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Introducing Restorative Justice in The Criminal Justice System as An Alternative Approach to Addressing the Shoplifting Crisis in Western Australia

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Abstract

This research advocates for the adoption of restorative justice as a more effective response to the escalating shoplifting crisis in Western Australia. The research, centered on the region's unique challenges, employs a conceptual approach, delving into the Rational Choice theory and restorative justice paradigm within the criminal justice system. As shoplifting incidents surge, notably contributing to stock losses for retailers, the study critiques the traditional criminal justice system's limitations and advocates for innovative alternatives. Shoplifting has become a pressing concern in Western Australia, evidenced by rising crime rates and significant stock losses for retailers. The Rational Choice Theory provides a comprehensive framework for understanding shoplifting, emphasizing the calculated decision-making process and socio-economic drivers behind this criminal behavior. The research introduces restorative justice as a viable alternative, emphasizing its success in Western Australia. This community-oriented approach fosters trust and collaboration between law enforcement and retail owners, addressing the limitations of the traditional criminal justice system. Applying the Rational Choice Theory to dissect the step-by-step process of shoplifting, the research acknowledges its relevance while highlighting limitations, such as overlooking non-material motivations. The conclusion emphasizes the Criminal Code's recognition of shoplifting as a crime in Western Australia and underscores the potential of restorative justice programs to mitigate recidivism, prioritize victim satisfaction, and address root causes, offering a more comprehensive and inclusive response to the shoplifting crisis.

Keywords: Shoplifting; Restorative Justice; Western Australia

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Introduction

Shoplifting has become a prominent subject in local news and public discourse around Western Australia. Also commonly referred to as retail theft or shop theft, it is defined as “an act of theft from a retailer committed during the hours the store

is open to the public by a person who is or appears to be a legitimate customer.¹ Similarly, to that definition is “theft of merchandise from display by a person posing as a legitimate customer of the store”.² The two definitions above lay the conceptual understanding of ‘shoplifting’ further elaborated in this essay. The key features show a correlation between the act of theft and a person posing as a legitimate customer.

Linking back to the narrow context of shoplifting in Western Australia, evidence shows from the Western Australian Police criminal data in stealing offenses have risen from 66.901 cases during 2021-2022 to 80.056 in 2022-2023. Coles supermarket boss Leah Weckert mentioned in an article by The Australian Financial Review that the total stock loss was up 20 percent in 2023 across its 850 stores.³ Although the margin seems thin accounting for stock lost to theft by retailers’ range between 1 percent to 3 percent of total wholesale revenue, it still remains a relevant uprising issue for retailers.⁴ These examples portray the impact of shoplifting on businesses and communities, especially smaller establishments on tight margins whose economic existence is deeply threatened.

The reasonable explanation by Police Inspector Nathan Johnston was related to the recent rising cost of living and homelessness contributing to the issue. Additionally, the inflation in Western Australia is above the national rate with Perth topping capital cities at 7.4 percent.⁵ An increase in the price of rent rose by 9.1 percent in the span of 12 months and a report by investment bank UBS found that among 60.000 grocery items prices had inflated at 9.6 percent by April 2023. These harsh socio-economic conditions have made lives for vulnerable communities at risk of committing criminal activity, especially those relating to making ends meet by shoplifting.

¹ James Cleary, *Prosecuting the Shoplifter: A Loss Prevention Strategy* (Butterworths-Heinemann 1986).

² Mary Owen Cameron, *The booster and the snitch: Department store shoplifting* (Free Press of Glencoe 1964).[25].

³ Australian Bureau of Statistics, ‘Crime Statistics for Western Australia’ (The Western Australian Police) <[https://www.police.wa.gov.au/crime/crimestatistics#/>](https://www.police.wa.gov.au/crime/crimestatistics#/) accessed 27 Desember 2023.

⁴ *Ibid.*

⁵ James Carmody and Keane Bourke, ‘Cost-of-living squeeze forces families to adapt as Perth struggles with Australia’s worst inflation’ (ABC News, 2022) <<https://www.abc.net.au/news/2022-07-28/three-generations-one-roof-perth-inflation-cost-of-living-surge/101273780>> accessed 27 Desember 2023.

In May 2023, a news article by WA Today published the story of a crackdown in shoplifting and theft by the local Cannington Police, who made more than 200 arrests during a fortnight.⁶ Increasingly, shoplifters in this area acted violently when confronted by store owners or the authorities. Cannington, the third highest crime rate suburb per 1000 residents in Western Australia, has implemented an approach that emphasizes on developing a trusting relationship with retail owners, with some to the extent of being part of a WhatsApp group chat directly with the local police.⁷ The high success rate with charges and arrests ranging from robbery, aggravated burglary, stealing of motor vehicles, and stealing from motor vehicles, was made possible through circulating information of suspects to the local police through effective and direct reporting through the facilitated group chat.

Method Research

It is argued that restorative justice in the criminal system method approach is the best way to respond to the shoplifting crisis in Western Australia. The scope of this academic essay is narrowed down to the region of Western Australia, particularly in crimes of shoplifting and stealing. The research in this essay will be dominated by the conceptual approach, especially exploring the shoplifting crisis, Rational Choice theory, and the restorative justice approach in the criminal justice system with a few examples of relevant factors that contribute to the criminal act and strategies in addressing the crisis in order to provide a comprehensive explanation.

Rational Choice Theory

Developed by Ronald V. Clarke and Derek B. Cornish, the Rational Choice Theory argues that a series of choices is made under the influence of various social

⁶ Rebecca Peppiatt, ‘Crimes of need’: Cannington cops tackle spike in violent shoplifting’ (WA Today, 2023) <<https://www.watoday.com.au/national/western-australia/going-out-to-do-crime-how-cannington-cops-tackle-spike-in-violent-shoplifting-20230513-p5d851.html>> accessed 27 December 2023.

⁷ *Ibid.*

and psychological factors that individuals bring with them to the situation.⁸ The idea is based on the assumption that individuals proceed on the basis of maximizing profits and minimizing losses.⁹ Six basic propositions that summarise the perspective of this theory are:¹⁰

1. Crimes are purposeful actions carried out with the intent to benefit the perpetrator.
2. Offenders strive to make optimal choices, taking into account the associated risks and uncertainties;
3. Offender decision-making significantly varies depending on the type of crime;
4. Decisions regarding involvement in specific types of crime (referred to as “involvement” decisions) differ substantially from those related to the actual commission of a particular criminal act (referred to as “event” decisions);
5. Involvement decisions encompass three distinct phases - initiation, habituation, and resistance - each influenced by a distinct set of factors, necessitating separate examination;
6. Event decisions encompass a series of choices made at various stages of the criminal act, such as preparation, target selection, execution, escape, and post-incident actions.

Digging deeper into this theory and linking back to the topic at hand could be constructed through a crime script that explains step-by-step stages and actions in cases of shoplifting. For example, preparation (bringing a concealed bag), entering the setting (getting to the shopping centers), target selection (choosing retail stores and specific items), initiation (approaching items on the shelf), continuation & completion (taking and concealing the stolen goods), and finishing up.¹¹

This theory best explains shoplifting crimes as it inhibits the conceptual foundation and integrates the components of the social and psychological aspects of shoplifting accounting for the rising cost of living and step-by-step process of the crime being committed. The emphasis on maximizing profit and minimizing losses through retail theft is very well established with evidence of rising cases and considered to be an ‘ordinary crime’.¹² However, it has its own limitations that

⁸ Derek B. Cornish and Ronald V. Clarke, *Crime Opportunity Theories* (Routledge 2011).

⁹ Tim Newburn, *Criminology* (Routledge 2017).

¹⁰ Derek B. Cornish and Ronald V. Clarke, *The Essential Criminology Reader* (Routledge 2006).

¹¹ Mary Owen Cameron, *The booster and the snitch: Department store shoplifting* (Free Press of Glencoe 1964).[25].

¹² J. Arboleda-Florez, Helen Durie, and John Costello, ‘Shoplifting - An Ordinary Crime?’ (1977) 21 *International Journal of Offender Therapy and Comparative Criminology* 3.[201–207].

ignore non-material motivations, difficulties in measuring costs and benefits, and the assumption of rationality when in reality not all criminals make rational decisions.

Criminal Justice Response to Shoplifting in Western Australia

In Western Australia, shoplifting is stipulated in the Criminal Code under section 378 ‘Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.’ Clearly, it is well established through the criminal code that the act of shoplifting is an offence consequence of up to 7 years imprisonment. The Australian flow of the criminal justice system is quite straightforward from the process of crimes being committed/ recorded, investigation, arrests charged by the authorities, getting to court, and ending with the sentencing. This traditional view portrays crime as a violation of the law and committed against the state and seeks to determine guilt and impose punishment.

Although the traditional criminal justice system in Western Australia has had its reforms and improvements, it still has common limitations such as inefficiencies and high recidivism rates because it struggles to effectively address the underlying causes of criminal behavior. In 2014 a research report by Jacqueline J. Larsen about restorative justice in the Australian Criminal Justice System was published by the Australian Institute of Criminology gave new insights into the alternative approach in addressing crime with prolific offenders to prevent them from further criminal activity, such as shoplifting.¹³ The widely accepted definition of restorative justice refers to a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. Practices in Australia has become popular since 2001 for juvenile justice and to some extent adult offenders in the form of victim-offender mediation, young -adult conferencing, and circle sentencing. In Western Australia, every practice of restorative justice is available, except adult-conferencing. These

¹³ Jacqueline Joudo Larsen *Restorative justice in the Australian Criminal Justice System: (Research and Public Policy Series No. 127)* (Australian Institute of Criminology 2014).

programs aim to bring together victims and offenders, allowing them to communicate and potentially reach agreements on restitution, apologies, or other forms of redress. By addressing the underlying causes of criminal behavior and fostering empathy and accountability, restorative processes are intended to divert defendants or offenders from the criminal justice system and result in less reoffending/recidivism.

A restorative justice definition highlighting the significance of both restorative processes and outcomes is as follows: Restorative justice is a justice theory that underscores the repair of harm caused or exposed by criminal behavior, achieved through cooperative processes involving all stakeholders. It distinguishes itself from contemporary criminal justice by adopting a more comprehensive view of criminal acts, recognizing the harm inflicted on victims, communities, and even offenders themselves. Moreover, it includes a broader range of parties in responding to crime, incorporating victims and communities alongside government and offenders. The success of restorative justice is measured not by the extent of punishment but by the degree of harm repaired or prevented.

Restorative justice is characterized by victim, offender, and community meetings as crucial avenues for addressing the relational aspect of crime and justice. Three methods are considered integral to restorative justice, each requiring the offender to acknowledge responsibility and involving voluntary participation of the parties. One such method is victim-offender mediation, a structured process enabling an interested victim to engage in a secure setting with the offender, facilitated by a trained mediator, to discuss the crime.

The objectives of victim-offender mediation encompass allowing victims to voluntarily meet their offenders, motivating offenders to comprehend the impact of their crimes and assume responsibility for the resulting harm, and affording both parties the chance to devise a plan addressing the harm incurred. In North America, there are over 300 victim-offender mediation programs, and in Europe, there are more than 500.¹⁴ Research on these programs indicates higher satisfaction

¹⁴Ronald Victor G. Clarke, *Shoplifting* (US Department of Justice, Office of Community Oriented policing services 2007).

among participants, including victims and offenders, compared to those undergoing the traditional court process. Additionally, benefits include reduced fear among victims, increased likelihood of offenders fulfilling restitution obligations, and a lower incidence of repeat offenses.

Family or Community Group Conferencing is another approach that involves bringing together the victim, offender, along with family, friends, and key supporters to determine how to address the aftermath of the crime. The objectives include providing the victim a direct role in responding to the crime, enhancing the offender's awareness of the impact of their behavior, involving the offender's support system in making amends and influencing future behavior, and facilitating a connection between the offender, victim, and key community support. Originally derived from Maori traditions in New Zealand, this practice has been adapted in Australia, North America, Europe, and southern Africa, with high satisfaction levels reported by participants.¹⁵

Peacemaking or Sentencing Circles represent a consensus-building process among community members, victims, offenders, legal professionals, and law enforcement to formulate a sentencing plan addressing everyone's concerns. The goals include promoting healing for all parties involved, giving offenders the chance to make amends, providing victims, offenders, and communities a voice in finding constructive resolutions, addressing underlying causes of criminal behavior, and fostering a sense of community around shared values. Adapted from Native American traditions, these circles are in use throughout North America.

Linking back to introducing the restorative justice approach in the criminal justice system is essential to reduce recidivism, victim satisfaction and empowerment, and community engagement. In shoplifting cases address both the stolen goods and the emotional/financial harm caused. Offenders are prompted to take responsibility, offering tangible amends like repaying for stolen items or covering damages. This fosters a sense of justice for victims, who appreciate efforts to right the wrongs

¹⁵ Jane Bolitho, 'Restorative Justice in Action' in Jane Chan, *The New South Wales Young Offenders Act* (Institute of Criminology Sydney 2005).

Conclusion

In conclusion, the rising incidence of shoplifting in Western Australia presents a significant challenge, with socio-economic factors playing a pivotal role in driving these crimes. The Rational Choice Theory helps us understand the decision-making process behind shoplifting, as individuals seek to maximize gains while minimizing risks. Traditional criminal justice approaches, while essential, may fall short in addressing the underlying causes of shoplifting and preventing recidivism.

Introducing restorative justice into the criminal justice system offers a promising alternative. By prioritizing victim satisfaction and empowerment, facilitating communication between victims and offenders, and addressing the root causes of criminal behavior, restorative justice provides a comprehensive and holistic approach to shoplifting crimes. It aims not only to hold offenders accountable but also to repair the harm done to victims and communities.

Narrowing to the shoplifting crisis in Western Australia, restorative justice programs contribute to reducing recidivism, enhancing victim well-being, and fostering community engagement. By embracing this approach, policymakers have an opportunity to address the complex dynamics of shoplifting while working toward a more just and inclusive criminal justice system that benefits all stakeholders.

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