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The Law
Reform
Commission



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6/11/13

SENTENCING

NATIONAL SURVEY OF OFFENDERS

MAY 1979

This questionnaire is being distributed to all offenders in Australian prisons known to have been convicted of an offence against the laws of the Commonwealth or Australian Capital Territory. It is part of the Law Reform Commission's work on a Reference concerned with the reform of sentencing law. The questionnaire is also being distributed to a sample of offenders in prison in New South Wales and Victoria following their conviction for offences against State laws. Any enquiries about this questionnaire should be addressed to Professor Duncan Chappell, the Commissioner in Charge of the Sentencing Reference or to Dr. G.M. McGrath, a consultant to the Commission at:

The Secretary,
Australian Law Reform Commission,
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THE LAW REFORM COMMISSION AUSTRALIA

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A NATIONAL SURVEY OF OFFENDERS

This Commission has a Reference on Sentencing law. The Reference asks the Commission to study the need for possible law reforms relating to such matters as the use of imprisonment, the treatment of offenders, the availability of alternatives to imprisonment, and principles of punishment.

To assist the Commission in forming its views about sentencing reform, we are seeking to obtain submissions from a wide range of persons and organisations concerned with sentencing. As someone who has been sentenced to imprisonment you are obviously in a position to express your personal opinion about this subject. We therefore invite you to take part in this National Survey of Offenders.

Participation in this survey is entirely VOLUNTARY and CONFIDENTIAL. The answers that you give to this questionnaire will not be related back to you in any way. The prison authorities have agreed that the questionnaire will not be censored or reviewed in any way by them. Providing you put the questionnaire in the accompanying envelope and seal it it will be delivered directly to the Commission.

There are three sections in the questionnaire. Section A is a general section where you are given a chance to put things in your own words. Section B contains a list of questions about sentencing. Simply, circle the letters alongside each question which is closest to your feelings. Section C asks you for some background information, as well as your views on topics like remand etc. Finally, there is Section D to be answered only if you are a Federal or Australian Capital Territory offender.

We cannot directly promise you anything for assisting us by answering this questionnaire. However, your views will be among those taken into account by the Commission in the preparation of its Report on Sentencing which will be published later in 1979. Thank you very much for your help and co-operation.

Duncan Chappell

Duncan Chappell,
Commissioner

G.M. McGrath

G.M. McGrath,
Consultant

IS IT FAIR?

SECTION A

GENERAL SECTION

This section asks for your view on some general matters to do with sentencing. Wherever appropriate please put a tick in the box which is closest to your view. We would also welcome your comments in the space below each question. In some questions we ask you in your own words to complete some statements. Be as frank as you like.

1. If I was asked to give my view on sentencing generally I'd say it was (Tick the box closest to your view.)

very fair *pretty fair* *pretty unfair* *very unfair*

Comments on sentencing generally:

2. If I was asked how fair I thought the sentencing in my (last) case was I'd say (Tick the box closest to your view.)

very fair *pretty fair* *pretty unfair* *very unfair*

Comments on your (last) sentence:

A2

3. If I had to say whether or not I thought harsh sentences for a particular offence turned others away from committing a similar offence I'd say (Complete the statement in your own words.)

4. If asked how fair I thought the process of arrest and charging in my (last) case was I'd say it was (Tick the box closest to your view.)

very fair pretty fair pretty unfair very unfair

Comments on your (last) arrest and charging:

5. If I was asked what I thought of judges in sentencing I'd say they try to do justice (Tick the box closest to your view.)

most of the time some of the time hardly ever

Comments on judges' sentencing:

6. If I was asked what I thought of magistrates in sentencing I'd say they try to do justice (Tick the box closest to your view.)

most of the time *some of the time* *hardly ever*

Comments on magistrates' sentencing:

7. If I had to give a comment on the judge or magistrate in my (last) case I'd say he was (Tick the box closest to your view.)

very fair *pretty fair* *pretty unfair* *very unfair* .

Comments on the judge or magistrate in your (last) case:

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, or the law of the Constitution. We shall not shrink from that decision.

8. If I asked what I thought of prosecutors I've experienced I'd say
(Please complete the statement in your own words.)

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, or the law of the Constitution. We shall not shrink from that decision.

A4

9. If I was asked what I thought of Legal Aid I'd say (Please complete the statement in your own words.)

10. If I was asked what I thought of the lawyers I had in my (last) case I'd say (If applicable please complete the statement in your own words.)

11. If I was asked what I thought of courtroom procedure (e.g., one lawyer against another lawyer, rules of evidence etc.) I'd say (Please complete the statement in your own words.)

12. *The bail system is, in my view, (Tick the box closest to your view.)*
very fair pretty fair pretty unfair very unfair

Comments on the 'bail system':

13. *The parole system as it stands now is, in my view, (Tick the box closest to your view.)*
very fair pretty fair pretty unfair very unfair

Comments on the parole system:

14. *The best way to make sentencing fairer is (Please complete this statement in your own words.)*
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SECTION B

PLEASE FOLLOW THE INSTRUCTIONS BELOW IN ANSWERING SECTION B.

FOR EACH QUESTION PLEASE PUT A CIRCLE AROUND SA OR A OR N OR D OR SD.

WHICH ONE TO CIRCLE?

- SA If you strongly agree with the statement circle SA (for Strongly Agree).
- A If you pretty well agree with the statement circle A (for Agree).
- N If you have mixed feelings or are neutral about the statement circle N (for Neutral).
- D If you disagree with the statement but not all that strongly circle D (for Disagree).
- SD If you strongly disagree with the statement circle SD (for Strongly Disagree).

PLEASE ANSWER EACH QUESTION.

IS IT FAIR?SECTION B'OFFENDER ATTITUDES TO SENTENCING'

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

1. The sentencing process on the whole is pretty satisfactory. SA A N D SD
2. Unfairly long sentences are pretty rare. SA A N D SD
3. Unfairly short sentences are pretty rare. SA A N D SD
4. Longer sentences for armed robbery offenders would help stop others from committing such offences. SA A N D SD
5. Crimes like homosexuality between willing partners shouldn't be crimes at all. SA A N D SD
6. The legal rules often prevent the true story being told in court. SA A N D SD
7. The sentence I received was, all things considered, pretty fair. SA A N D SD
8. Generally, sentences for state offences are longer than sentences for similar federal offences. SA A N D SD
9. Longer sentences for drug trafficking would help stop others from committing this offence. SA A N D SD
10. As far as I know my sentence would have been the same if I had been convicted and sentenced in another state. SA A N D SD
11. Under the present system, offences which are pretty much the same and committed by pretty much the same sort of person (similar record etc.) get much the same sentence. SA A N D SD
12. Under the present system the fact that a person's got a previous record plays too great a part in the sentence given. SA A N D SD
13. As it stands now no one really cares enough about how a sentence affects a person's family. SA A N D SD
14. It doesn't matter which judge you appear before - they're all the same when it comes to sentencing. SA A N D SD

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

- | | | | | | |
|--|----|---|---|---|----|
| 15. In my case the real story of the offence never came out in court. | SA | A | N | D | SD |
| 16. Some murders are so bad that the death penalty should be brought back. | SA | A | N | D | SD |
| 17. The average judge has a good idea of what prison is like. | SA | A | N | D | SD |
| 18. Some judges are generally much harder than other judges. | SA | A | N | D | SD |
| 19. It's often in the accused's interest to avoid a particular judge. | SA | A | N | D | SD |
| 20. The same judge may be <u>really</u> hard on some crimes but not so hard on others. | SA | A | N | D | SD |
| 21. Judges on the whole give a man a pretty good hearing. | SA | A | N | D | SD |
| 22. Often an accused person will change pleas to avoid a particularly hard judge. | SA | A | N | D | SD |
| 23. There are no crooked judges. | SA | A | N | D | SD |
| 24. It doesn't matter which magistrate you appear before - they're all the same when it comes to sentencing. | SA | A | N | D | SD |
| 25. There are no crooked magistrates. | SA | A | N | D | SD |
| 26. The average magistrate has a good idea of what prison is like. | SA | A | N | D | SD |
| 27. It's harder to avoid a tough judge if you're on legal aid rather than paying your own lawyer. | SA | A | N | D | SD |
| 28. With the help of a good barrister or solicitor you can, to some extent, 'choose' a judge. | SA | A | N | D | SD |
| 29. Judges' recommendations that a person receive psychiatric or medical help are generally not followed. | SA | A | N | D | SD |
| 30. Some sex crimes are so bad that the offender should be whipped. | SA | A | N | D | SD |
| 31. When it all boils down, the police are pretty fair when it comes to making the charge fit the offence. | SA | A | N | D | SD |

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

- | | | | | | |
|--|----|---|---|---|----|
| 32. A person whose occupation is described in court as 'labourer' will get a longer sentence than a person whose occupation is described as 'mechanic' just because of his occupation. | SA | A | N | D | SD |
| 33. In my case the details of the offence were fairly considered in the sentence. | SA | A | N | D | SD |
| 34. If you want to lower the crime rate you've got to make sentences tougher. | SA | A | N | D | SD |
| 35. In interviewing me the police were pretty fair. | SA | A | N | D | SD |
| 36. The judge (or magistrate) who gave me my present sentence was pretty fair. | SA | A | N | D | SD |
| 37. If you want a shorter sentence it pays to plead guilty. | SA | A | N | D | SD |
| 38. When it all boils down the system was pretty fair to me. | SA | A | N | D | SD |
| 39. From the time I got arrested to the time I started the sentence I really had little idea of what was going on. | SA | A | N | D | SD |
| 40. Criminal trials are really about both sides telling lies to each other. | SA | A | N | D | SD |
| 41. If a person's got enough dough or connections he can get his record altered so as to appear better than he really is in court. | SA | A | N | D | SD |
| 42. Magistrates should not be able to send men to gaol. | SA | A | N | D | SD |
| 43. On the whole the police treated me pretty well on my last charge. | SA | A | N | D | SD |
| 44. Most legal aid <u>solicitors</u> work just as hard as if you were paying them yourself. | SA | A | N | D | SD |
| 45. Most legal aid <u>barristers</u> work just as hard as if you were paying them yourself. | SA | A | N | D | SD |
| 46. My solicitor did his best. | SA | A | N | D | SD |
| 47. My barrister did his best. | SA | A | N | D | SD |
| 48. If there is a lot of offences of say armed robbery at a certain time a judge should give tougher sentences to help stop the numbers growing. | SA | A | N | D | SD |
| 49. During my (last) court hearing I really didn't understand what was going on. | SA | A | N | D | SD |

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

- | | | | | | |
|--|----|---|---|---|----|
| 50. Tougher sentences for rape would help stop others from committing this offence. | SA | A | N | D | SD |
| 51. Unsigned records of interview should not be allowed as evidence in court. | SA | A | N | D | SD |
| 52. Offences which are pretty much the same and committed by pretty much the same sort of person (similar record etc.) should get much the same sentence. | SA | A | N | D | SD |
| 53. Magistrates should not be able to impose prison sentences longer than say six months. | SA | A | N | D | SD |
| 54. Throughout Australia, similar crimes committed by similar types of persons (similar record etc.) should get similar sentences regardless of where the person is convicted. | SA | A | N | D | SD |
| 55. Pre sentence reports give an accurate picture of what a person is like. | SA | A | N | D | SD |
| 56. If a person's sentenced for say armed robbery when there's a lot of armed robberies going on he'll get a longer sentence. | SA | A | N | D | SD |
| 57. The way the courts deal with appeals against sentences is pretty fair. | SA | A | N | D | SD |
| 58. A person will often sign a record of interview even though he regards it as inaccurate. | SA | A | N | D | SD |
| 59. The sentence I'm serving now will make others think twice before committing an offence similar to the one I was up for. | SA | A | N | D | SD |
| 60. Judges generally don't know enough about the man they're sentencing. | SA | A | N | D | SD |
| 61. The way the courts deal with appeals against convictions is pretty fair. | SA | A | N | D | SD |
| 62. It's very rare that the police say 'if you plead guilty to this offence we won't charge you with a more serious offence'. | SA | A | N | D | SD |
| 63. If you've got a lot of money you get off more lightly. | SA | A | N | D | SD |
| 64. This prison sentence will make me think twice about doing a job (committing an offence) when I'm released. | SA | A | N | D | SD |
| 65. Having good contacts with important people can get you a shorter sentence. | SA | A | N | D | SD |

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

- | | | | | | |
|--|----|---|---|---|----|
| 66. If a judge has a pre sentence report in front of him the person about to be sentenced should have the chance to see the report and challenge it. | SA | A | N | D | SD |
| 67. Parole procedures are really pretty fair. | SA | A | N | D | SD |
| 68. The actual charge which a person is given is often a bit of a surprise. | SA | A | N | D | SD |
| 69. In my case the effects of the sentence on my family were given no consideration. | SA | A | N | D | SD |
| 70. In my case time spent on remand (if any) was fairly taken into account in the sentence. | SA | A | N | D | SD |
| 71. If your case gets in the papers before the sentence is given you can expect a longer sentence. | SA | A | N | D | SD |
| 72. Crimes like growing pot for private use shouldn't be crimes at all. | SA | A | N | D | SD |
| 73. Some magistrates are generally much harder than other magistrates. | SA | A | N | D | SD |
| 74. In the remand yards there is often talk about reasonable judges and hard judges. | SA | A | N | D | SD |
| 75. Once you know who's on the bench you know pretty well what sentence you are going to get. | SA | A | N | D | SD |
| 76. Generally time spent on remand is fairly considered in sentences. | SA | A | N | D | SD |
| 77. A person whose occupation is described in court as 'labourer' will get a longer sentence than a person whose occupation is described as 'accountant' just because of his occupation. | SA | A | N | D | SD |
| 78. The sentencing process should be taken out of the judges' hands. | SA | A | N | D | SD |
| 79. Sentencing would be fairer if more attention were given to the actual crime rather than the man's history. | SA | A | N | D | SD |
| 80. The system would be fairer if more attention were given to the effects of a sentence on a man's family. | SA | A | N | D | SD |
| 81. It is not fair that a person should get a shorter sentence just because he pleads 'guilty'. | SA | A | N | D | SD |

Strongly agree	SA
Agree	A
Neutral	N
Disagree	D
Strongly disagree	SD

Please answer each question.

- | | | | | | |
|---|----|---|---|---|----|
| 82. A black man is likely to get a longer sentence than a white man <u>just because he's black.</u> | SA | A | N | D | SD |
| 83. The person who lived in a so-called good area is likely to get a shorter sentence than the person from a poor area. | SA | A | N | D | SD |
| 84. How a person looks in court doesn't make any difference to his sentence. | SA | A | N | D | SD |
| 85. The press should not be able to report a trial until the sentence is delivered. | SA | A | N | D | SD |
| 86. I'd like to see sentencing done by a panel of experts and not by a judge. | SA | A | N | D | SD |
| 87. I'd like to see a system of sentencing where the judge was advised by a panel of experts but where he would still have the final say. | SA | A | N | D | SD |
| 88. When it comes to sentencing judges should have more power. | SA | A | N | D | SD |
| 89. The laws should give more direction to judges on how <u>short</u> and how <u>long</u> sentences can be. | SA | A | N | D | SD |
| 90. I'd like to see a system where the trial judge was a member of the parole board. | SA | A | N | D | SD |
| 91. All time on remand should come off the bottom end of the sentence. | SA | A | N | D | SD |

COULD YOU NOW PROCEED TO SECTION C.

SECTION C
BACKGROUND INFORMATION

Please fill in the information in the spaces provided and where appropriate, put a tick in the boxes provided. No individual will be identified or identifiable in the study.

1. a) Age under 20 20-25 26-30 31-40 41-50
51-60 Over 61

b) Present sentence: Bottom (if applicable) _____ Top _____
Time done so far on this sentence _____

c) What offence(s) was the sentence for? _____

d) Record: (Tick those boxes in both columns which best describe you before your present offence)

<u>How Much?</u>	<u>What Sort?</u>
Lots of form	<input type="checkbox"/> Serious crime <input type="checkbox"/>
A fair bit of form	<input type="checkbox"/> Mixture of serious and non serious crime <input type="checkbox"/>
Very little form	<input type="checkbox"/> Non serious crime <input type="checkbox"/>
No form at all	<input type="checkbox"/>

('form' refers to criminal record.)

e) Are you a Federal or A.C.T. or State offender? (Tick the appropriate box.)

State Federal

Joint State and A.C.T.
Federal

Not sure

f) In your last case did you use: (Tick appropriate box. Omit if inapplicable.)

Legal aid solicitor Solicitor paid by self
(or other private person)

Legal aid barrister Barrister paid by self
(or other private person)

g) Who gave you your present sentence?

Judge Magistrate

C2

2. a) Do you think you would have got a different sentence if you'd appeared before a different judge or magistrate?

yes no Don't know

If 'yes' how and why would it have been different?

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- b) Do you think you would have got a different sentence if you'd had different (or any) lawyers? (Tick appropriate box.)

yes no Don't know

If 'yes' how and why would it have been different?

- c) Do you think you would have got a different sentence if you'd been convicted in another state or territory? (Tick appropriate box.)

yes no Don't know

If you said 'yes' could you give a few details on how and why you think it might have been different?

C3

3. a) From the time of your arrest to the time the sentence was delivered did you change pleas? (Tick appropriate box.)

yes no

If 'yes' could you give some general details on the change(s) (e.g., from 'guilty' to 'not guilty' or 'not guilty' to 'guilty' and why you changed)?

- b) Did you receive any advice at any time about your plea
(Tick appropriate box in (i) (ii) and (iii))

(i) from Police? yes no .

If 'yes' could you give details?

C4

(ii) from your legal advisers yes no

If 'yes' could you give details?

(iii) from other people? yes no

If 'yes' could you give details?

4. Did the magistrate or judge have a pre sentence report on you before giving this sentence? (tick appropriate box.)

yes no Don't know

Your views on pre sentence reports?

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, or the law of the Constitution. We shall not shrink from that decision. We shall faithfully fulfil our constitutional trusts, and we shall not let any man or any power, domestic or foreign, subvert the just cause which God gives us for independence.

5. a) Did you spend any time remanded in custody before beginning this sentence? (Please tick appropriate boxes.)

yes no

- b) if 'yes', approximately how long? _____

- c) If 'yes', was this time taken into account in the sentence?

yes no Don't know

- d) In your view should time spent on remand be taken into account in the sentence?

yes no

Comments on remand system?

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, and let a single man, or a small party, control their destiny.

6. a) Did you appeal against your last conviction or sentence?
(Tick appropriate boxes in both columns.)

A

B

Yes

Appealed against
conviction

Yes but withdrew
appeal

Appealed against
sentence

No _____

Appealed against sentence and conviction

- b) If you answered 'yes' or 'yes but withdrew' did the period of appeal come off your sentence? (Please tick appropriate box.)

yes no Don't know

- c) What reforms to the appeal system could you suggest?

7. a) Was your case reported in the press and/or other media? (Tick appropriate box.)

yes no

- b) If 'yes' was it reported before, during or after the hearing?
(Specify which by ticking appropriate box or boxes.)

Before During After

- c) If 'yes' do you think the fact that your case was reported had any bearing on the sentence?

yes no

If 'yes' could you give details?

This concludes the survey for state offenders. Federal or Australian Capital Territory offenders please complete the next brief section.

SECTION DFEDERAL AND AUSTRALIAN CAPITAL TERRITORY OFFENDERS ONLY

1. a) Are you as a Federal or A.C.T. offender treated in prison in the same way as state offenders

yes no .

- b) If 'no' could you give details?

2. a) Do you think there should be a separate prison for Federal and/or A.C.T. offenders?

yes no .

- b) Why?

- c) If you said 'yes' where would you like to see such a prison located?

D2

3. What comments if any do you have about the present system of paroling?

4. If you had to identify the major problems you see with the present system of sentencing and imprisonment of Federal and A.C.T. offenders what would you say?

5. As a Federal or A.C.T. offender have you any suggestions as to how you think the present system of sentencing and imprisonment of offenders like yourself could be made fairer than it is?

the first time in the history of the world, the people of the United States have been called upon to decide whether they will submit to the law of force, or the law of the Constitution. We shall not shrink from that decision. We shall faithfully fulfil our constitutional trusts, and we shall not let any man, or any set of men, or any power whatever, either domestic or foreign, or any combination of them, stop us in our course.

E N D