



SACOSS

*South Australian Council
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Community Consultation on Young Repeat Offenders

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Submission to the Social Inclusion Unit

Introduction

While South Australia has previously been considered a leader in the field of juvenile justice in SACOSS is concerned over the increasing tendency of the State Government to recommend 'get tough' initiatives in regards to the law and order debate particularly with juvenile justice and repeat offenders. We consider that this increasing focus on criminal justice and an escalation of punitive sanctions has been the result of the dual processes of media sensationalism and political hysteria. These negative and populist environments are further exacerbated by baseless suggestions of 'crime waves' by youth in particular. Unfortunately through this discourse, opinion is manipulated in the community to accept that our society *is* unsafe and that harsher penalties against youth will make us all feel safer.

Within this submission we will articulate the common message of the members of SACOSS in our response to this proposal. This submission has been written after consultation with the SACOSS Policy Council¹ which has informed and shaped the content and message contained within this document. In this submission we intend to outline our position in regards to this proposal and in relation to fair and reasonable policy for young people, young offenders, repeat offenders and crime prevention within a functioning and just criminal justice system.

What do you think are the issues leading to repeat offending by young people?

To provide a context in which to present input to this question we will briefly discuss the developmental issues that contribute to youth offending. Research has supported what has been anecdotally known for many years that early experience and developmental

¹ The Policy Council is a group of 40 people that is generally representative of the community sector and informs the work that SACOSS perform within the broader community.

issues can contribute greatly to the chance and opportunity of engaging in offending behaviours later on in life. Social exclusion, disadvantage, financial exclusion, mental health issues, stress, child neglect and abuse are all established predictors of increased criminality and substance abuse. The roots of criminal offending are complex and compounding. They are firmly entrenched within the developmental and social narrative of the offender. In order to identify the complex set of contributing factors that lead individuals into criminal behaviour requires policy makers to focus upon the life and social factors of potential offenders and how these elements impact upon the development of young people (Cashmore et al 2002).

We know that social exclusion has been consistently identified as a contributor to feelings of alienation, mistrust, and increased criminality. Early childhood physical and psychological development as well as familial and social experiences can have considerable effects in the way that children and youth connect with education and the community. Disconnection from education and the community is known to be a significant predictor of experiences and behaviour in their adult life. Through research the link has been established between truancy, exclusion from education and the likelihood of becoming involved in drug use, anti-social behaviour and criminality (Cashmore, et al 2002).

Statistics regarding social and developmental predictors have shown that poverty, sole parent families, and crowded dwellings account for a 56% higher chance of participating in offending behaviour later in life. Child neglect explains 57% of juvenile participation in crime, 58% of property crime and 49% of the participation in violent crime (Cashmore, et al 2002).

The developmental and social aspects of youth involvement in crime are greatly contributed to by a general lack of meaningful rehabilitation and continued community support. Simply increasing sanctions and creating a further exclusionary environment will not effectively address the sociological aspects of criminality but will only work in the short term to provide the government with a handy set of statistics regarding arrest and imprisonment rates to take to the polls. Therefore SACOSS strongly recommends that a developmental focus takes priority that perceives the legitimacy of the sociological

contributors to offending and in the value of prevention programs that address the fallout from these issues.

What do you think is working well now, or has worked well in the past to halt the cycle of offending in young repeat offenders?

The features of the juvenile justice system that currently work effectively are diversionary processes, such as restorative justice, police being able to use discretionary powers such as warning and cautioning instead of charging, incarceration as the last resort, community based sanctions rather than taking the youth into custody, the shortest term of custody where all of the other options have been exhausted, and incarceration being utilised as a last resort and only for those offenders who have committed a violent crime or have persistently committed crimes of a serious nature. Family Conferences and victim conferences are restorative justice processes currently within our system that are essential in providing socially inclusive justice delivery for both the victim and the offender (Justice 2005).

The juvenile justice laws that we currently have are important in asking the court to consider the immaturity, inexperience and impressionability of the young offender in relation to the gravity of the crime committed. Laws in which the juvenile can be tried as an adult do not compel the court to consider the emotional and psychological immaturity of the offender and risk introducing vulnerable and inexperienced youth into the criminal justice system. We posit that the existing laws are appropriate but in order for the courts to exercise them more fully, resources need to be increased that provide the legal environment in which the laws can be put into practice. Policy makers and researchers will then be able to more fully quantify and judge the efficacy of the laws and their impact upon re-offending.

We assert that a systemic and holistic approach is necessary that involves stakeholders, the justice system, welfare agencies, the community sector and the community. This has to be coupled with government giving accurate representations of the true extent of youth offending to balance out the political and media hysteria that often follows this issue. This will help the government and the community to more effectively provide

considered discussion surrounding youth justice issues that is based upon evidence rather than fear.

What do you think can be done to address repeat offending by young people?

SACOSS is concerned by the brevity of services and support available for released prisoners and repeat offenders. Prevention strategies will require greater resources and will need to be coordinated meaningfully. Simply releasing an offender back into the community and into the same peer network, lifestyle, family situation, unemployment, and substance abuse issues without extensive support will not deliver lower recidivism rates. What is needed is extensive rehabilitation within correctional facilities and secure accommodation that offers training, support and practical training on day to day tasks that enable people to function more effectively within society.

- All levels of government should play a role within crime prevention.
- Crime prevention should be integrated throughout all social and economic policies including, social participation, employment, housing, education, urban planning and most importantly, Justice.
- There needs to be a better coordinated set of partnerships between the community, private and governments sectors where strategies are developed cooperatively.
- Strategies must be measured and considered and based upon sound, independent empirical research.
- There must be an acknowledgement and adherence of international human rights.
- There must be adequate funding to resource prevention strategies.
- Prevention should encompass as a major focus the plight of the disadvantaged and the effect of disadvantage over life chances and decision making (International Centre for the Prevention of Crime 2005).

According to the Australian Institute of Criminology, there is a growing body of evidence that has demonstrated that early interventions can be effective in achieving significant reductions in the involvement of crime, child abuse and substance abuse, as well as indicating improvements in education, employment, child and youth behaviour and levels

of income. Of note, strategies that encompass early intervention and primary prevention have shown that long term, they are more cost effective than conventional retributive approaches to crime. The Select Committee on the Youth Justice System report (2005) recommends that the justice system should be based upon early intervention and restorative justice strategies that serve to limit the engagement that young people have with the justice system.

SACOSS emphasizes that early intervention and prevention strategies are the key to youth offending and recidivism. Empirical and anecdotal evidence indicates that early intervention based upon holistic, developmental strategies and education has a greater effect upon community building, offending and recidivism rates than introducing harsher penalties, and punitive sanctions which further alienate youth from society.

What can be done to address victim's needs?

Victims are still often excluded from many justice processes with the exception of restorative processes such as conferencing. Victim participation within the justice system needs to be based upon the notions of access and equity.

We acknowledge and support that victims of crime have been one of the major driving forces behind the adoption of restorative justice processes in Australia. Restorative justice processes have been found to substantially increase the level of satisfaction felt by the victim throughout the criminal justice process. The use of restorative justice processes allows victims to become involved and informed, participate within decision making processes and feel a sense of inclusion within the justice system. Victims are able to address the offender and detail the impacts that the commission of the offence has had in their lives (which also confronts the offender to recognise the victim as a real person and not merely a means to an end) and become involved in the sentencing of the offender. In many cases, victims have transformed their negative experience into something positive through influencing offenders to consider their actions and not to re-offend. SACOSS assert that further involving victims through restorative processes will assist in both empowering individuals, and in providing a forum in which young offenders are afforded the opportunity to acknowledge the gravity of their actions in inclusive and constructive ways.

SACOSS asserts that the victims of crime need to be afforded the opportunity to be included within the justice process from start to finish. This is provided for within our Blueprint document (SACOSS 2005) in which we recommend reducing the impact of crime on victim's by increasing the use of restorative justice processes within the justice system that includes victim participation as much as is practicable.

What are your views on proposed legislation to enable courts to apply harsher penalties to adults who commit offences in company with juveniles or who encourage juveniles to commit offences?

We would not encourage the strengthening of a system that includes harsher penalties that are based upon populist and baseless notions of increasing crime rates while ignoring the sociological foundations of offending behaviour. These measures are more concerned with punishment and do not provide for a positive and comprehensive early intervention/prevention/rehabilitation system that includes significant resources for after release support.

What are your views on suggested legislation to enable courts to try juveniles as adults for certain offences?

SACOSS is concerned regarding the potential that this proposed legislation will have on young offenders and youth in general. Needlessly introducing young offenders into a criminal justice system that is more concerned with punishment than changing negative social environments, rehabilitation and community support will most likely lead to increased recidivism.

The discrimination involved in increasing police and court powers to deal with juvenile offenders in more harsh and punitive ways not only goes against the notion of child and youth rights but also clearly contravenes the basic provisions contained within the United Nations Convention of the Rights of The Child (White 1996). Article 37 of the United Nations Convention on the Rights of the Child, which dictates that no child should be deprived of their liberty arbitrarily and that detention should only be used as a last resort, be in accordance with the law, be for the shortest amount of time practicable and that the child has the right to prompt legal advice and has the right to challenge the legality of

any detention in front of a court or other impartial authority. Youth curfews and other zero tolerance measures that give police power to remove young people from public spaces are also inconsistent with article 9 of the International Covenant on Civil and Political Rights, which states; “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. In addition, article 12 states that; “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”. Justice measures that deny or endanger the liberty of youths simply for being youths does not conform nor comply with the directives of this convention

There is no reliable or consistent research that supports the argument that the inception of harsher penalties and targeted initiatives reduces the incidences of crime. Males & Macaillair (1999, cited in Justice 2005) analysed arrest, reported crime and mortality data from several Californian jurisdictions who had instituted youth curfews and other harsh youth related laws over the period from 1980 to 1997. They discovered that there had been no beneficial effect on lowering crime rates nor had they increased the perception of safety or real safety within those jurisdictions. This included those areas that had instituted a zero tolerance policy on youth crime.

Additionally, the government has stated that these measures are necessary in order to make our communities safer places in which to live however, we are interested in what informed the perception that South Australia is less safe than it was ten years ago and what was the impetus for the proposed implementation of these laws? For example, has there been meaningful independent empirical research and statistics analysed that have underpinned such potentially invasive legislation?

Nationwide, recorded crime statistics have demonstrated a reduction (with some fluctuations over the ten year period) across all forms of recorded crime since 1996² (Australian Institute of Criminology 2006). Within South Australia, the figures collected by the government (OSCAR 2005) paint a similar picture of an actual reduction in juvenile crime rather than the ‘crime waves’ that are often used to great effect by the political parties and by the media. This statistics demonstrate that during 2005 there were 6,127

² Forms of crime recorded within statistics include; property crime, violent crime, motor vehicle theft, etc (Australian Institute of Criminology 2006).

police apprehension reports involving young people which was actually 5.5% lower than in 2004 and 39% lower than the peak of 10,118 reports that were collected in 1995. The 2005 statistics were in fact the lowest demonstrated over a twelve year period. These statistics do not support the assertion that we are living within a crime wave or that South Australia is a less safe place to live.

There are several imperatives that should not be ignored during a debate regarding the instituting of increased sanctions and strategic targeting. Measures which target groups simply based upon characteristics that are beyond their control (such as being young) are an affront to both personal freedoms and basic human rights. Aggressive street policing and the implementation of zero tolerance policies are being duly criticized for their restrictions of human and personal rights as well as being linked quite convincingly to racist assessments of who these measures are actually targeting. These measures create resentment within youth and indigenous youth in particular but more importantly foster feelings of disconnection and distrust against authority figures. This exclusion and dislocation often leads to feelings of social isolation and a loss of community connectedness.

Our policy position on restorative justice principles and rehabilitation

SACOSS is committed, through our Blueprint document (SACOSS 2005) to advocate for;

1. Access to effective rehabilitation programs for all offenders.
2. Reduce the numbers of indigenous South Australian in prisons, proportional to their numbers in the overall state population.
3. Halve the number of South Australians sent to prison, through the vigorous pursuit of restorative justice, diversionary court systems and alternative sentencing options.
4. Ensure living conditions are safe and consistent with community living standards.
5. Increase the use of restorative justice processes to enable victims of crime to engage more meaningfully.
6. Reduce the impact of crime on its victims.

The way forward

SACOSS strongly recommends that the government address the Select Committee on the Youth Justice System report (2005) that emphasizes the strong need to minimise young people's engagement with the Youth Justice System and for intervention and prevention strategies to be targeted in the youth's formative years. The Select Committee (2005) has recommended that the principles of minimal involvement of young people aided by diversionary processes and early intervention should be a top priority and should govern the structure of the South Australian Youth Justice System.

The legislation that is being proposed has the potential not only contravene international human rights but also create further alienation and isolation amongst youth in South Australia. It is of concern to SACOSS that this report has not been responded to and this raft of new regulations is being considered in direct opposition to the recommendations of this report.

SACOSS suggests that further police powers are unnecessary and the discussion of the implementation of increased powers and sanctions are not informed by current crime statistics or meaningful research. Further, we assert that these proposals are reactionary and populist, are inconsistent with international rights and arbitrarily discriminate against a section of society based entirely upon their age and the unrealistic fear of young people. Harsh and unreasonable laws create resentment within youth and indigenous youth in particular and lead to feelings of social isolation, marginalisation and a loss of community connectedness.

We strongly assert that there are more positive ways of engaging with young people and young offenders which need to be explored that acknowledge disadvantage, marginalisation and other social factors rather than implementing measures which increase police powers and needlessly introduce already vulnerable youth into the justice system.

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