

Three-strikes judge questions whether law works

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Californian says it is hard to prove hardline policy cuts crime

A judge dealing with the Californian "three strikes" law has questioned whether such policies actually work.

Judge Eugene Hyman says they can result in unfair sentences, have a limited deterrent effect and make it too easy to ignore rehabilitation in favour of simply keeping criminals locked up.

Judge Hyman, who sits in the Superior Court of California and is a former police officer, said New Zealand's model _ which applies only to the most serious violent offences _ is not as hardline as his state's and judges have some discretion to ignore the policy if it would be unjust.

However, he questioned the deterrent effect of such hardline policies, saying in his experience offenders did not think through the punishment they might face before committing a crime.

The Act Party used the California experience in modelling the New Zealand version of three strikes, but the final policy the Government agreed to restricted it to only serious violent and sexual offences. This followed criticism that the policy in California meant people convicted of relatively minor offences were being jailed for hefty terms.

Judge Hyman said there was disagreement in his state about whether "three strikes" had cut crime and it was debatable whether any changes in rates of offending or reoffending were due to the hardline policy or other factors.

"For example, when people get older, they commit less crime. The people committing the crime are in a certain age group. Once you get beyond 40 or so, crime goes down. So is it a factor of three strikes, or people ageing out of crime? Who knows. There are no simple solutions.

"Some people, because of their violent histories and recidivist behaviour, need unfortunately to be locked up for long periods of time. People who are stabbing people, shooting people, molesting people _ those are violent, scary people."

However, in his experience offenders were not necessarily deterred by increased penalties because they rarely considered them before committing crimes.

"People commit crimes for various reasons. Some of it has to do with being under the influence of alcohol and/or drugs, some of it has to do with the availability of weapons and they're upset. Or they may think they're going to commit a crime like robbery and then the victim isn't as willing as they think and then things become more aggravating and someone gets hurt. I don't think the death penalty is a deterrent.

"I think that to argue that having certain kinds of laws or certain kinds of penalties will automatically cause people to comply doesn't work, based on my experience."

He said a blunt analysis could show crime was reduced by such schemes because locking up criminals

meant they were not on the streets. "My concern always is that sometimes it's looked at as a simple solution and we no longer have to make the effort to rehabilitate _ we just lock people up."

Judge Hyman, who is in New Zealand to discuss domestic violence issues, said he had passed down sentences under the scheme which he considered to be harsh.