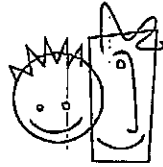


INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

Organisation: NSW Commission for Children and Young People
Name: Ms Jan McClelland
Position: Acting Commissioner
Date received: 1/02/2010



nsw commission for
children & young people

The Hon Christine Robertson MLC
Chair
Standing Committee on Law and Justice
Parliament House
Macquarie St
SYDNEY NSW 2000

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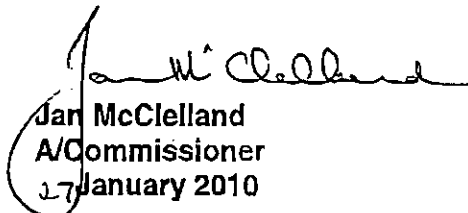
Dear Ms Robertson

I am pleased to make a submission to the Inquiry into Spent Convictions for Juvenile Offenders.

With your approval, we would like to place a copy of this submission on the Commission's website. Making work such as this publicly available is one way of demonstrating the Commission's accountability to the children and young people of NSW. Your consideration of this request at an appropriate time would be much appreciated.

If you require any further information please contact Ms Lou-Anne Lind, Manager, Policy on 9286 7205 or by email at lou-anne.lind@kids.nsw.gov.au.

Yours sincerely


Jan McClelland
A/Commissioner
27 January 2010

Attach.

NSW Commission for Children and Young People**Submission to the Standing Committee on Law and Justice
Inquiry into spent convictions for juvenile offenders****January 2010****1. Commission for Children and Young People**

The NSW Commission for Children and Young People ('the Commission') promotes the safety, welfare and well-being of children and young people in NSW.

The Commission was established in 1999 as a statutory corporation under the *Commission for Children and Young People Act 1998*.

Under section 11 of the *Commission for Children and Young People Act 1998* the Commission's principal functions include to:

- promote and monitor the overall safety, welfare and well-being of children;
- make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children; and
- participate in and monitor the Working With Children Check, for which certain criminal records, including spent convictions, are considered for the purposes of child-related employment.

2. The purpose of a spent convictions scheme

It is the Commission's view that the function of a spent convictions scheme should be to both protect the community from offenders, as well as give people who offend the opportunity for a second chance. Such a scheme should recognise that offenders can be rehabilitated, particularly those who commit minor offences, and that their previous criminal record should not limit their opportunities in life, nor stigmatise them.

In regard to young offenders a spent convictions scheme based on these principles is particularly important given the current evidence on adolescent brain development and low rates of recidivism amongst young people who commit sex offences.

3. Impact of the current spent convictions scheme on young people

The impact of excluding sex offences from the spent convictions scheme has long-term consequences for young offenders that are often disproportionate to the seriousness of the offence, as well as the young person's risk of reoffending.

A young person convicted of a sex offence can be affected in their future employment and professional life as they may be required to declare their conviction when applying for certain types of employment, public office and admission to certain professions. Stable and ongoing employment is crucial in the rehabilitation process and to assist an offender's reintegration back into the community. However, there is no doubt that people with criminal records are disadvantaged in employment decisions.¹ This further compounds the disadvantage that many young offenders already face due to their disengagement from education and employment.

A young person's future travel overseas may also be affected, as some countries require disclosure of certain convictions on visa applications. Applications for insurance, credit or certain licences and other administrative dealings may also be affected.

4. Sex offences committed by young offenders should be treated the same as other types of offences

a. The nature of sexual offending by young people

Research shows that young people who commit sex offences are significantly different from adult sex offenders, both in the nature of their offending and their capacity for rehabilitation.²

In relation to the nature of their offending, young people who commit sex offences are also frequently found to engage in nonsexual criminal and antisocial behavior.³ Some commentators suggest that for many young people sexual offending may be one part of an overall pattern of risk taking behavior.⁴

Findings from the few studies that compare juveniles who committed sex offences with those who committed other types of offences frequently have not revealed significant differences between offenders.⁵ This finding suggests that a substantial number of young people who commit sex offences do not differ significantly from other young offenders.

¹ Human Rights and Equal Opportunity Commission (2004) *Discrimination in Employment on the Basis of Criminal Record*, accessed at http://www.hreoc.gov.au/human_rights/criminalrecord/discussion.html

² Minor, M., et al (2006) *Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders*, Sexual Offender Treatment, Volume 1, Issue 3.

³ Van Wijk, A., et.al. (2006) *Juvenile Sex Offenders Compared to Non Sex Offenders: A review of Literature 1995-2005, Trauma, Violence and Abuse*, Vol. 7, No. 4, October 2006; Nisbet, I.A., Wilson, P.H. & Smallbone, S.W. (2004) A prospective longitudinal study of sexual recidivism among adolescent sex offenders, *Sexual Abuse: A Journal of Research and Treatment*, 16 (3), pp. 223-234.

⁴ Righthand, S and Welch, C., (2004) Characteristics of Youth Who Sexually Offend, *Journal of Child Sexual Abuse*, Vol. 13, No. 3/4, pp. 15-32.

⁵ Becker, J. V., and Hunter, J. A. (1997) Understanding and treating child and adolescent sexual offenders, in Ollendick, T. H. and Prinz, R. J. (Eds.), *Advances in clinical child psychology: Vol. 19* (pp. 177-197) Plenum Press, New York.

In addition, the proportion of young offenders who commit sex offences is very low. Statistics on sex offenders in Australia suggest that young people who sexually offend make up only 10 percent of all alleged sex offenders.⁶

b. Adolescent brain development

We now know that different areas of the brain reach their peak developmental stage at different ages. For example, the development of the frontal lobe, which is responsible for reasoning, continues until the mid 20s and then peaks. The processes that make the brain more precise and efficient begin at around nine years of age and continue beyond adolescence. As a result, there are some emotional responses that young people are simply unable to properly control, without being taught over time, and some types of reasoning that young people are incapable of doing on their own.⁷

Appropriate sexual behaviour is one such action that young people are learning about and often need guidance to understand. Alongside physical changes in the brain, adolescents also undergo hormonal and emotional changes that influence their sexual behaviour. Research shows that much sexual offending amongst young people is impulsive in nature and committed as a result of their immaturity, and often peer pressure. Increased novelty seeking, increased risk-taking and a shift towards more peer-based interactions are all behaviour changes that occur during adolescence.⁸

For these reasons inappropriate sexual behaviour on the part of young people, particularly that of a minor nature, is often best dealt with through proper assessment and treatment, rather than ongoing stigmatism and labelling.⁹ Just as our criminal justice system recognises the different needs of young offenders because of their developmental stage, so should the spent convictions scheme.

c. Recidivist rates for young people who sexually offend

Studies have shown that rates of sexual recidivism among young people who commit sex offences rarely exceeds 10 per cent¹⁰ and it is often said to vary between 0 to 20 per cent. In addition, relative to young people who commit other types of offences, those who commit sex offences do not appear to pose a high risk for other forms of violent recidivism.¹¹

⁶ Lievore, D. (2004) *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy*, Australian Institute of Criminology, Canberra.

⁷ Johnson, S. B., et al. (2009) Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, *Journal of Adolescent Health*, 45, pp. 216-221.

⁸ Johnson, S. B., et al, *Ibid.*

⁹ Letourneau, E. J. and Miner, M.H. (2005) *Juvenile sex offenders: A case against the legal and clinical status quo*. *Sexual Abuse: A Journal of Research and Treatment*, 17, pp. 293-312.

¹⁰ Righthand, S. and Welch, C., *Ibid.*

¹¹ Caldwell, M. (2007) Sexual offense adjudication and recidivism among juvenile offenders, *Sexual Abuse: A Journal of Research and Treatment*, 19, pp. 107-113.

To label these young offenders as "juvenile sex offenders" at a time when they are developing their identity may have negative effects. There is no evidence that suggests "once a sex offender always a sex offender."¹²

5. Other strategies that manage young people who sexually offend

Given the evidence on the nature of sexual offending amongst young people, there is no rationale for treating sex offences differently than other types of offences for the purposes of spent conviction legislation. In NSW there are a range of other strategies through which the safety of the community is protected from young people who may re-offend sexually, which are more appropriate than the prohibitions under the current spent convictions scheme. These strategies include the NSW Police Child Protection Offender Register and the Working With Children Check.

Under the *Child Protection (Offenders Registration) Act 2000* people who commit certain sex offences are required to register with the NSW Police. These registrable persons are required to advise police of their "relevant personal information" for varying periods of time, which for young offenders range from four to seven and a half years.

Under Part 7 of the *Commission for Children and Young People Act 1998* a serious sex offence is grounds for prohibition from child-related employment.¹³ In addition, any sexual offence that was punishable by imprisonment for 12 months or more is considered to be a relevant criminal record for the purposes of background checking.¹⁴ This is regardless of actual sentence received and whether the conviction is spent.

6. Recommendations for reform

a. Sexual offences committed by young offenders

The Commission considers that the rationale behind the spent convictions scheme should be that the initial determining factor for whether a conviction can become spent should not be the type of offence. Rather, it should be the 'seriousness' with which the courts viewed the offence, as demonstrated by the length of the sentence imposed.

The Commission supports Option B as proposed in the Committee's discussion paper. In relation to young offenders, convictions for sex offences should be capable of being spent just like any other offence provided that:

- a prison sentence of less than six months has been imposed; and
- the relevant crime-free period of time has elapsed.

¹² Righthand, S. and Welch, C., *Ibid.*

¹³ Section 33B(1) *Commission for Children and Young People Act 1998*.

¹⁴ Section 33 *Commission for Children and Young People Act 1998*.

While acknowledging that it is beyond the terms of reference for this inquiry, the Commission notes the impact of these minor convictions on young people under the Working With Children Check.

b. Consensual sex

While the Commission recognises that the spent convictions scheme needs to protect the public, and children in particular, there are a range of people who are convicted of sex offences who do not fall in the category of recidivist offenders that the community needs to be protected from. In particular, this category includes situations where a young person under 18 years has been convicted of having consensual sex with another young person.

The Commission recommends that sex offences committed by a young offender should be capable of becoming spent where there is a finding of fact by a court that the sexual act was consensual.

Again, while it is beyond the terms of reference of this Inquiry, the Commission notes that the impact of prohibiting convictions is substantial for young offenders. The Commission proposes to consider these prohibiting convictions further in the forthcoming review of the *Commission for Children and Young People Act 1998*.

c. Where no conviction is recorded

The Commission recommends that where a court finds a person guilty of a sexual offence, but does not proceed to a conviction, these findings should also be capable of being spent in the same way that other types of offences currently are under the spent convictions scheme.

d. Application to the court

The Commission does not support the option suggested in the discussion paper requiring an application to the court to be made before an offence is spent. Making an order to the courts is a daunting process for many people, particularly young people, which requires access to information and resources that many young people would not have.