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Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane, Qld, 4000
Email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Re: Submission on the Youth Justice and Other Legislation Amendment Bill 2015

We refer to the above and note that on 1 December 2015, the Attorney-General and Minister for Justice and Minister for Training and Skills, the Honourable Yvette D'Ath MP introduced the Youth Justice and Other Legislation Amendment Bill 2015 into the Queensland Parliament.

O'Connor Patterson Smith is a Townsville based law firm that specialises in Criminal and Family Law. The Directors of the firm have been involved in the criminal justice system for nine years, and have extensive experience with youth justice crime, representing young people in all jurisdictions involving children's matters.

Below are our comments in relation to the key objectives to that bill:

1. **Remove boot camp (vehicle offences) orders and boot camp orders from the range of sentencing options for children:**

    a. O'Connor Patterson Smith supports the repeal of sections that legislate a "boot camp order" as a sentencing option. Currently, the closure of Lincoln Springs boot camp has caused the inability of the courts to comply with these legislative provisions. The repeal of this section would follow what has already occurred in practice.
    b. It is our submission that the crux of the failure of the boot camp provisions lay in the mandatory sentencing requirement. This provision was drafted poorly and required any recidivist motor vehicle offender to be sentenced to a mandatory boot camp order. In practice, this has meant that even a child who was charged with three counts of Unlawful Use of a Motor Vehicle, in the absence of any previous criminal history, would be deemed a recidivist motor vehicle offender and had to be sentenced to a boot camp order. Being a first time offender was not able to be considered. Mandatory sentencing takes away the sentencing discretion from a sentencing Judge or Magistrate. In practice, this has given rise to numerous cases where a Magistrate was required to sentence a juvenile to a boot camp order where it was not in the best interests of justice. An example of this that we have witnessed in practice is a situation where a juvenile who had been sentenced to a boot camp order previously, either once or numerous times, was required to be sentenced again to a further boot camp order, even when previous orders had not been complied with, or were still currently subject to the order and/or orders.

c. We have also witnessed certain juveniles being deemed as unacceptable for the boot camp orders. These are usually juveniles who had been involved in the youth justice system for a number of years, and had extensive criminal histories for juvenile standards. It was these offenders who made up the small proportion of juveniles that committed the large percentage of crimes in Townsville. It has been our experience that these juveniles seemed to be deemed unsuitable for the orders for various reasons. Therefore, the juveniles who these provisions were targeted at were not being subjected to boot camp orders due to being deemed unacceptable by the courts, on the recommendation of boot camp coordinators.

2. **Prohibit the publication of identifying information about a child dealt with under the *Youth Justice Act 1992* (hereinafter referred to as the 'YJ Act'):**

a. O'Connor Patterson Smith strongly support amendments that prohibit publication of identifying information about a child, dealt with under the YJ Act. Publication of juvenile offenders identity only leads to labelling a young person as a criminal, which re-enforces negative stereo-types upon children who are still in maturation. In our experience, these negative stereo-types can be a contributing factor to an increased risk of recidivism.
b. We further submit that publication of identities of children can lead to a higher chance of vigilantism, or negative repercussions against juvenile offenders by the public. Examples of threats made towards juvenile offenders who have been publicly identified by members of the public can be found commonly on social media.
c. A large proportion of young people who come before the courts are under the care of the Department of Communities, Child Safety and Disability Services, the amendments to prohibit identities bring the sections in alignment with Section 189 of the *Child Protection Act 1999*

3. Remove breach of bail as an offence for children:

a. O'Connor Patterson Smith strongly supports the repeal of Part 5, Division 2 of the YJ Act. This division was not an offence of breaching bail, but rather, it created an offence of committing an offence whilst on bail. Due to the poorly drafted sections, the courts have that children cannot be punished for this offence, as in the in cases of *R v S; R v L [2015] QChC 003* This makes breach of bail an ineffectual offence. We submit the consideration of committing an offence whilst on bail can be (and is in our experience) taken into account by the sentencing Judge or Magistrate when determining an appropriate penalty.

4. Make childhood findings of guilt for which no conviction was recorded inadmissible in court when sentencing a person for an adult offence:

a. O'Connor Patterson Smith supports the repeal of the legislation to its state prior to the 2014 amendments. We submit that criminal offences that are committed by a child who is still developing mentally should not be held against them later in life if they appear before a court as an adult. Criminal Histories that are tendered in sentencing proceedings are very limited in what information they provide to the court. It is our submission that they may not adequately reflect the relevant circumstances at the time of conviction where a conviction has not been recorded.

5. **Reinstate the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period when sentencing a child:**

    a. O'Connor Patterson Smith strongly supports the principle that detention should only be imposed as a last resort. This is a long standing principle at common law and is recognised in all other Australian States. It is also consistent with article 37(b) of The United Nations Convention on the Rights of a Child. We support restorative justice, and submit that placing a child in detention only entrenches criminal behaviour and pro-criminal attitudes into a developing young person's mind. In our experience, we have seen that placing a young person into detention allows them to associate and form greater bonds with older juvenile offenders, often leading to an increased level of recidivism.
    b. We further submit that detention should be a last resort as it is the most severe of reactive punishments. Other principles of the YJ Act support a rehabilitative and proactive approach to dealing with young persons. Studies have shown that addressing the cause of offending rather than reacting with draconian punishments have greater success in reducing recidivism.

6. **Reinstate the Childrens Court of Queensland's (the CCQ's) sentence review jurisdiction and expand the jurisdiction to include Magistrates' decisions in relation to breaches of community based orders:**

    a. O'Connor Patterson Smith strongly support the re-instatement and expansion of the sentence review process. The President of the Children's Court of Queensland, His Honour Judge Shanahan addressed the importance of sentence reviews in his Children's Court of Queensland annual report 2013 – 2014. His Honour at page 8 wrote:

> *"The sentence review process enabled an expeditious and informal resolution of complaints about a sentence imposed on a child by a magistrate. The speed of the process was particularly important when an inappropriate penalty was imposed on a child. The process was open to both prosecution and defence. All of the sentence review decisions were published on the Courts website. Almost all sentence reviews that were successful were on the basis of appellable error made by the sentencing Magistrate. Those decisions would still be amendable to appeal under the s 222 Justices Act process. Such appeals however are cumbersome, formal matters requiring a number of administrative steps to be undertaken. They are thus more time consuming and costly. The impact of this amendment can be seen from the fact that in the period 1/04/2014 to 30/06/2014 only two Childrens Court sentence appeals were heard in Brisbane. This is a contrast with the 36 sentence reviews heard during the first nine months of the reporting period. In my view this indicates that there are a number of what may well be inappropriate sentences imposed on children which have not been appealed under the more cumbersome s 222 Process. The sentence review process was an efficient way to deal speedily with inappropriate sentences imposed on juveniles. It provided a speedy resolution where most sentences imposed on juveniles are of relatively short duration and quickly corrected errors made by sentencing Magistrates. The purported rationale of the supposed saving of court time and registry cost is spurious when one considers the impact the repeal has had on the rights of sentenced juveniles. The repeal should be reconsidered, this time, with appropriate consultation and assessment of its impact."*

We submit sentence reviews allow young people greater access to justice and expedite matters being finalised.

7. **Reinstate into the *Penalties and Sentences Act 1992* (hereinafter referred to as the 'PS Act) the principle that imprisonment is a sentence of last resort and a sentence that allows the offender to stay in the community is preferable.**

    a. O'Connor Patterson Smith strongly support the re-introduction of this principle into the *Penalties and Sentences Act 1992*. It is a long standing principle at common law, and supports restorative justice. We submit that sentencing should exhaust all rehabilitative options (if the severity of offending allows) prior to a juvenile being incarcerated.
    b. It also brings the PS Act in line with other states, as well as commonwealth legislation.

We greatly appreciate the opportunity to place these submissions before the committee.

Should you wish to discuss please do not hesitate to contact our office.

Yours Sincerely,

Nathan Smith

Nathan Smith
Director
O'Connor Patterson Smith Lawyers