

**INQUIRY INTO THE PROHIBITION ON THE  
PUBLICATION OF NAMES OF CHILDREN INVOLVED IN  
CRIMINAL PROCEEDINGS**

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## Justice Action's Submission to the Inquiry into the prohibition on the publication of names of children involved in criminal proceedings.

### 1 *Introduction*

Thank you for inviting Justice Action to make submissions to this inquiry. We have considered the terms of reference. In summary, our position is:

#### (a) Term of reference 1

The current policy remains completely valid for the reasons outlined in paragraph 2;

#### (b) Term of reference 2

In our experience the Act is operating successfully to achieve the objectives of the current policy outlined in term of reference 1;

#### (c) Term of reference 3

The prohibition on the publication and broadcasting of names under section 1 of the Act should cover all the children and circumstances outlined in this term of reference; and

#### (d) Term of reference 4

Our comments on this term of reference are contained in our comments on term of reference 1 in paragraph 2.

### 2. Submissions on term of reference 1

#### 2.1 *Ramifications of naming, shaming and blaming*

In all cases, we say that one needs to understand the ramifications of naming, shaming and blaming on people especially children because children are least likely to be able to deal with the fallout. As some Justice Action members are ex prisoners we have taken into account the process of naming, shaming and blaming on us, because it has affected some of us in adverse ways that we say have had no pragmatic

outcome in terms of preventing crime in the future.

Amongst other things, the naming of children is likely to have the following effects:

- (a) By obscuring the true environmental predisposing factors that led to the crime and instead focusing, hence shifting, the blame almost entirely on a bad person or bad genes.
- (b) By hiding the fact that 'anyone' without skills could have made the same mistake given the wrong circumstances:
- (c) Reducing the understanding about more resources that could be available for people or children to deal with social responsibility or a crisis situation that may develop, by having the further opportunity to learn better social responsibility and skills at the 'earliest intervention' that would prevent crime.
- (d) Interventions that could have been blocked and that could sideline the general problem of preventing crime generally - particularly if socio economic factors such as poverty or bad parenting - that led to the crime have not been dealt with
- (e) Not passing on more social skills to people or children like communication, conflict resolution and life skills in the future to the person or child offender.

## 2.2 *Benefits of addressing the true causes of crime*

One needs to understand how the justice system could be much different than it is now. It ought to be constructive so that the community gets the 'full benefit' of crime prevention by generally understanding what led to the crime and therefore how to prevent it instead of naming, shaming and blaming a particular offender's mistake.

- *Offending is one part of a person*

We are all human beings and so when society breaks down a human being into parts then one invariably loses sight of a way to fix the problem holistically and in terms of crime prevention.

Our experience as ex-prisoners is that in order to solve a problem one must search for the solution at the root. Not at the part. In this instance the root is the human being and for this submission a child. The part is what the human being or child may have been accused of (the act or crime) or found guilty of doing. The early intervention at this level provides long-term benefits for crime prevention in the community.

- *Stigmatisation*

For instance, x is an alleged gang-rapist, or x is an alleged sex-monster, x is an alleged criminal, murder, killer, etc. Even if those attributes were found to be true then how does it help fix the problem holistically of crime, sex offending or killing in the future? Is shaming, naming and blaming a constructive way to address the problem of sex offending or killing in the future? Are there any pragmatic answers we are missing in labeling people, especially children for their mistakes? Are we forgetting the process of learning involved in trial and error?

Once a person or child is broken down into parts, criminal, sex offender, killer, even if the offence may never ever occur again by the same offender, it then becomes harder to prevent crime in the future or in this instance the fact that the offender was a child. To explain:

The problem is more general than the person who has committed an offence. The problem is the offence itself and the social issues underlying the offence. Punishing individuals further through naming and shaming does not address this problem and in effect fails to prevent further offences occurring. Both the person who has committed an offence and society must take responsibility to socially respond to crime for crime prevention to be effective.

- *Opportunity to learn from mistakes and rehabilitate*

Society is built on trial and error because that's how people, especially children, learn. We couldn't have a society without trial and error or learning and therefore depend on it to build the future and so a standard needs to be in place similar to the current prohibition on the publication and broadcasting of names under section 11 of the *Children (Criminal Proceedings) Act 1987* (the Act) to ensure that offending others is addressed generally and holistically and not just internalized as if one particular person has bad genes and is the problem. It is more likely that an offender has lost their way because of 'x predispositions', taken too many risks and used the wrong resources in order to achieve the same goals as say you and I might aspire to. Problems that could have been addressed better by learning some 'social responsibility', say at school or at the earliest intervention in the future (especially if some parents didn't have the social skills to pass on) that may have prevented the same crime and will prevent more of the same crime down the track.

If all people or children become aware of the process and outcome (damage caused by the offence of crime, sex offending or killing) then they are more likely not to do it, more likely not to want to do it or be aware of the consequences of doing it themselves. In turn if a person, child, offender knows how much they are 'worth' then it is more likely that they will know how much you are worth next time that they may consider offending. How would that happen if they were just belittled, blamed or shamed that would decrease their self worth and deconstruct them?

- *Communicating*

In communication we learn that if something is not said or addressed in a constructive manner then it would be better off not being said at all. One may argue that shaming and blaming is 'constructive' - we say in what way? Destructing and belittling a person for making a mistake does nothing but put fear into a child. A child running on fear is not learning as well because they have high emotions and less thinking ability as a child who has no fear and is thinking about solutions better.

If offending is merely attributed to certain individuals who've made the mistake 'now' say based on only those who had 'bad genes', then that fails in terms of 'general awareness' and 'deterrence' and preventing the same crime down the track. In this case it is forgotten that many others could make the same mistake. Some crime, sex offending, killing or domestic violence is not always a premeditated crime either. Therefore not a pre learned experience or a plan, but a grave mistake, trial and error and sometimes done in the heat of the moment.

Taking into account 'social responsibility' in responding to crime means that all people and children have some responsibility for preventing crime. It gives further opportunity for all children to realise why offending a human being is an option that is not tolerated in society, or even to be considered if one wants mutual respect in the community, in the future and in any relationship between human beings.

### *3 Constructive feedback through JA mentoring is the solution*

In our view, constructive feedback through JA mentoring has a more positive effect than any other means. To have a person trusted by the offender, in a one-to-one relationship, to give support and guidance to an offender as a role model and a friend, is in our experience the most effective means of addressing an offender's criminal behavior.

### *4. Conclusion*

Justice Action believes that naming offenders and in particular child offenders is 'destructive'. It will reduce the likelihood of general deterrence and shift the focus, blame and attention to the destructive notion that an individual simply has bad genes or even a bad family. Crime and society are more complex. In our view, given a constructive lifestyle, the opportunity to form positive mentoring relationships and an equal opportunity to learn about life, will prevent more crime and make others more aware of not being offensive. Hence, as a general deterrent we should not remove the prohibition on the publication of names of children involved in criminal proceedings.

*Additional References*

The Privacy Commissioner's position on Child Offenders and Privacy:

<http://www.privacy.org.au/Papers/ChildOffenders2002.pdf>

Justice Action Mentoring:

[http://www.justiceaction.org.au/index.php?option=com\\_content&task=view&id=160&Itemid=145](http://www.justiceaction.org.au/index.php?option=com_content&task=view&id=160&Itemid=145)