

## LEGAL STUDIES

### Balancing Victims, Offenders, Society in Sentencing

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#### **To what extent does criminal law balance the rights of offenders, victims and society when sentencing offenders?**

The criminal justice system, to a high extent, balances the rights of victims, offenders and society effectively, although it is almost impossible to please all three parties with one decision. Victims generally feel a sentence is not strong enough, whilst offenders regularly appeal to the Court of Criminal appeals on the opposite basis. Despite the impossible task of pleasing all parties, the criminal justice system is still largely effective at finding the best balance.

Many cases result in all three parties being dissatisfied by the criminal justice system, although it effectively finds the best balance during sentencing. The case of R v. Rippard is an exemplary example of this struggle. Rippard killed a cyclist on his way to work in 2011 whilst being intoxicated and texting his ex-wife. During the sentencing process, the judge considered the purposes of sentencing under s3A Crimes (Sentencing Procedure) Act 1999 and based his decision on general deterrence of the public from committing a similar crime, and retribution for the family. As Rippard felt strong remorse and guilt, incapacitation and rehabilitation were not necessary. Despite Rippard's short sentence of just 3 years and 4 months prison, 20 months non-parole, he still felt his right to freedom was somewhat unjustly removed. The victim's family were outraged by the light sentence and the community shared their belief. Thus, balancing the rights and opinions of these parties proves to be a challenge that the criminal justice system is still reasonably effective at achieving.

One method introduced to our justice system to promote the rights of victims and their role in the system is the Victim Impact Statement, introduced under s28 Crimes (Sentencing Procedure) Act. The Statement is read by the judge during the sentencing process to shed light on the extent to which the crime has affected the victim or their family. Victim Impact Statements can have a large impact on the sentence, seen recently in the Queensland case of a triple murder. The victims' mother composed what was described by Ten News as a 'heart-breaking victim impact statement', explaining how she lights a candle every night for her dead children. A problem for offenders can arise with the Statements as it may prevent judges from remaining objective in sentencing, for instance in this case, the offender received the heaviest sentence in Queensland's history. Statements can cause stress on the victim as not only do they have to notate and re-live the aspects of their life they may be trying to move past, Statements are frequently deemed inadmissible or given little weighting as they are too subjective. Despite these setbacks, victim impact statements remain largely effective at bringing the victim into the process and fulfilling their rights, without undermining that of the offender's.

Youth Justice Conferencing was introduced to provide an alternative sentencing method for young offenders in the hope of aiding rehabilitation and reducing recidivism, however recent studies suggest it is not as effective as it could be. The NSW Bureau of Crime Statistics and Research (BOCSAR) has found an alarming 65% recidivism rate within as little as one year from both the judicial system and the expensive diversionary system. This indicates that society is being damaged by young offenders at a much higher rate than adult offenders (60% recidivism over 15 years) and that it is therefore quite ineffective at protecting society from crime. Despite this, Dr Weatherburn, director of the Bureau, reports that 'large sections [about 75%] of the public support measures like YJC'. Victims feel that they strongly benefit from the Conferences as they get a chance to face their offender, understand their situation and in some cases, forgive and move on. At the time, many offenders feel that the Conferences help them understand the pain they have caused and are more accepting of their sentence. Again, the recidivism statistics suggest that this feeling must wear off

quickly. Considering all aspects, Youth Justice Conferencing is highly effective in the short term, as it makes all parties feel better about the situation, but the long-term statistics suggest that YJCs do not address the underlying causes of juvenile offending.

The criminal justice system, to a large extent, effectively balances the rights of victims, offenders and society effectively to the best of its ability. New additions to the system such as Victim Impact Statements and Youth Justice Conferencing improve the rights of the victim, however there is much room for improvement in all areas of the system.