

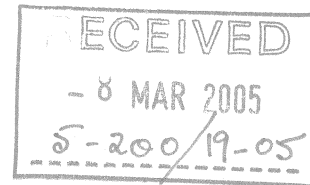
**INQUIRY INTO COMMUNITY BASED SENTENCING
OPTIONS FOR RURAL AND REMOTE AREAS AND
DISADVANTAGED POPULATIONS**

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Theme:

Summary:

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



Dear Sir/Madam

**Inquiry into Community Based Sentencing Options
for Rural and Remote Areas and Disadvantaged Populations**

I refer to recent correspondence and thank the NSW Legislative Council for the opportunity for the Department of Juvenile Justice to comment on the above discussion paper.

With regard to community based sentences for young people in rural and remote areas and disadvantaged populations the department is committed to ensuring as far as possible, that eligible young offenders are diverted under the *Young Offenders Act* 1997, and to maintaining a policy of diversion from custody for all other young offenders. The department therefore supports the use of community based sentencing options where possible and appropriate.

The department has written the attached submission in response to the issues raised in the discussion paper.

Once again, thank you for giving the department the opportunity to comment on the discussion paper and I look forward to the outcome of this inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Sherlock". To the right of the signature, the date "4-3-05" is written in ink.

David Sherlock
DIRECTOR GENERAL

DEPARTMENT OF JUVENILE JUSTICE

Submission to: The Standing Committee on Law and Justice - Inquiry into Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations.

BACKGROUND:

- The Committee has been asked by the Attorney General to inquire into whether it is appropriate and in the public interest to tailor community based sentencing options for rural and remote areas in NSW and for disadvantaged populations.
- The Committee has released a discussion paper and is calling for public submissions by Friday 11 March 2005. Public hearings will subsequently be conducted across metropolitan and regional NSW prior to the Committee tabling its final report in the Legislative Council.
- The discussion paper encompasses all offender groups, but makes particular reference to special and disadvantaged populations, including young offenders, Aboriginal and Torres Strait Islander offenders, culturally and linguistically diverse offenders, female offenders and offenders with a disability.
- The Discussion Paper explores a range of community based sentencing issues, including:
 - the feasibility and desirability of promoting community based sentencing in rural and remote areas of NSW;
 - the viability of tailoring community based sentencing for special and disadvantaged populations;
 - offender eligibility for community based sentencing;
 - the types, accessibility and appropriateness of current community based sentencing options; and
 - community based sentencing options in other jurisdictions.

DEPARTMENTAL POSITION:

Note: The diversion of young offenders by way of caution or youth justice conference referral is not included in this paper. The department's position as set out in this paper applies only to those young offenders who are not dealt with under the *Young Offenders Act 1997*.

The Department wishes to emphasise the following points, which should be read as a background to this submission:

- The principle that the incarceration of children should only take place as a measure of last resort is recognised both as a matter of human rights, and as a key principle in sentencing, especially when dealing with young offenders.
 - This principle is enshrined in the *Children (Criminal Proceedings) Act 1987* (NSW) which provides that children should not be made subject to a control order (detention) unless other community based sanctions would be 'wholly inappropriate' (section 33). The Act also provides that, in the case that the Court sentences a child to a period of detention, the Court must give reasons why that sanction was chosen and why other community based sanctions were found to be 'wholly inappropriate' (section 35).
 - Article 37(b) of the *International Convention on the Rights of the Child* (CROC) provides that detention and imprisonment of children should only take place as a measure of last resort.
- The last resort principle is recognised as best practice in juvenile justice. International research indicates that where a young person is remanded in custody the young person is considerably more likely to re-offend as a consequence of this intervention.
- The department is committed to maintaining a policy of diversion from custody. Thus the department supports the use of community based sentencing options where possible and appropriate, for all young offenders, in order to reduce the risk that the young person will re-offend.
- As noted above, this is an issue of human rights, sentencing principles and best practice in juvenile justice. Further, general principles such as the equality of all before the law, and consistency in sentencing, require that community based sentencing options should be available to all young offenders, including offenders from rural and remote areas and disadvantaged populations.
- However, the success of community based sentencing options is wholly dependent upon the availability of appropriate administrative and operational resources, and solid links with community organisations, to support community based sentencing options.
- While the department submits that all sentencing options and community-based alternatives should be available to all eligible young offenders throughout the state, it is concerned that the vital resources to support community-based

sentencing options are particularly constrained or absent in rural and remote areas. The availability of appropriate services for Indigenous and female young offenders, is also an issue of concern.

- Consideration should be given to issues that particularly affect rural and remote communities and disadvantaged populations, in particular:
 - lack of realistic transport options to meet reporting requirements;
 - lack of appropriate alcohol and other drug services;
 - lack of accommodation options and services;
 - lack of educational, training and vocational services;
 - lack of specialist education programs;
 - lack of placement opportunities for Community Service Orders; and
 - lack of culturally appropriate or gender specific services for Indigenous and young female offenders.
- Regarding Indigenous young offenders (many of whom come from rural and remote areas), the importance of the last resort principle should be emphasised. National bodies such as the Royal Commission into Aboriginal Deaths in Custody and the Human Rights and Equal Opportunities Commission, in the *Bringing them Home* Report have emphasised the heightened importance of the last resort principle with respect to Indigenous offenders. The significant over-representation of Indigenous offenders in custody is a matter of deep concern.
- Regarding young female offenders, the department's custodial facility for young women, Yasmar, is located at Haberfield in metropolitan Sydney. Young women from rural and remote communities detained at Yasmar are isolated from their families and communities. This especially impacts on young women whose families or children may not be able to travel the distance to see them. Further, it is difficult for the young women and their support workers to establish links with appropriate services in their home communities that will assist and support them to reduce their offending upon their release.
- In NSW all young people are given free legal advice and representation. However, for children and young people in rural and remote areas, access to face-to-face legal advice is very limited.
- In Metropolitan Sydney specialist Children's Court Magistrates sit at the Children's court, these Magistrates are aware of the issues that are specific to young offenders. This is not necessarily the case in rural and remote areas where country Magistrates sit from time to time for both the Local and Children's Courts.

The Department also wishes to address the following specific areas set out in the Discussion Paper:

Disadvantaged populations

- As stated above, community based sentencing options should be available to all offenders, on the basis of the last resort principle and well-established sentencing

principles. It is in the public interest that all young offenders should have access to community based sentencing options regardless of where they live.

- However, in view of the particular lack of appropriate services to support community-based sentencing options for disadvantaged populations, the committee should consider how such services can be established and their work supported in rural and remote populations, and for indigenous and female offenders.
- All community based sentencing options listed in the *Children (Criminal Proceedings) Act 1987 (NSW)* should be made more available to these groups:
 - Good behaviour bonds;
 - Release conditioned upon compliance with an outcome plan determined at a conference;
 - Adjournment with bail;
 - Probation; and
 - Community Service Order
- The department is currently considering a trial of an *Intensive Court Supervision Pilot Program* in Brewarrina. The trial will target high risk persistent young offenders, including those where alcohol and other drug use has been a factor in their offending behaviour. Consultation is currently underway with the community in Brewarrina. The proposed trial will take place over two years and be externally evaluated.
- Community based sentencing works better where there is appropriate support and regular contact with support workers. Expanding community based sentencing options to rural and remote areas and to disadvantaged populations would require increased and appropriate resources to Juvenile Justice Community Offices and other support services.
- Home detention is often inappropriate for young offenders. For example, the *Crimes (Sentencing Procedure) Act 1999 (NSW)* includes the following provisions for assessing the suitability of adult offenders for home detention:
 - Any dependency of the offender on illegal drugs;
 - The likelihood that the offender will commit a domestic violence offence;
 - Whether any circumstances of the offender's residence, employment, study or other activities would inhibit effective monitoring of a home detention order;
 - Whether the persons with whom it is likely the offender would reside, or continue to resume a relationship, understand the requirements of the order and are prepared to live in conformity with them; and
 - Whether the making of the order would place at risk of harm any person who would be living with or in the vicinity of the offender.
- These suitability requirements would exclude many young offenders particularly those in rural and remote communities.

- The Committee should also note the inverse of the suitability requirements set out above and the possibility that the offender would be placed at risk of harm in the home environment. Many young offenders, including those from rural and remote areas, come from unstable or dysfunctional home environments where they have been abused or neglected. Home environments that are unstable, or where the offender has been subject to abuse or neglect are clearly not an appropriate environment for the young person to participate in a home detention order. Offenders may also be homeless or live in accommodation otherwise not suitable for home detention.
- The particular developmental challenges and needs of young offenders should also be considered with respect to home detention. Home detention requires considerable self-discipline and motivation, thus it can be more onerous than other sentencing options.

Eligibility for community based sentences

- It is inequitable to exclude violent and sex offenders from community based sentencing options without regard to the nature and circumstances of their offence.
- Responsibilities for child and other family care should be considered as part of sentencing submission.
- Regarding positive criteria for eligibility for community based sentences, the Court should consider whether the young offender has had the benefit of that particular sentencing option before. For example, if the young person has not had the benefit of a CSO, a CSO should be considered as a sentencing option in preference to custody.
- The Court should also consider positive criteria that indicate resilience/ protective factors such as:
 - Does the young person have strong community ties/ family support?
 - Has the young person managed to get to school?
 - Has the young person shown willingness to participate in programs/ made contact with appropriate support services?
- Disadvantage should be taken into account when considering community based sentencing options. Young offenders from disadvantaged communities will be further disadvantaged by a custodial sentence.
- Eligibility criteria will not make a difference if the appropriate support resources are not available. As previously noted, the success of community based sentencing options is wholly dependent upon the availability of appropriate resources to support young offenders in discharging the requirements of their sentence.

Types of community based sentences

- The department supports the use of community based sentencing options in preference to the use of custodial options.

Good Behaviour Bonds

- Good behaviour bonds are available as a sentencing option in NSW.
- The lack of appropriate staff and services to enable young offender to meet the conditions of their bonds are an obstacle in utilising good behaviour bonds in rural and remote areas.
- Further, it is of concern that while young offenders may be receiving a bond as a sentence, the purpose of this sentence tends to be less effective or act as a deterrent towards further offending in cases where young offenders are placed in custody bail refused prior to sentencing.
- The impact of being placed in custody and then appearing at court to receive a bond is somewhat confusing to young people and their families. Issuing of bonds in these situations tends to have little relevance to the offender as the harsher experience of custody and the court appearance out-ways the impact and importance of a bond.
- Community perceptions of youth crime and the community's willingness to address youth crime through community capacity building are also obstacles to the use of good behaviour bonds.
- The department already tailors supervision services to individual offenders. Juvenile Justice staff utilise assessment processes to develop individual case plans. These case plans take into consideration the young persons' disadvantage in terms of rural and remote circumstances.
- When the court orders a good behaviour bond, consideration should be given to the lack of transport and available services in rural and remote communities. The conditions of the order should reflect the circumstances of the offender.
- The advantages of good behaviour bonds are relevant to all offenders. The advantages of good behaviour bonds include the advantages of all community based non-custodial options, maintaining connections with families, communities and appropriate services *and* reducing the risk of re-offending.
- Bonds also have the advantage of flexibility of options with respect to conditions that allow the circumstances of the young offender and their offence to be addressed. For example, a condition may require the offender to attend a rehabilitation or treatment program.

Community Service Orders (CSOs)

- There are many advantages to the use of CSOs in preference to the use of custody as a sentencing option, particularly in rural and remote areas. CSOs

allow the young person to remain in, and be monitored and supported by their community.

- CSOs also provide an opportunity for the young offender to provide reparation to their community. This can also give the young offenders a sense of connection, pride and ownership in their community.
- Some forms of CSO are available in rural and remote areas. However, there is anecdotal evidence that CSOs are not being utilised extensively in certain remote areas.
- CSOs require appropriate placement options, supervision and a meaningful task in order for the young offender to participate. It is of concern that placement options and appropriate services for CSOs in rural and remote areas are limited.
- It can be especially difficult where the young offender comes from a small town, both in that there could be no appropriate options for a CSO placement, and that in small communities it is likely that the offender is known and there may be no one willing to offer a placement.
- The department currently utilises the Community Development Employment Projects (CDEP) and Lands Councils for CSO placements for Indigenous young offenders in rural and remote areas. More options, with appropriate resources and supervision, are required for young offenders in rural and remote areas, including those from indigenous communities.
- More latitude in terms of placement options for CSOs should be considered to increase their availability and meaning. For example, current restrictions to unpaid community work exclude options such as participation in education and training, or appropriate cultural programs.
- Mentoring programs have been suggested to improve CSO delivery and participation.
- The lack of resources needs to be addressed on both a macro and micro level. For example, in rural areas there is a lack of appropriate individualised services such as special education and AOD treatment program. It has also been suggested that resources are a problem on a micro level, for example, young offenders need to be provided with suitable clothing and footwear to take part in work programs.
- All CSOs should be tailored to meet the needs of individual offenders, including the needs of those from disadvantaged groups.
- The particular developmental challenges and needs of young people as compared to adults need to be considered. In considering sentencing options, we must be alert to whether the young person has a mental illness or intellectual disability, a drug or alcohol problem, whether their family circumstances are supportive. Are there adults willing and able to get them to their placements? Are

there enough Juvenile Justice Officers to support and monitor the young offenders in completing their CSOs?

- The main obstacles with regard to CSOs is the lack of services and placement options, not the lack of sentencing options.

Drug Court of New South Wales and the Youth Drug and Alcohol Court

- At present the Drug Court is only available in South Western Metro Sydney and Bidura. If all NSW courts were to refer defendants to the Drug Court in metropolitan areas, video-conferencing for court appearances would need to be made available.
- With respect to the Drug Court, again we emphasise the issue of the availability of appropriate resources and services. There is a lack of youth specific Drug and Alcohol services in rural and remote communities. Anecdotal evidence suggests that it is very difficult to recruit and retain appropriately skilled Alcohol and Other Drug workers to service rural and remote communities.