

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND
ISSUES IN NSW**

Organisation: Children's Court of NSW

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Children's Court of New South Wales

16 September 2011

Hon Niall Blair MLC
Committee Chair
Standing Committee on Social Issues
Legislative Council
Parliament House
Macquarie Street Sydney
NSW 2000 Australia

Dear Mr Blair,

RE: Inquiry into Domestic Violence Trends and Issues in New South Wales

Thank you for the opportunity to make a submission to the Legislative Council's Inquiry into Domestic Violence Trends and Issues in New South Wales.

The Children's Court submits that any recommendation made by the Standing Committee regarding domestic violence legislation should take into account the potential impact it will have on children and young people.

There were 1693 charges of domestic violence brought against a child or young person in the Children's Court in 2010.¹ The majority did not involve stereotypical partner-partner domestic violence. Most of the domestic violence matters that come before the Children's Court involve young people being violent or threatening to be violent to a parent or parents and siblings are often witnesses to the violence. In these cases, the power dynamic is often quite different from spousal violence. In cases of spousal violence, it is often the man who has financial control and is exploiting the power imbalance already established. In cases of child-parent violence, parents have direct control of the finances and other resources, including accommodation and allowances. Parents are also in a position of internal conflict because they usually feel a sense of responsibility as the parent or support person to the child. In these instances, the adversarial court process and the inflexible consequences of some Apprehended Domestic Violence Orders (ADVOs) can exacerbate the situation rather than improve it. In looking into the issues of domestic violence, it therefore needs to be taken into account that different considerations apply to different types of domestic violence.

The court has also seen an increase of juvenile females who are being charged with domestic violence related offences. There was a 36% increase in the 10 years to June

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2009.ⁱⁱ In this time, domestic violence assault for juvenile female offenders rose by 19.3% per year.ⁱⁱⁱ Non-domestic violence assaults have also risen 3.6% annually and are still one of the most likely offences to be committed by juvenile females.^{iv} There are now more matters coming before the court where young females are being charged with assault against their siblings, parents and more commonly, their female peers. Further research should be conducted into the causes of this increase and how the current system could better assist the young person and victims.

I am proposing to shortly issue a Practice Note dealing with Apprehended Personal Violence Orders (APVOs) and ADVOs in the Children's Court. The intention of the Practice Note is to promote the rehabilitation of the young person within their family and the community as indicated in the objects of the *Children (Criminal Proceedings) Act 1987* whilst acknowledging the objects of the *Crimes (Domestic and Personal Violence) Act 2007*. If the police prosecutor and young person consents, the court may adjourn the proceedings for three months so the young person may attend counselling (individually or with the family), or for five months in cases where there are no suitable counselling or intervention services or if the young person does not wish to participate in counselling or other interventions. If there are no breaches of the interim order during the adjournment period, the application may be withdrawn and dismissed by the court if the police prosecutor makes such an application. Such an application would only be made with the agreement of the protected person.

It is very important with respect to domestic violence, that early intervention programs are available in metropolitan and regional areas, especially for young people. Domestic violence can be intergenerational; if young people are exposed to domestic violence, there is a real risk that they also resort to domestic violence to resolve conflict.^v It is important not to wait until young people commit domestic violence offences as adults before intervention programs are made available.^{vi} The Salvation Army's Reconnect program is a highly regarded early intervention domestic violence program for young people. Some Children's Courts also have Court Support Officers who are well informed about the different counselling services and programs and are able to help the young person and any persons in need of protection.

The Children's Court has concerns with the proposed use of Global Positioning System (GPS) bracelets to reduce breaches and improve compliance with ADVOs. It has not been indicated as to how they would be used and who would monitor the systems but the Court does not feel it would be appropriate for children or young people in any case. In most of the domestic violence matters that come before the court, the child or young person remains in the family home. GPS bracelets in these instances would be of no utility. It is also argued that GPS bracelets for those on bail or who have interim ADVOs would stigmatise young people and undermine the rehabilitative objects under the *Children (Criminal Proceedings) Act 1987*.

The court would also like to take this opportunity to express concern in relation to the provisions on background checks under Division 3 of the *Commission for Children and Young People Act 1998*. Under this Act the Commissioner is empowered to give employers information about a person's 'relevant criminal record' or any 'relevant apprehended violence orders' for persons who are employed in or who are applying to be employed in child related employment. A 'relevant criminal record' refers to any offence involving 'reportable conduct' which is defined as among other things

'any sexual offence, or sexual misconduct, committed against, with or in the presence of a child' as well as 'any assault...of a child' or any sexual offence or an intent or attempt to commit such an offence. A 'relevant apprehended violence order' on the other hand refers to any final apprehended violence order made under either the *Crimes (Domestic and Personal Violence) Act 2007* or a final order under Part 15A of the *Crimes Act 1900* before its repeal.

The concern for the court is that the *Commission for Children and Young People Act 1998* does not differentiate between adults and young persons nor the circumstances of the particular violent conduct. This may cause serious and unfair prejudice to a young person's future employment prospects. The Act extends to assaults between young persons of a similar age as well as between siblings. In the majority of such cases the relevant conduct does not indicate that the person is generally a risk to children. It is the submission of the Children's Court that the provisions relating to background checks should not automatically apply to children or young persons but instead, that a Children's Magistrate should be given discretion to notify the Commission where the person's conduct indicates some potential risk to children. The Court is of the view that this approach would ensure that only young offenders who pose a real risk to the safety of children are caught by the provisions of the Act, while avoiding any prejudice to those children and young persons who do not generally pose such a risk to children.

Yours sincerely,

Judge Mark Marien SC
President

ⁱ NSW Bureau of Crime and Statistics, obtained 7 September 2011.

ⁱⁱ Holmes J 2010. Female Offending: Has there been an Increase? *Crime and Justice Statistics: Bureau Brief* no. 46. Sydney: NSW Bureau of Crime Statistics and Research.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v Edelson J 1999. Children's Witnessing of Adult Domestic Violence. *Journal of Interpersonal Violence* 14(8): 839-394.

^{vi} See Richards's article for an outline of intervention programs offered in Victoria. Richards K 2011. Children's Exposure to Domestic Violence in Australia. *Trends and Issues in Crime and Criminal Justice* no. 419. Canberra: Australian Institute of Criminology.