SUBMISSION FROM GATEHOUSE ROYAL CHILDREN'S HOSPITAL
LAW REFORM COMMISSION REVIEW
OF SEX OFFENDER REGISTRATION JULY 2011

Gatehouse welcomes the opportunity to provide a submission to this Law Reform Commission Review of Sex Offender Registration.

Purposes

1. To what extent does the Sex Offenders Registration Act fulfil its stated purpose?

This is not a question that Gatehouse Royal Children’s Hospital can answer fully however what Gatehouse does believe is that putting children and young people on this register that was primarily established to monitor paedophiles’ behaviour is not developmentally appropriate and serves no useful purpose in assisting these children and young people or reducing any further sexually abusive behaviour.

There is research which shows that these children and young people do not reoffend, particularly if they receive treatment.

The Minister stated in Parliament that “adult sex offenders are unlike other offenders.”

However, young people are not like adult offenders and they do often “settle down” and do not reoffend sexually.

In Victoria, children from the age of 10 years exhibiting Sexually Abusive Behaviours (SAB) are deemed to have committed a sexual crime and as such can receive a conviction in the Children’s Court. Findings in the literature that support a clear distinction between the motivations and intent behind the SAB exhibited by children and young adolescents and those of adults, challenged this position as being the most developmentally appropriate response. (ATSA Taskforce, 2006; Chaffin and Bonner, 1998; Crofts, 2003).

The introduction of the Therapeutic Treatment Orders (TTO) Children, Youth and Families Act 2005 enabled a more developmentally appropriate response, in keeping with more recent research indicating that many of this cohort do not go on to exhibit SAB into the future (Elcovitch, et al.2009; Longo, 2003; Longo and Prescott, 2006; Prescott, 2007).

The cohort (10 years and less than 15 years) have not had the same focus in research and are viewed as important for any studies that seek to understand the presence of SAB. The age range of 10 years – 14 years represents a key developmental period of transition between childhood and adolescence. Therefore, to place these children and adolescents on a Sex Offender register designed to monitor adults with a sexual preference for children is both developmentally inappropriate and harmful to the child or young person’s development. There is no empirical evidence that supports the notion that children and adolescents pose a high risk of exhibiting further SAB towards children, most particularly if therapeutic intervention is offered at this early intervention stage.

The introduction of the TTO represents a collaborative approach between the law and therapy with an understanding of child development and the benefits of family focused interventions supported by empirical studies in the literature. For the law to support placement of children and adolescents
on an adult focused sex offender register is in contradiction to the before mentioned legal position and is in stark opposition to the principles of therapeutic jurisprudence and best interest of the child, both being key in the legislative positions currently informing the Courts in Victoria.

There is agreement about the presence of common sets of risk variables within the developmental histories of these children and young adolescents who exhibit SAB that align their psychological profiles with other same-aged clinical groups (Chaffin, Letourneau and Silvosky, 2002). These risk variables emphasize disrupted attachment patterns often in the context of early childhood trauma. The aspects of the family environment leading to these outcomes was indicated to include an increased presence of family violence, impoverished and under resourced sole parents and an increased likelihood of the child experiencing abuse and neglect (Duane and Morrison, 2004; Elkovitch et al. 2009). Research clearly indicates the strong presence of maldaptive ways of relating to others learnt within the early childhood experiences of this group (Rich, 2009). This clearly indicates the need for a therapeutic response rather than long term criminal sanctions such as placement on a Sex Offender register if the true aim is to enhance community safety and minimize the risk of further sexually abusive behaviour (SAB).

This register was proposed to allow monitoring of predatory adult sex offenders whose motivations and intent were to cause harm to children. The population in question also represent vulnerable children and adolescents as are those they “offend” against.

Research clearly indicates “access and opportunity”, rather than gender and age as the most consistent pre conditions for SAB, with family members and peer aged friends most often the victims. This clearly distinguishes them from a group with a set sexual preference for gender and age as these are adult concepts.¹

If the purpose of this Register is to also protect children and young people from further abuse by paedophiles this is not the case.

**Gatehouse Royal Children's Hospital** clinical practice demonstrates that paedophiles target vulnerable women and their children. The current system of Registration does not inform these women and their families that these men are on this Sex Offender Register. Often the first time they know about their sexual predatory behaviour is when their children disclose sexual abuse.

2. **Should the Sex Offenders Register be a primary source of information to the Department of Human Services about child protection concerns?**

Yes it should.

It is essential that this Register and Child Protection, DHS are linked and with processes in place for ongoing exchange of information.

3. Does the Sex Offenders Registration Act establish an effective scheme for monitoring the activities of convicted child sex offenders who are likely to re-offend?

No.

The current legislation including:
- Working with Children Legislation
- Child Young & Families Act 2005 Vic
- Serious Sex Offenders Act 2009 Vic
- CrimTrac
does not have a process legislated or service driven for ongoing communication between the agencies.

Inclusion in the Sex Offenders Register

4. Should inclusion in the Sex Offenders Register be an automatic administrative consequence of a person being convicted of and sentenced for a Class 1 or Class 2 offence?

No! We need judicial discretion to deal with individual circumstances.

However children and young people should not be on this adult paedophile register at all.

This current legislation has no power to deal with internet communication technologies (ICT) eg, sexting, UTube, Face book

5. Should the court have a discretionary power to decide whether to order that a person who is convicted of some or all of the Class 1 or Class 2 offences be placed in the Sex Offenders Register? What criteria should govern the exercise of any discretionary power?

Yes: to deal with individual variations there should be more specific categories than joint Class 1 and Class 2.

The current legislation fails to take into account technological and social changes.

6. Should an order placing a person in the Sex Offenders Register be a matter that the court can take into account when sentencing a person for a Class 1 or Class 2 offence?

There needs to be discretionary powers for the judiciary.

7. Should it continue to be possible for a court to order that a person convicted of any offence be placed in the Sex Offenders Register if the court is satisfied that the offender poses a risk to the sexual safety of another person?

Not if the Registered individual is under 18 years of age.

Yes discretionary powers of the judiciary.
Duration of reporting obligations

8. Should the duration of a registered sex offender’s reporting obligations continue to be automatically determined by a legislative classification of offences?

No.

Judicial discretion needs to be available. Young person should not be on this register at all as previously mentioned.

However, if young people do remain on the Register the duration should not be determined by the adult categories just being halved. This is naive and does not take into account the developmental ages of young people.

9. Should the court have a discretionary power to determine the length of the reporting period? What criteria should govern the exercise of any discretionary power?

Yes. Categories of abuse and age of offender and individual circumstances including that of the victim and characterisations of high risk offenders.

10. Are the current provisions in the Sex Offenders Registration Act for suspending the reporting obligations of sex offenders adequate?

Yes

11. Should the Chief Commissioner of Police or some other statutory official have the power to apply to a court for an order extending a registered sex offender’s reporting obligations?

Yes

Content of reports

12. Should all registered sex offenders continue to have the same reporting obligations that are automatically determined by the legislation?

No. As above need more specific categories.

13. Should the court have a discretionary power to determine the content of a registered sex offender’s reporting obligations? What criteria should govern the exercise of any discretionary power?

Yes. Same as 9.

14. Should the Child Commissioner of Police have additional powers which would permit police officers to test the truth of any report provided by a registered sex offender? If yes, what should those powers be and in what circumstances should they be available.

Yes as Police monitor the Register already.
As with the DV Register – there needs to be a list of criteria risk assessment that Police need to address if they are called to a Family Violence incident.

This should include pregnancy! Which would not necessarily show up on the visit by Police but is an indication of abuse.

Management, use and disclosure of information in the Register

15. Should the Child Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to CrimTrac for national law enforcement purposes?

Yes.

16. Should the Chief Commissioner of Police have an express power to give some or all information in the Sex Offenders Register to the Secretary of the Department of Human Services for child protection purposes?

Yes

17. Should the Chief Commission of Police have an express power to give some or all information the Sex Offenders Register to any other public body or official for any other purpose?

No. Purpose is to stop children being abused.

18. Should registered offenders continue to be required to report “unsupervised contact” with a child? If so, should the legislation contain guidance about what is meant by this term? Should registered sex offenders be required to report “unsupervised contact” with a child before it occurs rather than after it has occurred? If reporting were required in advance of contact, should it be before the first contact, a subsequent contact, or at any other point in time?

Yes. If assessed by the Court.

Definitions/terms: Should be same as listed in Children, Youth & Families Act 2005 Vic

Yes. There must be an assessment of each particular situation including the possible risk to the child and young person. The outcome of this assessment will then influence future plans for possible unsupervised contact

Protections for registered sex offenders

19. Are there adequate protections for registered sex offenders in the Act?

Public humiliation has impact on children who are related and/or have been abused. This needs to be considered when protection for the sex-offender is discussed.
Accountability and review

20. Are the current accountability and review mechanisms in the Act adequate?

Don't know.

Management of other information about registered offenders

21. Should other government agencies be required or permitted by legislation to give the Child Commissioner of Police information about a registered sex offender for inclusion in the Sex Offenders Register? If so, what type of information?

No.

22. Should Corrections Victoria be required or permitted by legislation to give the Secretary of the Department of Human Services information about a sex offender that is acquired during any treatment programs undertaken by the offender when in custody or on parole?

Only if there is no other way of accessing this information.

Gatehouse
Royal Children’s Hospital
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