



Legislative Council

Standing Committee on Law and Justice

Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations

**Discussion paper
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Standing Committee on Law and Justice



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Introduction

What is the Standing Committee on Law and Justice?

The Standing Committee on Law and Justice is a committee of the NSW Legislative Council. The Committee has six members from different political parties and is chaired by the Hon Christine Robertson MLC.

The functions of the Committee are to inquire into, consider and report to the Legislative Council on matters concerned with legal and constitutional issues including law reform, parliamentary matters, criminal law, administrative law and issues arising in connection with the NSW criminal justice system. The Committee also examines industrial relations, emergency services and fair trading issues.

You can find information about current Committee inquiries and access previous Committee reports on the Committee's website.

What is this inquiry about?

The Committee has been asked by the Attorney General to inquire into whether it is appropriate and in the public interest to tailor community based sentencing options for rural and remote areas in NSW and for disadvantaged populations. The Committee is required to address a number of specific issues in the context of its inquiry, including the perceived advantages and disadvantages of community based sentencing options in this context, the impact of the availability of community based sentencing options upon rural and remote communities and the criteria for eligibility for community based sentencing options.

The terms of reference given to the Committee by the Attorney General are set out in Appendix 1.

Inquiry process

In addition to distributing this discussion paper, the Committee is writing to relevant individuals and organisations inviting them to make a submission and is also placing advertisements in metropolitan and local papers calling for submissions from members of the public and interested organisations.

After the Committee has received and examined all the submissions, public hearings will be conducted in Sydney and regional centres where individuals and organisations will be invited to give oral evidence. Public hearings allow Committee members to speak directly to people about matters relevant to an inquiry and seek clarification or further details about issues raised in submissions.

Following the hearings the Committee will prepare its final report, containing the Committee's conclusions and recommendations, for tabling in the Legislative Council. All committee reports recommending that action be taken by the Government require a response from the Government within six months of the report being tabling in the Legislative Council.

You can keep up to date about the progress of the inquiry via the Committee's website.

Purpose of this discussion paper

When conducting inquiries, parliamentary committees rely on submissions from interested individuals and organisations to inform them about the issues raised by the terms of reference and to help them reach informed decisions about any changes that need to be made to the law or public policy.

This discussion paper is designed to provide you with some basic information you may need to write your submission. It canvasses the range of community based sentencing options currently available in NSW and gives a general overview of the issues relevant to the terms of reference for the inquiry. A number of questions have also been included to help you write your submission. The discussion paper aims to prompt discussion and does not try to identify all issues. The Committee welcomes submissions on issues relevant to the terms of reference even if they are not raised in this discussion paper.

Making a submission

The Committee hopes to hear from a wide range of people including those from rural and remote areas, members of disadvantaged populations and organisations working with disadvantaged populations. There is no special format for your submission and it does not need to address all aspects of the terms of reference or all of the questions posed in this discussion paper. It can be as long or short as you wish. Your name, address and telephone number is required for administrative purposes.

Submissions should be sent to the Director of the Committee by mail, email or fax or can be posted on our website (see the inside cover for the Committee's contact details). The closing date for submissions is **Friday 11 March 2005**. Submissions become the property of the Committee and may only be released following a decision of the Committee to make them publicly available. Please indicate clearly if you wish your submission to remain confidential.

What is community based sentencing?

When sentencing, the presumption applied by the courts is that imprisonment is a last resort and therefore community based sentencing options should always be considered first. Only if all other alternatives are inappropriate may a judge sentence an offender to imprisonment (except in certain circumstances).

Community based sentencing refers to sentences that are not primarily based in a prison setting. Community based sentencing options currently available in NSW include:

- good behaviour bonds
- community service orders
- intensive supervision programs linked to the Drug Court of NSW and the Youth Drug and Alcohol Court of NSW
- periodic detention
- home detention.

The NSW Probation and Parole Service, which is part of the Department of Corrective Services, is responsible for managing community based offender services including community service orders and home detention orders. Breaches of community based sentences, or failure to comply with the conditions imposed, such as attending treatment programs or undertaking community work, may attract further penalties including full-time imprisonment.

Questions

1. Apart from those identified above, what other community based sentences are available in NSW or in other Australian or overseas jurisdictions?
2. Do you consider some/all community based sentencing options to be 'lighter' forms of punishment than imprisonment?
3. What do you see as the advantages and disadvantages of community based sentences in general compared to imprisonment?
4. Community based sentences are generally more economical than full-time imprisonment. Should economic reasons be a basis for imposing a community based sentence or making them more widely available?
5. Can various community based sentencing options be linked in order to tailor them to rural and remote areas or disadvantaged groups?
6. Do you have any other issues you wish to discuss about the range of community based sentencing options available in NSW?

Rural and remote areas in NSW

The Committee has been asked to examine whether it is in the public interest to tailor community based sentencing options for rural and remote areas in NSW. In general, rural areas are those outside urban centres. 'Remoteness' can be understood in relation to access to services. Remote areas include small towns and areas that have limited resources and access to goods and services, as well as limited opportunities for social interaction.

Currently, community based sentencing options are not uniformly available throughout NSW. For example, the NSW Sentencing Council, recently observed that 'periodic detention and home detention are not available in a number of regional areas and supervision of community supervision orders are theoretically available in most, but not all areas.'¹ In addition, those that are available may not be specifically 'tailored' to rural and remote areas.

Questions

1. Do you think it is in the public interest to tailor community based sentencing for rural and remote areas in NSW? Why/why not?
2. In which rural and remote areas in NSW is access to community based sentencing options a problem? Why is accessibility a problem and how can it be overcome?

3. Which rural or remote areas in NSW would benefit from increased availability of community based sentencing options?
4. Which community based sentences currently available in NSW should be available in these areas? Are there any other types of community based sentences, perhaps used in other jurisdictions, that are particularly suitable to rural and remote areas?
5. What cost considerations are involved in expanding the availability of community based sentencing options, or tailoring them, to rural and remote areas?
6. What disadvantages or advantages of community based sentencing options are particularly relevant to rural and remote areas?
7. Do you have any other issues to raise in relation to tailoring community based sentencing options for rural and remote areas in NSW?

Disadvantaged populations

The Committee has been charged with examining whether it is in the public interest to tailor community based sentencing options for disadvantaged populations in NSW. In terms of the criminal justice system 'disadvantaged populations' include:

- Aboriginal and Torres Strait Islander offenders
- Older offenders
- Culturally and linguistically diverse offenders
- Female offenders
- Young offenders
- Offenders with a disability

Questions

1. Which disadvantaged groups should the Committee consider as part of its review? What difficulties do they face accessing community based sentencing options and why?
2. Do you think it is in the public interest to tailor community based sentencing for disadvantaged populations in NSW? Why/why not?
3. Which community based sentencing options currently available in NSW should be made more available for these groups?
4. Are there any other types of community based sentences, perhaps used in other jurisdictions, that are particularly suitable for various disadvantaged groups?
5. Are some community based sentencing options inappropriate for particular disadvantaged groups?
6. What cost considerations are involved in expanding the availability of community based sentencing options, or tailoring them, for disadvantaged groups?
7. Which of the disadvantages or advantages of the community based sentencing options are particularly relevant to disadvantaged groups?
8. Do you have any other issues you wish to raise in relation to disadvantaged groups?

Eligibility for community based sentences

Eligibility for the various community based sentencing options is often limited by the nature of the offence and whether or not the offender has previously received a custodial sentence. For example, some community based sentences can only be imposed where the offence would otherwise attract a certain minimum term of imprisonment. In addition, those convicted of sex offences and other violent crimes are often excluded.

Most eligibility criteria are framed negatively or are better considered to be exclusion criteria, for example, the ineligibility of sex offenders. However, it may be possible to consider a number of other criteria that would positively influence a decision to impose a community based sentence. For example, individuals with carer's responsibilities or parents with sole childcare responsibilities may be particularly suitable for some forms of community based sentencing.

Questions

1. Do the eligibility criteria for the various community based sentencing options unfairly exclude some offenders from disadvantaged groups?
2. Existing criteria for eligibility are 'negative' or better described as criteria of exclusion. What are some positive criteria that might be used in relation to disadvantaged groups?
3. Should 'disadvantage' be taken into account by the courts as a factor when determining whether an offender is eligible for a community based sentence?
4. Do eligibility criteria need to be tailored to make the various forms of community based sentencing more accessible in rural and remote areas? If so, how?
5. Do you have any other comments in relation to eligibility criteria for community based sentences?

Types of community based sentences

Good behaviour bonds

A good behaviour bond is an undertaking not to commit an offence for a specified period. There are various types of good behaviour bonds that can be considered by a court.

- Following conviction, an offender can be sentenced to a good behaviour bond for a period of up to five years instead of imprisonment, in certain circumstances (a 'section 9' bond).
- A court can suspend an offender's sentence conditional on them entering a good behaviour bond (a 'section 12' bond).
- Sentences of up to two years, or part of a sentence can be suspended. In certain circumstances, a court is able to discharge a person found guilty of an offence without recording a conviction, conditional on them entering a good behaviour bond (a 'section 10' bond).

Conditions may be placed on a bond, such as a requirement for the offender to attend a rehabilitation or treatment program, pay a fine or compensation to a victim or accept the supervision of the Parole

Service. A person who is convicted of another offence during the period of the bond or who breaks any conditions of the bond will be called up for breach of the bond before a magistrate where the original sentence may be imposed, depending on the type of bond and the nature of the breach.

In August 2004 the Sentencing Council reported that good behaviour bonds 'are available in most areas. However, some difficulties are experienced due to limited resources, particularly in remote locations'.²

Questions

1. Can you comment on the availability of good behaviour bonds in rural and remote areas in NSW?
2. What obstacles exist to utilising good behaviour bonds in rural and remote areas? What can be done to overcome these obstacles?
3. Can you comment on the use of good behaviour bonds in relation to disadvantaged groups?
4. Should good behaviour bonds be tailored to the requirements of disadvantaged groups so as to increase their use or make them more effective? How can this be achieved?
5. Are any of the advantages and disadvantages of good behaviour bonds particularly relevant to offenders from rural and remote areas or offenders from disadvantaged groups?
6. Do you have any other issues you wish to raise in relation to good behaviour bonds?

Community service orders

Offenders who have committed an offence punishable by a term of imprisonment may be sentenced to a community service order (CSO) instead of imprisonment if they are considered 'suitable' by the court and work is available in their area. The CSO scheme is administered by the Probation and Parole Service. 4,409 offenders were supervised in the community under a CSO in 2002/2003.³

Offenders are allocated to perform unpaid work at non-profit agencies and are supervised during their community service. The work must be considered appropriate for the offender's circumstances, provide a service to the local community and provide the offender with positive work experience. In addition, offenders may be required to participate in a development program at an attendance centre. Development programs are designed to enhance offenders' potential to lead a law-abiding lifestyle and include personal development subjects addressing specified offending behaviour.

For offences with a maximum penalty exceeding 1 year imprisonment an offender may be required to perform up to 500 hours of community service work or to participate in a development program. For offences attracting a lesser maximum penalty, the maximum number of community service hours also reduces. Young offenders can only be sentenced to a maximum of 100 hours community service if they are 16 or under or up to 250 hours if they are over 16.

CSOs place restrictions on the time and liberty of offenders by requiring them to carry out community work. CSOs promote rehabilitation by allowing offenders to remain in the community and address the factors that have contributed to their offending through development programs. CSOs also allow offenders to give something back to their local community through the work they perform. CSOs have been shown to have a positive impact on reoffending rates. CSOs are also considered to be cost-

effective as they are relatively economical to administer and contribute a measurable value to the community in the form of unpaid work performed for community organisations.

CSOs are available as a sentencing option in courts across NSW. In August 2004, however, the NSW Sentencing Council reported that 'it is understood that community service orders may not be widely used in some regional areas, as there is limited community service order work and corresponding supervision available.'⁴ The higher level of support and supervision required by offenders with special needs can also be an impediment to a court imposing a CSO on such an offender, as can the availability of appropriate community service work. A lack of places in appropriate programs may also determine whether or not disadvantaged offenders can be sentenced to CSOs.

Questions

1. Can you comment on the availability of CSOs in rural and remote areas?
2. What needs to be done to increase the availability of CSOs in rural and remote areas?
3. Can you comment on the availability and appropriateness of CSOs for offenders from disadvantaged groups?
4. Can you comment on the courts use of CSOs in relation to offenders from disadvantaged groups?
5. Do CSOs need to be tailored to meet the needs of disadvantaged groups? If so how?
6. Are any of the advantages and disadvantages of community service orders particularly relevant to rural and remote areas or offenders from disadvantaged groups?
7. Do you have any other issues you wish to raise in relation to CSOs?

Drug Court of New South Wales and the Youth Drug and Alcohol Court

The Drug Court commenced in NSW as a pilot program in 1999. It provides an opportunity for offenders with substance abuse problems to be diverted into treatment rather than imprisonment. The Drug Court operates from the Parramatta Court complex and caters to defendants referred from courts in the western-Sydney catchment area.

If the Court decides that a person is eligible, the person will be remanded without bail for detoxification and assessment. After assessment the offender appears before the Court where he or she enters a guilty plea, receives a sentence that is suspended and signs an undertaking to abide by his or her program conditions. The person then undergoes community-based treatment and intensive supervision by the Probation and Parole Service. A treatment plan may require a participant to enter a residential rehabilitation centre or live in accommodation found by the participant and approved by the Court or in supported accommodation organised by the Court. The treatment programs are designed to eliminate, or at least reduce, their dependency on drugs and thereby reduce the person's need to resort to criminal activity to support that dependency.

To be eligible for the Drug Court a person must: be highly likely to be sentenced to full-time imprisonment if convicted; have indicated that he/she will plead guilty to the offence; be dependent on the use of prohibited drugs; reside within the catchment area; be referred from a court in the catchment area; be 18 or over; and be willing to participate. A person is not eligible if he or she: is charged with an

offence involving violent conduct; is charged with certain offences; or is suffering from a mental condition that could prevent or restrict participation in the program.

The Youth Drug and Alcohol Court, which covers eastern and western Sydney (accepting referrals from the Cobham, Campbelltown and Bidura Children's Courts), offers a similar option for young people who plead guilty to drug and alcohol related crimes. The Court commenced as a pilot program in 2000. Rather than offenders being processed through the justice system, they are offered an opportunity to participate in an intensive program of rehabilitation before being sentenced. In a six month program, participants undergo detoxification and rehabilitation, attend educational and vocational courses and appear regularly throughout that period before the Court.

Questions

1. Would the Drug Court be beneficial in rural and remote areas in NSW?
2. Would it be sufficient to enable all NSW courts to refer defendants to the Drug Court in Parramatta?
3. Are suitable treatment programs available in rural and remote areas?
4. What barriers exist for offenders from various disadvantaged groups accessing the Drug Court? How can these barriers be overcome?
5. Is the Youth Drug and Alcohol Court model appropriate for rural and remote settings?
6. Is the Youth Drug and Alcohol Court accessible or suitable for various disadvantaged groups?
7. Do you have any other issues you wish to raise in relation to the Drug Court?

Periodic detention

A court that has sentenced an offender to imprisonment for three years or less may make a periodic detention order (PDO) directing that the sentence be served by way of periodic detention. Periodic detention requires an offender to remain in custody for two days a week for the duration of the sentence. The detainee must report to a detention centre by 7.00pm on a specified day of the week (usually a Friday) and remain under the custody of the centre until 4.30pm two days later. Some centres also run midweek programs where attendance is required from Wednesday evening to Friday afternoon. On 30 June 2003 there were 787 periodic detainees in NSW, representing 8.9% of the total inmate population.⁵

To be eligible for periodic detention an offender must be over the age of 18 years and must also be considered suitable to serve the sentence by way of periodic detention. Periodic detention is not available as a sentencing option for an offender who has previously served full time imprisonment for more than six months in relation to any one sentence of imprisonment. Periodic detention is also not available for certain sexual offences.

Periodic detention provides courts with flexibility to impose custodial sentences while allowing offenders to remain part of the community through employment and living with families. Periodic detainees can therefore retain their links to the community and access employment and education options. Periodic detention is also significantly cheaper than full-time imprisonment.

A pre-requisite for a periodic detention order is the *availability* of accommodation in a periodic detention centre. Transport arrangements to take the offender to and from the periodic detention centre must also be available. These arrangements must not place undue 'inconvenience, strain or hardship' on the offender.⁶ There are eleven correctional centres currently able to take periodic detainees in NSW, leaving many areas without access to this community based sentencing option. Periodic detention centres in rural or regional NSW are located in Bathurst, Broken Hill, Grafton, Mannus via Tumbarumba, Tamworth, Wollongong and Tomago.

People with drug and alcohol related problems or with mental illness may be disadvantaged in accessing PDOs by a lack of nearby treatment options in some areas. Lack of a driving licence, common among offenders with drug and alcohol related crimes, also makes it difficult for some offenders to access periodic detention facilities.

Questions

1. Can you comment on the availability of periodic detention in rural and remote areas in NSW?
2. How significant is the generally higher level of unemployment in rural and remote areas for the availability or success of periodic detention in such places?
3. What would be the impact of the availability of periodic detention upon rural and remote areas?
4. Can the requirements of periodic detention be tailored for rural and remote areas? Eg, how near to a detainee's home should a periodic detention centre be for a PDO to be considered appropriate?
5. What services need to be available to support periodic detention in rural and remote areas?
6. Can you comment on the appropriateness of periodic detention for disadvantaged groups?
7. Can the eligibility criteria for periodic detention be tailored for disadvantaged groups?
8. What services need to be available to support periodic detention in indigenous communities?
9. What needs to be done to make periodic detention appropriate for disadvantaged offenders?
10. Do you have any other issues you wish to raise in relation to periodic detention?

Home detention

Home detention allows offenders to serve all or part of their sentence at home rather than in prison and participants may be required to perform community service, enter treatment programs and seek and maintain employment. The home detention program is administered by the NSW Probation and Parole Service.

Before home detention can be considered the court must have imposed a custodial sentence on the offender, therefore home detention is not available as an alternative for offenders who would otherwise receive a non-custodial sentence or periodic detention. Home detention is only available for sentences of up to 18 months and is not available for a sentence for any violent offence. Offenders who have previously been convicted of certain offences including murder, sexual assault offences, stalking or intimidation or a domestic violence offence are also precluded from home detention.

Home detention can be 'front-end' or 'back-end'. Front-end home detention operates from the commencement of the sentence while back-end home detention requires the offender to have served the first part of their sentence in a correctional centre. At present, only front-end home detention is available in NSW, although the Law and Justice Committee is currently also inquiring into whether it is appropriate and in the public interest to introduce back-end home detention in NSW. For further information about this inquiry see our web site at: www.parliament.nsw.gov.au/lawandjustice.

Home detention enables offenders to remain in the community, look for or maintain employment and retain family links. It also provides opportunities for offenders to access and participate in rehabilitation programs.

Home detention is, however, considered substantially more punitive, more intrusive and more costly than any other penalty short of full-time custody.⁷ Home detention requires a high level of self-control and effectively turns the offender's home into a prison for the duration of the sentence. Detainees are required to remain within their residence unless undertaking approved activities, such as work, education, community service, and drug and alcohol treatment programs. Detainees are also required to submit to urine and breath analysis.

Probation and Parole Officers monitor detainees' compliance with conditions on a 24-hour basis, utilising electronic means and regular face to face visits. Detainees' families can also be placed under stress from the conditions imposed on the detainee. Breaches of conditions result in further penalties, including return to Court. Further offences or unauthorised absences result in imprisonment.

Home detention is currently only available to offenders in the Sydney, Illawarra and Newcastle areas. There are some impediments to the availability of home detention in all parts of NSW, particularly rural and remote areas. For example, Probation and Parole Officers must be available to supervise detainees and respond in emergencies and the range of employment and educational options for offenders on home detention may be limited in such areas. The element of self-discipline required of home detention may also prevent the courts ordering such an order in relation to some offenders with special needs such as offenders with intellectual disabilities.

Questions

1. Can you comment on the availability and use of home detention for offenders from rural and remote areas?
2. Is home detention a viable community based sentencing option for rural and remote areas?
3. What would be the impact of the availability of home detention upon rural and remote areas?
4. What modifications could be made to the existing home detention scheme to make it suitable for rural and remote areas?
5. What are the infrastructure needs for home detention in rural and remote areas?
6. Is home detention a suitable community based sentencing option for the various disadvantaged groups?
7. Can home detention be modified to suit the needs of the various disadvantaged groups without compromising the punitive element of the sentence?

8. Can home detention be adapted for people who have no stable residence at the time of sentencing?
9. Are any of the advantages and disadvantages of home detention particularly relevant to rural and remote areas or offenders from disadvantaged groups?
10. Do you have any other issues you wish to raise in relation to home detention?

Community based sentencing options in other jurisdictions

Other jurisdictions within Australia and overseas have implemented a variety of community based sentencing options. Some Australian jurisdictions that could be explored include Western Australia and Queensland. International examples include Hong Kong, Singapore, the United Kingdom, the USA, New Zealand and Guyana.

Questions

1. Have you had any experience with community based sentences in other Australian states or overseas? If so, how might these be adapted for NSW?
2. How have the special needs of offenders from disadvantaged groups been catered for in relation to community based sentences in other jurisdictions?
3. How are community based sentences in other jurisdictions tailored for rural and remote areas?

Further information

Reports and papers

NSW Department of Corrective Services, *Annual Report 2002-2003* (2003)

NSW Law Reform Commission, *Discussion Paper 33 – Sentencing* (1996)

NSW Law Reform Commission, *Report 79 – Sentencing* (1996)

NSW Legislative Council, Select Committee on the Increase in Prisoner Population, *Final Report* (2001)

NSW Sentencing Council, *Abolishing Prison Sentences of Six Months or Less* (2004)

NSW Parliamentary Library, *The Home Detention Bill 1996: Commentary and Background*, Briefing Paper No 20/96, by Honor Figgis

Websites

Drug Court of New South Wales: www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/index

Lawlink NSW: www.lawlink.nsw.gov.au

NSW Department of Corrective Services: www.dcs.nsw.gov.au

NSW Law Reform Commission: www.lawlink.nsw.gov.au/lrc

NSW Bureau of Crime Statistics and Research: www.lawlink.nsw.gov.au/bocsar

Youth Drug and Alcohol Court of NSW: www.lawlink.nsw.gov.au/youthdrugcourt

Notes

¹ NSW Sentencing Council, *Abolishing Prison Sentences of Six Months or Less, Final Report*, August 2004, p11

² NSW Sentencing Council, *Abolishing Prison Sentences of Six Months or Less, Final Report*, August 2004, Attachment 1, p34

³ NSW Department of Corrective Services, *Annual Report Highlights, 2002/03*

⁴ NSW Sentencing Council, *Abolishing Prison Sentences of Six Months or Less, Final Report*, August 2004, p34

⁵ NSW Department of Corrective Services, *NSW Inmate Census 2003*, January 2004, p35

⁶ *Crimes (Sentencing Procedure) Act 1999*, s66(1)

⁷ NSW Department of Corrective Services, *Annual Report 2002/03*, p40

Appendix 1 Terms of Reference

Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations

- 1) That the Standing Committee on Law and Justice inquire into and report on whether it is appropriate and in the public interest to tailor community based sentencing options for rural remote areas in NSW and for special need/disadvantaged populations, including:
 - (a) The perceived benefits and disadvantages of community based sentencing options including Periodic Detention, Intensive Supervision Programs (Home Detention e.g. Drug Court), Community Supervision Orders.
 - (b) The relationship between different Intensive Supervision Programs – Home Detention and Periodic Detention (Stage 1 and 2).
 - (c) The impact of the availability of Intensive Supervision Programs upon rural and remote communities.
 - (d) The place of Periodic Detention within a spectrum of community based sentencing options utilising intensive supervision.
 - (e) The criteria for eligibility for community based sentencing options.
 - (f) The experience of other jurisdictions in implementing community based sentencing options.
- 2) Any other related matter.

The Committee to report by July 2005.

Terms of references referred by the Attorney General, the Hon Bob Debus MLC, 2 April 2004.