

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

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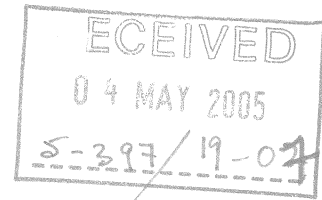
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Summary:

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Attorney General's
department of nsw



Fax

Ref.

To	Rachel Callinan
Fax No	9230 3416
From	Carolyn Marsden
Date	2 May 2005
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Re	Inquiry into community based sentencing options for rural and remote areas and disadvantaged populations

Rachel

Please find following a letter from our Director General providing some information for the Inquiry on community based sentencing options administered by the Attorney General's Department.

If you require any further information, please do not hesitate to contact me on 9228 7537.

Regards

Carolyn Marsden
Senior Policy Adviser
Legislation and Policy Division



Attorney General's
department of nsw

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

05/0664

Dear Ms Robertson

I am pleased to provide you with information for the purposes of the inquiry into community based sentencing options for rural and remote areas and disadvantaged populations.

The Attorney General's Department administers the following community based sentencing programs:

1. The Magistrates Early Referral into Treatment (MERIT) program;
2. The Youth Drug and Alcohol Court;
3. The Drug Court of NSW (Adult Drug Court);
4. Circle Sentencing Program;
5. The Intensive Court Supervision Program;
6. The Rural Alcohol Diversion Pilot Program; and
7. The Community Conferencing for Young Adult Offenders Pilot Program.

I have attached information on each of these projects.

The Attorney General is responsible for administering the *Young Offenders Act 1997* (the Act). The Act provides a hierarchy of increasingly intensive sanctions for dealing with young offenders, starting with warnings and cautions, and progressing to youth justice conferencing and court attendance. How a matter is dealt with depends on the type of offence that has been committed, how serious it is, the amount of violence involved, and the harm caused to the victim.

Very serious matters like murder, manslaughter, sexual offences, drug trafficking, offences resulting in the death of a person and apprehended violence order matters can only be dealt with by a court.

Warnings aim to provide an efficient, immediate and direct response to the commission of trivial offences by young people that do not involve violence and are not ongoing. Warnings are used most frequently for first offenders unless the offence involved theft or assault. The use of warnings recognises that a significant number of young people who commit trivial offences do not go on to commit further offences.

Cautions are far more than a "slap on the wrist" - being given a caution is a serious matter. The young person, accompanied by their family or another adult chosen by the young person, must face a senior police officer at the police station and confront what they have done. Cautions can take up to an hour to administer. The number of cautions a young offender can receive is generally limited to three.

Conferencing is a confronting process that makes young offenders face their victims in the presence of their families and the police and actively participate in analysing and making decisions about their behaviour. It produces a strict outcome plan requiring young offenders to redress the damage they have done and deal with the underlying causes of their offending behaviour. Outcome plans are negotiated with the victim and are monitored just as strictly as court orders. If an outcome plan is not completed, the young person may still face prosecution through the court.

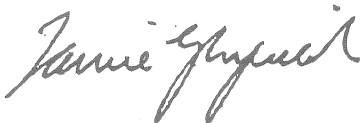
The Bureau of Crime Statistics and Research (BOCSAR) released a report in 2000 evaluating the conferencing scheme established under the Act (*An Evaluation of the Youth Justice Conferencing Scheme*, Trimboli, L., BOCSAR, 2000) This study provides strong endorsement for the use of alternatives to court proceedings for dealing with juvenile offenders. The report confirms that both young offenders and victims experience high levels of satisfaction with the conferencing process. The report also confirms that most offenders accepted responsibility for their offences, felt that the offence they had committed was wrong, understood what it felt like for those affected by their actions, and understood the harm they had caused to the victim.

BOCSAR has also conducted a study into the re-offending rates of juvenile offenders who have been conferenced compared to those who have been dealt with by the court (*Reducing Juvenile Crime: Conferencing versus Court*, Crime and Justice Bulletin, No 69, April 2002). The report finds that conferencing produces a moderate reduction of up to 15 to 20 per cent in reoffending across different offence types. Copies of both of these reports are available on the BOCSAR website at www.lawlink.nsw.gov.au/bocsar.

If you require any further information, please do not hesitate to contact Ms Carolyn Marsden, Senior Policy Adviser, Legislation and Policy Division, on 9228 7537.

I look forward to the reading the report of the Inquiry.

Yours faithfully



Laurie Glanfield
Director General

MAGISTRATES EARLY REFERRAL INTO TREATMENT (MERIT) PROGRAM

PROGRAM DESCRIPTION:

The MERIT Program is a Local Court based diversion initiative which aims to reduce crime associated with illicit drug use by engaging defendants with drug problems in intensive drug treatment as part of their bail conditions.

MERIT is funded through the joint Commonwealth-State Illicit Drug Diversion Initiative. Under the second phase (2003/2004 – 2006/2007) of this agreement, the Australian Government will provide \$43 million to support MERIT.

As at 28 February 2005:

- 4260 defendants had entered the MERIT program (60.5% of all referrals);
- 315 were participating in the program;
- 2320 defendants (58.8% of finalised cases) had successfully completed the program; and
- 1626 defendants did not complete the program - they were either terminated or withdrew from MERIT.

The 2003 Annual Report on the statewide implementation of MERIT is available on the MERIT website (www.lawlink.nsw.gov.au/cpd).

PROGRAM LOCATION:

The MERIT program is available in 53 Local Courts covering 75% of finalised Local Court criminal matters in NSW. MERIT most recently commenced at Blacktown Local Court on 1 April 2005 and will commence at Wilcannia in late May 2005.

Approval has been given to expand MERIT to Waverley, Fairfield, Singleton, and Cooma Local Courts during the 2005/06 financial year.

YOUTH DRUG AND ALCOHOL COURT

PROGRAM DESCRIPTION:

The Youth Drug and Alcohol Court (YDAC) trial commenced in Western Sydney in July 2000 and was expanded to eastern and central Sydney in July 2004.

The Youth Drug and Alcohol Court operates under existing legislation, primarily the *Children (Criminal Proceedings) Act 1987* and the *Bail Act 1978*.

Juveniles appearing at any NSW Children's Court can be referred to the Youth Drug and Alcohol Court if they:

- Have a serious drug or alcohol problem;
- Plead guilty (or indicate an intention to do so);
- Live in or identify with the program's catchment area;
- Cannot be dealt with under the *Young Offenders Act 1997*; or
- Are suitable for treatment and rehabilitation.

The participant is comprehensively assessed and given a program plan that they must follow. It lasts six months or more and includes drug treatment, regular appointments with the court, and health, housing and education services.

Program services are provided by the NSW Departments of Juvenile Justice, Community Services, Health, and Education and Training. Non-government organisations are also funded to provide services where appropriate.

As at 31 December 2004:

- 350 people had been referred to the Youth Drug and Alcohol Court;
- 158 people had entered the program;
- There were 28 participants in the program;
- 51 of the 130 people whose cases had been completed (39%) had successfully completed the program.

PROGRAM LOCATION:

The Youth Drug and Alcohol Court operates in western, eastern and central Sydney.

PROGRAM EVALUATION:

The trial has been fully evaluated by the Social Policy Research Centre, University of NSW. The evaluation report was released on 8 July 2004. The evaluation found that "the program is having an important, positive impact on the lives of many of those participating" and recommended that the program should continue and possibly be expanded to selected other geographical areas.

DRUG COURT OF NSW (ADULT DRUG COURT)

PROGRAM DESCRIPTION:

The Drug Court of NSW was the first such court in Australia and commenced in Western Sydney in February 1999. The Drug Court of NSW offers non-violent drug dependent adult offenders the opportunity to participate in a supervised community-based program of treatment and rehabilitation.

Operation of this program is outlined in the *Drug Court Act 1998* and the *Drug Court Regulation 1998*. The objects of this Act, and of the program, are:

- (a) to reduce the drug dependency of eligible persons; and
- (b) to promote the re-integration of such drug dependent persons into the community; and
- (c) to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

As at 31 December 2004:

- 1054 offenders had commenced Drug Court programs;
- 172 offenders were undertaking Drug Court programs;
- 251 (28.5%) of the 882 people whose cases had been finalised had successfully completed the program and received a non-custodial sentence when they exited from the program.

PROGRAM LOCATION:

Under the *Drug Court Regulation 1999*, referrals to the Drug Court can only be made by the District Court sitting at Campbelltown, Parramatta or Penrith; and by the Local Courts at Bankstown, Blacktown, Burwood, Campbelltown, Fairfield, Liverpool, Parramatta, Penrith, Richmond, Ryde and Windsor.

Under the *Drug Court Regulation 1999*, a participant's residence must be within one of the following local government areas: Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta or Penrith.

PROGRAM EVALUATION:

The Adult Drug Court was rigorously evaluated by the Bureau of Crime Statistics and Research (BOCSAR), with favourable results released in February 2002. The evaluation found that the Drug Court program was more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending.

In response to the evaluation, the Government announced that the program would be extended. The Drug Court has also been allocated a major role in the implementation of the Compulsory Drug Treatment Correctional Centre trial program scheduled to commence operation in December 2005.

CIRCLE SENTENCING PROGRAM

PROGRAM DESCRIPTION:

Circle sentencing is an alternative sentencing court for adult Aboriginal offenders who plead guilty or are found guilty in participating Local Courts. A circle involves Aboriginal elders, the magistrate, the victim(s), the prosecutor, the defendant, the legal representatives, various support people, as well as the Aboriginal Circle Sentencing Project Officer.

The legislative basis for this program is the *Criminal Procedure Amendment (Circle Sentencing Program) Regulation 2003*.

The NSW Aboriginal Justice Advisory Council (AJAC) developed and implemented a pilot Circle Sentencing Program in Nowra in February 2002.

PROGRAM LOCATION:

Following the success of the pilot, the program has been sustained in Nowra and expanded to three other locations in New South Wales. The program is now operational in Nowra, Dubbo, Brewarrina and Walgett.

The program is to be expanded to a further five locations in 2004/2005 - Bourke, Lismore, Kempsey, Armidale and Mt Druitt.

PROGRAM REVIEW AND EVALUATION:

The NSW Judicial Commission and the Aboriginal Justice Advisory Council released a joint review and evaluation of the Nowra Pilot in October 2003. The review shows that the Nowra pilot was successful in its key objectives, namely:

- a) Improving the sentencing process to better suit Aboriginal offenders,
- b) Empowering the community to address offending issues and patterns within their community, and
- c) Reducing the number of people appearing at Nowra Local Court.

The Department's Crime Prevention Division will arrange a comprehensive evaluation of the program over the next two years.

INTENSIVE COURT SUPERVISION PROGRAM

PROGRAM DESCRIPTION:

The Intensive Court Supervision (ICS) program provides magistrates with community-based alternatives to incarceration for eligible children who would otherwise be facing custody.

These alternatives are developed through a partnership between the court, the local Aboriginal Community Justice Group, the Department of Juvenile Justice (who have recruited a dedicated program worker) and other community members and agencies as required.

The community-based alternatives typically aim to reduce recidivism by participants through addressing health and social deficits and reintegrating them into productive community life, including employment, sport, cultural activity and education/vocational programs.

The involvement of Aboriginal Community Justice Group members is the key element of the ICS program which differentiates it from existing juvenile justice practice.

The role for Community Justice Group members within ICS is to:

- (1) within the court setting, support the magistrate and the Juvenile Justice officer (JJO) to identify key areas and expected outcomes to be included in the program plan,
- (2) coordinate community activities such as living skills programs, sport, vocational and cultural activities that the child can participate in as part of their program plan, and
- (3) with the magistrate and the JJO, support participation and monitor compliance with regular aspects of the program plan such as school attendance.

The Community Justice Group at Brewarrina has a dedicated project officer who provides a vital link between the Local Court and the Aboriginal community at Brewarrina. By mid 2005 it is planned that a similar position will be established in Bourke.

While the program is predominantly concerned with reducing incarceration and potential recidivism, it also serves as a pilot program subject to ongoing monitoring and review and independent evaluation to assess the effectiveness of incorporating community supervision and support in the management of serious young offenders in rural communities.

PROGRAM LOCATION:

The Intensive Court Supervision program commenced at Brewarrina Local Court in March 2005. It is expected to commence in Bourke Local Court in mid 2005 once the Bourke Community Justice Group has been established and fully trained. These communities were chosen due to local concerns about the rates of juvenile offending and juvenile incarceration.

RURAL ALCOHOL DIVERSION PILOT PROGRAM

PROGRAM DESCRIPTION:

The Rural Alcohol Diversion Pilot Program (RAD) is a Local Court based program which aims to reduce alcohol related crime by engaging defendants on bail with primary alcohol abuse or dependence problems in specialist treatment and rehabilitation.

The approach is based on the Magistrates Early Referral Into Treatment (MERIT) model.

The implementation of RAD was a key recommendation of the NSW Summit on Alcohol Abuse. The program is funded under the joint Commonwealth-State Illicit Drug Diversion Initiative Funding Agreement. Under this agreement the Australian Government will provide NSW with \$713,268 over four financial years to trial the Program.

RAD operates within the legal framework of the *Bail Act 1978*, in particular section 36A. Eligible defendants are referred for a comprehensive assessment and referral into treatment services under a three-month judicially supervised program as part of their bail conditions.

The program operates at the pre-plea stage of the court process.

PROGRAM LOCATION:

RAD was launched at Orange Local Court on 17 December 2004.

As at 28 February 2005:

- 12 defendants had been referred to RAD; and
- 6 of these defendants had been accepted onto the program.

RAD commenced in Bathurst Local Court on 26 April 2005.

PROGRAM EVALUATION:

The program will be independently evaluated to determine its effectiveness in meeting program goals.

COMMUNITY CONFERENCING FOR YOUNG ADULT OFFENDERS

PROGRAM DESCRIPTION:

In November 2004 the Government announced that the Community Conferencing for Young Adults Pilot Program would be conducted for a two year period.

A community conference is a decision-making forum that brings together the offender, victim and other relevant people to discuss the harm caused by the offender and to negotiate an intervention plan for the offender.

The pilot program is modelled in part on the Youth Justice Conferencing program established under the *Young Offenders Act 1997*.

A working group has been established to oversee the implementation of the pilot program. It includes representatives from the Department of Corrective Services, NSW Police, the Department of Juvenile Justice, the Attorney General's Department, the Youth Justice Advisory Council, the Legal Aid Commission, the Chief Magistrate's Office, the Law Society and Local Courts.

PROGRAM LOCATION:

The pilot will take place in two locations: one metropolitan – South West Sydney, (Liverpool Local Court), and one non-metropolitan Far North Coast (Tweed Heads, Murwillumbah, Byron Bay, Mullumbimby Local Courts).

It is envisaged that the pilot will commence taking referrals at Liverpool Local Court in mid 2005 and at Tweed Heads Local Court in June 2005 subject to the making of the Regulation.