LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION, TRAINING AND YOUNG PEOPLE

(Briefing on Children and Young People Bill)

Members:

MS M PORTER (The Chair)
MR M GENTLEMAN (The Deputy Chair)
MR S PRATT

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 13 MAY 2008

Secretary to the committee:
Dr S Lilburn (Ph: 6205 0490)

By authority of the Legislative Assembly for the Australian Capital Territory

APPEARANCES

GOGGS, MR STEPHEN, Deputy Chief Executive, Statutory Support, Department of Justice and Community Safety **1**

MOYSEY, MR SEAN, Manager, Criminal Law Group, Criminal Law Group, Legislation and Policy Branch, Department of Justice and Community Safety..... **1**

WILLIAMSON, MR ANTHONY, Legal Officer, Criminal Law Group, Legislation and Policy Branch, Department of Justice and Community Safety..... **1**

The committee met at 10.06 am.

GOGGS, MR STEPHEN, Deputy Chief Executive, Statutory Support, Department of Justice and Community Safety
MOYSEY, MR SEAN, Manager, Criminal Law Group, Criminal Law Group, Legislation and Policy Branch, Department of Justice and Community Safety
WILLIAMSON, MR ANTHONY, Legal Officer, Criminal Law Group, Legislation and Policy Branch, Department of Justice and Community Safety

THE CHAIR: I apologise for my lateness. I had to go to the Giralang preschool opening for a very few minutes. Thank you to my deputy for welcoming you here. Do you understand the privileges card now that you have read it? You understand the implications of the statement?

Mr Goggs: Yes.

THE CHAIR: For the purpose of *Hansard*, I move:

> That the statement be incorporated in Hansard.

The statement read as follows:

> The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the Resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it.
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> Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.
>
> While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

THE CHAIR: Thank you very much for coming to give us this public briefing on the Children and Young People Bill. We do appreciate that very much. Mr Pratt will be here shortly, I believe. I welcome Mr Stefaniak.

Mr Goggs: As I understand it, the principal focus for the committee today is the matters relating to the youth justice provisions of the Children and Young People Bill. I have with me today Sean Moysey and Anthony Williamson from the department's legislation and policy branch who have prepared a presentation that we thought we would go through—it might take up to half an hour—just to pull together some of the

strands of the criminal justice provisions in relation to children and young people.

As is often the case, even with such a weighty tome as this one, the amendments to the legislation can become rather opaque when, in fact, what they are doing is amending a number of other pieces of legislation.

MR STEFANIAK: Will a copy of the presentation be provided? It would be really helpful, I am sure, to everyone.

Mr Goggs: I think we have provided it.

MR STEFANIAK: Of your presentation now?

Mr Goggs: Yes. The youth justice provisions were drafted in the exposure draft of the bill in full. All of the words that appeared in relation to the way the criminal justice provisions would apply to children and young people serve to fill out an even larger volume of legislation. As an outcome of the consultation that we had with the community in relation to the exposure draft, it became apparent that there was a strong desire for the criminal justice provisions to be assimilated with other criminal justice provisions rather than to be assimilated with other provisions that happen to relate to children. That is the outcome that we have today.

Schedule 1 of the bill is now a much slimmer volume in terms of its size but it is also something that much more closely aligns the youth justice provisions with the criminal justice provisions that exist in a range of other places in the statute book, whether it be in relation to the court itself or the court's procedures, whether it be in relation to sentencing or in relation to other criminal justice matters.

We felt we would step through what are the main effects of those amendments to the legislation in a way that puts them in a more coherent framework around criminal justice than just the amending provisions as they appear in the bill as such. Without further ado, I would like to hand over to Sean, who will physically run the presentation.

Mr Moysey: The presentation we are giving today is really focusing on sentencing. From our conversation with the secretary, that is the issue you are interested in. Stephen has given an excellent summation of the drafting problems that come into play.

I will give you an overview of the themes of the changes. There are four themes of change, and they come in small packages as a part of the whole bill. There is an enhancement of the sentencing methodology which reflects both common law and human rights—and I will talk about that a bit later—where the starting point for all sentences is rehabilitation. That is a common theme between human rights and common law.

There are a broader range of sentencing options. I think the Childrens Court has obviously been very flexible in relation to how it does sentencing at the moment. There will be a greater range of sentencing dispositions available to the Childrens Court and to the Supreme Court, which is what they have been asking for. There is

a greater flexibility in sentencing and an ability to tailor a sentence to an individual young person.

There is equality. That is basically about the Supreme Court engaging in the sentencing process—the thinking and methodology of sentencing—in the same way the Childrens Court would. Both courts are using procedures that are similar so that we do not have the kinds of situations that we have seen in the past in the United Kingdom, for example, where children are being tried in cavernous courts, with people with wigs, and being stuck in a little box and having no idea what is going on.

Stephen has touched on the structure of the acts. Effectively, schedule 1 of the bill and, in particular, the amendments to the sentencing act—to give you a physical idea of how targeted they are—take up approximately 20 pages. As a proportion of the bill, they are relatively small. Of course, they do not disclose what they are doing. In some parts we take in words and put them into the sentencing act. Thanks, Dr Lilburn, for providing some copies of the sentencing act. That gives a bit of context to what these amendments will do to the sentencing act.

As Stephen said and the committee would appreciate, the exposure draft of the bill replicated everything that was in the sentencing act and the sentencing administration act. Stakeholders in the justice system made the point that a better method would be to separate the specific elements out. A lot of that is to do with the fact that there are thousands of cases in relation to adults, compared to hundreds of cases in relation to children.

That means that, in terms of understanding and knowing what the specific laws are, one of the challenges would have been to be constantly comparing the two acts and trying to justify the change. Certainly part of the consultation was to see whether there was any other changes needed to the dispositions or the way the dispositions would be administered. Very few things eventuated from that. That is the reality, I think, for most Anglo law jurisdictions.

There is a lot of commonality in terms of the machinery or the operation of particular orders, how they are implemented and what sorts of things are appropriate for children and young people and what is appropriate for adults. That is the distinguishing feature. That is what courts like to see. They like to see that the machinery of how they do a good behaviour order, for example, is the same. The types of conditions that they set, how the good behaviour order affects the young person or how it might engage them in rehabilitation or developing their understanding of the wrongfulness of what they have been convicted of, are really the key issue.

I should say that I have not put in the slide showing that the children's commission was very supportive of this structure and the process of drawing out whether the community felt that we needed to add change, modify et cetera.

Finally, it resolves the statutory interpretation problem of whether having the same set of words in two acts is the intention of the parliament; to in fact have radically different things or the same things or slightly different things. In the context of trials and in the context of sentencing, that would have potentially resulted in a lot of

reinventing of the wheel and a lot discussion and adversarial debate about issues that are actually well settled and get away from the specific needs of the specific case in hand, when often there is enough debate, conversation and submission about those things anyway without having to re-examine some fundamentals.

The sentencing methodology is set out in section 7 of the sentencing act. That is on page 4. Effectively, what that does is list the purposes of sentencing which have been forged over quite a number of centuries. Some of those purposes are relatively new in terms of decades; some of them are very, very old. All of them are informed by a significant body of common law, case law and practice.

The way the section was intended to work, when the government proposed it to the Assembly, was to allow the common law on the purposes of the sentencing to develop and connect to the sentencing act. It was a statement from the Assembly to the judiciary that there is not an intention to totally cut off the history there and start again; it is actually connecting up with that common law and allowing the common law to develop. The intention is, in combination with that, that this legislation which the Assembly was authorising would work in with that thinking about how you read your sentence. The common law has, for these purposes, as I said, a well-understood legal meaning and form the basis of the method that courts have used for ages.

At the time the sentencing draft was drafted, the review of the Children and Young People Act was underway. That was considered the appropriate policy and policy framework to have the discussion about the sentencing of young people, even though the methodology still applies to young people. The sentencing methodology has always applied to young people. The particular application in terms of rehabilitation I will talk about later. We encapsulate it in the bill. It was always there, but it was not disclosed on the face of the sentencing act.

Australian common law and international human rights law both have rehabilitation as the starting point when sentencing young people. The common law in Australia is very explicit on that. To the extent that, where this issue has come up in various jurisdictions, although the formulations are never exactly the same, pretty much the methodology is exactly the same. You start with rehabilitation and, if there is no hope there, then you work through the other purposes of the sentencing in terms of tackling the purpose that is most appropriate for the case. That is consistent with the human rights instruments. As I said, the methodology is consistent with human rights.

If I could draw your attention to the bill itself: on page 705, right at the back of the bill, at 1.75, new section 133C, which is at the bottom of the page, is called "Young offenders—purposes of sentencing". Great things come in small packages. In essence, that provision sums up the obligation on sentencing courts to start with the purpose of rehabilitation and to give that purpose more weight than any other purpose in the sentencing methodology.

Also, in sub 2, you have the court having particular regard for the commonwealth principle of individualised justice. I will not go into all of those principles of sentencing. They are long and extensive in the common law. Mr Stefaniak would be familiar with them, as a former prosecutor. Essentially, this provision just connects up with the common law notion of individualised justice, which is looking at the case in

particular and the particular individual and working out what the appropriate sentence is.

The antithesis is the notion of the imposition of exactly the same sentence for exactly the same offence. So no matter what the circumstances of the offence are, if the offence is a robbery then you will always get two years imprisonment. That is the antithesis of that notion. In human rights jurisprudence, in common law jurisprudence in Australia, that has been elevated as an important part of sentencing over the other principles. So it touches on those.

Moving on to the dispositions, in this slide I have given a list of the dispositions that the amendments will result in. When you work through the provisions of schedule 1 of the bill and you are wondering where all the dispositions are, you will note that they actually connect up with the sentencing act. Throughout the act, the bill amends particular provisions in the act to draw the court's attention to the fact that there is a new chapter to the sentencing act, and that chapter is specifically for young people.

So if the court knows or if a defence lawyer or a prosecutor know that the person is under 18, as soon as they know that, they know where to go. If they are wondering, "Can we use that disposition for young people?" there is a note in a lot of the provisions that draws attention to the specific provisions that might be modified for young people. There are some dispositions that are just for young people—accommodation orders, an education and training condition and a supervision condition.

When the sentencing act was being developed, there were a plethora of rules that made it difficult for courts to apply a number of sentences: "If you do community service, you can't do this; if you do this, you can't do that. If you're going to use this sentence, you have to do it this way." The statutory obligations on offenders, such as providing a name and address, the most basic one, were all very different. So there was a very tangled web. And that was because the different dispositions historically were added at different times.

There were different understandings and methods of building those new dispositions in. So we reconciled that, much to the happiness of the magistrates and the judges. Between those years and now, some of those barriers in the Children and Young People Act were residue until we worked through this process to try and reconcile those things. The bill would reconcile those issues and enable a range of dispositions to flow.

As I said earlier, the majority of dispositions and the legal framework for the process are pretty much common. So there are standard obligations, for example, for good behaviour orders—you do not re-offend, you provide a name and address, and if you are going to change your address you have to let somebody know.

As I mentioned earlier, new chapter 8A makes specific modifications to existing sentencing dispositions that apply to young people or set out how the orders only available to young people work. In this way the critical differences are obvious to the sentencing court and anybody before the sentencing court. So there is no loss in the mix, if you like, by saying, "Well, we do this in the adult system," and therefore that

little detail gets missed. What we have done is to highlight what the little detail is.

For example, community service, on page 709 of the bill, makes it absolutely clear that if there is a good behaviour order where a community service condition is imposed for young people, it must be at least 20 hours but not more than 200 hours, whereas in the adult system it is 500 hours. Importantly, it must not interfere with the young person's education. I apologise; I am using "young person" as a generic term for both children and young people. An existing disposition has been modernised for the purposes of the sentencing act on page 715, in relation to accommodation orders for young people. That is the kind of framework for a new order.

Flexibility in sentencing: courts will have access to combination sentence powers in the sentencing act. I draw your attention to page 28 of the sentencing act—part 3.6, combination sentences. Combination sentences give an ability to mix and match and to tailor a sentence to the offender's particular criminogenic factors or particular needs. Justice Connolly made the point to us that the group of people who really need that is really children and young people, because that is where you can make a lot of difference in relation to having a rehabilitation sentence around the young person or having an ability to manage the behaviour in the first instance and then move on to rehabilitative dispositions as part of that.

That could work in a couple of ways. For example, if a crimongenic factor of a young person is drug abuse, the court can order a rehab condition of a good behaviour order—that means they attend a particular drug program—plus a supervision condition, so our colleagues in youth justice can work with the young person and monitor how that is going and set some boundaries there. There could perhaps be a non-association order, if the young person is associating with people who rob houses or steal things to fund the purchase of drugs. So it is a way of tackling the factors that create a high risk of offending.

Another way of using the combination sentence is a graduated return to the community. Perhaps somebody is engaging in repeated violent behaviour; perhaps there could be a sentence that involves one month at Bimberi followed by a supervision good behaviour order, which is quite intense in terms of reporting every day, seeing the person every day, and then perhaps a rehab condition of anger management, with a view to tapering off the intensity of the engagement as the person integrates into the community. Of course, that is in theory; in most cases things don't travel that simply. But on the basis of probability it creates a better opportunity for the young person. That is the kind of thing that the courts have been frustrated by.

As is mentioned on the slide, only these dispositions can be used in combination with restorative justice, which has its own act. Restorative justice for young people can occur at any stage of the criminal justice system, right from apprehension by a police officer through to the completion of a sentence. There are powers there for youth justice officers to refer young people to restorative justice, just as the court can. We make it clear that there is a distinction between the restorative justice process and the sentencing process in terms of issues about double jeopardy. That is partly why the restorative justice act is so carefully drafted—and there were many different views about whether it did or did not. To make sure the systems worked, we have made it parallel and made the intersections between the two things very clear, so there is no

doubt that the restorative justice process is not attempting to be a judicial process in itself.

Treating all under-18s equally: in some Australian jurisdictions and in some other countries founded on Anglo law, the issue of whether a young person is sentenced as a young person or as an adult is often affected by the severity of the offending behaviour. So in some countries they literally have a cut-off and say, "If you've committed this serious offence and you're over 15, you go to an adult court," or "If you've committed this serious offence then there is a decision about whether you go to be sentenced as an adult or a young person." At the moment the Supreme Court can make that decision about whether they sentence a young person as an adult. It is a severity issue.

The government considered the issue very carefully and reached two conclusions. Firstly, the government was convinced by evidence that the seriousness of the offence is not an indicator of whether the young person is mature enough to be tried as an adult. The other problem relates to the arbitrary cut-offs between an age, whether you choose 15 or 16. I had the privilege of being involved with people with intellectual disabilities who were also young and may come across the criminal justice system. Certainly, there are a lot of examples there where somebody who is 16 obviously does not have the requisite maturity.

MR STEFANIAK: What part of the bill is that in?

Mr Moysey: It is in 133B, which is on page 705. This also works in combination with the changes to court procedures. Basically, if you are under 18 at the time of the offence then you are tried as an under-18 person. So the age is the factor.

There is an abundance of case law in relation to how the common law has treated this very issue. If the court finds that the person is guilty beyond reasonable doubt and is able to form a guilty mind, the court can consider the maturity of the person in relation to the wrongfulness that they should know. That goes into the sentencing methodology, into the way the court works out the sentence. In other words, for somebody who might be approaching 18 and has done something quite serious, the court will have the power to consider the maturity and culpability of that person in relation perhaps to another person who is relatively immature. So that comes down to the court's ability to work through those facts and the evidence about that particular young person.

Just to make it clear, if an offence is committed by a person who is under 18 but they were not convicted until they were 19, the sentencing is about the person as an under-18 person, not about the person before the court at the time of sentencing. As I mentioned, new section 133 on page 705 gives effect to that.

The other change here is that if the person is convicted of an offence that they committed when they were under 18 and they are sentenced to imprisonment, which I have to point out is a minority of the cases that go through the Children's Court, they may serve that sentence in a youth detention place until they reach 21. That does not mean at all, as I said, that all young people will be imprisoned between the ages of 18 and 21; it just means that, for example, if somebody is not sentenced until they are 20,

and let us say there have been some lengthy legal proceedings and they receive a short sentence of imprisonment, they could serve that sentence at a youth detention place.

I should note that if a person committed an offence after they are 18 and they are convicted and sentenced to imprisonment, they will be liable to that imprisonment at an adult facility. So 18 is a marker, but there is flexibility if imprisonment is imposed for a conviction of an under-18 offence, if you like—

MR STEFANIAK: What would happen to their 17-year-old offence—the offence they committed at 17—if, say, they did another offence at 18 and the sentence was a term of imprisonment? What would happen to the Childrens Court matter?

Mr Moysey: The latter sentencing would flow, and there is power under the sentencing act to consider orders that are already made by previous courts. In practice, that would probably be a rare circumstance. That would involve a long criminal history, but then it comes down to the particularities of the offence and all those considerations.

MR STEFANIAK: So basically the juvenile sentence would be tacked on if it was done later than, say, the adult sentence. So, if they have got six months when they were 18 and they were going to get six months in a detention centre, but for reasons you stated it was delayed, that could simply be tacked on.

Mr Moysey: That's right, and that would come into—

MR STEFANIAK: There wouldn't be a time in another institution and then go back to Quamby—

Mr Moysey: That would work out as part of the concurrent and consecutive sentences and would depend—

MR GENTLEMAN: It would be up to the judge to determine what would apply—

Mr Moysey: It is possible that the court would enable the person to serve out the rest of that time in a youth facility up to the point that the adult sentence starts. That is a possibility as well.

MR STEFANIAK: What if the kid is difficult? Having at one stage had responsibility for Quamby, we had a number of cases where clearly you would not want them there after 18 because they were just bullying the other kids. We had some problems initially with following that provision through. We sort of sent them off to New South Wales. What is the situation there now? With that, if the young person is serving, say, three years, finalised when they are 18 and they get three years to serve until 21 at Quamby and they are difficult, what provisions apply there? Do they have to stay there or can you move them to the adult centre?

Mr Moysey: There is a provision that lies with the chief executive of DHCS that enables those things to be considered. The person would have to be over 18. I think the factors are things like whether the person is affecting the other young people's custody, the manageability of the person in terms of violence and things like that. So,

yes, it is possible for a transfer to occur from a youth facility to an adult facility for a person between 18 and 21.

MR STEFANIAK: So that situation hasn't changed then. Thanks.

Mr Moysey: Just a quick run through of a couple of other key changes that are fundamental to this: imprisonment as a last resort and for the shortest appropriate time; that is on page 707, proposed new section 133G, and those words are literally the words from the convention on the rights of the child.

MR STEFANIAK: Do we have that in the adults—

Mr Moysey: It is slightly different for the adults, in the same way that the cause of that rehabilitation changes the quality of aid work through the sentencing methodology for young people, 133 changes the quality of how you would work through whether imprisonment is appropriate for young people. So it is more definitive; it is—

MR STEFANIAK: Have you considered possible alternatives—that no other penalty is appropriate?

Mr Moysey: That is right. Any sentence of imprisonment imposed on a young person must be served at a detention place for young people and that is section 133H, just below that provision. The statutory remissions are repealed; instead, the court must consider imposing a good behaviour order in conjunction with a sentence of imprisonment. Again, that is section 133G (3). There was considerable deliberation about that issue.

Statutory remissions have been found to be highly problematic in administrative law and a breach of human rights if administered by the executive arm of government. It is extremely difficult to exercise that kind of system in a just and equitable way. The human rights commissioner touches on it in her report on Quamby. There is a whole range of case law about it and I draw your attention to page 261 of the explanatory statement, which outlines the human rights jurisprudence on the issue.

Just to give you an idea of the administrative law problems, for example, in a number of cases around different times in states particularly that have had remission schemes that have since been abolished, the difficulty is to ensure that in administrative law terms there is a legitimate expectation met. With a statutory scheme, the starting point is that you will get your time off the sentence, then of course it is how all of the things that might accrue towards your time off the sentence are decided on, and that is an administrative law decision.

Then you have situations of, not through any malice or through any necessarily bad practice but just through the millions of decisions that are made, inequitable decisions between adult prisoners in the way that those schemes were administered. It got to the point in some jurisdictions that they would be keeping whole large books on every single thing that had happened, and of course one disciplinary matter then leads to an issue of how much remission is lost et cetera. So it became an incredibly difficult issue.

The other discussion about remissions—and it is a genuine debate—is: do statutory remissions undermine the purpose of the sentence in the first place? In different times in different jurisdictions, courts have had different methodologies about how they account for a statutory remission scheme—whether they make the sentence longer or they tailor the sentence to incorporate the fact that they expect a third will be off anyway, or some factor like that. What the Childrens Court has been doing is imposing a good behaviour order in conjunction with a sentence of imprisonment. That is consistent with the notion of combination sentences; it is consistent with having that graduated return to the community.

The government did not want to advocate that the court would have to do that but what the government has advocated is that the court must consider doing that. In some circumstances it may not be appropriate, but by drawing the court's attention to it it really helps to make those decisions.

MR STEFANIAK: We had before a sentence of imprisonment as a last resort for children. I am sure that was in the previous act, wasn't it, so that has not changed?

Mr Moysey: No, I do not think it has changed. I think the words are different. I would have to take that on notice, Mr Stefaniak.

MR STEFANIAK: I would be interested if it was different.

Mr Moysey: These words are certainly lifted straight from the convention on the rights of the child.

MR STEFANIAK: If you could get back to me on that and tell me what the original words were if they are different.

Mr Moysey: Sure. Finally, I draw your attention to new section 133D on page 706, "Young offenders—sentencing—additional relevant considerations". In section 133 of the sentencing act, there is a list of considerations that the court must engage in when sentencing a person. Predominantly, those considerations are about the individual person they are sentencing. Some are about the circumstances of the offence but many are about the person.

Section 133D adds particular things that are critical to the individual young person, given the ages involved: the issue about maturity is critical, the young offender's state of development, where are they in relation to other people, where they sit in relation to young people—that is particularly important—and the past and present family circumstances. So this again is a statutory expression of the kind of things that the human rights instruments expect to see somewhere in laws where countries and states have taken on human rights law, and that enables an examination of the individual young person in greater detail.

That is the end of what formally we would like to draw your attention to. We are happy to answer questions.

MR STEFANIAK: You did not say anything on bail. One of the issues I hear a lot

about from police and the DPP is that it is almost impossible having anyone remanded in custody in the Childrens Court, even if they are up for multiple offences. The court seems to disregard what I think is 9D of the Bail Act as opposed to what happens normally in the Magistrates Court. Is there any provision made in this in relation to either tightening that up? Does that come under the Magistrates Court laws that apply? Is it silent on that? What is the situation there?

Mr Moysey: The only amendments that are made are consequential to the Bail Act. We did not examine the Bail Act in relation to children and young people. A lot of the source of the policy, just to give you a bit of clarification, that has informed the bill actually stems from the current Children and Young People Act and so the ambit or scope of the policy examination did not extend to things like the Bail Act.

MR STEFANIAK: So it is basically silent on the question of bail? The normal law is meant to apply with whatever provisos you put in generally in relation to children?

Mr Moysey: That is right. There are consequential amendments and I will have to get back to you on what those are.

MR STEFANIAK: Could you, because I could not find them either, which may or may not be a good thing.

The amount of community service hours: is it currently 208 for young people? The bill says 200, but the current one is 208, is it?

Mr Moysey: And that is because the old system relied on blocks of eight hours. That is no longer the case; it is more flexible. One of the challenges in the adult system was that of taking advantage of when the work was available and maintaining the integrity of the order. We had unfortunate situations where you might have someone doing two hours work and then, if rain or some other thing interfered, the question was: does that equal the eight-hour block or is it only two hours?

What we have said is that you do the hours and that may be more flexible; in fact, it should be more flexible for young people because there is an imperative in community service not to interfere with education. So it may be something that it is more flexible to do, perhaps in a block on the weekend or an hour or two after school.

MR STEFANIAK: Is that the reason for 200 as opposed to 500 in the adult system? What is the rationale for not having the same number of hours?

Mr Moysey: There is jurisprudence about community service and how onerous that can be. The imperative about education is an obvious thing; that is a block of time that young people should have in their weekday if they are of school age. But also it is to take into account that the existing practice has been 208, I think. There were no submissions received to extend that or to reduce it significantly. It seemed to be an appropriate block of time.

THE CHAIR: As we have another hearing at 11 o'clock, I can allow one question from Mr Pratt and then we will need to break.

MR PRATT: This is a bit of a crossover. It may not be entirely a JACS issue; it may be an issue that lies in other departments. I have not had a chance to rip into this and have a good hard look so there may be a very obvious answer. Is there any provision for dealing with young recidivist offenders who are also repeat drug offenders, who have a problem, who are carrying a drug addiction problem? Are there any diversionary activities, once a person has come back for the 15th time after the eighth burglary and found again to be in possession, any provisions to give a magistrate—we talked to Magistrate Dingwall about this very issue; I think I asked him that question at a recent meeting—to divert a young offender down a rehabilitation program as an absolute obligation and therefore, in a sense, part of a sentencing regime?

Mr Moysey: Definitely. There are different ways of doing that in a list of dispositions. The Childrens Court will be able to order a deferred sentence, so that is the kind of sentence that says, "You are convicted. I am going to sentence you. There is an opportunity for you to engage in a drug rehab program. This is what it is." There are different ways of doing it, but what they can say is "I want to see you again" in whatever time, and the person comes back and there is an assessment of whether the person is engaging. That helps the court to form to what extent or degree of onerousness the sentence will be. So, for example, if the person is demonstrating that they are complying with the program, the court might decide to order a good behaviour order that has a rehabilitation condition of engaging in that drug program.

MR PRATT: I take it that the flexibility that we have noticed here in the sentencing can allow a magistrate to undertake a mix—

Mr Moysey: Exactly.

MR PRATT: perhaps some detention component because they may have just gone back one metre too far, plus rehabilitation. But I presume that the rehabilitation will be well and truly supervised and assessed, to give the court confidence that there is a fair dinkum—

Mr Moysey: That is right. In the adult system in relation to this issue we set up some clear triggers about engaging in the programs. There is a range of programs and it really depends on the nature of the program. In most cases, a supervision condition of good behaviour would be ordered and the colleagues from youth justice would be engaging with that person as to the intensity that is required.

There are other ways of doing it. I have not disused this with Megan, but, for example, in the adult system it is contemplated that you could have a sentence of imprisonment where a person starts a rehab program in prison and finishes it in the community, so that you have an order that binds the person over when they leave. They might have started the program, then there is a good behaviour order that has the rehab condition, the supervisory condition. If they breach that, they are back before the court and the court makes a decision about what further consequences might happen as a result of that breach.

MR PRATT: Given that a quite significant number of youth offences, so we understand, are driven by drug addiction, are you satisfied that there are enough mechanisms in place now to try and tackle the problem at source?

Mr Moysey: That is a difficult judgement call to make. The law is one part of the whole nexus.

THE CHAIR: It is a bigger question, isn't it?

Mr Moysey: Indeed.

THE CHAIR: Thank you very much for this very interesting and informative briefing. We are very grateful to you for taking the time to give us this briefing.

Mr Goggs: Might I just indicate for the record—I mentioned this to Mr Stefaniak outside as well—that the current Children and Young People Act specifically provides at the moment in section 68 that a young person may only be detained in custody for an offence, whether on arrest, in remand or under sentence, as a last resort, which I think was the question earlier. It is already in the law.

THE CHAIR: Thank you very much.

The committee adjourned at 10.56 am.