

LAW & JUSTICE INSTITUTE (QLD) Inc
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Patron: The Honourable James Thomas AM QC

6 March 2014

Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lasc@parliament.qld.gov.au

Dear Research Director,

YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2014 - AMENDMENTS

The Law & Justice Institute (Qld) Inc. ('the Institute') appreciates the opportunity to provide additional comment on the Youth Justice and Other Legislation Amendment Bill 2014 ('the Bill') in relation to the proposed 'boot camp (vehicle offences) order' amendments ('the order').

The Bill, at s 206A, stipulates that the court must make this order against a child:

- found guilty of a vehicle offence when they have, on or before the day they are found guilty of the vehicle offence, been found guilty of two or more other vehicle offences (which were committed within one year before or on the day of the relevant vehicle offence);
- who has attained the age of 13 at the time of sentence and is not ineligible; and
- who usually resides in the area prescribed by regulation (that regulation as we understand it will stipulate Townsville).

In addition to the Institute's opposition to the original Bill, the Institute opposes these further amendments. The Institute:

1. Opposes mandatory sentencing in any form;
2. Submits that an evaluation of the sentenced youth boot camp/s ('SYBC') must predate the introduction of the amendments;
3. Opposes the introduction of a supervised order to which consent is not a prerequisite to the making of such order;
4. Submits that mandatory orders resulting in removal of children from family and community are not in the best interests of either the child or the community and are contrary to established principles;
5. Submits that the proposed orders are discriminatory; and
6. Submits that any amendment to the Youth Justice Act should be delayed until release of and appropriate consultation on the Blueprint is completed;

The Institute expresses concern that the proposed amendments were not included in the Bill from the outset, to allow consideration of the amendment by the community, and to allow sufficient opportunity for broad consultation and detailed consideration of the research and

objective evidence. The Institute notes the abridged period for submissions in relation to these further proposed amendments, by reason of which, it is therefore limited in its ability to provide feedback and to fully consider any unintended drafting consequences.

Mandatory Sentencing

Mandatory sentencing is a controversial issue involving the intrusion by the legislature into the judicial arm of government. The Institute notes that in introducing this Bill to the house the Attorney-General expressed that courts should have the flexibility to craft appropriate sentences.¹ The Institute submits that introducing mandatory sentencing regimes, in any form, is an attack on judicial independence and necessarily limits the ability of the courts to craft flexible sentences, and to ensure that each sentence is decided on a case-by-case basis, taking into account all the relevant factors.

An anecdotal situation where such a case by case approach is appropriate is that of a young person, without criminal history, who has been a passenger during one day in stolen vehicles resulting in three separate offences of unlawful use of motor vehicle on the same date. Under the proposed laws that young person would be subject to this order. Surely, this young person, who has never had the opportunity to hear the warnings of the judiciary that 'should you reoffend you will be facing a mandatory penalty' is not among the target group. No other intervention would yet have been tried for such a young person and yet they will be removed from their family and ensconced in a program residing with more established offenders.

As the Institute previously submitted, 'proportionally fewer young people are offending'.² The majority of offences committed by young people are committed by a small group of young offenders.³ It is recognized that these young people often have complex needs.

Holding young offenders accountable for their actions and promoting the rehabilitation of young offenders is best achieved by individually targeted, rather than blanket mandated, responses. As the Institute has submitted previously, given that deterrence is not as effective for young people, such rehabilitation is the best way of protecting the community.

Evaluation

As mentioned at the public hearing of the Youth Justice and Other Legislation Amendment Bill, the Institute regards it as problematic that an order to attend to a SYBC is being mandated when there appears to have been no evaluation of the SYBC to determine its efficacy and no release of relevant information for consideration by the community. We note that the first SYBC was decommissioned. We understand that the new boot camp was established at Lincoln Springs and only received its first cohort of young offenders early this year.⁴ Even if there has been an evaluation it would no doubt be inconclusive given the short period of time within which this Boot Camp has been operational. As such, the

¹ Queensland, *Youth Justice and Other Legislation Amendment Bill, Introduction*, (11 February 2014) 47 (The Hon. JP Bleijie – Attorney-General and Minister for Justice).

² Explanatory Notes, *Youth Justice and Other Legislation Amendment Bill 2014 (Qld)* 1.

³ President Shanahan J, 'Children's Court of Queensland Annual Report 2011-2012' (2012) 6.

⁴ Allyson Horn, 'Qld Government's New Youth Boot Camp Up and Running at Lincoln Springs' (6 January 2014) available at <http://www.abc.net.au/news/2014-01-06/qld-governments-youth-boot-camp-up-and-running/5185968>.

Institute does not support the introduction of this costly order (even in a discretionary form) without evidence of its success, especially in light of available international research and evaluative studies which strongly suggest that correctional boots camps are ineffective in reducing recidivism.⁵

Consent

What is missing in these requirements, contrary to the existing SYBC orders,⁶ is the requirement for the child's consent. This aspect of consent is vital to the success of the therapeutic elements of the boot camp program. Without such therapeutic interventions the boot camp experience would be ineffective,⁷ and without willing participation in the therapeutic part of the program lasting reform will be unlikely.⁸

Removal from community

The Institute notes that in its report on the Youth Justice Boot Camp Orders and Other Legislation Amendment Bill 2012, the Committee noted

the evidence which suggests that boot camp programs alone are ineffective unless they include a strong therapeutic focus on education, families and psychological and behavioural change.⁹

Principles relating to the role of the child's family and the importance of reintegration of the child within his or her community underpin the operation of the *Youth Justice Act 1992* (Qld).¹⁰ Given the importance of family involvement and reintegration, the Institute is concerned about the ability of a boot camp program in such an isolated environment as Lincoln Springs to properly engage with the family during the residential phase of the order.

Discrimination

The Institute understands that the area prescribed by regulation will be Townsville. This will mean that only children who ordinarily reside in Townsville will fall within this order's ambit. This situation is inappropriate. That persons, by virtue purely of their residence, will be treated differently from others in terms of punishment is discriminatory and offends the principle of equality before the law. The Institute recognizes the specific problem of recidivist motor vehicle offenders in that area. However, the Institute suggests instead that the problem in Townsville be addressed through other means. For example, '[s]ituational crime prevention techniques have been found to reduce targeted crime problems in specific

⁵ Kerry Carrington, Angela E Dwyer, Terry Hutchinson, Kelly Richards (2012) Submission to the Legal Affairs and Community Safety Committee - Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012, Crime and Justice Research Centre, Queensland University of Technology, page 4 citing Wilson et al (2005) and Drake et al (2009).

⁶ *Youth Justice Act 1992* (Qld) s 226C(2)(c).

⁷ Australian Institute of Criminology (2002) *What Works in Reducing Young People's Involvement in Crime: Review of current literature on youth crime prevention*, Australian Capital Territory Government and Wilson & Lipsey (2000), cited in Cameron M & MacDougall C (2000) *Crime prevention through sport and physical activity*. Trends & Issues in Crime and Criminal Justice, no 165, Canberra: Australian Institute of Criminology.

⁸ This underlies the reason for consent requirement in the current boot camp program – see the discussion of this in the Legal Affairs and Community Safety Committee, *Youth Justice Boot Camp Orders and Other Legislation Amendment Bill 2012*, Report #18 (November 2012) p 9 and indeed for all other supervised community-based orders for children under the *Youth Justice Act*, p 10.

⁹ Legal Affairs and Community Safety Committee, *Youth Justice Boot Camp Orders and Other Legislation Amendment Bill 2012*, Report #18 (November 2012) p 14.

¹⁰ *Youth Justice Act 1992* (Qld) sch 1, eg. Clause 8 (c), 10 and 16.

locations. Several forms of community crime prevention are also promising, including mentoring, Vocational Education and Training, community economic development and recreational programs.¹¹

The Blueprint

Acting Assistant Director General of the Department of Justice and Attorney General, Sean Harvey, noted that the proposed Youth Justice blueprint is expected to address the issue of recidivist offenders and create a balanced platform intended to work cohesively with the amendments in the Youth Justice and Other Legislation Amendment Bill.¹² However, that Blueprint has not been released 'because it has not been considered properly by government'.¹³ As such the proposed amendments are simply premature and should not be considered in isolation from the wider plan still under consideration by the Government.

This submission was authored by Jann Taylor and Jodie O'Leary on behalf of the Youth Justice subcommittee of the Law and Justice Institute. Please contact the co-chairs of the Youth Justice subcommittee, Jodie O'Leary at jooleary@bond.edu.au and Jann Taylor at janntaylor@qldbar.asn.au, for further information.



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Co-Chair Youth Justice Subcommittee

Law and Justice Institute (Qld) Inc.

¹¹ Troy Allard, April Chrzanowski and Anna Stewart (2012) *Targeting Crime Prevention to Reduce Offending: Identifying communities that generate chronic and costly offenders* No.445 Canberra: AIC at p 2 citing Clarke (1997), Eck (2006), Burghardt et al (2001), McCord, Widom and Corwel (2001), Sherman et al (1997) and Steward, Allard and Dennison (2011).

¹² Hansard (draft) Public Hearing Legal and Community Safety Committee 3 March 2014 at p 39, 41.

¹³ Ibid, 40.