

**CASA FORUM SUBMISSION
PRACTICAL LESSONS, FAIR CONSEQUENCES –IMPROVING DIVERSION FOR
YOUNG PEOPLE IN VICTORIA**

Thank you for the opportunity to comment on Practical Lessons, Fair Consequences. Improving Diversion for Young People in Victoria, September 2012 .The focus of this submission is in the area of offending in which the CASA Forum has expertise i.e, sexual assault, child abuse, social media offences, sexually abusive behaviours and family violence.

Preamble

We know from research that the earlier a young person becomes involved with the juvenile justice system the more likely they are to move onto a life of contact with the adult criminal justice system. It is therefore important that there are sufficient options available for young people when they get into trouble to assist them get their life back on track. Family support is the major factor that assists young people feel part of a community and that they have a role to play in that community. Young people without any buy in to a system will have no reasons to observe the mores and conventions that assist them to play, work and establish a family.

Introduction

This submission is from the Victorian Centres Against Sexual Assault (CASA) Forum which is the peak body for the 16 CASAs. The CASAs provide 24 hour services for victim/survivors of sexual assault and a number of them provide the same services for victim/survivors of family violence. Fifteen of these CASAs provide direct service and of these nine work with young people with sexually abusive behaviours in the Sexually Abusive Treatment Services (SABTS) program which is funded under the Therapeutic Treatment Order legislative section in the Children Youth and Families Act (2005).

The focus of this submission is the area of offending with which we have expertise. These are sexual assault, family violence, social media offences and sexually abusive behaviours.

1. In what circumstances do you think Diversion is an appropriate response to a young person who has committed a crime?

1.1 “Sexting”:

If the 15th Parliamentary Inquiry into Sexting does not decriminalise the sending of explicit materials by those under 18 years then the CASA Forum would recommend “Sexting” for those under 18 years be put into a diversion program. Sexting requires early intervention and referral into a diversion program that assess risk e.g. a TTO program so that information and education can be provided to the young person. Victims of Sexting should be offered restorative justice.

1.2 Adolescent violence towards family members:

This is becoming an increasingly recognised form of violence that requires intervention for all family members, not just the young offender. Very often these families are known to DHS, Child Protection Services. The reasons for this violence by the young offender are often symptomatic of complex issues in a vulnerable family.

1.3 Sibling Sexual Assault:

This is also becoming an increasingly recognised form of assault that requires interventions for all family members not just the young offender. Sibling Sexual Assault is often a behaviour that indicates the family is stressed, vulnerable and often in crisis. All family issues must be addressed.

1.4 Some Adolescent Sex Offenders

They require a Risk Assessment by skilled clinicians. Those adolescent sex offenders at the more violent end of the spectrum i.e. use of a weapon, are not eligible for a diversion program in our opinion.

1.5 Extension of the current TTO Programs

Under the Children Youth and Families Act (CYFA) 2005 to include the 15 y – 17 yr olds. Currently the TTO “Diversion Program” is from 10-14 years. Clinical practice in Victoria with current TTO clients demonstrates that a “family response”, whether it be the State, foster care and/or family, is essential to achieve reasonable outcomes.

2. Are you aware of other diversion programs designed specifically to assist young people who have contact with the Police or the Court (Pre-Sentence)? If yes please provide details.

Yes – other states. Victim offender mediation and conferencing programs have emerged over the past 25 years as an alternative to criminal justice practice and its perceived and actual deficiencies.

Conferencing programs and victim offender mediation have grown out of attempts to reform systems perceived as being unresponsive to people’s needs. They have rarely been tried in the sexual assault and family violence fields.

These programs have long histories having commenced in Ontario, Canada in 1974. There are more than 300 victim-offender reconciliation programs in Europe and Northern America and around 200 in Canada. New Zealand run family conferences evolving out of traditional Maori practices. Australia experimented with conferencing in Wagga Wagga run by the Police although this program was abandoned when concerns were expressed about it being run by the Police. These approaches should be investigated looking at a victim driven community based system. A victim-offender program exists in a community based Centre Against Sexual Assault based in Copenhagen which has demonstrated success in offering an alternative approach to the justice system.

3. How well do current diversion programs address the criminal behaviour of young people with whom you have contact?

Young people on the TTO program 10 yr – 14 yr are on a 12 month counselling program to address their sexually abusing behaviours, to take responsibility for their actions, to understand its consequences and to address the complex issues in their lives that led them to behave in this way. The program also works with their “family system” to address family issues and to assist them to develop strategies to help the young person. This program is currently only for 10-14 yrs. It is currently not an option for 15 – 17 years. Young people over 14 yrs only attend currently on a voluntary basis. Extending the TTO would be of great benefit to young people with sexually abusive behaviours.

4. Do you think there should be changes to legislation regarding the diversion of young people? If YES what do you think should be included in the legislation?

YES. Matters heard in the Children’s Court under the CYFA 2005 should not record a criminal record. Sexting: should not be a recorded criminal offence for under 18 years. Adolescent abuse: should not be a recorded criminal offence under 18 years. Sibling sexual abuse should not be a recorded criminal offence under 18 years and some sexual assault adolescent offenders should not receive a recorded criminal offence.

5. Do you think there should be circumstances in which a young person can avoid a criminal record? If YES what circumstances should this occur? What other records, if any, of the offending behaviour should be kept?

YES young people under 18 years should avoid a criminal record if they can be diverted into a program. No other records of the offending behaviour should be kept.

6. What mechanisms do you think should be implemented to improve co-ordination of Diversion Programs?

Victoria requires a State wide response to Diversion Programs. Agencies skilled in assessing the risk in young people should become part of the Victorian State wide approach. A Government Department is required to lead and take responsibility to manage the State wide response.

7. Can you provide examples of coordination efforts that have worked well for young people who are coming to the attention of Police? What do you think makes this effective?

The TTO program works well even though it is only to 14 years and not a true Diversion program. It is a State wide response with agencies providing funded services across the State. It has a peak body which provides a Standard of Practice manual, work force development training, monthly forums to discuss issues, practices and developments. Membership from the TTO Board and DHS as well as agency providers are part of the Peak Body. The Queensland model appeared to work well prior to it being disbanded.

8. What could be done to improve understanding of the Functioning and Effectiveness of Pre-Sentence Diversion Programs in Victoria?

Research, data and evaluations with a State wide mandated response.

9. What could be done to facilitate sharing of successful practices?

Victoria requires a Government Department to carry the responsibility for Pre-Sentence Diversion Programs State wide. There needs to be a State wide Reference Group with Regional Networks that can feed into this Reference Group including the Courts, Agencies working with young people, police, education, family support agencies and DHS.

10. What is your experience of the accessibility of Diversion options?

Mainly the TTO program and individual clients experience of possible diversions for the offending behaviour usually theft, graffiti, substance abuse. The TTO program is decided by the TTO Board after recommendations from Child Protection DHS, and our counselling individual clients experience of Diversion programs appear to vary enormously depending on who the young offender comes in contact with after they have been apprehended after committing a crime. It is not a consistent response from our experience.

11. Within current resource constraints what measures could be implemented to improve availability and use of diversion programs?

- Change the legislation in relation to sexting. The sending of an explicit photo of yourself to your boyfriend or girlfriend, that is, sharing in an intimate relationship even if one of the parties are under 18 years of age should be decriminalised. A diversion program needs to be created for the under 18 year olds who forward on a message or image without knowledge or consent of the person who originally sent it and this transmission has come to the notice of the authorities. This program should be linked with the State wide Sexually Abusive Treatment Services (SABTS) program created under the Therapeutic Treatment Order (TTO) legislative provisions of the

Children, Youth and Families Act (CYFA) (2005). There needs to be early intervention in such instances and referral into a program that will conduct an assessment of risk. If it is assessed that this was a one off offence, and there is no risk, the young person can deal with by attending an information session about sexting and the law, etc. If it is assessed that this young person is high or medium risk they would attend a program about respectful relationships, offending and issues around technologically facilitated offences for 6-12 months, depending on the assessment.

The TTO legislative provisions only apply for 10-14 year olds so either the CYFA legislative provisions need amending to deal with 15-17 year olds or a diversion needs creating for this age group.

- Change legislation dealing with young people to promote diversion programs.
- Tap into the current service system that provides risk assessments.

However, it is highly unlikely that an increase in youth diversions will be cost neutral. Having put a diversion in place it is essential to offer a risk assessment and then if require treatment. This approach would eventually be a cost saving as it would provide youth who require assistance with treatment to address their behaviour with options. This would have the result that a large number would be kept out of the criminal justice services where they currently end up when the underlying cause of their behaviour is not dealt with

12. For what groups do you think it is desirable to develop targeted interventions?

All those under 18 years of age who are engaging in potentially criminal behaviour.

13. Do you have examples of particular diversionary interventions that have worked effectively for groups with specific needs? If so, what do you think makes these programs effective?

Although not a diversion program in the strict sense of the word the Therapeutic Treatment Order project has been effective. There are 13 agencies across Victoria providing sexually abusive treatment services (SABTS) under this auspice for young people 10-14 years of age. In addition three agencies are funded to provide these services to 15-17 year olds. These programs are effective because they provide a treatment option for 10-17 year olds as opposed to sending them into the juvenile justice system without a treatment option. The criteria for acceptance into the program is that you are willing to attend and engage in treatment. It is our experience that most young people and their families are interesting in getting help for their child with the sexually abusive behaviour and engage in the twelve month program. The small percentage of families who are not willing to engage are referred back to the justice system.

It appears to be confusing for magistrates at present that the option of a referral to a SABTS is only available under the Children Youth and Families Act (2005) provisions for 10-14 year olds. It would be logical to extend these provisions to 17 years of age.

14. Are there other strengths, limitations or changes that have not been identified? If so, please describe.

1. One limitation of the Therapeutic Treatment Orders program is that currently there are only 240 places across the State. A number of programs have long waiting times which mitigates against people engaging voluntarily. The South Eastern Centre Against Sexual Assault (SECASA) has 87 targets for SABTS and works with 10-18 years olds. However it also has 25 families on a wait list which given the behaviours that are being reported is an unacceptable level of risk.
2. The strengths of the programs currently existing as SABTS is that it gets young people into services voluntarily and risk assessments are carried out on all young people referred. In addition the programs have links with family school and community which maximises the young person's

treatment being successful. Research shows that the most important predictors of successful treatment of young people with SABB is to maintain their networks so they can build successful lives.

3. There needs to be a different model developed for rural and remote areas. It is difficult to these areas to have sufficient young people to run group programs. It can be hard due to the distances for young people to attend treatment centres or for outreach workers to travel weekly. The use of a Care Team Model needs to be explored.
4. The scope of TTOs being from 10-14 years is a limitation. They need expanding to 17 years.
5. Need to explore family conferencing driven by victim requests to sexual assault and family violence.

15. How do you think any limitations might be addressed or diversion arrangements otherwise improved?

1. Extend Therapeutic Treatment Order age to 17 years.
2. The legislation dealing with sexting requires amendment. The production, possession and distribution of child pornography is unacceptable. However, this needs differentiating from the voluntary, consensual exchange of intimate images between young people. The charge should be related to further transmission not the initial receipt of the image if the young people are in a relationship or a single image has been sent unsolicited.

16. Do you think there are initiatives from other jurisdictions from which Victoria can learn either to adopt successes or to avoid failures?

Victim offender mediation and conferencing programs have emerged over the past 25 years as an alternative to criminal justice practice and its perceived and actual deficiencies. Conferencing programs and victim offender mediation have grown out of attempts to reform systems perceived as being unresponsive to people's needs. They have rarely been tried in the sexual assault and family violence fields.

These programs have long histories having commenced in Ontario, Canada in 1974. There are more than 300 victim-offender reconciliation programs in Europe and Northern America and around 200 in Canada. New Zealand run family conferences evolving out of traditional Maori practices. Australia experimented with conferencing in Wagga Wagga run by the Police although this program was abandoned when concerns were expressed about it being run by the Police.

These approaches should be investigated looking at a victim driven community based system. A victim-offender program exists in a community based Centre Against Sexual Assault based in Copenhagen which has demonstrated success in offering an alternative approach to the justice system.

17. Are there any Victorian examples of good diversionary practice that have been evaluated but have not been identified in this paper?

The SABB programs working with 15-17 year olds have been evaluated by Synergistiq. Currently the same organisation is evaluating the whole Therapeutic Treatment Order program.

The Victorian Association of Restorative Justice (VARJ) has released a Best Practice Standards manual for Restorative Justice Facilitators and an Accreditation Scheme. Justice Marcia Neave of the Victorian Court of Appeal and former Chair of the Victorian Law Reform Commission along with other Judges has commented that there is a place for restorative justice approaches alongside current criminal justice and juvenile justice responses.

There is an inventory of responses to sexual violence in ACSSA Issues No.12 2011 in an article by Kathleen Daly. However, there is no program of this nature that has been evaluated as they are usually run on an unfunded basis in Australia.

Professor Susan Miller has written a book *After the Crime* about a program in the United States called Victims' Voices Heard based in Delaware. This is a victim-offender dialogue program that is not corrections based. This is not Victorian but has been researched.

18. What factors specific to your local context need to be taken into consideration when assessing the transferability of diversion programs from other places?

1. Programs from other countries and jurisdictions do not always translate to Victoria.
2. Restorative Justice approaches would be better sitting in the community sector rather than the justice sector. Any process that sits within a bureaucratic system especially the justice system tends to become coercive with people having to explain why they do not want to take part rather than being allowed to opt in when they wish to. With sexual assault and family violence victims often feel disempowered. It is essential that any system set up to assist them leaves them in charge of their involvement.
3. It is essential to have well trained people dealing with young victims of sexual assault and family violence. Grooming is a subtle occupation. It is not always clear why the interaction between a child and an offender is as it is.
4. Rigorous selection processes must be put in place for the selection of participants.
5. The offender must have admitted guilt and clearly accept responsibility for their actions before diversion programs can be considered.

19. Do you think there should be specified principles underpinning diversion in Victoria? If so, what should those principles be?

1. Offender should admit guilt and accept responsibility.
2. Rigorous selection process must be put in place for the selection of participants.
3. A risk assessment should be undertaken in relation to the offender by agencies who work with young people.
4. The treatment programs should sit in the community sector.
5. Matters in the Children's Court should be dismissed if a diversion is given and not appear on a criminal record even if proven.
6. Needs to be systematic co-ordination State wide of diversionary responses.

20. How could the principles be used to create greater consistency in the delivery of diversionary programs?

There needs to be a Government Department in charge of diversionary programs. This Department needs to monitor and evaluate the services delivering the treatment programs.