



**MINISTER FOR JUVENILE JUSTICE**

BN10/0053

The Hon. CM Robertson, MLC  
Chair, Inquiry into Spent Convictions for Juvenile Offenders  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Chair

**QUESTIONS ON NOTICE ARISING FROM EVIDENCE PROVIDED TO THE INQUIRY  
INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS**

On Thursday 1 April 2010, Juvenile Justice representatives appeared as witnesses before the Legislative Council's Inquiry into Spent Convictions for Juvenile Offenders.

Several Questions on Notice were taken during the hearing and Juvenile Justice has provided answers to these, along with answers to questions forwarded to the agency prior to the hearing that were not covered in the evidence provided on the day.

Responses to those questions are provided in the attachment.

Yours sincerely



**Graham West MP**  
Minister for Juvenile Justice

## Questions on Notice taken at the Hearing of the Inquiry into spent Convictions for Juveniles

### Question:

- 1. P 23-24 of the transcript - Provide information from the 2003 and 2006 Young People in Custody and Community Health Surveys***

### Response:

- Summary information about the Young People in Custody Health Survey 2003 and the Young People on Community Orders Health Survey 2006 can be found on the Juvenile Justice webpage at [www.djj.nsw.gov.au](http://www.djj.nsw.gov.au).
- Preliminary results of the **Young People in Custody Health Survey 2009** are due to be released in June 2010. However, early indications are that the results in relation to intellectual disability and mental health issues will be consistent with the findings of the 2003 survey.

### Question:

- 2. P 24 of the transcript - What percentage of people would you deal with in the 15 to 16 year age group in relation to sexual offences?***

### Response

- Of those young offenders (unique individual count) in the 15 to 16 year age group commencing community based orders in 2008/09, 1.2% had orders relating to sexual offences.
- Of those young offenders (unique individual count) commencing a sentenced custodial order in 2008/09, 0.2% had orders relating to sexual offences.

### Question:

- 3. P 31 of the transcript - If we were to now remove the exemption in relation to sexual offences so that now with a sexual offence it would apply for a juvenile, would six months be sufficient or should it be increased, as the new Federal model is recommending, to 24 months? In answering consider how the extra two years would affect their ability to obtain employment etc.***

### Response:

- Juvenile Justice supports the removal of the exemption in relation to sexual offences and is of the view that it should apply to those young people with sentences less than 24 months as proposed in the Model Bill.
- Research indicates that those young people who commit sexual offences only and those who are more “versatile” offenders cannot be readily distinguished from each

other. Therefore, there does not appear to be any evidence to support a continued exemption in relation to sexual offences.

- In relation to the good behaviour period that should be applied to young people before they become eligible for their convictions to be spent, Juvenile Justice data shows that when young people re-offend, they are likely to do so within three years. A three year good behaviour period in the community would appear to be a more significant criterion than the length or type of sentence.
- An extra two years before a conviction can be spent would delay the ability of a young person to fully reintegrate into the community and adopt an offending free lifestyle.

#### **Question:**

#### **4. P 32 of the transcript - What is the Juvenile Justice view in relation to the registration of juvenile sex offenders under the Child Protection (Offenders Registration) Act?**

#### **Response:**

- Sexual offender registration (and community notification laws) assumes that the likelihood of these offenders repeating their crimes is enduring and unchanging, leaving the community vulnerable to ongoing risk. Research shows that most juvenile sexual offenders are not convicted of further sexual offences (at least) within the first ten years as an adult (Nisbet, I., Smallbone, S. & Wortley, R. 2010. *Sexual Abuse in Australia and New Zealand*, 2(2): 34-47).
- Research by Letourneau, et al. (2010) found that the registration of juvenile sexual offenders failed to deter sexual offending. (This jurisdiction includes public notification of sexual offenders, i.e. public shaming). Letourneau reasons (p.565) that:  
“A general deterrent effect would have required that potential juvenile sex offenders execute a multistep reasoning process involving (a) the correct identification of certain sexual behaviors as criminal, (b) a belief in the likelihood of detection and prosecution, and (c) an understanding of post detention consequences, including registration and public notification. It seems highly unlikely that most youth possess sufficient knowledge of juvenile and adult justice procedures to navigate these steps,...”.  
(Letourneau, E., Bandyopadhyay, D., Armstrong, K. & Sinha, D. 2010. Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes? *Criminal Justice and Behavior*, 37 (5): 553-569).
- The juvenile justice system aims to balance community safety with the potential for juvenile offenders to be rehabilitated. There is little evidence to support the registration of juvenile sexual offenders as an effective option for achieving either aim. Registration significantly beyond the length of a legal order may be in fact delay young people's re-integration into the community by increasing the stigma attached to the original offence thereby making it more difficult to obtain suitable employment and access to educational and recreational opportunities.

## Questions forwarded prior to the Hearing but not asked on the day

### Question:

- 5. *The Model Bill sets out more generous eligibility criteria for spent convictions than currently exist. Currently eligible offences include those where the prison sentence is less than 6 months, with a good behaviour period for an adult of 10 years and 3 years for a juvenile. Under the Model Bill, eligible offences include those where the sentence is less than 12 months for an adult and 24 months for a juvenile. The good behaviour period for an adult is 10 years, and 5 years for a juvenile. What are your views on the eligibility criteria proposed in the Model Bill?***

### Response:

- A more generous eligibility criterion for spent convictions to cover sexual offences where the sentence is less than 24 months, as proposed in the Model Bill, is the preferred option supported by Juvenile Justice. Such a criterion would encourage reintegration for a greater number of young offenders than the alternative of restricting the criterion to where the sentence is less than 6 months.
- In relation to the criterion proposed in the Model Bill for a good behaviour period of 5 years for a juvenile, Juvenile Justice is of the view that the current 3 year good behaviour period for juveniles is appropriate. The 3 year good behaviour period would encourage a young person to re-integrate fully into society at an earlier date than if that period was set at 5 years.
- Evidence of reoffending does not point to the need for a period beyond the existing 3 year good behaviour period. In fact, the additional two year requirement may act as a barrier to reintegration for young offenders in terms of access to employment, education or training opportunities and community acceptance, all of which are a necessary component for maintaining an offence free life style.

### Question:

- 6. *The submission from Professor Dianna Kenny (Sub 18, p 4) argues that more research is needed into sentencing trends for juveniles before deciding on the benchmark sentence under which a sex offence could become spent. What is your view on the benchmark sentence of 24 months in the Model Bill, and the suggestion that further research is required?***

### Response

- There is a significant and growing body of research into juvenile sexual offending as described in previous responses to questions provided by Juvenile Justice. While welcoming further research into this area of offending, Juvenile Justice is of the view that current research is adequate to support the position that in relation to juvenile convictions where the sentence is less than 24 months, these be eligible to be spent after a three year good behaviour period.

**Question:**

**9. *The Model Bill proposes that if sex offences are included in the spent convictions scheme, they should become spent through a court application process. However the submissions from the Children's Court (Sub 16) and the Local Court (Sub 12) oppose a court application model for sex offences. What are your views on the court application model?***

**Response:**

- The proposal in the Model Bill that if sex offences are included in the spent convictions scheme, they should become spent through a court application process would seriously disadvantage young offenders. Juvenile Justice also supports the views outlined in the submissions provided to the Inquiry from the Local and Children's Courts.
- A disproportionate number of young offenders (as demonstrated in Custody and Community Health Surveys) have low literacy levels, unstable accommodation, intellectual disabilities and/or mental health issues. Such circumstances, combined with limited maturity means that many young offenders would be unlikely or unable to make informed decisions and exercise their full legal rights through applications to the court to have their convictions spent after meeting the required criteria.

**Question:**

***10. The court application model for sex offences provides that an offender must wait two years after an unsuccessful application for a spent convictions order before re-applying to the courts. What are your views on this provision?***

**Response:**

- See response to the above question.

**Question:**

***11. Some submissions oppose the court application model for sex offences because this could disadvantage young people who do not have access to legal information and resources. To address this, the Salvation Army (Sub 14, p 3) recommends that legal aid be made available to applicants, and that information on the application scheme be provided at the time of sentencing. Should young people be provided with support to access the court application model?***

**Response:**

- If a Court application process is introduced, then young people should be provided with advice and support. However, information given at the time of sentencing is highly unlikely to be retained by young people over a long period of time. Assistance would be more effective if provided at the time a young person becomes eligible to make a court application, and this assistance should continue through the progress of the application at the court.