

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

Organisation: Government of Western Australia
Name: The Hon John D'Orazio MLA
Position: Minister for Justice and Small Business
Telephone:
Date Received: 30/09/2005



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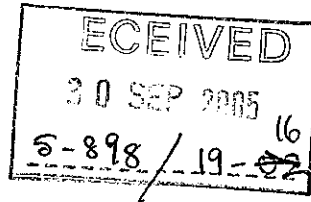
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The Hon. Christine Robertson MLC
Chair NSW Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Robertson

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

Thank you for your letter dated 25 July 2005 regarding the inquiry into how community based sentencing options have been tailored for rural and remote areas and disadvantaged populations in Western Australia.

I have sought advice from the Department of Justice and enclose for your information a copy of this advice. I trust this will assist with the compilation of your report.

Yours sincerely

**JOHN D'ORAZIO MLA
MINISTER FOR JUSTICE**

23 September 2005

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TO: Annie Marshall
COMPANY: Legislative Council
FROM: ASHE DENTON
ADMINISTRATIVE ASSISTANT
SUBJECT: Letter dated September 2005

FAX No: 02 9230 3371
DATE: 14 October 2005
PAGES (including this): 9

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MESSAGE:

Dear Annie

Please accept my apologies for not including the advice with the original letter faxed on 23 September 2005 and find a copy of the advice attached to this fax.

If there are further problems, please do not hesitate to contact me on 9213 7151 or adenton@dpc.wa.gov.au.

Yours sincerely

Ashe Denton
A/Liaison Officer
Minister for Justice and Small Business

If there are any queries, or the fax was not received correctly, please call (08) 9222 8950

HOW COMMUNITY BASED SENTENCING OPTIONS HAVE BEEN TAILORED FOR RURAL AND REMOTE AREAS AND DISADVANTAGED POPULATIONS IN WESTERN AUSTRALIA

The Community Justice Services (CJS) Directorate is responsible for all adult and juvenile offenders in Western Australia under supervision in the community through an order imposed by the court or a releasing authority. The primary releasing authority for juvenile offenders is the Supervised Release Review Board and for adults, it is the Parole Board.

CJS is also responsible for providing assessment and advice to courts to assist the judiciary with sentencing decisions and to the releasing authorities to inform release decisions. Offender assessment reports are prepared for people eligible for release from detention or prison under community supervision. Progress reports on offenders under community supervision may also be prepared. For those offenders who fail to comply with the conditions of supervision, breach reports are supplied to the relevant sentencing or releasing authority.

The range of community-based sanctions for adult offenders include:

- work and development orders for fine defaulters
- community based orders, such as intensive supervision orders, re-entry release orders and parole orders and
- other options such as home detention bail and monitored bail.

The range of community-based sanctions for juvenile offenders include:

- referral to the Juvenile Justice Teams,
- community based orders such as community work orders for fine defaulters, youth community-based orders, intensive youth supervision orders with and without detention and supervised release orders from detention and
- other options include supervised bail

These adult and juvenile sanctions are Statewide and applicable to all offenders in the justice system, including rural and remote areas. There is a philosophy in the case management of all offenders who are sanctioned to community based orders, that the support and intervention required by the individual offender are individually customised based on their ethnicity, gender, age and other developmental needs. These factors are always taken into consideration in the management plan so that the offenders prospects of completing the Order are maximised and to reduce the likelihood of re-offending.

Further to this however, there has been an adaptation of some sanctions to better service the needs of rural and remote areas as well as the provision of services for disadvantaged populations, which are outlined in the following:

1. Juvenile Justice Reform Strategy

In Western Australia over recent years, a range of introduced strategies such as police cautioning and referral to the Juvenile Justice Teams, has significantly reduced the number of juvenile offenders appearing before the Courts. Statistics demonstrate that sixty one percent of juveniles entering the justice system now have no further contact with this system within two years. The same success however could not be achieved

with three specific groups of offenders namely, serious repeat juvenile offenders, regional young offenders and Aboriginal young offenders.

As such, in August 2004 to address this issue, the Gallop Government committed to a range of options through the Juvenile Justice Reform Strategy to target serious and repeat juvenile offenders as well as juvenile offenders in remote communities. The primary aim is to reduce re-offending amongst these three groups.

The Juvenile Justice Reform Strategy provides a range of strategies to meet this aim including:

- Establishing an Intensive Supervision Programme (ISP) for serious repeat juvenile offenders;
- Expansion of Community Supervision Agreements in remote and regional areas; and
- Developing juvenile Community Conferencing in regional areas; based on the Juvenile Justice Teams process

To permit the establishment of the initiatives and support the Juvenile Justice Reform a number of amendments were made to the *Young Offenders Act 1994*. These amendments were subsequently proclaimed on 1 January 2005.

1.1 Intensive Supervision Program (ISP)

ISP is aimed at the State's most serious repeat juvenile offenders, and is the first of its kind in Australia. Intensive Supervision Program (ISP) teams work with juveniles who have extensive offending histories, and complex social circumstances that contribute to their anti-social behaviour.

The Intensive Supervision Program operate under license from the highly successful Multi-Systemic Therapy (MST) model, which is currently used in 25 American states, as well as in Canada, England, Northern Ireland, Norway, Denmark, France and New Zealand. Evaluations of the model over the past 30 years have shown a 25-70% reduction in long-term rates of re-arrest of juveniles.

The model targets the many factors known to relate to juvenile offending, including family and peer relations, school/work performance and community or neighbourhood factors. Interventions occur in the offender's usual environments, both at home and in their local neighbourhoods. By targeting juveniles in their home environment, they develop strategies that take into account the normal demands and stresses of everyday life and are more likely to achieve sustained behaviour changes.

MST has had significant cross-cultural success in other countries, which is critical, given the high number of Aboriginal juveniles in Western Australia's justice system. An important aspect of the program is that it works with the whole community, including the extended families of these young people, their school teachers and principals, friends and associates, as well as the police, local recreation services, and other significant people and services in their lives. In other words, the multi systems that impact on the young people and their families.

Intensive Supervision Program staff focus on identifying the strengths and resilience in the young person, the family, carers, informal and formal networks of support and use these as levers for positive, incremental change. Giving up on families or labeling them as 'resistant' or 'unmotivated' is not an option. The Intensive Supervision Program approach finds ways to engage with families and juvenile offenders who might be ambivalent or resistant. Team members will work with some of the States most marginalized, disadvantaged and challenging families, often in difficult environments. Interventions used will depend on how the offending behaviours 'fit' or make sense with each family's situation.

Ultimately the aim of the program is to provide parents with skills and resources to monitor the activities of the young person, independently address difficult behaviours and give the young person skills to cope appropriately with family, peer, school and neighbourhood demands.

The main philosophy behind the program is that the best way to help juvenile offenders is by helping their families use their existing strengths, skills and resources.

The first Intensive Supervision Program team commenced operating on November 1, 2004; with three Intensive Supervision Program teams now established in the Perth metropolitan area. A team will commence in the regional centre of Kalgoorlie by September 2005. Each team consists of a team supervisor, three clinicians and an Aboriginal team advisor. A Juvenile Education Officer works with the three Metropolitan teams to help the young people and their families make positive connections with compulsory and post compulsory education and training. Four to six offenders and their families are assigned to each clinician for a maximum of six months. The three teams in the metropolitan area are in the suburbs of Midland, Cannington and Mirrabooka, areas of identified need and with significant disadvantaged population.

1.2 Expansion of Community Supervision Agreements for Adult and Juvenile Offenders

The provision for Community Supervision Agreements in the amendments to the *Young Offenders Act 1994* allows for Aboriginal community councils and other community members to be contracted by the Department to provide supervised and supported placement options for young offenders as well as adult offenders in rural and remote areas. These placement alternatives include suitable options for offenders who require supervised bail, are placed on community based orders and require community supervision, or returning to the community after serving a term of detention or prison.

The aim of Community Supervision Agreements is to actively engage community members in providing support, monitoring and guidance to offenders in their own communities. Further to this, the agreements with communities also aim to assist in the development and facilitation of programmes in regional and remote areas. Community Supervision Agreements ensure that offenders under supervision in the community are more closely monitored. It is envisaged that these agreements will address the gaps in community justice services available to remote communities due to the vast distances in WA.

To ensure that communities are able to meet the obligations of a community supervision agreement, the Department provides training and ongoing support to community councils so they can undertake these services.

In 2004 the Department appointed four Community Supervision Agreement Officers (CSAOs). The Juvenile Justice Reform Strategy funded the Gascoyne position and the Gordon Inquiry provided funding for the Kimberley, Pilbara and Goldfields positions. Since June 2004, the CSAOs in conjunction with the Regional Centre Managers have been negotiating with a number of communities to establish agreements.

1.3 Regional Community Conferencing

On 1 January 2005 the *Young Offenders Act 1994* was amended to allow Community Conferencing in remote Aboriginal communities to be conducted by approved Aboriginal community members. The amendments allow both the Western Australian Police Service (WAPS) and the Department of Justice (DoJ) to delegate their part in the Juvenile Justice Team process to an approved community member.

The Juvenile Justice Teams deal with young people who have committed minor offences or are in the early stages of offending. The Team process involves the young offender, their parents/responsible adult and the victim sitting down face-to-face, discussing the young person's actions and agreeing on a penalty/action plan for the young person to make amends for their behaviour. The Teams are an important way of diverting young offenders from the courts and a future career in crime and provide the Police and the Courts with alternatives to involving the young person in the justice system.

Regional Community Conferencing is an extension of the Juvenile Justice Team process and maintains the principles and philosophy of the Teams. This is in partnership with the Department of Justice, the Western Australian Police Service and the Education Department of Western Australia.

Regional Community Conferencing was initiated in response to the over representation of Aboriginal young people in the justice system. Recent statistics demonstrate that over half the people managed by Community Justice Services (CJS) now originate from regional areas and there is a large over-representation of Aboriginal youth in regional and remote areas. One of the reasons underpinning this is the limited availability of diversionary programs in these areas and as such young people are escalated into the formal justice system much quicker than metropolitan youth. The lack of services available in some of these areas meant that the options available for Police and Courts were limited.

The introduction of Regional Community Conferencing not only empowers Aboriginal communities but also provides a key influence in addressing the offending behaviour within the community and in fashioning culturally appropriate penalties. Keeping the matter and the process at a local level not only encourages the young person but also the community to accept responsibility for the young person's actions and to acknowledge the impact the behaviour has had on the victim and the community itself. Community presence in this process can impart a positive and

constructive notion of restorative justice, embracing a more culturally appropriate approach for all participants and embracing the true spirit of the process.

Within the process the aim is to shift the focus to that of rehabilitation and responsibility rather than punishment and sanction. This option may be viewed by some as a softer option than that of the Courts but the concept of a young person facing their own community or those respected in the community to discuss their behaviour supports the concept that this could be a more meaningful process for the young person. Engagement at this level with a more meaningful outcome could prevent or deter a young person from future contact with the justice system. Often the Court process does not require the same level of engagement by the young person particularly as they do not meet their victim face to face and as such are not exposed to the full impact of their behaviour on the victim.

2. The Gordon Inquiry

The Gordon Inquiry 2003 into child sexual abuse in Aboriginal communities was established following the coronial inquiry into the suicide death of a young 15-year-old girl at the Swan Valley Nyoongar Community. The Department of Justice has been funded over four years for three initiatives as part of the government's response to the Gordon Inquiry.

Community Justice Services are progressing two initiatives –

1. the provision of Programs in Remote Regional Areas and
2. the expansion of Community Supervision Agreements (refer to 1.2).

2.1 Programs in Regional and Remote Areas

The Department was funded through the Gordon Inquiry to develop and implement, in collaboration with remote communities, a range of justice related programs. The focus of these programs was on violence and substance misuse with the aim of providing services to remote areas to address these issues in a community development context. To assist this process Regional Programs Development Officers (RPDOs) were employed in the Pilbara, Goldfields, Murchison/Gascoyne and Kimberley regions to work with communities to identify, develop and deliver programs that meet community and government needs and priorities.

Over the past twelve months Regional Program Development Officers have liaised with local and remote communities to identify program needs and scope design and delivery aspects for programmatic interventions specific for the area. The RPDOs have gathered and workshoped the information from stakeholder groups and local communities to produce a range of program materials and tools to provide services to these areas. These program initiatives will be presented to communities between July and September 2005 in order to refine the program content and validate their suitability for use in the targeted communities. If the programs prove suitable it will provide Regional Program Development Officers with a range of program materials and tools that are relevant, responsive and reflective of perpetrator, victim, family and community needs.

An Aboriginal Programs Development Consultant position has also been created within the Community Justice Services Programs Branch to develop a range of

programmatic interventions that will enhance the management and supervision of Aboriginal offenders; and contribute to promoting safer communities. Further to this position an Aboriginal Programs Supervisor position has also been created to provide support and clinical supervision of Regional Programs Development Officers in respect of program delivery to Aboriginal offenders.

3. Other Initiatives in Western Australia

3.1 Circle Courts and Community Courts Involving Aboriginal Elders

The objective behind Yandeyarra and Kiwirrkurra Circle Courts in the Pilbara is to have community Elders directly involved in the Court processes by attending the Court proceedings and by being involved with sentencing discussions with the Magistrate. During the sentencing process, the Elders provide direction to the offender as well as provide explanation if needed of what the offender should do in relation to the received sentence.

Offences dealt with in the Circle Court can originate from other towns, however the offender has to be from the local community of Yandeyarra or Kiwirrkurra. The Yandeyarra Circle Court commenced on 16 May 2003, and Kiwirrkurra Circle Court commenced on 3 May 2005. The response from both communities is that the communities feel comfortable with the proceedings of the Circle Courts and it is viewed as a positive way to deal with local offending behaviour. Due to language barriers and local community people not having a sound understanding of the court and sentencing processes, the involvement of the Elders has been instrumental in assisting with developing this understanding for the community as well as for the Magistrates.

Currently the Jigalong community in the Pilbara Region is exploring the option of establishing a Circle Court for the local community.

Further to Circle Courts in the Pilbara Region, the Kimberley Region adopts a similar process in the sentencing of Aboriginal people from local and remote communities. In the Kimberley the Magistrate holds Court in seven remote Aboriginal communities in addition to six towns. It is noted that the majority of the appearances in these Courts are from people of aboriginal descent and from varied cultural groupings. In these instances, the Magistrate seeks the assistance of local Elders and Justices of the Peace in sentencing.

3.2 Intellectual Disability Diversion Project (IDDP)

The IDDP was introduced in July 2003 to focus on offenders with an intellectual disability. Although a metro based program IDDP does serve to assist offenders with an intellectual disability so that they are not further disadvantaged in the justice system. The scheme is designed to divert these offenders, when charged with minor offences, from the court to community-based interventions.

The objectives of the program are:

- Reduce the rate of imprisonment
- Reduce the rate of recidivism
- Improve the appropriateness of the ways in which intellectual disabilities are handled within the system.

This is a court diversion program that enables adult people with an intellectual disability to be diverted by the courts into appropriate alternative support arrangements within the community. Following completion of the program the court will, prior to sentencing, take into consideration their compliance and involvement with the program. It is an intended outcome that people who are linked into these support agencies will continue engaging beyond their initial involvement with the program. Initial and ongoing involvement with the program is also intended to reduce their likelihood of re-offending.

The target group are adults with an intellectual disability, charged with a minor or non-violent offence, that appear in the Perth Central Law Courts. Potential candidates are able to be referred by the arresting police officer, prosecutors, duty lawyers, magistrates, security staff, lock up staff and others.

This program has been developed by, and continues to be a joint initiative between, the Department of Justice and the Disability Services Commission with support from the Chief Stipendiary Magistrate, the WA Police, Legal Aid, the Community Forensic Mental Health and others.

An Intellectual Disabilities Diversion Co-ordinator works closely with the Disabilities Services Commission in the assessment and development of support plans for eligible offenders. For those who do not meet the eligibility criteria, the co-ordinator endeavours to link clients to other appropriate community support agencies. The co-ordinator also provides training and consultancy regarding intellectual disability for the Department of Justice's Community Justice Service's staff and consultancy regarding the justice system for the Disabilities Services Commission staff.

3.3 Programs That Address Offending Behaviour

The absence of an integrated and comprehensive approach to therapeutic program provision within Community Justice Services has been a long-standing concern in Western Australia that is currently being addressed through 'The Reform of Programmatic Intervention Services' project.

Following research and initial stakeholder consultation phases of the project, a statewide service delivery model was endorsed. A Community Justice Services Programs Branch was established as an expansion of the existing Warminda Intensive Intervention Centre.

In brief, key elements of the service delivery model include:

- developing a more expansive program model that ensures a stage matched and more "responsive" array of treatment programs. For example, at the most intensive level the tiered model utilises "targeted" program options (e.g. substance abuse and domestic violence treatment programs). At the medium intensity level a modularised foundation program is provided. In particular, the modularized foundation program is designed to better engage those offenders previously considered 'not treatment ready' or 'pre-contemplative' (of the need for change);
- Program Officer positions have been assigned coverage of each metropolitan site and some country sites. At other country sites Regional Program Development Officers, as outlined under the Gordon Inquiry section of this paper, will target remote Aboriginal communities. The presence of a Senior Programs Officer at each site raises the profile and use of programs by case managers (Community Corrections Officers);
- Offenders who participate in programs are also introduced to the services of Vocation, Education and Training Officers who offer information and support following completion of the program; and
- A generic Program Assessment Package has been implemented incorporating Pre and Post Tests for participants for those offenders who proceed into programs.

In addition;

- A Programs Branch Policy and Procedures Manual and Induction Package for staff are currently being finalised, as are a set of publications explaining the work of the branch to key stakeholders, Community Corrections Officers and the offenders themselves; and
- Opportunities for enhanced partnerships in program delivery with other community based agencies and links with other re-entry supports such as welfare services are being explored.

The Programs Branch has just commenced its second full year of operation and program development is ongoing. Steadily increasing referral rates, enrolments and program completions have been achieved. The Branch is continuing to refine its assessment process to ensure participants are competent to attend and the program is relevant to their needs, with the aim of reducing attrition rates.