

Eugene Hyman: Locking up crims and throwing away the key no answer

By Eugene Hyman

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Studies show long sentences don't deter crime and prisons make offenders escalate the violence of their crimes after release. Photo / Glenn Jeffrey

Legislation is proposed in the New Zealand Parliament to adopt the "three strikes" criminal justice system model used in the United States.

The term "three strikes" comes from American baseball where after three attempts to hit the baseball, the batter is "out", but just for that innings.

The batter returns when it is again his turn - at least three times in a game.

But there is no such right of return under the criminal laws of most jurisdictions in the US where the law provides that after three felonies, the convicted are imprisoned for life.

The American "three strikes" model is fundamentally flawed and merits thoughtful scrutiny and discourse. Furthermore, any meaningful dialogue on sentencing reform must address the vital issue of rehabilitation to ensure effectiveness of the criminal justice system.

Experience shows this legislation can be unduly punitive at best and draconian at worst. Instead of a tough posture, consider instead smart rehabilitation intervention.

Resist the urge to implement a model that is a product of the "politicisation" of crime. Being tough on crime is a powerful rally-cry for votes. Criminals do not garner empathy and they carry no political clout.

Understandably, citizens are fearful of criminals in general and violent offenders in particular, especially when there is a perception of laxity. However, securing safety for the populace and implementing sentencing reform coupled with smart rehabilitation programmes are not mutually exclusive.

There is an important distinction to be made about the type of criminal that can benefit from rehabilitation. No one will argue against punishing violent criminals who stab, shoot, molest, and rob.

Some argue that these people are not capable of reform. If this is true, then the goal should be to target those who can be helped.

The majority of the prison population in both America and New Zealand has substance abuse and mental health issues but receive no appropriate treatment, in or out of custody.

To make matters worse, this class of criminal often leaves prison in a worse state than when they entered and, moreover, if they reoffend their crimes tend to escalate.

It is a gross understatement to say that prison is a violent milieu and a breeding ground for more criminal activity, not less. Longer prison sentences mean longer exposure to this hardened environment and only compound the situation further.

The sad reality is that longer sentences only delay recidivism, they don't eliminate it.

Considering that the majority of prisoners are illiterate, what is gained by being purely punitive? Is this the desired legacy of an advanced culture, or should we attempt to solve the problem in a considered, humanitarian way that is a win-win for society at large?

"Three strikes" is actually a bit of smoke and mirrors. There is an illusion that crime and criminals are being addressed but in reality they are only hidden from view.

Incarcerate as many adult male offenders as you can and the problem is simply "out of sight and out of mind".

This begs several questions: Is this the most effective use of increasingly scarce government resources? Are the core issues being addressed?

If offenders are incarcerated long enough, crime rates may appear to go down; but take this argument to its logical conclusion. If the death penalty is applied, a dead person cannot recommit. Repeated studies have shown that the death penalty and harsh punishment do not deter crime.

What are the costs of punitive measures?

If we are to break the cycle of crime, we must consider the children who are left without parents. These children are more likely to enter the criminal justice system.

Over 60 per cent of those on parole in California violate their parole. The rate isn't much better in New Zealand. The paucity of treatment plans for those on parole and the consequences cannot be underestimated.

Substance abuse treatment is a lifetime commitment but is very successful when done correctly. At the moment, the largest mental hospitals in the US are its prisons.

This is wholly inadequate. A better use of funds would be to provide appropriate mental health services in the community. A year in prison costs much more than a year of community health services. Ultimately, the focus must be on evidence-based practices.

Under this proposed legislation, the responsibility for rehabilitation by correction officers will be diminished.

As a counter measure, these officers should be held accountable by developing a results-based evaluation approach where key indicators that measure effectiveness can be tracked, rewarded and changed.

Proponents of the "three strikes" legislation argue that judges can be soft on crime by not imposing tougher sanctions or by granting parole prematurely. Redressing this problem does not require the force of a "three strikes" approach. A simpler, more effective approach would be mandatory minimum sentences.

The current proposal looks to prior case law to define exceptional circumstances, but why leave this area vague when you can explicitly define what you mean?

Courts need to become involved and communicate with each other in order to provide meaningful interventions, assisting in criminal, family, juvenile and probate courts. Often families are in multiple divisions of courts at the same time.

The US has developed many worthy legal models in the areas of drug abuse, mental health, domestic violence, and problem-solving courts that would mesh well with New Zealand's legal culture. "Three strikes" is not one of them.

*** Judge Eugene M. Hyman, of the Superior Court of California, recently visited New Zealand to discuss domestic violence issues.**

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