

Legal Affairs and Safety Committee

Youth Justice and Other Legislation Amendment Bill 2021

Submission



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This submission may be quoted in public documents.

Introduction

Anglicare Southern Queensland (Anglicare SQ) welcomes the opportunity to make a submission to the Legal Affairs and Safety Committee in relation to the *Youth Justice and Other Legislation Amendment Bill 2021* (the Bill).

We have been strong supporters of this Government's previously stated commitment to youth justice reform based on sound evidence of what works and an increased focus on restorative justice, early intervention and rehabilitative approaches to reducing youth offending.¹

We have deep concerns however that the proposed amendments contravene this approach in fundamental ways by:

- targeting the most vulnerable children in Queensland; and addressing the 'symptoms' rather than the causes of recidivism; and
- overlooking key protected human rights.

Our submission therefore focuses on these issues. We do not plan to address knife crime or hooning in this submission.

Anglicare SQ's experience

Our comments below reflect the direct expertise and experience of Anglicare SQ in working directly with many thousands of vulnerable children, young people, and their families for more than twenty years.

In the financial year 2018–19, Anglicare provided 411,720 nights of care for children and young people through foster and kinship care and supported accommodation, providing care to more than 1,000 young people on any one night.

We operate child and family programs and services across a geographic footprint double the size of the United Kingdom: Foster and Kinship Care, Residential Care, Family Intervention Services (FIS), Intensive Family Support (IFS); Secondary Family Support (SFS), Supported Independent Living Services (SILS) and Assessment Support Connect (ASC), clinical nursing services, youth justice services, and counselling and accommodation to young people aged 12–18 years who were homeless or at risk of homelessness.

Given this experience, Anglicare SQ offers the following reflections to inform consideration of the proposed Bill.

The Bill targets the most vulnerable children in Queensland and addresses the ‘symptoms’ rather than the causes of recidivism

The target group for this law reform proposal is ‘the 10%’ — the nearly 400 children who persistently offend in Queensland.

Extensive research has shown that these are also the most disadvantaged of our children, with experience of extreme poverty, family violence, unstable accommodation or homelessness, disrupted education, exposure to alcohol and substance misuse and histories of familial offending. Many enter the youth justice system after first having contact with the child protection system.

These are the children who have had ongoing and repeated experiences of trauma. Trauma has been shown to impact the development of higher level reasoning, abstract thought and the ability to process complex information, such that required to understand the full consequences of their actions. As the US Department of Health and Human Services notes:

For teens who have been abused, neglected, or traumatized ... impulsive behavior may be even more apparent. Often, these youth have developed brains that focus on survival, at the expense of the more advanced [higher-level thinking and feeling] that happens in the brain's cortex.²

These are therefore the *most* at-risk of our vulnerable children, and those most in need. Strategies that stigmatise and further criminalise these young people do not address the core reasons that recidivist young people offend and keep re-offending.

Without denying the importance of community safety, therapeutic and integrative approaches and environments that aim to address the effects of trauma, and enable connection of young people to family and community, are much more likely to reduce recidivism in young people convicted of serious or dangerous offences (see our case study, right).

Effective rehabilitative diversion programs help young people address the underlying causes of their offending by tackling issues including substance use, housing, mental ill-health, education and training needs; and recognise that young people's criminal behaviour is not necessarily a calculated action, but often largely the result of circumstances such as their age, maturity, background and social context.³

Case study

At 16 years old, Fetu (not his real name) had spent more time in detention over the past two years than out. Most of his offences had been committed under the influence of drugs, including ICE.

Fetu was from New Zealand originally, and was Samoan on his father's side. He had little knowledge of either culture. Despite having been in Australia since he was a toddler, Fetu was not a citizen so faced the risk of deportation.

Fetu was placed in an Anglicare residential where several staff had New Zealand or Samoan backgrounds. He was extremely withdrawn, did not trust staff, and was not engaged in any type of education or employment. He was very worried that he would be deported, as he had not had any contact or cultural connection with family members in New Zealand.

Over time Anglicare staff built relationships with Fetu, and he gradually became willing to share issues important to him: staying in Australia, finding his family and his culture, staying out of trouble, getting a job and living independently (although this was a frightening prospect as well).

Our staff had connections within the community that enabled us to find some of Fetu's family from his mother's side, and we helped him to connect and join a youth group with his cousins. We also found his father in Samoa and, although his father could not speak English and Fetu could not speak Samoan, our staff member was able to translate for the two. Fetu consequently began to take Samoan language classes 2 days per week.

Fetu attended all his youth justice appointments and engaged in drug and alcohol diversion sessions. We worked together on his living skills, including budgeting, cooking, maintaining a household etc, and this enabled him to transition to a semi-independent living service within 12 months. He is well on the way to his long term goal of living independently and productively in the community.

The Bill overlooks key protected human rights

This Bill creates significant limitations on the human rights of young Queenslanders. Respectfully, we submit that a number of key human rights have been overlooked in the Statement of Compatibility provided by Government. These include:

1. Protection from cruel, inhuman or degrading treatment or punishment (see below for further discussion).
2. Children charged with a criminal offence have the right to a procedure that takes account of their age and the desirability of promoting their rehabilitation.
3. Children in the criminal process who have been convicted of an offence must be treated in a way that is age appropriate.

Consideration of the Bill against the Human Rights Act also raises other issues.

To demonstrate that the above and other limitations on human rights are justifiable, the Bill must be able to demonstrate that these actions are reasonable ones to achieve the purpose of community safety. This point rests on evidence: is there sufficient rigorous evidence showing that putting GPS trackers on children and removing the presumption against bail will make the community safer? Clearly there is not: in the Government's own briefing on the Bill, Mr Michael Drane, Senior Executive Director, Youth Detention Operations and Reform, admitted that:

More information is needed about the potential impact of electronic monitoring for children on bail ... Evidence of the potential benefits and risks when used for young people on bail is not clear.⁴

While the Government may see this need for information as grounds for a trial, it does not consider fully the human rights of those young people assessed by Government as 'suitable candidates' for such a trial.

Nor does it consider precedents already offered by other jurisdictions, or existing research that suggests that strategies such as electronic monitoring for children can be stigmatising and often ineffective. Northern Territory youth justice lawyer Elizabeth Colliver has noted that electronic monitoring can carry "complex social stigmas that have the potential to undermine the rehabilitation of a young person by preventing them from engaging in pro-social activities".⁵ Research in the UK has also suggested that sanctions such as electronic monitoring, particularly when used without accompanying wrap-around support services, may "deplete the social support and capital present within the lives of young offenders more than they build it", and by "increasing negative emotionality" they may also "make them more sensitive to social strains, and more likely to continue to cope with these strains in a criminal manner".⁶

While there is little proof that putting GPS trackers on children and removing the presumption against bail will have the desired effect of creating a safer community, there is vast evidence that investing in services to assist children when they are charged with an offence, and supporting families when they need it, does contribute to this goal.

In a report for the Queensland Government, Little et al (2011) addressed possible 'front-end' options at the community level, to support the diversion of young people out of the justice system and reduce offending and re-offending. These included:

- Employing youth justice workers to formulate cultural support plans, provide practical support to offenders and their families and coordinate with other service providers.
- Assisting young people to re-engage with school or engage in other vocational or employment training opportunities.
- Active promotion and enablement of sport and recreational activities.

Anglicare's own work is based on a restorative practice/restorative justice approach that focuses on helping young people to understand the impact of their actions, accept responsibility and make reparation. A restorative justice approach sees offending as a violation of people and relationships, and thus "creates obligations to make things right".⁷ It address the needs and harms experienced by victims, offenders *and* the community.

From our own extensive experience, therefore, we would add to Little et al's list above:

- Encouraging the strengthening of family relationships and supporting young people to repair and restore where they have caused hurt or damage.
- Supporting young people into long term accommodation options, and away from unstable options such as couch surfing. Our collaboration across Anglicare services (such as the partnerships established by our INSYNC youth homelessness services), for example, enables us to work with young people across multiple areas of need. Restorative practice strategies and therapeutic programs such as aggression replacement training are most effective where young people feel safe, secure and engaged. The support we offer young people focuses on building the support network of the individual child and their family, so that they are better prepared to manage adversity when it arises.

These more holistic interventions put early intervention squarely within the sphere of mainstream education, health, social care, youth and the community sector, rather being than a 'youth justice' issue; and make genuine partnerships across government and sectoral silos critical. Universal services and supports should extend across the whole of childhood, and include locally available access to play, leisure, social and cultural opportunities — normalising parenting skill development and experiences, enabling early support for those who might benefit from it, and building connection as well as capacity. In this way, educational, health and family support interventions become a positive 'step up', rather than imposed as 'fix ups' or punishments for the deficits of individuals or families.

Conclusion

It is clear from the discussion above that Anglicare SQ has grave concerns about the Queensland Government's shift toward a 'crackdown on youth crime' stance that appears in many ways to contradict its previous commitment to evidence-based youth justice reform and focus on restorative justice, early intervention and rehabilitative approaches to reducing youth offending.

Like other organisations that support vulnerable young people, we emphasise the need for integrated, evidence-based, sustained, well-funded, community-based services that begin support at the earliest, most crucial stages of children's lives.

This Bill does nothing to address the root causes of youth crime in Queensland and on that basis, we ask that the Committee rejects the Bill.

References

- ¹ D'Ath, Y., The Hon. 2015. *Youth Justice and Other Legislation Amendment Bill 2015*, Explanatory Speech, 1 Dec. www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/151201/YJOLAB.pdf
- ² Child Welfare Information Gateway. 2015. *Understanding the effects of maltreatment on brain development*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, p. 11. www.childwelfare.gov/pubs/issue-briefs/brain-development
- ³ Richards, K. 2011. What makes juvenile offenders different from adult offenders? *Trends and Issues in Criminal Justice* (no 409), Canberra: Australian Institute of Criminology.
- ⁴ Queensland Parliament Legal Affairs and Safety Committee. 2021. Inquiry into the *Youth Justice and Other Legislation Amendment Bill 2021*, Transcript of Proceedings, 8 March, p. 4. www.parliament.qld.gov.au/documents/committees/LASC/2021/YJandOLAB2021/trns-pb-8Mar2021.pdf
- ⁵ Colliver, E. 2019. Digital shackles or rehabilitative technology? Electronic monitoring in the Northern Territory's youth justice system. Presentation to Australian & New Zealand Society of Evidence Based Policing Conference (ANZSEBP), March 18. www.anzsebpconference.com.au/2754
- ⁶ Deuchar, R. 2011. The impact of curfews and electronic monitoring on the social strains, support and capital experienced by youth gang members and offenders in the west of Scotland. *Criminology & Criminal Justice* 12(2) pp. 113–128.
- ⁷ Zehr, H. 1990. *Changing Lenses: A New Focus for Crime and Justice*, p. 181, cited in Morris, A. and Maxwell, G. (eds). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford and Portland, Oregon: Hart Publishing, p. 3.