

Making Justice Work

Fact sheet: Mandatory Sentencing

What is mandatory sentencing?

Normally the court has discretion to decide what sentence it will impose on a person convicted of a criminal offence. This means the magistrate or judge takes into account all of the circumstances of the case and decides the most appropriate sentence. The magistrate or judge will consider and balance a range of things, including: the facts of the offence, the impact on the victim and their views about the offence (set out in a victim impact statement), the reasons for the offending and the circumstances of the offender.

‘Mandatory sentencing’ changes the way magistrates and judges make sentencing decisions. It limits sentencing options. Mandatory sentencing laws can require the Magistrate or Judge to impose a certain type of sentence (such as imprisonment) for some offences, and can also require the court to impose a minimum sentence length (for example, a minimum sentence of three months imprisonment), regardless of the circumstances of the case. If mandatory sentencing applies, a court can choose to impose a more serious sentence than the minimum mandatory sentence, but it can’t choose to impose anything less.

What’s wrong with mandatory sentencing?

Mandatory sentencing does not work to prevent crime

There is no evidence that mandatory sentencing will work to reduce crime or make the Territory a safer place. Mandatory sentencing has not worked in the past. In fact, when the Northern Territory introduced mandatory sentencing for property crime in 1997, property crime rates in the NT increased and then decreased after mandatory sentencing was removed.¹ Imposing a harsher sentence does not work to deter people from committing crimes.²

Mandatory sentencing costs a fortune

The community pays for mandatory sentencing. It is very expensive to put someone in prison. According to a recent research paper prepared for the Australian National Council on Drugs, it costs almost \$250 per day to imprison a person in the NT. That means that a mandatory sentence of three months imprisonment imposed on an adult offender will cost the community over \$20,000. A mandatory sentence of 12 months imprisonment imposed on an adult offender will cost the community almost \$90,000.

¹ Office of Crime Prevention, Northern Territory Government, *Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience* (August 2003) 10

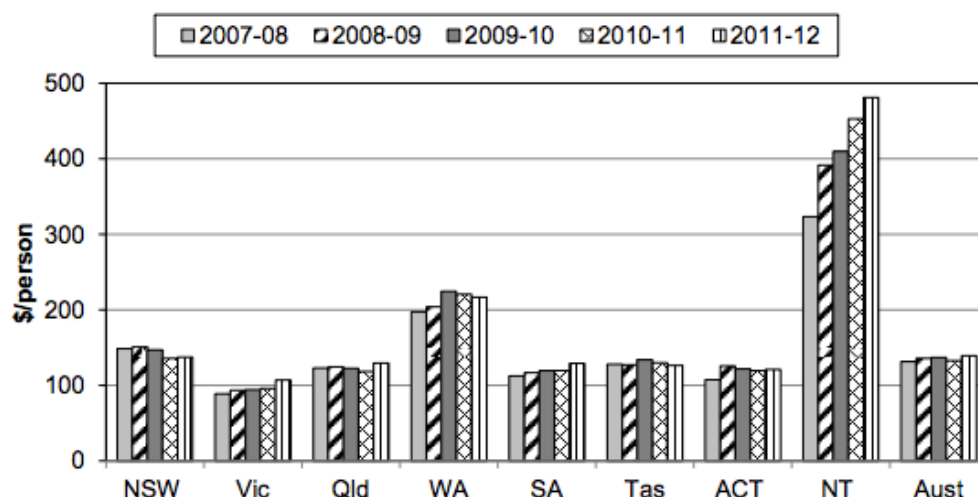
<http://www.nt.gov.au/justice/policycoord/documents/statistics/mandatory_sentencing_nt_experience_20031201.pdf>.

² Mirko Bagaric and Theo Alexander, ‘(Marginal) General Deterrence Doesn’t Work: And What It Means for Sentencing’ (2011) 35 *Criminal Law Journal* 269, 283.

The cost of detaining a youth is *double* the cost of locking up an adult. That's money we could be spending on crime prevention strategies and other things that build a better community, like more teachers and better schools.

This graph shows how much the NT spends for every person in the NT each year on corrections compared to the rest of Australia:³

Figure 8.1 Real net operating expenditure on prisons and community corrections plus depreciation, per head of population per year (2011-12 dollars)^{a, b, c}



^a Includes operating expenditure on prisons and community corrections (net of operating revenues) and depreciation; excludes payroll tax, transport/escort services costs where reported separately from prison expenditure, debt servicing fees, and user cost of capital. ^b Per person cost is calculated using total population (all ages). ^c Data are adjusted to 2011-12 dollars using the gross domestic product (GDP) price deflator (2011-12 = 100) (table AA.51).

Source: State and Territory governments (unpublished); table 8A.13; table AA.2.

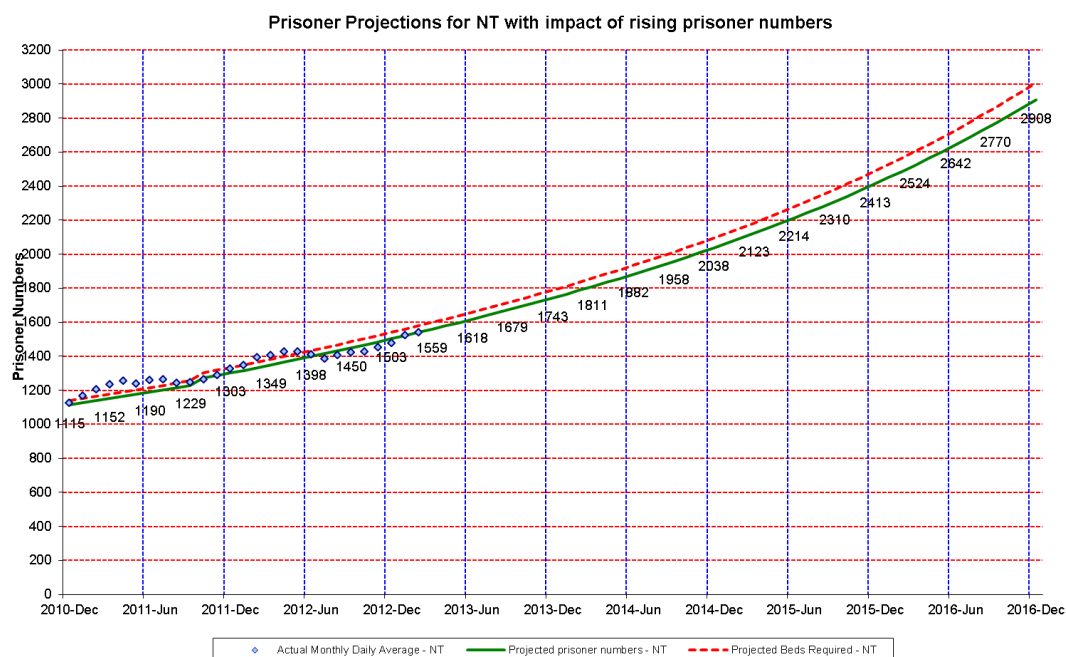
Our prisons are already full

Statistics produced by the NT Department of Corrections show that our prisons are already full and the problem is getting worse. The new Darwin prison will cost NT taxpayers almost \$500 million and by the time it opens in 2014 it will already be full. By 2016 the NT will need *another* 1,000 bed prison operating. The NT Government estimates that our prisoner numbers are going to *double* in the next four years. This will mean that the Territory taxpayer will need to spend hundreds of millions of dollars more on locking people up, when we could be spending money on things that really make us safer.

This graph shows the projected growth in prison numbers in the NT:⁴

³ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services* (Commonwealth of Australia, 31 January 2013) Ch 8 Corrective services, Figure 8.1 <http://www.pc.gov.au/_data/assets/pdf_file/0008/121769/11-government-services-2013-chapter8.pdf>.

⁴ Department of Correctional Services, Northern Territory Government (2013). The model is based on the average growth rate of NT prisoner numbers over the past 3 years and assumes that this growth rate will continue into the future. The model does not take into account increased police numbers, population growth or legislative change or court sentencing practices.

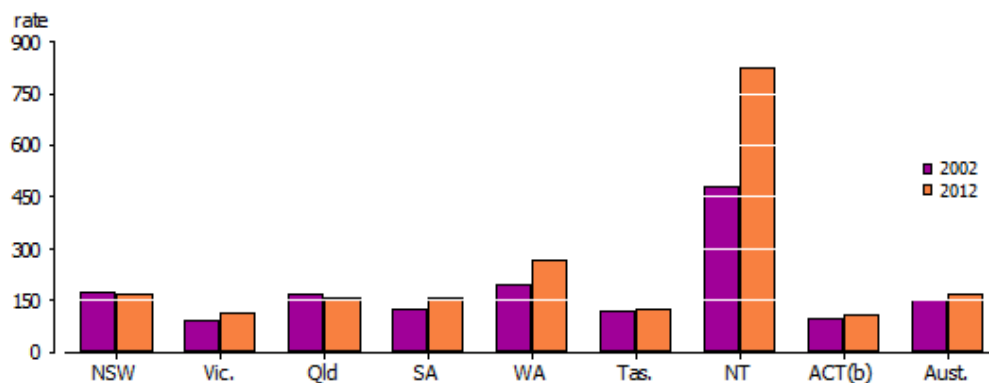


Courts already impose tough sentences

There will always be cases where the only appropriate penalty is prison. In fact, in the Territory, we have the highest imprisonment rate in the country by a long way. Our imprisonment rate is 5 times the national average. We lock up far more of our population than anywhere else. Our rate of imprisonment increased by 72% in 10 years from 2002-2012.

This graph shows the NT's imprisonment rate compared to the rest of Australia:⁵

IMPRISONMENT RATES(a), 30 June 2002 and 30 June 2012, state and territory



(a) Rate per 100,000 adult population.

(b) ACT data for 2002 include ACT prisoners held in NSW prisons. These prisoners are excluded from NSW data.

Mandatory sentencing results in unfair sentences

It is the job of magistrates and judges to make the punishment fit the crime, taking into account all of the evidence. Mandatory sentencing means that courts must impose a 'one size fits all' sentence.

⁵ Australian Bureau of Statistics, 4517.0 - Prisoners in Australia (2 April 2013) 28

<[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/24B61FAA213E5470CA257B3C000DCF8A/\\$File/45170_2012reis sue.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/24B61FAA213E5470CA257B3C000DCF8A/$File/45170_2012reis sue.pdf)>

Magistrates and judges are prevented from imposing a sentence that properly reflects the seriousness of the offences and is appropriate, having regard to all of the circumstances of the case. This means that sentences may be unjust, arbitrary and inconsistent.

Mandatory sentencing is unnecessary

Most of the time magistrates and judges get sentences right. When they get it wrong, the prosecutor or the defence can appeal the sentence and have it corrected. If it's not broken, don't fix it: there is no need for mandatory sentencing.

Mandatory sentencing has the biggest impact on the most vulnerable and disadvantaged people in our community, especially Aboriginal people

Our prison populations are already overpopulated with people struggling with systemic socio-economic disadvantage such as mental health issues, intellectual disability, homelessness, and sexual and domestic abuse. Increasing their likelihood of going to prison does nothing to address the underlying causes of their criminal behaviour.

Under the 1997 mandatory sentencing scheme, Aboriginal people were 8.6 times more likely to be imprisoned under mandatory sentencing than non-Aboriginal people.⁶ Aboriginal people are already vastly overrepresented in our prisons: they are about 30% of the general population but 80% of the prison population and over 90% of the young people in detention. We should be spending money on reducing the rate of imprisonment of Aboriginal people, rather than increasing it.

What are the key features of the new mandatory sentencing scheme?

- The new mandatory sentencing scheme commenced on **1 May 2013**.
- The new mandatory sentencing scheme applies to 'violent offences.' The Act defines 'violent offences' very broadly to include 'the use, or threatened use, of violence'. This includes even common assaults which could be constituted by the threatened application of force or mere touching.
- The new mandatory sentencing scheme sets out different 'levels' of violent offences subject to mandatory sentences of imprisonment, according to the seriousness of the offence.
- The length of the mandatory sentence of imprisonment depends on the level of the offence and whether the offender has a previous conviction for one of the listed violent offences. In some cases involving low level types of violent offences, mandatory sentencing won't apply unless the offender has previously been found guilty of one of the specified types of violent offences.

⁶Office of Crime Prevention, Northern Territory Government, above n 1, 3.

- Some high level violent offences attract a mandatory sentence of 3 or 12 months actual imprisonment. Some low level violent offences attract a mandatory sentence of imprisonment, but leave the length of the sentence to be decided by the magistrate or judge.
- In 'exceptional circumstances' the court may have discretion, if it does not already, over the length of the mandatory sentence of imprisonment and may have the option of partially suspending the sentence or ordering that part of the sentence be served in home detention. The new law does not define what 'exceptional circumstances' means. It does state that some things, such as intoxication, will not be 'exceptional circumstances'. Unfortunately experience with mandatory sentencing shows that even an 'exceptional circumstances' provision doesn't avoid unfair results.
- You can find more information about how the new mandatory sentencing laws work in the Fact Sheet prepared by the Department of Attorney-General and Justice.⁷

Will the new mandatory sentencing scheme apply to young people under 18?

Normally it won't. The new mandatory sentencing scheme will only apply to a youth if the court decides to sentence the youth as an adult in the Supreme Court under the *Sentencing Act*, which doesn't happen very often and usually only happens in the most serious types of cases. If mandatory sentencing does apply to a youth, the court will still have discretion to determine the length of the sentence of imprisonment and the court will have the option of partially suspending the mandatory sentence of imprisonment, or ordering that part of the sentence be served in home detention.

Is it different to the 1997 mandatory sentencing scheme in the NT?

It is different. The 1997 mandatory sentencing scheme applied to a range of property offences. The new mandatory sentencing scheme doesn't apply to property offences; it applies to specified types of violent offences.

What is justice reinvestment?

Justice reinvestment is an approach that diverts a proportion of corrections budgets to communities that have high rates of offending to invest in programs that will reduce criminal behaviour and rates of reoffending. Justice reinvestment aims to spend money now on dealing with the causes of crime to save money in future on dealing with the outcomes of crime.

It is an approach that has been very successful in places like Texas where previously they had relied on locking more and more people up and realised that not only was it not working, but they couldn't

⁷ Department of the Attorney-General and Justice, Northern Territory Government, *Fact Sheet: Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (22 March 2013) Northern Territory Government <[http://www.nt.gov.au/justice/policycoord/documents/lawmake/2013/Fact_sheet_Sentencing_Amendment_\(Mandatory_minimum_sentences\)_Act_2013.pdf](http://www.nt.gov.au/justice/policycoord/documents/lawmake/2013/Fact_sheet_Sentencing_Amendment_(Mandatory_minimum_sentences)_Act_2013.pdf)>.

afford to keep building new prisons. For more about the Texas experience, see the ABC Lateline story.⁸

There is a chronic shortage of programs in the NT that reduce criminal behaviour, particularly in remote Aboriginal communities. There is a real need to increase spending on services that specifically target offending (for example family violence, sexual assault, alcohol and drug abuse) as well as preventative programs such as early childhood intervention, school attendance programs and programs for youth.

⁸ ABC Lateline, *Texas Experience with Justice Reinvestment* (16 April 2013) <<http://www.abc.net.au/lateline/content/2013/s3738637.htm>>.