

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

<b>The High Court on crime in 2014: Outcomes and jurisprudence</b> – <i>Mirko Bagaric</i>	
This article examines the Australian High Court decisions in 2014 which relate to criminal matters. This systematic analysis of all High Court judgments commenced in this Journal in 2010 and is now undertaken annually. The article explains the principles that derive from these cases and identifies jurisprudential themes from the decisions. It also sets out the significance of the cases and the possible wider consequences of the decisions. ....	7

<b>Sexsomnia – excusable or just insane?</b> – <i>Colleen Davis</i>	
In a number of recent cases, people charged with sexual offences have raised sexsomnia as a defence. Sexsomnia is a variant of sleepwalking, and the gist of the defence is that the accused’s conduct was involuntary, carried out while in an automatic state. The law recognises two types of automatism: sane and insane. The former results in a complete acquittal whereas the latter leads to a special verdict of not guilty on the grounds of insanity or mental illness/impairment/disorder. Judges in Canada, England and Australia have relied on tests such as the internal/external and continuing danger tests to determine whether automatism is caused by a disease of the mind, and therefore insane. However, these tests are unhelpful in sexsomnia cases and the outcomes have been inconsistent. The recent Canadian Court of Appeal case of <i>R v Luedecke</i> provides a useful model for future sexsomnia cases. ....	21

<b>Fitness to plead in Queensland’s youth justice system: The need for pragmatic reform</b> – <i>Suzie O’Toole, Jodie O’Leary and Bruce D Watt</i>	
Although research indicates that juveniles should be found unfit to plead at a greater rate than adults, that is not the case in Queensland. This article presents data from a research project designed to explore potential reasons for this anomaly. The data from that project revealed that the main reason rests with legal practitioners who decide not to raise unfitness. Such a decision is usually either due to jurisdictional constraints or other strategic or pragmatic concerns. In this article, it is argued that the law on fitness to plead in Queensland is in need of reform to combat such practice. The article analyses the law in other Australian States and Territories and the recommendations from the Review of the Mental Health Act 2000 (Qld) in search of a better approach. ....	40

<b>Swift and certain sanctions: Is it time for Australia to bring some HOPE into the criminal justice system?</b> – <i>Lorana Bartels</i>	
This article examines the Hawaii’s Opportunity Probation with Enforcement (HOPE) Program, first piloted in Hawaii in 2004, to determine whether it would be suitable for adoption in the Australian context. The article commences with an overview of the origins and operation of the HOPE program. It then considers the findings of outcome evaluations	

of the program, which demonstrated greater reductions in drug use and reoffending and fewer days in prison compared with the control group. The findings of a process evaluation, including the perspectives of probation officers, judicial officers, court staff and offenders, are also discussed. Other programs in the United States which also deliver swift and certain sanctions are considered. The article then examines current and future projects and research. The article acknowledges some of the concerns with programs of this nature, but concludes by calling for Australia to adopt an appropriately funded and evaluated pilot project based on the HOPE model. .... 53

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