

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

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**Theme:**

**Summary:**

Submission to NSW Legislative Council  
Standing Committee on Law and Justice

**Inquiry into community based  
sentencing options for rural and  
remote areas and disadvantaged  
populations**

February 2005

The Director,  
Standing Committee on Law and Justice  
NSW Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

11 March 2005

Dear Committee Members,

**UnitingCare NSW.ACT welcomes the opportunity to respond to the NSW Legislative Council Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations.**

UnitingCare NSW.ACT has a long and substantial commitment to the support and care for rural and remote and disadvantaged peoples and an interest in law and justice issues. We currently have three chaplains placed in correctional centres and nineteen police chaplains across New South Wales.

In 1988 Christian Churches in Australia released a joint statement calling for “prison as a last resort” (Church Agencies 1988), which while acknowledging the need for the community to imprison people who had broken society's laws, emphasised the need for imprisonment to be used sparingly and for rehabilitation to be a component of prison policy. This document, along with the follow-up report by the Inter-Church Committee on Prison Reform (1993), guide UnitingCare NSW.ACT in thinking about community based sentencing options.

UnitingCare NSW.ACT joins other churches as an active supporter of emerging trends in jurisprudence across Australia falling under the banners of *therapeutic jurisprudence* and *restorative justice*. The church is committed to standing beside all people, including offenders, desiring that no person be abandoned by society regardless of their wrongdoing. We are also impressed by the evidence behind these approaches which suggests they are more successful in terms of reintegrating offenders into the community and avoiding recidivism than traditional legal procedures.

This submission details these principles and their application in relation to the questions posed by the discussion paper. We thank the Committee for the opportunity to provide input into the review of community based sentencing and urge it to consider the issues carefully and without undue regard to inflamed passions aroused by the media which do little to inform debate.

Yours sincerely,



Rev. Harry J. Herbert  
Executive Director

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## 1 About UnitingCare NSW.ACT

UnitingCare NSW.ACT is the peak body for all community services, chaplaincy, and social justice and advocacy activities of the Uniting Church in the New South Wales Synod. UnitingCare NSW.ACT is one of the Boards within the New South Wales Synod and is part of the national network of UnitingCare Australia.

Our view of social justice is guided by the Christian scriptures, theological reflection, insights of social, political and economic analysis, the statements of the Synod and Assembly, and our encounters with people and their life experiences in our work.

Through major agencies such as UnitingCare Burnside and Wesley Dalmar, we provide a broad range of innovative services to children, young people and their families across all forms of intervention and support, with a view to breaking the cycle of disadvantage that traps people in poverty and often leads to contact with the legal system.

## 2 Principles in law and justice

UnitingCare NSW.ACT has been calling for “prison as a last resort” since 1988. We are therefore pleased to see the discussion paper’s declaration that “the presumption applied by the courts is that imprisonment is a last resort” (p2). Unfortunately the evidence does not appear to support this statement. We note that the Auditor-General (quoted in Noonan 2005) reports that more offenders who breach community service and periodic detention orders are being sent to full-time custody than was previously the case. Recent comments by the NSW Premier to the effect that a record prison population is a sign of a safe society (Noonan 2005) suggest a lack of appreciation of this principle on the part of the NSW government.

UnitingCare NSW.ACT also actively supports the principles of *restorative justice* and *therapeutic jurisprudence* which are transforming the criminal justice systems of the English-speaking world.

By *restorative justice* we mean “a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall 1999, p5). When people commit crimes, they cause injury primarily to people and communities rather than the state. Restorative justice is consistent with justice, in that it involves repair of those injuries and allows the parties to participate in that process (Prison Fellowship International 2000).

*Therapeutic jurisprudence* is based on the recognition that legal processes themselves can “impact the wellbeing of participants, including their satisfaction and compliance with the justice system ... [an] implication is that court processes can be designed to promote wellbeing while at the same time furthering other justice system goals” (King 2003, p1). The NSW Drug Court and Youth Drug and Alcohol Court are examples of therapeutic jurisprudence at work.

### 3 Community based sentences vs. Imprisonment

**What do you see as the advantages and disadvantages of community based sentences in general compared to imprisonment?**

**Do you think it is in the public interest to tailor community based sentencing for disadvantaged populations in NSW?**

Imprisonment is not effective in deterring crime or protecting the community from repeat offences. There are no studies in Australia that prove a causal relationship between high incarceration levels and reduced crime or prevented recidivism. Approximately 62% of NSW prisoners have already been in gaol on at least one previous occasion (Beyond Bars 2004a, p1). Full-time imprisonment also contributes to family breakdown, prevents offenders from making social and economic contributions to society, and in many cases aggravates problems and pressures that lead people to commit crimes. The conventional criminal justice system has completely failed to deal with offenders with significant psychological or social problems (Freiberg 2002, p5).

We also remind the Committee that one of the key recommendations of the Royal Commission into Black Deaths in Custody was the avoidance of imprisonment for Indigenous offenders. We note with grave concern that despite public assurances by the NSW Government that it has implemented the recommendations of the Royal Commission, the number of Aboriginal people in prison continues to increase with a parallel increase in the number of deaths in custody.

Short-term imprisonment is particularly problematic. People sentenced to less than six months imprisonment are unable to access rehabilitation and training services, are generally not covered by the Probation and Parole Service's post-release supervision programs, and are exposed to criminals serving time for more serious offences (Beyond Bars 2004a, p3).

The Bureau of Crime Statistics and Research estimates that:

*"If all those who currently receive sentences of six months or less were instead given non-custodial penalties, the number of new prisoners received in NSW prisons would drop from about 150 per week to about 90 per week, the NSW prison population would be reduced by about 10%, and there would be savings of between \$33-47 million per year [excluding the one-off "admission costs" for newly arrived prisoners] in the recurrent cost of housing prisoners."* (Lind & Eyland 2002)

We also note that 54% of Aboriginal people in prison are serving sentences of less than six months (Beyond Bars 2004b, p3). For these and other reasons, the NSW Legislative Council Select Committee on the Increase in the Prison Population recommended to the NSW Government that it emulate the policy of Western Australia and abolish these short term sentences (2001, p107). It also suggested that the rehabilitation of many first-time offenders is best served within the community. UnitingCare NSW.ACT supports these proposals.

UnitingCare NSW.ACT is also concerned about the problem of breaches of community service orders leading to custodial sentences. We believe the experience of the NSW Drug Court and Youth Drug and Alcohol Court demonstrates the value of the "therapeutic jurisprudence" framework involving a whole-of-government approach to responding to the needs of offenders and providing ongoing judicial supervision, with minor sanctions and rewards available to flexibly respond to offender participation (Freiberg 2002, p5). It appears that meaningful ongoing multi-disciplinary supervision

and support is helpful in avoiding breaches of community based sentences and rehabilitation.

Another advantage of therapeutic jurisprudence is that it gives people a greater sense of having had a 'fair hearing'. Dr King SM explains of the value of this approach to the legal system:

*“Research suggests that if a litigant believes the court process to have been fair, then they are more likely to respect the outcome. That is, this aspect of wellbeing relates to the level of compliance with court orders, a matter of direct concern to a court, whether a specialist problem solving court or otherwise. The fairness of court procedures not only impacts upon litigants’ perception but also on the public’s perception of the integrity of the justice system. A therapeutic approach has the potential to increase public confidence in the justice system.”* (2003, p3)

On the basis of the evidence suggesting improved outcomes and reduced cost coming from their recent evaluations, UnitingCare NSW.ACT supports the expansion of the Drug Court and the Youth Drug and Alcohol Court across New South Wales, with an emphasis on targeting disadvantaged populations in which social factors tend to play a larger role in the circumstances surrounding criminal activity. We are aware of the impracticality of making every court a drug court in the short term. We agree with Dr Freiberg’s (2001, p24) proposal of using a number of courts in key areas which can act as points of referral from general courts, centres of expertise, training for staff and foci of research and evaluation.

The fact that many rural and remote areas may lack sufficient treatment programs should not be accepted as an excuse not to expand the Drug Court and YDAC beyond Sydney. Rather it draws attention to a lack of essential services and provides an opportunity for the NSW Government to tailor multi-disciplinary services to meet the needs of rural and remote communities. It would not be appropriate to enable all NSW courts to refer defendants to the Drug Court in Parramatta because the ongoing nature of this court and its relationship to local treatment services requires offenders to live reasonably close by.

We would also support any moves to implement a trial of other “therapeutic jurisprudence” (also known as “problem-oriented courts”) measures such as the mental health and domestic violence courts currently being trialled in South Australia, and the Family Violence Court and “Roads to Healing” and “Family Care Program” in Western Australia. We understand there are also many programs underway in the United States with which we do not have extensive knowledge, but suggest the Committee may find research in this direction fruitful.

### **Should economic reasons be a basis for imposing a community based sentence or making them more widely available?**

Economic criteria alone are not sufficient for evaluation of sentencing options. However, cost is a component of efficacy, and it is logical that a process with equally satisfactory outcomes that costs less is desirable. Given that community based sentencing is cheaper to provide than full-time detention *even without factoring in the financial benefits of improved health and reduced recidivism, family breakdown and social dysfunction*, we urge meaningful steps be taken to expand their application across NSW.

## **What are some positive criteria that might be used in relation to disadvantaged groups?**

Parents and carers face particular problems in detention, and it is widely agreed that outcomes for children of detainees are severely hampered. Around 60% of women in prison are parents, with 30-40% being sole carers (Beyond Bars 2004b, p4). Alternatives to custody which allow for families to stay together would be beneficial for children of prisoners, as well as for those attempting to address their offending behaviour.

UnitingCare NSW.ACT also strongly believes that Aboriginal and Torres Strait Islander people are especially suitable for 'positive screening' in relation to community based sentences. We have already discussed the increasing ATSI prison population in New South Wales and remind the government of its commitments relating to the Royal Commission into Black Deaths in Custody. ATSI people are also likely to benefit from 'restorative justice' measures due to their stronger community ties and the fact that these measures are consistent with the logic of customary law, being based on a concern to restore community relationships first and foremost.

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