10%).



***'... the views of judges and jurors are much more closely aligned than mass public opinion surveys would suggest.'***

(Warner et al., 2017)

Stage 1 participants were asked *whether jurors should have a role in sentencing*, and if so, what that role should be. In response, 52% thought that they should be able to recommend which factors the judge should consider (Freiberg et al., 2018). Less than one-third, however, thought that juries should be able to recommend the type and length of sentences (28%) or the sentencing range (32%). During the semi-structured interviews in Stage 3, the researchers identified four main reasons why some jurors preferred not to play a role in sentencing. The most common reason was recognising the judge as having more experience or expertise. Jurors also considered the sentencing task a difficult one – they thought that jury involvement could lead to inconsistency and unfairness in sentencing, and they thought that jurors would find it difficult not to make the decision on emotional grounds.

The majority of Stage 1 participants considered sentencing for most offences, in the abstract, to be too lenient: 83% of participants held this view for sex offences, 75% for violent offences and 58% for drug offences (Warner et al., 2017a). This is despite most jurors having imposed a more lenient sentence than the judge *and* having considered the judge's sentence to be appropriate. The one exception was property offences: most jurors (56%) thought sentences for this offence type was 'about right'. Participants' *perception that sentences in general are too lenient* was almost entirely unaffected by the provision of information about sentencing law and practice and the judge's sentencing remarks. The majority of Stage 2 participants still held the view that, in general, sentences for those offences are too lenient: 78% of participants held this view for sex offences, 76% for violent offences and 64% for drug offences.

When asked about the *most important purpose of sentencing* in their case, Stage 1 participants identified punishment (29%) and denunciation (19%), while judges favoured general deterrence (35%) and denunciation (21%) (Warner et al., 2017b). The greatest difference between judges' and jurors' views was in the weight given to general deterrence: 35% of judges ranked it as an important purpose in their case, but just 9% of jurors did the same. Jurors were also nearly five times more likely than judges to consider rehabilitation an important purpose (14% of jurors compared with 3% of judges) and twice as likely to consider punishment important (29% of jurors compared with 15% of judges). The researchers concluded that 'judges' choices of purposes are not aligned with jurors' choices' (Warner et al., 2017).

Finally, the researchers found that both judges and jurors gave more weight to aggravating factors than mitigating factors, and both gave a similar amount of weight to most factors (Warner et al., 2018a). For example, both judges and jurors gave the most weight to the same three aggravating factors: breach of trust (92% of judges and 84% of jurors), vulnerability of the victim (84% and 75%) and substantial injury to the victim (78% and 73%). Similarly, both judges and jurors gave 'a lot of weight' to the same three mitigating factors: youth (48% of judges and 32% of jurors), having good prospects of rehabilitation (35% and 30%) and being a first-time offender (44% and 20%). The researchers also found that delay was the third most common mitigating factor identified by judges (46% of cases); however, jurors were not asked about this factor during Stage 1 (Warner et al., 2018b).

## PUBLICATIONS

Freiberg, 2018; Warner et al., 2017a, 2017b, 2018a, 2018b.

## STAND-ALONE STUDIES

In addition to large-scale research projects, a number of researchers have conducted stand-alone studies of public opinion about sentencing in Australia.

### JONES AND WEATHERBURN (2011)

Jones and Weatherburn aimed to identify the extent to which the public expects punitive responses to crime. The research, conducted in 2009, was based on telephone surveys with 1,885 residents of New South Wales. All respondents were eligible to vote and were required to lodge a tax return in the previous financial year. Respondents were split into four groups. All groups were told how much tax each taxpayer was paying per week to maintain the prison population and were asked how much extra they would pay to achieve a 10% reduction in crime. The first two groups were advised that the 10% crime reduction would be achieved via a rehabilitation program; for one group, the rehabilitation program was for adults and for the other group, the rehabilitation program was for juveniles. The third and fourth groups were advised that the 10% crime reduction would be achieved by imprisoning offenders for longer; for one group, offenders were adults and for the other group, offenders were juveniles.

#### Results

The four groups were almost equally willing to spend *any* additional money to reduce crime. Between 68% and 74% in each group were willing to pay an almost equal amount of extra tax each week in order to achieve the 10% reduction in crime. Respondents were, though, slightly more willing to pay for juvenile rehabilitation (74%) than they were for adult punishment (68%). Respondents were also willing to pay slightly more to *punish* both adult offenders (\$3.82) and juvenile offenders (\$4.04) than they were to *rehabilitate* adult offenders (\$3.29) and juvenile offenders (\$3.66). Respondents who were more willing to pay additional tax tended to be younger and under less financial stress, and they perceived crime to be occurring in their local area. The researchers concluded that ‘members of the New South Wales public are just as disposed to reducing crime through programs that seek to rehabilitate offenders, as they are to pay for longer prison sentences’.

### BYLES AND GILL (2014)

The Victorian Sentencing Advisory Council hosts an online interactive sentencing application called Virtual You be the Judge. At the time of publication, Virtual You be the Judge had four case studies, based on real-life cases, in which offenders were sentenced for culpable driving causing death, drug trafficking, intentionally causing serious injury and burglary. The study was based on three years of anonymous user data from October 2010 to September 2013, during which time 60% of 28,000 users completed Virtual You be the Judge through to sentencing. The researchers then identified the extent to which the sentences imposed by users were consistent with the sentence that the judge had originally imposed.

#### Results

In three of the four case studies, most users imposed sentences that were roughly consistent with the sentence imposed by the judge, ranging from 70% consistency in the culpable driving case to 85% consistency in the drug trafficking case. The one exception was the intentionally causing serious injury case, in which the offender was sentenced for a serious violent offence. Only 27% of users imposed a sentence similar to the judge (a community order); instead, 40% of users imposed a more serious sentence (a term of imprisonment). Users who asked more ‘courtroom questions’ during Virtual You be the Judge also tended to be less punitive. They were less likely to impose a term of imprisonment than users who asked fewer questions, and they imposed shorter average terms of imprisonment. The researchers concluded that ‘the more information people have about an offender and their offence, the more likely they are to agree with the sentence imposed by the court’.

**“** *‘... the more information people have about an offender and their offence, the more likely they are to agree with the sentence imposed by the court.’*

(Byles and Gill, 2014)

## **SIMPSON ET AL. (2015)**

Simpson et al.'s aim was to determine the appropriateness of 'citizen juries' as a means of exploring public opinion on criminal justice issues. The researchers hosted three small group sessions – one each in Sydney (NSW), Canberra (ACT) and Perth (WA) – in which participants discussed issues underlying offending behaviours and how society should respond to them. Researchers first invited an expression of interest from 300 randomly selected individuals (using a telephone directory) and then identified up to 17 participants in each jurisdiction who would be (relatively) demographically representative of the general population. In the end, 43 people participated in the three sessions. Participants were given information by five or six experts with experience in mental health, law, criminology, Indigenous justice, victimology and corrections. They were then given an opportunity to question the experts, after which participants deliberated among themselves. Participants were asked to answer two questions: (1) What principles do you want to see underpin the treatment of offenders? (2) How best might these principles be put into practice?

### **Results**

Participants identified three principles that they considered the most important in the treatment of offenders: equity and fairness, a focus on prevention and greater community involvement in justice policy. Participants then identified four policy recommendations that would put these principles into effect:

- holistic prevention strategies targeting social, economic, interpersonal and socio-psychological factors;
- a move towards decarceration, except for serious offences, and less use of imprisonment;
- a need to ensure proper funding for rehabilitation and crime prevention programs; and
- increased opportunities for community input into criminal justice policy.

The researchers found that participants 'strongly believed that the escalating expenditure on prisons represented a huge burden on the public purse' and that they instead 'recommended a more holistic, non-punitive approach towards offenders'. The researchers concluded that these non-punitive views were a result of participants being 'given access to relevant information and the opportunity to deliberate with others'.

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Warner, K. et al. (2017b). 'Why Sentence? Comparing the Views of Jurors, Judges and the Legislature on the Purposes of Sentencing in Victoria, Australia.' *Criminology & Criminal Justice*. doi:10.1177/1748895817738557.

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Warner, K. et al. (2018a). 'Aggravating and Mitigating Factors in Sentencing: Comparing the Views of Judges and Jurors.' *Australian Law Journal* 92(5): 374–391.

## APPENDIX: PUBLICATIONS ASSOCIATED WITH EACH PUBLIC OPINION STUDY

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### MELBOURNE CRIMINOLOGY SENTENCING STUDY

Lovegrove, Austin. (2007). 'Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community.' *Criminal Law Review* 769–781.

Lovegrove, Austin. (2011). 'Putting the Offender Back into Sentencing: An Empirical Study of the Public's Understanding of Personal Mitigation.' *Criminology & Criminal Justice* 11(1): 37–57.

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### TASMANIAN JURY SENTENCING STUDY

Warner, Kate, Julia Davis, Maggie Walter, Rebecca Bradfield and Rachel Vermeij. (2009). *Gauging Public Opinion on Sentencing: Can Asking Jurors Help?* Trends & Issues in Crime and Criminal Justice No. 371. Canberra: Australian Institute of Criminology.

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Warner, Kate, Julia Davis, Maggie Walter and Caroline Spiranovic. (2014). 'Are Judges Out of Touch?' *Current Issues in Criminal Justice* 25(3): 729–744.

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### NATIONAL SENTENCING SURVEY

Roberts, Lynne, Caroline Spiranovic and David Indermaur. (2011). 'A Country Not Divided: A Comparison of Public Punitiveness and Confidence in Sentencing Across Australia.' *Australian & New Zealand Journal of Criminology* 44(3): 370–386.

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Mackenzie, Geraldine, Caroline Spiranovic, Kate Warner, Nigel Stobbs, Karen Gelb, David Indermaur, Lynne Roberts, Rob Broadhurst and Thierry Bouhours. (2012). 'Sentencing and Public Confidence: Results from a National Australian Survey on Public Opinions Towards Sentencing.' *Australian & New Zealand Journal of Criminology* 45(1): 45–65.

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## NATIONAL SENTENCING SURVEY: THE VICTORIAN SAMPLE

Sentencing Advisory Council. (2011a). *Alternatives to Imprisonment: Community Views in Victoria*. Melbourne: Sentencing Advisory Council.

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## STAND-ALONE STUDIES

Jones, Craig and Don Weatherburn. (2011). 'Willingness to Pay for Rehabilitation Versus Punishment to Reduce Adult and Juvenile Crime.' *Australian Journal of Social Issues* 46(1): 9–27.

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