



Should Preventive Detention be Legal for Repeat Violent Offenders?

What is this research about?

Preventive detention is the practice of confining a person who has not been found guilty of a crime in a secure facility. It can also include extending a convicted person's sentence beyond what it would otherwise be. Preventive detention is challenging because it imposes punishment on people based on a judgment that they pose an unacceptably high risk of violence or criminality in the future. It seems to punish them now for something they may do in the future. This practice is contrary to many basic principles of criminal justice. To overcome these criticisms the author recommends creating a new offence of being a 'persistent violent dangerous offender' (PVDO). Since proof that a person is a PVDO is proof of a current status, it does not involve punishing people for possible future conduct.

What did the researcher do?

The author conducted an extensive literature review, examining a range of proposals for dealing with dangerous offenders. She then presented an early version of her paper at a workshop on preventive justice at the Robina Institute for Criminal Law and Criminal Justice. The workshop reported how governments are increasingly using the law to punish behaviour

What you need to know:

PVDO is a proposed method to legally and morally detain dangerous offenders by creating a new offence. People would be tried and convicted of this offence using the usual standards of criminal proof and trial procedures. This offence would be created in order to keep the general population safe. This method is uniquely supportable because it complies with central rule of law values (like predictability, fair warning, and identifying clearly exactly what we are punishing people for), as well as principles of proportionality in sentencing.

quite remote from any substantive crime in a number of different legal jurisdictions. The author benefited from discussion of her paper with renowned Oxford professors Andrew Ashworth and Lucia Zedner, as well as Antony Duff and other members of the Institute.

What did the researcher find?

The author proposes creating a new criminal offence of being a PVDO to deal with certain offenders. The safety of the general public is the focus. This proposal allows us to comply with some very important legal values. These include proportionality in sentencing and

providing people fair warning that their conduct is prohibited. An outline detailing the conditions that would be necessary for a person to be defined as PVDO was established. This included conditions such as: past criminal convictions for at least two serious violent offences and refusal to engage in meaningful rehabilitative efforts. This approach would allow societies to detain dangerous offenders indefinitely. Their continuing confinement would be reviewed annually and they must be released as soon as they no longer pose an unacceptable risk to public safety.

How can you use this research?

Law makers can use this research to understand why preventive detention is typically unjust and formulate an opinion about the issue.

Scholars in both Law and Philosophy can use this research to understand the multiple implications (ethical, legal) of preventive justice.

Policy-makers can use this research as a practical proposal for dealing with the issue of restraining persistently violent persons in society while also respecting important legal values.

About the Researcher

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