



Support, Help & Empowerment Inc.

July 2016

Submission to the Sentencing Advisory Council
Mandatory Treatment for Sex Offenders: Research
Paper Draft



SUPPORT
HELP
EMPOWERMENT

PO Box 300
North Hobart 7002
T (03) 6278 9090
F (03) 6278 8292
E admin@she.org.au
www.she.org.au

Table of Contents

1. About SHE	3
2. Summary of Recommendations.....	4
3. Introduction	6
4. A Rights based approach to mandatory sentencing.....	7
5. Focus on increased community based treatment, re-entry and integration.....	9
6. Increase of resources	11
7. Individualised treatment programs.....	12
8. Inclusion of women in treatment programs.....	15
9. Treatment for offenders serving shorter term prison sentences	16
10. Review of time period that treatment programs are offered.....	17
11. Early intervention in the youth justice system	18
12. Prevention programs not associated with the criminal justice system	19
13. Specialised courts.....	20
14. Summary	21
References.....	22

For further information on this submission, please contact:

Alina Thomas, EO, SHE

03 6278 9090

eo@she.org.au

Tessa Moodie, Secretary, SHE

0438 045 986

1. About SHE

SHE, a feminist organisation established in 1989, is the eminent non-government agency in Tasmania for the provision of counselling services to women who have experienced family violence. SHE is a dynamic and evolving professional service, with a high level of skill, knowledge, and experience working with women, children and families in Tasmania. We are known in the community and among community services providers as thought-leaders, representatives and advocate against violence.

SHE staff, with high levels of skill and expertise, deliver contemporary therapeutic interventions to people impacted by family violence. SHE's practice framework is informed by feminist, trauma informed, human rights and social justice models and applies strength-based approaches.

SHE is a not-for-profit service, with an independent governance structure. SHE is not faith-based. These features help to support clients who are wary of interactions with government services and also to those who have experienced abuse through faith-based institutions or prefer a secular service culture.

SHE is governed by a dynamic and rich board known as the *Management Collective*, which comprises of dedicated individuals with a diverse range of skills and life experiences. The Management Collective contains expertise on: law, finances, community, youth and children, marketing, executive management, justice, psychology and human resources. The Collective has state wide membership with members in Launceston and the North West of Tasmania who contribute localised knowledge and networks to our governance body. A collaborative, people centred, non-violence philosophy is embedded in the organisation which strives to use mutual rather than hierarchical approaches, where appropriate. Our community accountability also ensures the organisation's ability to be responsive, flexible and innovative.

2. Summary of Recommendations

RECOMMENDATION 1	<i>That a human rights framework underpins the development of sentencing and treatment options for sex offenders, that prioritises the safety of the community and enhance opportunities for offenders to rehabilitate.</i>
RECOMMENDATION 2	<i>An Increased focus on and provision of community based treatments for sex offenders exiting prison.</i> <i>To allow continuity of care from prison based programs to re-entry in the community after a prison sentence and to increase opportunities for early identified or potential sex offenders to seek treatment.</i>
RECOMMENDATION 3	<i>An increase in funding and resources towards psychological and social support services for sex offenders both exiting prison and those who may self-refer, particularly in the north and north west of Tasmania.</i>
RECOMMENDATION 4	<i>An individualised case management based treatment model.</i> <i>To addresses offenders needs and risk level, including increased delivery of programs to enhance and encourage participation on a voluntary basis and the incorporation of Trauma Informed Care (TIC) into the current therapeutic practices.</i>
RECOMMENDATION 5	<i>Inclusion of female sex offenders in treatment programs.</i> <i>To complement programs currently offered in the prison system for men, with consideration given to modifying treatment programs to be gender-specific and tailored to the needs of female offenders.</i>
RECOMMENDATION 6	<i>The implementation of treatment programs for sex offenders serving shorter than nine month sentences to ensure early intervention for behaviour change.</i>
RECOMMENDATION 7	<i>A reduction in the intervals sex offenders are invited to participate in treatment in prison, from six months to three months, to increased rehabilitation opportunities and decrease recidivism.</i>

<p>RECOMMENDATION 8</p>	<p><i>Increase the capacity of programs directed at offenders in the youth justice system.</i></p> <p><i>To allow early intervention and education around healthy relationships, sexual behaviours and early disclosures of dysfunctional behaviour.</i></p>
<p>RECOMMENDATION 9</p>	<p><i>Increased treatment and prevention programs not associated with the criminal justice system.</i></p> <p><i>To foster the treatment of early identified offending behaviours, similar to the Prevention Project Dunkelfeld implemented in Germany since 2005.</i></p>
<p>RECOMMENDATION 10</p>	<p><i>Establishment of a specialised sex offences court</i></p> <p><i>to provide increased support and safety of both victims and offenders and to enable timely appropriate assessment of the sex offender prior to sentencing and rehabilitation measures.</i></p>

3. Introduction

SHE is concerned that there is insufficient localised evidence available to adequately inform the design of mandatory treatment programs for sex offenders in Tasmania.

Therefore, the development of new legislation and associated strategies will be based on the composite set of values and attitudes of the community, informing a model that has demonstrated success in comparable socio-environments.

With this in mind, SHE is compelled to contribute to the range of perspectives that will inform the decisions and actions of the Sentencing Council.

With the interest of marginalised communities and people suffering from trauma and consequent social disorders underlying SHE's mission to eliminate violence, the safety of the community and all people's rights to be free from violence must be priorities.

SHE advocates for a human rights approach to the sentencing of all felons. In recognition that the spectrum of sex offences and the people who have perpetrated these offences is broad and complex, the sanctioned response to each offender must be nuanced and based on a rigorous psychological assessment and a discretionary review of the circumstances. A framework of this nature will adequately inform a treatment program that will most likely result in an improved opportunity for offenders to integrate, post sentence without harm, into the community.

4. A Rights Based Approach to Mandatory Sentencing

The treatment and management of sex offenders must promote a human rights framework, or rights based approach. Therefore, a balance between protecting the rights of the community and protecting the rights of offenders needs to be maintained.

Enforcing mandatory treatment programs presents possible breaches to human rights, as it limits the autonomy of the offender. Increased efforts to encourage participation in treatment programs (similar to what is offered in other states of Australia) instead of making treatment mandatory is considered more productive. We recommend providing education, motivational or pre-treatment programs for offenders to increase voluntary engagement.

A treatment framework that focuses on 'treatment-as-rehabilitation' instead of 'treatment-as management' will facilitate a rights based approach. 'Treatment-as-management' approaches include cognitive behavioural treatments to foster self-management in high risk situations are aimed at preventing re-offending. Evidence from social science research confirms that the 'treatment-as-management' approach is not effective in reducing reoffending¹.

In contrast, 'treatment-as-rehabilitation' approaches are more holistic and empower offenders to live a more stable and productive life. They encompass not only individual clinical and psychological approaches but incorporate broader social considerations such as individual, family, temporal and community factors.

Two 'treatment-as-rehabilitation' models that sit within a rights based approach are Therapeutic Jurisprudence and the Good Lives Model. Therapeutic Jurisprudence focuses on maximising therapeutic effects by applying social science theory to explore the effects of legal decisions on individual's well-being and mental health. The Good Lives Model is based on a psychological theory developed by drawing on social science research, social policy, evolutionary theory, applied ethics, philosophical anthropology

¹ Birgden & Cuculo, 2011, p. 303

and psychology. It applies self- determination and balances risk management to the community with autonomy of the offender.²

'Treatment-as-rehabilitation' approaches emphasise sex offenders being treated as rights holders and as rights violators. We recommend treatment programs focus on these approaches in Tasmania, which may increase effectiveness of preventing further offending as well as treating offenders from a human rights perspective.

RECOMMENDATION 1

That a human rights framework underpins the development of all sentencing and treatment options for sex offenders, that prioritises the safety of the community and enhance opportunities for offenders to rehabilitate.

² Birdgen & Cuculo, 2011, p. 306-307

5. Focus on increased community based treatment, re-entry and integration

Treatment programs must be designed to:

1. Ensure all members of the community are safe and empowered to live the lives they choose for themselves.
2. Create opportunities for sex offenders and potential sex offenders to take responsibility for their abusive and violent behaviours.
3. Create opportunities for sex offenders and potential sex offenders to identify the beliefs, assumptions and motivations that underpin their abusive and violence behaviour.
4. Provide skills and tools for sex offenders and potential sex offenders to recognise high risk situations that enable offending behaviour and easily access intervention to prevent abuse and violence against potential victims.

Page 25 of the Draft Research Paper indicates there are limited community based treatment programs and no continuity of care from custody to community settings.

As stated in page 30 of the Draft Research Paper, community based treatment is generally more effective than treatment in prison. Treatment that includes social, psychological and behavioural measures addresses the sex offending at multiple echelons. Limiting treatment to therapy in prison is missing the importance of assisting the offender to develop and practice skills in their normal life and family environment to prevent harm to others and reduce recidivism.

As we fail to provide intervention opportunities to those who self-identify risky attitudes and behaviours that may lead to sex offending, we severely reduce their opportunities to seek help to change. These lost opportunities allow early identification of the circumstances and personality profile that contribute to the spectrum of conditions that enable sex offending to occur to go unchecked.

Community based treatment reduces the stigma attached to sex offending intervention programs and provides greater opportunities for early identified perpetrators to seek help via behaviour change programs.

RECOMMENDATION 2

An Increased focus on and provision of community based treatments for sex offenders exiting prison. To allow continuity of care from prison based programs to re-entry in the community after a prison sentence and increased opportunities for early identified or potential sex offenders to seek treatment.

6. Increase of resources

Early intervention and self-referring are both optimal strategies that reduce the impact and harms caused by sex offenders. The lack of psychological support services in the north/north west of Tasmania was noted as an impediment to an adequate social response to secondary prevention. Increased funding and resources in this area are required to provide increased levels of access to services for offenders who may be required to attend programs upon exit from the prison system or who may self-refer outside of the criminal justice system.

RECOMMENDATION 3

An increase in funding and resources towards psychological and social support services for sex offenders both exiting prison and who may self-refer, particularly in the north and north west of Tasmania.

7. Individualised treatment programs

An individualised case management style approach that commences in prison and continues, following release, into the community is valuable and strongly advocated for. Individual psychological assessment using DSM-5 to identify any existing mental disorders that may be underpinning offending behaviour and implementing personal therapy separate, or in addition to the group offender program will provide more specialised and individualised care for the offender.

Therapeutic responses to family violence models such as the Risk/Needs/Responsivity (RNR) model are, “widely regarded as the leading model for guiding offender assessment and treatment.”³ The RNR model is underpinned by knowledge regarding social learning theory and violent behaviour.⁴ The RNR model matches offender risk level to the degree of service intervention and tailors the style of the service to the learning style, motivations and of the offender.

SHE advocates that the following guidelines are positioned at the forefront of the development of the prevention and intervention frameworks (National Outcomes Standards for Perpetrator Interventions, COAG):

1. Women and children's safety
2. Perpetrators getting the right interventions
3. Perpetrators face justice
4. Perpetrators change violent behaviors and attitudes
5. The establishment of credible evidence to support continuous improvement.
6. Development of a skilled workforce

Motivational interviewing enhances men's willingness to engage in rehabilitation programs by assisting them to make informed decisions about their participation. This involves ensuring that offenders:

1. Understand their criminogenic risks and needs (offence related), and what this means in terms of their likelihood of re-offending should they chose not to participate in rehabilitation programs and services,

³ Andrews, Bonta & Wormith, 2011

⁴ Department of Justice, 2010

2. Weigh up the pros and cons of change, and
3. Evaluate their rehabilitation options (Department of Justice Tasmania, 2016)

Recent research has identified that incorporating Trauma Informed Care (TIC)⁵ into the therapeutic model brings a powerful scope for change and reducing recidivism. TIC considers childhood trauma as a major contributing factor to the occurrence of sex offending in adulthood and maladaptive or abusive behaviours are considered through the lens of early trauma.

Over two-thirds of offenders report at least one negative childhood event and multiple adverse experiences contribute to numerous problems in adulthood⁶. Levenson (2014) reported that 28.2% of sex offenders have a history of sexual abuse as a child and sex offenders are more than three times likely to have suffered childhood sexual abuse⁷.

TIC focuses on helping sex offenders to detect their negative interaction patterns, develop new skills to counteract this and improve their relationships as well as general wellbeing.⁸ Historically, cognitive behavioural therapy models for treatment of sex offenders focus on cognitive reframing and reoffending prevention but have lacked focus on individual developmental experiences and how they create the environment for offending behaviour.⁹

TIC can be incorporated into current models and establishes a compassion focused approach that “facilitates trust, emotional safety, empowerment and intimacy”¹⁰. It also supports the healing of childhood trauma in addition and the development of new skills for interacting in the world and the consequent reduction of recidivism.¹¹

Programs tailored to each category of sex offender (as outlined in pg. 18-19 of the Draft Research Report) may increase effectiveness of interventions due to the varying needs, histories and behaviours of each category. As stated in page 31 of the Draft Research

⁵ Levenson, 2014, p. 9

⁶ Levenson, 2014, p. 12

⁷ Levenson, 2014, p. 13

⁸ Levenson, 2014, p. 9

⁹ Levenson, 2014, p. 11

¹⁰ Levenson, 2014, p. 18

¹¹ Levenson, 2014, p. 18

Report we agree it must be tailored to the risks, needs and offense dynamics of individual sex offenders.

RECOMMENDATION 4

An individualised case management based treatment model that addresses the offender's needs and risk level, including increased delivery of programs to enhance and encourage participation on a voluntary basis and the incorporation of Trauma Informed Care (TIC) into current therapeutic practices.

8. Inclusion of women in treatment programs

Page 24 of the Draft Research Report indicates there is currently no sex offender program offered to female sex offenders. This needs to be reviewed to provide inclusion in appropriate programs regardless of gender. Whilst the treatment system excludes females, it is fostering a system of imbalance and fails to acknowledge that although the minority, women can be offenders too. Subsequently women's are not provided the opportunity to benefit from therapeutic intervention that men are currently offered.

Women suffer significant psychological impact as a result of their convictions for sex offences.¹² Under the current Tasmanian guidelines women may be suffering psychological distress and are lacking therapeutic intervention. Mainstream sex-offence treatment that is male-specific may not be sufficient for the treatment of female sex offenders because the contexts in which each sex offends are often different¹³. A female treatment program must be gender-specific and tailored to the therapeutic needs of women to ensure they develop responsible sexual behaviour.

RECOMMENDATION 5

To include female sex offenders in treatment programs currently offered in the prison system with consideration given to modifying treatment programs to be gender-specific and tailored to the needs of female offenders.

¹² Lawson & Rowe, 2010, p. 180

¹³ Lawson & Rowe, 2010, p. 180

9. Treatment for offenders serving shorter term prison sentences

It is widely acknowledged that there are points of behaviour change that are facilitated by events such as an offender's first police involvement and the first point of incarceration. Therefore when someone is sentenced to prison this is an ideal time to be providing programs that challenge behaviours.

Page 24 of the Draft Research Report states that treatment is not offered to offenders serving less than a nine month prison term. We advocate for that treatment programs be made available to all sex offenders, regardless of the length of their sentence which will also help to give access to women prisoners.

Offenders need to get the right interventions at the right time. It is important that organisations work collaboratively to ensure that perpetrators have early access to appropriate services in a timely manner and that behaviour can be addressed before it becomes entrenched. Studies indicate that “perpetrators with minimal previous contact with the criminal justice system are more likely to complete behaviour change programs”¹⁴

RECOMMENDATION 6

The implementation of treatment programs for sex offenders serving shorter than nine month sentences to ensure early intervention for behaviour change.

¹⁴ Centre for Innovative Justice, 2015, p. 39

10. Review of time period that treatment programs are offered

Page 24 of the Draft Research Report states that offenders are followed up six months after first decline to participate in treatment in prison. Given that the 2015 median time served was 1.6 years, a shorter review period of three months should be offered to increase additional opportunities to access treatment.

RECOMMENDATION 7

A reduction in the intervals sex offenders are invited to participate in treatment in prison, from six months to three months, to increased rehabilitation opportunities and decrease recidivism.

11. Early intervention in the youth justice system

Page 18 of the Draft Research Report states that the largest category of sex offenders – limited/versatile – usually have contact with the criminal justice system at an early age, even if not for sexual offences but other criminal offences. The *Recidivism of Sex Offenders: Research Paper*, Melbourne: Sentencing Advisory Council (2007) shows that a large proportion of adult sex offenders report that their sexual offending started in adolescence and recidivism is more likely in offenders who started at an early age.¹⁵ It is clear that early intervention programs should be incorporated into the youth justice system in Tasmania, particularly the Ashley Detention Centre. Programs around healthy relationships, sexual consent, sexual behaviours and an approach to disclosure of dysfunctional sexual behaviour are recommended. A model currently used in Germany, *Prevention Project Dunkelfeld*, has proven success in early intervention for youth.¹⁶

RECOMMENDATION 8

Increase in programs directed at offenders in the youth justice system to allow early intervention and education around healthy relationships, sexual behaviours and early disclosures of dysfunctional behaviour.

¹⁵ Gelb, K., 2007

¹⁶ Prevention Project Dunkelfeld, www.dont-offend.org

12. Prevention programs not associated with the criminal justice system

As in all types of violence, prevention is an integral part in reducing occurrence of interpersonal violence. The current system in Tasmania is based on interventions made once offenders enter the criminal justice system. Our laws ignore paedophile behaviour until an offence is committed, namely an emphasis on punishment not prevention.¹⁷ Obstacles need to be removed to assist people with paedophilic or harmful sexual tendencies to come forward and seek help. In-turn this will increase efforts to protect children from harm.¹⁸ A prevention program in the community that is aimed at addressing sexual desires towards children or young people, before they reach the offending stage, is an integral part to prevention and management of sex offender behaviour. Germany has been implementing a prevention program since 2005,¹⁹ and it is aimed at:-

“...people seeking therapeutic help with their sexual preference for children and/or early adolescents. In the context of the therapy, the affected persons receive support so as to prevent sexual offending in the form of both direct contact and indirectly via the consumption or production of child sexual abuse images (so-called child pornography) on the internet”.²⁰

SHE promotes that an integrated approach and a longer-term investment is needed to address abusive behaviour. Integrated responses include ‘coordinated, appropriate, consistent responses aimed at enhancing victim safety, reducing secondary victimisation and holding abusers accountable for their violence’.²¹

RECOMMENDATION 9

Increased treatment and prevention programs not associated with the criminal justice system to foster treatment of early identified offending behaviours, similar to the Prevention Project Dunkelfeld implemented in Germany since 2005.

¹⁷ Kaplan, M., 2014, The New York Times

¹⁸ Kaplan, M., 2016, The New York Times

¹⁹ Prevention Project Dunkelfeld, www.dont-offend.org

²⁰ Prevention Project Dunkelfeld, www.dont-offend.org

²¹ Mulroney, 2004, p. 2

13. Specialised courts

The establishment of a specialised sex offences court would focus on the needs of both offenders and victims and may reduce the incidents of offending.²² The court should be attended by lawyers, counsellors, clinical psychologists and forensic psychiatrists.²³

The welfare of victims would be supported and priorities within the sex offence court.

The Court would conduct a full assessment of the offender under a model of therapeutic jurisprudence to enable the best course of punitive measures and/or rehabilitation for the offender.

RECOMMENDATION 10

Establishment of a specialised sex offences court to provide increased support and safety of both victims and offenders and to enable timely appropriate assessment of the sex offender prior to sentencing and rehabilitation measures.

²² Justice Action

²³ Justice Action

14. Summary

SHE is concerned about the lack of evidence to support the design of mandatory treatment programs for sex offenders in Tasmania. Strong consideration must be given to a human rights approach to sentencing and punitive measures to ensure that offenders are treated as rights holders as well as rights violators.

SHE recommends a sex offender management program which incorporates:

- Increased programs to enhance voluntary participation;
- Trauma Informed Practices (TIC);
- A human rights approach utilising treatment as rehabilitation approaches instead of treatment as management approaches;
- Individual assessment and tailored programs specific to the offender;
- Increase in community based treatment and continuity of care from the prison system;
- Increase in resources and funding aimed at treatment programs both in the prison system and community;
- Inclusion of women in treatment programs;
- Treatment of prisoners serving shorter prison sentences and a reduction in the interval that treatment is offered;
- Early intervention in the youth justice system;
- Prevention programs not associated with the criminal justice system; and
- The establishment of a specialised sex offences court.

A treatment and management program that focuses on early intervention and increased voluntary participation will seek to foster an environment where offenders can address their offending behaviour early, in a more individualised manner, and within the community instead of only within the criminal justice system and during a period of incarceration.

*"...successful intervention with sexually abusive individuals means fewer future victims, potentially stopping a cycle of violence that leads to high psychological, social and fiscal costs for individuals, families and communities."*²⁴

²⁴ Levenson, 2014, p. 10

References

- Andrews, D. A., Bonta, J., & Wormith, J. S. (2011) The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention? *Criminal Justice and Behavior*, 38 (7), pp 735-755.
- Birgden, A & Cucolo, H, *The treatment of sex offenders: evidence, ethics and human rights*, *Sexual Abuse: A journal of research and treatment*, 23(3), pp 295-313
- Centre for Innovative Justice (2015). *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View*. Centre for Innovative Justice,
- Accessed 02/06/2016: <http://apo.org.au/node/53699>
- Department of Justice (2010). *Breaking the Cycle – Tasmanian Corrections Plan (2010-2020)* Discussion Paper
- Gelb, K (2007), *Recidivism of sex offenders : research paper*, Melbourne : Sentencing Advisory Council.
- JusticeAction ,
<http://www.justiceaction.org.au/images/stories/CmpgnPDFs/sexoffanpaper239.pdf>
- Kaplan, M, *Pedophilia, A Disorder, Not a Crime*, *The New York Times*, 5 Oct 2014,
http://www.nytimes.com/2014/10/06/opinion/pedophilia-a-disorder-not-a-crime.html?_r=0
- Lawson, L & Rowe, S (2010), *Treatment of females convicted of molesting children*, *Journal of Forensic Nursing*, 6(4), pp 180-187
- Levenson, J, (2014), *Incorporating Trauma-informed care into evidence-based sex offender treatment*, *Journal of Sexual Aggression*, 20(1), pp 19-22.

MULRONEY J. (2003). *Trends in Interagency Work*, Topic Paper 2, Australian Domestic and Family Violence Clearinghouse.

Nassim, T, (2012), *Antifragile: Things that gain from disorder*, New York: Random House

Prevention Project Dunkelfeld, <https://www.dont-offend.org/>