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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

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I request and approve publication of my submission, including my full name and email address, on the Committee's and any other website as required, and would appreciate being notified of it.

Minor Offences and Vulnerable People

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Abstract

This submission discusses minor offenders and their treatment in the current legal system. It considers some of the problems with the current system, and suggests a possible way of better dealing with minor offences and offenders.

Introduction

Silvestri and Crowther-Dowey (2014) argue that minor nuisances, such as over-loud music and noise, and minor skirmishes between intoxicated people, can easily escalate into being treated as serious and major crimes by the way they are dealt by the police and the legal system.

This escalation can have the effect of turning minor trouble-makers into criminals with deleterious effects on the futures and families of vulnerable people, and on society in general.

Silvestri and Crowther-Dowey (2014) also point out that some parts of the present legal system may, or actually do, breach the Human Rights of some minor offenders and vulnerable people in that the minor status of their offence does not warrant nor justify their Human Rights being overridden.

Minor Offences

Turning minor offences into serious crimes can effect the whole lives of the perpetrators by drawing them more to the attention of the police and other branches of the legal system, by causing difficulties for them obtaining and retaining employment, and other long-term mental and social problems.

It can also cause problems for the legal system in that it will make more work for the police and courts, will put more people in jail, and increase the need for social services intended to help or reform offenders.

While these minor offenses do have to be dealt with, for the general good and keeping the peace, they need to be dealt with in ways that do not hold the risk of escalation into serious crimes. These ways may need to be tailored to the needs and vulnerabilities of the perpetrators, in relation to such matters as their mental health, level of education, legal knowledge and understanding of the situation, social position, sobriety and other actors.

On the other hand, stereotyping offenders should be avoided, because of its inherent over-simplification and lack of attention to the offender as an individual person with their own personality and rights.

Thus it can be argued that the police are not the right people to deal with these minor offenders.

Since the police are bound by their training, procedures and practices, they are liable to see some of these minor offenders as being actual or potential criminals and deal with them as such.

Also the police are impelled to react to public complaints in ways that clearly demonstrate that they are dealing with the problem. In doing so, they may do it in tougher ways that satisfy the sometimes over-reaction or concern of the general public, while ignoring or paying less attention to the perpetrators' and other reasons for their actions.

Vulnerable People

Vulnerable people are more likely to come to the attention of police and the legal system for a variety of reasons. This will have adverse results for themselves and others.

They may not understand why the escalation is happening, why they have been picked out for special treatment (be it good or bad) or feel persecuted. Fines may cause people with low incomes severe financial problems. Putting minor offenders in prison may cause problems for their families. This is unacceptable because the punishment might exacerbate their situation and have deleterious side-effects on innocent people.

These minor offenders have to be dealt with in ways that clearly demonstrate that their anti-social behaviour is not acceptable by society and must not continue. However, the best solution may not be fines or imprisonment. Clearly, jailing an unemployed or destitute man for not being able to pay a fine is not an escalation of benefit to him, his family nor to society.

Discussion

Minor offenders need to be dealt with in a way that is more socially rather penalty orientated. They should not be drawn immediately into the legal system as would happen if dealt with by the police, but dealt with in some less legally formatted and determined manner.

Silvestri and Crowther-Dowey (2014) discuss these needs in some detail, so I here only briefly discuss some of the basics of their analysis that might be usefully considered by The Committee.

They suggest that some form of behavioural bond be used, where the offender is put under (semi-voluntary) restrictions of his/her behaviour and with the requirements that efforts be made in improving that behaviour. There might be requirements for undertaking counselling, some control of movements or associations, and other suitable requirements that are tailored to the individual's offence, situation and other factors.

This behavioural bond should not be a legal document, but basically a social agreement and contract between some non- or semi-legal body, representing society, and the offender.

Breaching the behavioural bond should not immediately escalate it into a criminal matter requiring a fine or prison sentence, but, perhaps, be an indication that the present form of the bond is ineffectual or faulty in this particular offender's case, and can and should be renegotiated.

In other words, every effort should be made to encourage and help the offender reform his/her behaviour and thus avoid all the problems of official, legal, responses such as fines or incarceration.

Should the offender fails to accept the advantages offered by such a system and remedy her/his behaviour, or the behavioural bond system proves to be ineffective for that particular offender, only then should more serious treatments be considered and initiated.

Of course, there is a major problem with this suggestion, that it is sure to be very costly. However, the result of criminalising minor offenders under the current system is far more undesirable than any criticism of the Government for spending money. One has only to consider the social, financial and personal costs which might accrue to the minor offender, and society, under the present system.

Summing Up

Minor offences and offenders require better treatment that is not possible under the current legal system. This treatment must be tailored to suit the offender, the situation in which the offence took place, and why it evolved into a legal matter.

It must take into consideration the offender's personal, social and financial situation as a vulnerable person, which many minor offender are, for various reasons.

Such a system would allow minor offenders the opportunity to reform without becoming involved too deeply with the legal system and its sometimes over-rigid procedures. In doing so, the disadvantages of a criminal, penal, record would be avoided, much to the advantage of the minor offender, his/her family and society in general.

Considering the cost of criminal trials and other court preparation time, the expense of more police action and the cost of keeping an inmate in prison, anything that might reduce those costs deserves a serious trial.

Reference

Silvestri, M. and Crowther-Dowey, C. (2014) *Gender and Crime* (2nd edition), Sage,