

**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

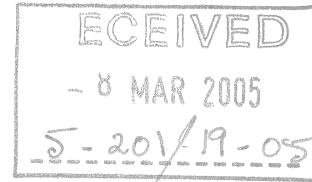
Organisation: Attorney General's Department
Name: Judge Derik Price
Position: Chief Magistrate - Local Courts
Telephone: 02 9287 7615
Date Received: 8/03/2005

Theme:

Summary:



The Chief Magistrate of the Local Court



4 March 2005

The Honourable Christine Robertson MLC, ALP (Chair)
Standing Committee on Law and Justice
NSW Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW

Dear Chair,

I refer to the invitation to make a submission to the Inquiry into community based sentencing options for rural and remote areas and special needs/disadvantaged populations and respond as follows:

1. Community based sentencing options

Community based sentencing options presently available include those identified at page 2 of the discussion paper. Apart from those identified, the following community based sentences are available in New South Wales.

- Dismissal of a charge after a finding of guilt pursuant to section 10 *Crimes (Sentencing Procedure) Act 1999*
- Deferral of sentencing for rehabilitation and other purposes pursuant to Section 11 *Crimes (Sentencing Procedure) Act 1999*
- Court Diversion Programs

(a) Magistrates Early Referral into Treatment (MERIT)

MERIT is a program developed in the Local Court that provides an opportunity for adult defendants with drug problems to work towards rehabilitation.

(b) Circle Sentencing

Circle Sentencing aims to provide more relevant and meaningful sentences for Aboriginal Offenders. Circle Courts currently sit at Nowra

Dubbo and Brewarrina and will commence sitting at Walgett, Bourke, Lismore, Armidale and Kempsey during this year.

(c) Rural Alcohol Diversion Program

The Alcohol Diversion Program commenced at Orange in late 2004 and is expected to expand to Bathurst in the near future.

(d) The Intensive Court Supervision (ICS) Program in Bourke and Brewarrina

This program provides magistrates at Bourke and Brewarrina Children's Court with alternatives to incarceration for eligible children who would otherwise be facing custody.

(e) Youth Justice Conferences

The *Young Offenders Act 1997* enables young offenders who commit less serious offences to be diverted from the criminal justice system by way of police warnings and cautions and by referral to Youth Justice Conferences.

(f) Traffic Offender Programs (TOPS)

Traffic Offender Programs offer an education intervention for traffic offenders. They are a pre sentence initiative designed to increase the understanding of those charged with drink driving (and other major category offences) of the dangers and consequences of committing these types of offences. NSW Health, Police, Corrective Services, Juvenile Justice, the legal profession, voluntary groups and individuals participate in TOPS. TOPS have a strong community base and have developed throughout the State although not uniformly so.

• *Mental Health (Criminal Procedure) Act 1990*

Part 3 of the *Mental Health (Criminal Procedure) Act 1990* provides a mechanism for magistrates to deal with persons with mental disorders otherwise than in accordance with law. A magistrate may dismiss (s.32) a charge and discharge the accused:

1. into the care of a responsible person, unconditionally or subject to conditions; or
2. on the condition that the accused attend a person or at a place specified by the magistrate for assessment of the accused's mental condition or treatment or both; or
3. unconditionally

Section 32 conditional discharge orders are enforceable.

There are other sentencing options such as " Interlock participation" for offenders convicted of offences under the *Road Transport (Safety and Traffic Management) Act 1999*.

Furthermore, Young Adult Conferencing for adults aged 18 to 24 years is to be trialled in one metropolitan court and one regional court this year.

2. Imprisonment a last resort

A court must not sentence an offender to imprisonment, unless it is satisfied, having considered all the possible alternatives, that no penalty other than imprisonment is appropriate: s.5 (1) *Crimes (Sentencing Procedure) Act 1999*. A **full time** custodial sentence is a sentence of last resort.

Community based sentencing options are considered to be 'lighter' forms of punishment than full time terms of Imprisonment. Sentences of periodic detention and home detention are sentences of imprisonment but are not full time custodial terms. They cannot be used until a decision has been made that an offender be sentenced to a term of imprisonment.

3. The availability of community based sentencing options

It is the Court's recommendation that community based sentencing options should be made, so far as possible, available at every court in New South Wales. The Local Court sits presently at 158 locations in the State.

4. Should economic reasons be a basis for imposing a community based sentence?

The matters to be taken into account in determining an appropriate sentence are set out in the provisions of s.21 A *Crimes (Sentencing Procedure) Act 1999*. The fact that community based sentencing options are generally more economical than full time imprisonment is not one of the factors that may be taken into account by a court. The court however may take into account the personal circumstances including the financial circumstances of the offender before determining the appropriate sentence.

It is appropriate however to take into account economic reasons for making community based sentencing options **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?

Yes. This is already being done for example with court intervention programs such as Circle Sentencing (supra), Traffic Offender Programs (TOPS) (supra), the Intensive Court Supervision program for young offenders at Bourke/Brewarrina (supra) and the Youth Insearch program at Tamworth.

6. Rural and remote areas in New South Wales

All community based sentencing options are not available at every court in New South Wales. When I spoke to the Sentencing Court of New South Wales in July 2003, the Council was given a, "partial overview of the availability of sentencing alternatives" in the Courts circuits which had been provided by magistrates as follows:

Far North Coast Circuit

Females: No facilities for Home Detention or Periodic Detention. Community service available

Males: No facilities for Home Detention. Community Service available. Periodic Detention available but very few are suitable due to problems in distance and transport.

Moss Vale Circuit

All options available except Home Detention.

Goulburn Circuit

Periodic Detention available but providing the client has the ability to get to Sydney. Home Detention not available. Community Service difficult at Crookwell/Gundagai, clients often ineligible.

Wentworth Circuit

Community Service not available in Wentworth circuit for an offender who resides in Victoria at time of P&PS assessment.

Periodic Detention not available given the distance from Balranald/ Moulamein/ Wentworth to nearest centre Broken Hill.

Availability of drug, alcohol and other treatments/counselling is far from adequate.

Grafton Circuit

Periodic detention not available to women. Home Detention not available.

Dubbo Circuit

Periodic Detention and home detention not available.

Bourke/Brewarrina

Periodic detention and home detention is unavailable at Bourke/Brewarrina. Community service orders are usually available but due to staff shortages, supervision is limited.

Albury Circuit

Community service available. Although such an option is available in Albury, the reality is that other courts in this circuit do not always have this option due to limited placements available in these smaller areas.

Periodic Detention available. It is important however to bear in mind that although Periodic Detention is available, due to the distance involved in attending, 80% of assessments are not suitable. Home detention not available.

Bathurst Circuit

Periodic detention is technically available, as long as (private) transport can be arranged. Dunedoo is too far from Bathurst for even private transport. Home Detention is not available. Community Service is available.

Bateman's Bay Circuit

Community Service is available.

Periodic Detention is available. The nearest Periodic Centre in Wollongong area, 200k from Bateman's Bay. Corrective Services provide bus transport. Home detention not available.

Broken Hill Circuit

Wilcannia has only Community Service options due to distance to Broken Hill.

Tamworth Circuit

Community service and Periodic Detention available for males at Tamworth and Tomago. No Home detention available.

There are no Periodic Detention facilities at Tamworth or Muswellbrook for women.

Armidale Circuit

Periodic Detention is not available for women. No Home Detention available.

Please note that periodic detention is no longer an option at Broken Hill, the periodic detention centre having closed.

All rural or remote areas in New South Wales would benefit from increased availability of community based sentencing options.

All the "disadvantaged persons" as identified at p4 of the discussion paper should be considered by the Committee as part of its review.

7. Why should community based sentencing options be available at every court in New South Wales?

Magistrates wherever they preside throughout the State should be able to consider the full range of sentencing options before determining an appropriate sentence. This is necessary to provide:

- Equal access to justice for all offenders notwithstanding that they live in rural or remote areas.
- Consistency in approach to sentencing by magistrates

The unavailability of various community based sentencing options in different locations increases the possibility of disparity in sentencing outcomes. More particularly, full-time custodial sentences may be imposed because other more appropriate options are not available to the Court. **The Court acknowledges however that substantial resources will be required to distribute all community based sentencing options equally across the State.**

8. Why is accessibility a problem and how can it be overcome?

There are a number of factors which influence the availability of community based sentencing options which include:

- Distance and the lack of available transport. Whilst, for example, periodic detention may be available within particular rural circuit, an offender may be assessed as unsuitable for periodic detention due to the lack of available transport, public or private and the distance involved;
- The resources of the Probation and Parole Service in a particular area;
- The availability of counselling, mental health and other services in an area;
- The level of community support;
- The sex of the offender; and
- The availability of appropriate community service work.

The problems associated with the lack of availability of sentencing options may be overcome by:

- Providing funding to ensure that the full range of sentencing options are available regardless of where the Local Court sits and the sex of the offender;
- Providing appropriate transportation in instances where sentencing options are subject to the offenders ability to travel;
- By encouraging relevant community groups to support sentencing initiatives in their community; and
- By ensuring that adequate enquiries are made to determine the availability of appropriate community service work in particular communities.

9. Disadvantaged populations – offenders with a disability

A full time Mental Health Liaison Service operates in eight metropolitan courts and nine regional courts. The importance of this service is underlined by the fact that in 2002 some 60% of those persons in custody who were examined by Mental Health Liaison Officers were suffering from mental illness. About 10% were directed from custody and recommendations for treatment were made for others who stayed in remand centres.

An increased availability of Mental Health Liaison Officers in regional areas would more readily identify offenders suffering from a mental illness at an early stage and enable magistrates to divert offenders to appropriate treatment.

The service which is provided by Justice Health may be expanded to other regional areas. A "telehealth" unit is to be installed at Griffith courthouse to provide an audiovisual link to mental health experts for assessment of offenders.

10. The Drug Court of New South Wales, the Youth Drug and Alcohol Court and the Magistrate's Early Referral Into Treatment Program (MERIT)

Whilst the expansion of the Drug Court would be beneficial in rural and remote areas of New South Wales, those benefits would essentially be limited to those matters that will be heard in the District Court. It is appropriate to note that 95% of all criminal matters are finalised in the Local Court and are not heard in the District Court.

The Magistrates Early Referral Into Treatment Program (MERIT) is a special program based in Local Courts that provides the opportunity for adult defendants with drug problems to work on a voluntary basis, towards rehabilitation as part of the bail process. The program allows defendants to focus on treating their drug problem in isolation from legal matters. Treatment as a general rule commences prior to pleas being entered and continues until the completion of the program.

MERIT is a partnership between the Local Court, NSW Attorney General's Department, Health, Police and the Probation and Parole Service. MERIT currently operates out of 52 Local Courts covering 65% of the State's population. As at 31 October 2004, 3,850 defendants (i.e. 60% of 6,455 referrals) had been accepted into the program. Of these, 2,064 (59% of finalised cases) completed the program requirements while 341 were still participating. The remaining 1,445 had not completed the program – they were either terminated or withdrew from MERIT. It is intended that MERIT will continue to expand, however the rate of expansion is dependant upon funding. MERIT is a Commonwealth/State Illicit Drug Diversion Initiative.

MERIT has filled the gap for the vast majority of criminal offences that the Drug Court would otherwise provide. It would furthermore be impractical to refer defendants from all areas of the State to the Drug Court at Parramatta. MERIT enables defendants to participate in rehabilitation programs in their regional areas.

So far as the Youth Drug and Alcohol Court is concerned, significant additional resources would be required to enable the Court to preside in regional areas. The Intensive Court Supervision (ICS) pilot program being trialled in Bourke and Brewarrina provides an alternative to the Youth Drug and Alcohol Court model. Expansion of the ICS model to other circuits would also require considerable resources.

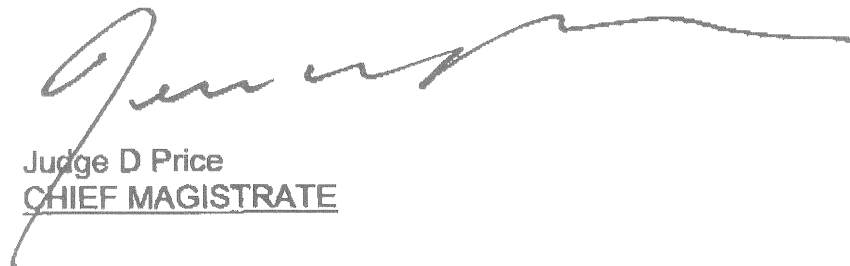
11. Good Behaviour Bonds

The discussion paper (at p5) states that a "condition may be placed on a bond such as a requirement for the offender to pay a fine or compensation". Regrettably this is incorrect. Section 95 (c) (ii) *Crimes (Sentencing Procedure) Act 1999* prohibits the making of "any payment, whether in the nature of a fine, compensation or otherwise" as a condition of a good behaviour bond.

The discussion paper's reference to a sentence "of up to two years, or part of a sentence can be suspended" is incorrect in part. Section 12(1) (a) *Crimes (Sentencing Procedure) Act 1999*, as amended in July 2003, provides for the "whole of the sentence" to be suspended, thereby prohibiting suspension of part of a sentence.

I have not sought (as time does not permit) to deal with all of the issues raised in the discussion paper. These issues might be more comprehensively addressed in oral evidence should the Committee consider that appropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Price', with a long horizontal flourish extending to the right.

Judge D Price
CHIEF MAGISTRATE