



**Government of South Australia**

Office of the Guardian  
for Children and Young People

**Response to Commissioner  
for Social Inclusion**

## **Serious Repeat Young Offenders**

**March 2007**

To: Monsignor David Cappo  
Commissioner for Social Inclusion

From: Pam Simmons  
Guardian for Children and Young People

## **1. Introduction**

- 1.1 Among other statutory functions the Guardian for Children and Young People acts as an advocate for the interests of children under the guardianship, or in the custody, of the Minister for Families and Communities. This includes young people in the secure care centres. It is in this capacity that the following submission is made.
- 1.2 The submission may not be quoted from in whole or in part without prior permission.
- 1.3 This submission is prepared on the basis of the Office's experience in investigating individual matters, talking with experts in the area of youth justice, and our knowledge of policies and practice in Families SA. Our monitoring role includes the secure care centres. However we have only just commenced this function in secure care and it is early days to make detailed comment or specific recommendation on the matter of responding to serious repeat offenders.

## **2. General**

- 2.1 The Guardian is deeply concerned at proposed legislative changes to address youth crime or anti-social behaviour. While there is still lack of clarity about what is proposed, since February 2006 there has been public interest in a range of measures including anti-social behaviour orders, mandatory sentencing for auto crimes, higher rate of refusal of bail and 'fast-tracking' repeat offenders through the youth justice process.
- 2.2 At stake is a long held understanding and practice that young people who offend will be treated as a special category when it comes to criminal justice in recognition of their underdeveloped moral reasoning. The proposed changes are abrupt reactions to problems that have been with us for a long time and which, largely, we have handled sensibly.
- 2.3 The youth crime rate has fallen 39 per cent over the ten year period to 2005. This is testament to a mostly good youth justice system and approach.
- 2.4 The argument for a more punitive approach to young people who offend is not supported by evidence. If the goal is to further reduce crime and dissuade offenders from offending again then bringing more young people into the formal youth justice system and incarcerating greater numbers is more likely to work against this goal, except in the shortest of terms.
- 2.5 The specific proposal that led to the request from Government to the Commissioner for Social Inclusion, that is, legislation to enable courts to try juveniles as adults for certain offences, is representative of this more general retaliatory approach to young people who break the law or are suspected of such. Young people can already be tried as adults under existing legislation.

## **3. A different approach**

- 3.1 Ahead of further measures to punish young people who have offended we must first be clear about the outcomes sought and examine the evidence. The Parliamentary Select Committee on the Youth Justice System has done that as recently as 2005.<sup>1</sup> There is yet to be a detailed Government response to the Committee's recommendations.

---

<sup>1</sup> Parliament of South Australia [2005] *Report of the Select Committee on the Youth Justice System*, 4 July 2005

- 3.2 A different approach, and one supported in the Select Committee's findings, is to emphasise intervention that helps, guides and includes young people. This requires a 'care and protection' response as much as a criminal justice response.
- 3.3 There are already significant shared interests between the child protection system and the youth justice system, not least because of the movement of children from one to the other. In 2002-03, over half (55.7%) with justice orders had been previously subject to a care and protection notification. More than one in four had prior contact with the alternative care system and more than one in ten had current contact with the alternative care system. One in three of the young people incarcerated in the two secure care centres are reported to be under existing care and protection orders.
- 3.4 Among other things, this tells us that strengthening the child protection and family support services is one key means of preventing young people from offending.
- 3.5 The Social Inclusion Unit and Board have previously heard from the Office of Crime Statistics and Research (OSCAR) that research shows there are primarily two groups of young offenders. The 'early onset' group who begin to offend early in childhood is "drawn from families characterised by poor parental discipline, impaired family problem solving and general dysfunction". The 'late onset' group of offenders who first offend after the age of 14 are usually adolescent-limited offenders, who, "through the processes of social mimicry, and motivated by a desire to demonstrate maturity... engage in delinquent behaviour only during adolescence."<sup>2</sup>
- 3.6 Prevention strategies will therefore differ for these two groups. The group we should be targeting most intensively (and is the group targeted by Operation Mandrake), is the early onset and repeat offenders. It is clear from the research findings and from what we know of the young people identified to date within this operation, that their early family experience, including deprivation, homelessness and cultural confusion, is a significant root cause of their persistent offending.
- 3.7 Prevention of further offending then requires a social and emotional response as much as one that holds them responsible for their actions.

#### **4. Incarceration and rehabilitation**

- 4.1 Since the police have instigated Operation Mandrake the number of young people on remand in custody has significantly risen and they are expected to be in custody for longer periods before matters are heard.
- 4.2 Should the other measures such as mandatory sentencing, anti-social behaviour orders and fast-tracking repeat offenders be introduced, in addition to trying juveniles as adults for certain offences, we can expect greater numbers of young people will be detained in our secure care centres. Mandatory sentencing for second offence auto crimes alone will bring an estimated 36 young people into custody each year for 12 month periods, most of whom will be Aboriginal young people.<sup>3</sup> About one quarter of this group would have been in custody without this measure but for shorter periods of time. That is a 40 per cent rise on daily occupancy rates now in custodial facilities.

---

<sup>2</sup> Skrzypiec, G [2005] *Research Findings: Offending at 16 to 20 years of age*, unpublished, Office of Crime Statistics and Research, Department of Justice

<sup>3</sup> Aboriginal young people are reportedly involved in 75% of young offender auto theft and high speed chases.

- 4.3 On hearing all the evidence, the Select Committee recommended that the *Young Offenders Act* be amended to include, among other things, the principle that youth detention only be utilised as a last resort. There is good reason for this. Detention behind bars and loss of liberty accentuates or leads to depression, anxiety and low self-worth. Re-offending rates among young people following community orders appears to be much lower than the very high rates following incarceration.<sup>4</sup> It would also make us compliant with our international obligations to children and young people.<sup>5</sup>
- 4.4 Incarceration may protect the community from criminal acts by the young person detained for the period of detention but we would have to be confident the quality of rehabilitation, including education and care, in detention and on release will serve the purpose of preventing further crime. I am not confident of this.

## 5. Our responsibility

- 5.1 If we are to hold children and young people responsible for their criminal behaviour we must also be accountable for the strength of our teaching, guidance and support in their childhood to understand laws and desist from breaking the law.
- 5.2 We must be clear and agreed about the goals of our youth justice system. This is different to the objects of the Act which focus on the context for using the conferred powers and responsibilities. Statutory and non-statutory agencies should be engaged, agreed and committed to meeting them. The goals of the system as a whole may start with something like this:
- A reduction in the number of first-time young offenders
  - A reduction in the re-offending rate
  - A reduction in the seriousness of offences committed by repeat offenders
  - Limiting the use of custody to a 'last resort' measure
  - Reducing the contributing factors that are likely to lead to offending and re-offending
  - A reduction in the disproportionate number of Aboriginal young people apprehended and detained
  - An improved balance between a protective response and a justice response.
- 5.3 Turning to the specific matter of serious repeat young offenders our responsibility is to examine whether the youth justice system in its broadest sense did not contribute to, by failure or omission, the re-offending. In addressing this question we would consider the following:
- Why didn't previous detention work to prevent re-offending?
  - What happened in detention?

---

<sup>4</sup> Day, A. Howells, K and Rickwood, D [2004] *Current trends in the Rehabilitation of Juvenile Offenders*, Canberra: Australian Institute of Criminology

<sup>5</sup> The UN *Convention on the Rights of the Child* [Article 40 part 4] obliges state parties to make available a "variety of dispositions" as alternatives to institutional care. Rules 19 and 19.1 of the *UN Standard Minimum Rules for the Administration of Youth Justice* (the Beijing Rules) require state parties to make the least possible use of institutionalisation and "the placement of a youth in an institution shall always be a disposition of last resort and for the minimum necessary period".

- How well have we managed the post-custody situation and the circumstances that contribute to re-offending, such as group/social pressure, addiction, homelessness, literacy and unemployment?
  - How well do the custodial and post-custodial services work together? For example, do they see themselves as part of the same team? Is there exchange of staff and staff involved in both?
  - Is the post-custody arrangement inclusive of other key agencies such as health, education and housing?
  - How well and how often is a conferencing process undertaken pre- and post-release to ensure the young person, family, immediate community and service providers are engaged? (Conferencing can, of course, be used for different purposes such as case advice and progress, mediation, sentencing, community resolution and healing. Currently in South Australia its use is limited to family conferencing following admission to an offence that is too serious for a caution and case conferences.)
  - How adequate is the engagement of Aboriginal communities in the development and provision of programs in detention facilities and post-release?
  - How much difference would a tiered security detention system have made to re-integration and prevention of further offending? (We do not have a range from high to low secure facilities in this state.)
  - How adequate is our therapeutic service in detention and outside to address contributing psychological factors such as grief and loss? (For Aboriginal young people there is personal and community loss to address.)
  - How adequate is our case management practice to flexibly address risk factors, criminogenic needs, responsivity issues and development needs of adolescents?<sup>6</sup>
- 5.4 This is a long list of questions that makes the response to serious repeat offenders more complex. It is certainly more complex than a proposal to try juveniles as adults for certain offences.
- 5.5 While we can say that the youth justice system, including crime prevention, may work well for first time offenders, it does not work so well for that small number, around 8 per cent, of young offenders who persist with offending. The Social Inclusion program *Breaking the Cycle* is one welcome attempt to address the needs of 16-20 year old persistent offenders.
- 5.6 A blunt 'lock them up' response will not be effective with young people who are familiar with brutality, may see imprisonment as a 'badge of honour' and who may find more certainty and safety in prison, albeit only for the period of incarceration.
- 5.7 Alternative responses are possible. As argued in the national report *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, early intervention programs at critical points of transition for children

---

<sup>6</sup> The first three of these are the core set of principles that make up the 'what works' model of rehabilitation that has been recently been adopted in Australian adult correctional agencies. See, for example, Day, A, Howells K and Rickwood, D *op.cit.*

and young people will have the biggest sustainable impact.<sup>7</sup> For those young people for whom early intervention has not reached, including those in the spotlight now, a more intensive assistance and management approach is required.

- 5.8 The reality is that, due to the seriousness of the offence or of offending history, incarceration for many of the group of persistent offenders will be required. This fulfils one part of the 'justice' contract which is that the community will be protected against violent or wrongful acts.
- 5.9 The other part of the contract is to secure for the young person the care, correction and guidance necessary to be responsible and useful members of the community. This is where we have failed. For example, there is no tiered security system in South Australia that assists young people to move from maximum security (Cavan and Magill Secure Care Centres) to a low security situation prior to release. There is little consideration to community engagement with the re-integration of the young person. There is no decision about intensity of supervision based on the likelihood of re-offending, that is, the higher the likelihood the more intensive the support and supervision.
- 5.10 The high security facilities are also high-dependency environments. The focus of operations and environment is on containment and control. It is as far away from what is required to live as a responsible member of the community as you can get. Many other jurisdictions do better than this with conditional release into other facilities and more intensive assistance and supervision during transition from detention to release.
- 5.11 In the public discussion to date there is a tendency to see repeat young offenders as merely wilful and beyond rehabilitation. Of course they must face the consequences of their offending but our responsibility is to pay attention to their mental health needs, disabilities or developmental needs, the consequences of past abuse or neglect, substance use and negative peer relationships.
- 5.12 If we are serious about serious repeat young offenders there is much to be done on our part in improvements to the physical and therapeutic environment of our secure care facilities, provision of quality rehabilitation programs and assistance with re-integration. This is in addition to the early intervention crime prevention measures.

---

<sup>7</sup> National Crime Prevention, Attorney Generals Department (1999) *Pathways to Prevention: developmental and early intervention approaches to crime in Australia*, Barton: ACT