

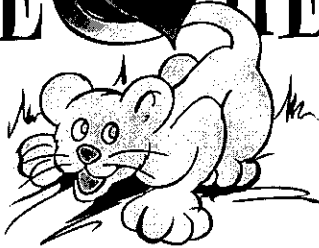
Submission
No 15

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

Organisation: Bravehearts

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BRAVE HEARTS



"Protecting children against sexual assault"

Monday, 15 February 2010

Standing Committee on Law and Justice
Attorney-General's Department
Parliament House
Macquarie St
Sydney, NSW 2000
E-mail: madeleine.foley@parliament.nsw.gov.au

Inquiry into Spent Convictions for Juvenile Offenders

Dear Committee:

Bravehearts Inc is a not for profit organisation dealing exclusively and specifically with child sexual assault. Bravehearts has been operating for 13 years providing therapeutic, support and advocacy services to survivors. We are also actively involved in education, prevention, early intervention and research programs relating to child sexual assault. Bravehearts operates at a National level, from our Head Office on the Gold Coast, advocating and lobbying across the country, with a physical presence in three States: Queensland (Gold Coast, Brisbane and Cairns), New South Wales (Sydney and Shoalhaven) and Victoria (Shepparton).

As an agency that has extensive experience working with and advocating for victims of child sexual assault, Bravehearts provides this submission to the New South Wales Attorney-General's Standing Committee on Law and Justice.

The question around allowing juvenile sex offenders to have his or her conviction spent is complex. At the heart of the question should be consideration of the research around the progression of juvenile sexual offending to adult sexual offending.

In the 1997 Wood Inquiry, Justice Wood commented that:

Juvenile offenders can be just as predatory as adult offenders. Their abuse is often well-planned and thought out. Protected by the silence that has been characteristic of sexual abuse generally, juvenile offenders learn they can get away with it, and have time to fine tune the manipulative techniques which are characteristic of the recidivist offender. Unlike other young offenders who grow out of their offending behaviour, juvenile sex offenders tend to grow into it. Most sexual

offender behaviour escalates over a period of time – it does not suddenly just happen.

Research however is mixed. While studies have suggested that patterns of sexual offending often begin in adolescence and many offenders show a progression to more serious offending in adulthood (Grant, 2000), others have suggested that the risk of juvenile offending progressing into adult offending may be exaggerated due to the retrospective nature of these studies (Hunter, 2000).

Regardless, the need to deal with these offences with due seriousness and appropriateness is consistently emphasised. In addition, Bravehearts emphasises the necessity of ensuring that the protection and safety of children and the community be placed at the fore of any legislative reform.

We note that within the current Inquiry the specific question is whether a number of circumstances should be considered in relation to whether or not a sexual offence should be capable of being spent. Those circumstances are: (a) that the offence was committed by a juvenile, (b) that there was a finding of fact that the sexual act was consensual, (c) that the offences were *minor* offences, and/or (d) that no conviction was recorded.

In addition we note that three options for reforming current legislation around spent convictions for juvenile offenders are being considered:

- 1) Convictions for sexual offences should not be capable of being spent
- 2) Convictions for sexual offences should be capable of being spent
- 3) Convictions for sexual offences should only be capable of being spent in limited circumstances

In relation to the circumstances under which a sexual offence may be capable of being spent, Bravehearts recommends that in relation to juvenile sex offenders convictions for juvenile sex offenders should only be capable of being spent in limited circumstance. This includes after a qualifying period of 5 years (increased from the standard 3 years to reflect the seriousness of child sexual offences) and not for offences attracting a standard minimum sentence of more than 6 months:

Juvenile sexual offenders **may apply for a court order for a conviction to become spent** after the elapse of an appropriate qualifying period of 5 years, where the young person has had no investigations, charges or convictions in relation to sexual offences.

Under such a model the Attorney-General would be notified of the application to allow for a submission to the court.

Such an application would require that the court weigh up factors such as any finding of fact around consent, offence seriousness (offences attracting a standard minimum sentence of more than 6 months would not be eligible), and whether the individual has participated in appropriate treatment programs.

In addition, Bravehearts advocates that the conditions outlined in our previous submission (7th January 2009 re: *Consultation Paper: Model Spent Convictions Bill*), be included:

- Along with the outlined exclusion for “special occupations”, it should be articulated clearly that spent convictions should be disclosed in any application under various State “working with children” checks.
- Under circumstances where a child sex offender has had a conviction spent and they are charged with a subsequent child sex offence, the Bill must not restrict media or academic discussion.
- Under circumstances where a child sex offender has had a conviction spent and they are charged with a subsequent child sex offence, the Bill must not restrict knowledge of the spent conviction from the court.
- Under circumstances where a child sex offender has had a conviction spent and they are convicted with a subsequent child sex offence, the Bill must not restrict knowledge of the spent conviction from rehabilitation staff.
- Under circumstances where a child sex offender has had a conviction spent and they are convicted with a subsequent child sex offence, if on completion of the sentence for the subsequent offence the offender is subject to an application of a continued detention order, the spent conviction must be disclosed to the court.

We thank you for the opportunity to provide this submission to the Standing Committee and look forward to hearing the outcome. Please contact us if further information or clarification is required in relation to this submission.

Warm Regards



Hetty Johnston
Founder & Executive Director



Carol Ronken
Criminologist, BA (psych), MAppSoc (social research)
Research and Policy Manager

References:

- Grant, A. (2000). The historical development of treatment for adolescent sex offenders. *Trends and Issues in Crime and Criminal Justice* (February 2000). Canberra [ACT]: Australian Institute of Criminology.
- Hunter, J.A. (2000). Understanding juvenile sex offenders: research findings & guidelines for effective management & treatment. *Juvenile Justice Fact Sheet*. Charlottesville [VA]: Institute of Law, Psychiatry, & Public Policy.
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