

Rethinking Crime and Punishment is a strategic initiative designed to increase the level of public debate about the use of prison and alternative forms of punishment in New Zealand



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Three Strikes – Future, Present and Past



Peter Dunne MP to vote against Three Strikes Bill

United Future leader Peter Dunne will oppose the Sentencing and Parole Reform Bill during its second reading in Parliament today.

“This bill, in my opinion, is flawed legislation,” said Mr Dunne, “it will neither reduce the incidents of violent crime, assist in addressing the high rate of recidivism among offenders, nor help curb our bulging prison population.”

[Read the full media release](#)

Bills Before Select Committees

Prisoners' and Victims' Claims (Expiry and Application Dates) Amendment Bill

This bill bridges the gap between the expiry of regime for the awarding of compensation and the enactment of a second Prisoners' and Victims' Claims Amendment Bill to be introduced later in 2010.

This week, Parliament debates the three strikes legislation for probably the last time. While there is clearly no great enthusiasm for the Bill across party lines, it would seem that while National's pre-election undertaking to take the Bill to Select Committee stage only, has developed into something more.

The Three Strikes legislation in California is different from that proposed in New Zealand. Nevertheless, often such legislation is passed without taking proper account of the consequences for victims, offenders and their families and whanau.



One person who understands that well is Rev Ron Givens, who will be in New Zealand next week as a guest of the Howard League of Penal Reform to share his message from families and workers in California about the downstream effects of the three strikes legislation.

Ron was the Executive Director of the 600 strong Prison Chaplains Association in California, before funding was withdrawn in order that more prison guards could be employed. He is now Political Director of UNION (United for No Injustice, Oppression or Neglect), an organisation which has been documenting the effects of the “draconian” policy.

As more and more people are sent to prison for long periods in California, the state is reducing its budgets for schools and social services in order to meet the huge Corrections bill. In parts of California, a quarter of all budgets now go to locking up criminals.



“We still have time to learn from California and not go down the bankrupting route of more and more imprisonment” says Howard League spokesperson Peter Williams QC.

“In particular, implementation of the three strikes law here will accelerate our incarceration rates and breed a prison population of hopeless, helpless, permanent criminals.

“We have invited the Rev Givens here to persuade the Government and people of New Zealand that we should not be following the Californian model of incarceration, and that the three strikes policy in particular is a highly damaging approach with no advantages to society”. [Download the flyer](#)

You can hear Ron speak at the following locations:

Auckland:

Tuesday, 12th May, 7.00pm. Trades Hall, 147 Great North Road, Auckland

Wellington:

(1) Wednesday, 13th May, 12.30pm – 1.30pm. St Andrews on the Terrace 30 The Terrace Wellington.

(2) 5.30pm – 7.00pm. St Josephs Catholic Church, Brougham St, Mt Victoria Wellington (next to Basin Reserve). See Christchurch location on the next page.

Prisoners' and Victims' Claims Act 2005, passed by the previous Government, contains provisions that are due to expire on 30 June 2010. First, the Act restricts the awarding of compensation to prisoners to those situations where no other remedy is deemed appropriate. Second, if compensation must be awarded, the Act allows victims of the prisoner to claim against it before the prisoner can access the money. This amendment bill extends these provisions for a further 2 years to ensure that victims are not locked out of this process from 1 July of this year. This is a transitional measure to ensure that victims' access to prisoners' compensation does not lapse prior to the introduction of further legislation in this area later this year

Related Documents

[Make a submission](#)

[Bills Digest No 1766](#)

[Parliamentary Debates \(Hansard\) Prisoners' and Victims' Claims \(Expiry and Application Dates\) Amendment Bill — First Reading](#)

[Read Te Ururoa Flavell's speech on this legislation – it's a great history lesson.](#)

Submissions are due on the 14th May 2010. Due to the short time frame for consideration of the bill the committee are unlikely to conduct hearings of evidence.

Electoral (Disqualification of Convicted Prisoners) Amendment Bill

The bill proposes to remove the right of a person serving a term of imprisonment of less than three years to register as an elector.

Related Documents

[Parliamentary Debates \(Hansard\) Electoral \(Disqualification of Convicted Prisoners\) Amendment Bill — First Reading](#)

[Parliamentary Debates \(Hansard\) Electoral \(Disqualification of Convicted Prisoners\) Amendment Bill — First Reading](#)

Christchurch:

Friday, 14th May, 4.00pm. Oxford Baptist Church, cnr Oxford and Madras St, Christchurch (opp Community Law Centre).

Three Strikes – The Present

In recent months, the three strikes legislation has created concern across the political and ideological spectrum. The Maxim Institute, sponsored a speaking tour by Professor Warren Brookbanks and Senior Lecturer Richard Ekins of Auckland University.

They also published an excellent report setting out the facts about the three strikes legislation.

In describing the issue, Maxim Institute had this to say:

"There is justified concern about serious violent crime in New Zealand, with many genuinely fearful about their safety. Against this backdrop, National and ACT advocate a "get tough" approach to such crime. The Sentencing and Parole Reform Bill which would see a "three strikes" system of sentencing introduced in New Zealand, is about to receive its second reading in Parliament."

[Link to Maxim home Page](#)

[Listen to the lecture online](#)

[Read the NZ Herald's coverage of the event](#)

Brookbanks and Ekins report "Criminal Injustice and the Three Strikes Law" considers the legislation is both wrong and unjust for the following reasons:

- The Bill departs from the central principle of just sentencing, which is proportionate response to wrongdoing. The "three strikes" regime, to some extent on strike two and especially on strike three, ignores the nature of offences, which include conduct that ranges from the relatively minor to the very serious. The regime ignores almost all the aggravating and mitigating factors relevant to assessing the relative gravity of a criminal wrong. The application of the regime, especially at strike three, will often be unjust. Specifically, the regime will often impose grossly disproportionate punishments on relatively minor offences. It will also fail to distinguish relatively minor and very serious offences, which is unjust to victims as well as to offenders.
- The application of the regime is unlikely to deter would-be offenders in general, or the offender with one or two strikes in particular.
- There is no need to cancel eligibility for parole to establish that parole is a privilege and not an entitlement.
- Cancelling eligibility for parole for all second strike and most third strike offenders will not deter offenders but will undermine incentives for prisoners to reform or to refrain from further offending in prison.
- The regime will remove the incentive for offenders facing a strike three conviction to plead guilty (or to cooperate with authorities), which will sharply increase trial costs and impose unnecessary trauma on victims.
- The regime has a substantial fiscal cost, which would be better spent on (among other things) victim support, intensive policing, and improving parole supervision.
- There are more effective and promising ways to address recidivism, which include increased use of existing sentences such as preventive detention, principled reform of parole eligibility, and "front-loading" of criminal justice interventions to achieve maximum deterrence and rehabilitation.

The authors take the view that if the government intends to persist with the three strikes legislation, it should be amended to:

- Authorise judges not to impose the maximum sentence on strike three if this would be manifestly unjust (this amendment would bring the legislation into line with the assertions being made by the ACT Party).
- Retain presumptive eligibility for parole, or if this is not done, authorise judges not to order the sentence be served without eligibility for parole on strike two if

[Read the Attorney General's report on the Bill, in which he concludes that the blanket disenfranchisement of prisoners appears to be inconsistent with s 12 of the Bill of Rights Act and that it cannot be justified under s 5 of that Act.](#)

Submissions are due on the 11 June 2010

this would be manifestly unjust.

- Modify what counts as a strike from a conviction for a qualifying offence alone to at least a custodial sentence for a qualifying offence and preferably a custodial sentence of some length, say at least two years.
- Make provision for strikes to lapse over time (perhaps after ten years).
- Make specific provision in strike three sentencing to recognise a guilty plea, allowing judges to discount the maximum sentence by up to 25 percent, depending on when in the trial process the plea is made.
- Authorise the courts not to impose a life sentence for murder and manslaughter if this would be manifestly unjust.
- Specify that some instances of manslaughter (most notably accidents arising out of gross negligence) do not constitute a qualifying offence.

[Read Criminal injustice and the proposed "three strikes" law](#)

Three Strikes - The Past

In considering the impact of three strikes, it is useful to look beyond the immediate debates by assessing the general origins of the Three Strikes initiative, and then to examine the implementation of this law in the New Zealand. In this recent research paper, Craig Carpenter argues that the Three Strikes law in New Zealand will largely be a symbolic assertion of 'get tough' political rhetoric rather than an actual enabler of widespread punitive fervour. (1)

He concludes his report with this comment:

"The nature of the Three Strikes debate in New Zealand has been influenced by the change in political system predicated by low levels of trust in the main political parties that allowed for smaller fringe parties to gain political ground. With improved representation for populist groups, more radical beliefs have been given a more legitimate standing.

Exposure of such groups in the popular media has further increased pressure on governments to 'get tough' on crime. Engaging in such 'tough' rhetoric provides politicians with the ability to appease citizens' concerns. A perhaps unintended consequence of such action is that a relatively stable cycle emerges in which political parties indulge the fear of crime championing their 'get tough' rhetoric, appearing to confirm that crime is worsening, thus encouraging the punitive mood of the public, leading to back to pressure to get even 'tougher'. This rhetoric also allows governments to minimise their reduced role in providing resources to address the wider structural causes of crime, instead focusing on the outcomes of individual failures."

"In New Zealand this has contributed to the introduction of initiatives such as Three Strikes and You're Out in order to remain consistent in rhetoric. It appears that the current New Zealand government however are unwilling to commit to a broadly defined Three Strikes and You're Out law primarily due to the high cost to the taxpayer. The fact that concerns over the infringements of human rights agreements appears to have been a less significant influence indicates the pervasive nature of the dominant construction of the criminal offender in modern society."

[Read the full report " Three Strikes and You're Out in New Zealand: Getting tough on violent crime or 'get tough' political rhetoric?"](#)

(1) Carpenter, Craig, " Three Strikes and You're Out in New Zealand: Getting tough on violent crime or 'get tough' political rhetoric?", Honours Paper, Victoria University of Wellington, December 2009