

Submission to the Victorian Law Reform Commission Inquiry on Improving the Response of the Justice System to Sexual Offences

Reducing trauma among victim-survivors of sexual offences who are involved in the criminal justice system

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Contributors:

Melissa Willoughby, Justice Health Unit, Melbourne School of Population and Global Health, The University of Melbourne and Centre for Adolescent Health, Murdoch Children's Research Institute

Professor Stuart A Kinner, Justice Health Unit, Melbourne School of Population and Global Health, The University of Melbourne and Centre for Adolescent Health, Murdoch Children's Research Institute

Victim-survivors involved in the criminal justice system

An integral part of improving the response of the criminal justice system to sexual offences is to reduce the trauma of victim-survivors within the system. Many victim-survivors of sexual offences come into contact with the criminal justice system as the complainant in a criminal case. Victim-survivors can also come into contact with the criminal justice system after being charged, convicted and/or sentenced for an offence (1). Both of these groups of victim-survivors report that being involved in the criminal justice system is a retraumatising experience (1, 2). However, the needs of the latter group as victim-survivors are not often adequately considered. This submission will focus on this latter group.

Victims and perpetrators of crime are not mutually exclusive groups. Many of the people who are convicted of a crime have also been a victim of a crime. People who come into contact with the criminal justice system for perpetrating a crime are more likely to be victims of violent crime, including sexual offences, than are people who have not had contact with the criminal justice system (3). An effective response to reduce the trauma of victim-survivors within the criminal justice system must also consider the needs this group of people.

Female victim-survivors in the adult criminal justice system

While both men and women can experience sexual violence, this section will focus on women involved in the criminal justice system, as women are disproportionately impacted by sexual violence. It is estimated that between 70% and 90% of women in prison have been victims of violence, including sexual violence (1). This is an issue that disproportionately impacts Indigenous women, who are more likely to be incarcerated (4) and victims of violence (5), compared to non-Indigenous women. In 2019, there were 9,654 instances of a woman being released from prison in Australia (6). This number is increasing at a rate that far exceeds crime rates (7), population growth (7), and the growth of the male prison population (6). The vast majority of women in prison will be released, usually after spending only a few months in custody (8, 9).

Women's offending has often been connected to their experiences of violence victimisation. For example, women may use substances as a coping mechanism after experiencing sexual violence, which may lead to criminal charges relating to buying or possessing illegal substances being brought against them (10). Sexual violence can also occur in the context of intimate partner and family violence. After prolonged and ongoing victimisation, some women may react violently against the person who is perpetrating violence against them (11, 12). This may lead to the women being misidentified by police as the primary aggressors of violence, and having assault charges brought against them (13). Given the increasing number of women in

prison, and their elevated risk of experiencing sexual violence, their needs as victim-survivors should be considered in improving the criminal justice system's response to sexual offences.

Victim-survivors in the youth justice system

Similarly, many young people in contact with the criminal justice system have experienced sexual violence. Young people who have experienced violence and abuse are more likely than the general population to be involved in the criminal justice system (14, 15). This issue also disproportionately impacts young women and young Indigenous people. It is estimated that 70% to 90% of young women involved in the criminal justice system have ever been a victim of violence, including sexual violence (16). Half of the young people (aged 10 to 17 years) under youth justice supervision in Australia in 2018 were Indigenous, despite contributing to only 6% of young people of the same age in the Australian general population (17). In 2018, 5,694 young people were under youth justice supervision on any given day in Australia, the majority (84%) of whom were supervised in the community (17). Of the young people held in detention, 63% were held on remand, meaning that they had not been found guilty of a crime or were waiting to be sentenced (17).

There is an overlap of the young people involved in the youth justice and child protection systems (14, 15). It is estimated that at least half of the young people in contact with the youth justice system in Australia from 2014-2018 also had contact with the child protection system (15). Indigenous young people and young women are more likely than their non-Indigenous and male counterparts to be in contact with both systems (15). Young people's offending has also been connected to their experiences of violence victimisation (14). Experiencing violence at a young age may negatively impact a young person's cognitive and social development, which may lead to poor impulse control, emotional dysregulation, aggression, mental illness, and substance use, and in turn may increase their risk of criminal justice involvement (14). Therefore, the youth justice system should have a trauma-informed approach and provide appropriate support for the young person's health and wellbeing.

Opportunities to reduce trauma among victim-survivors in the criminal justice system

Punitive criminal justice practices, particularly incarceration, may be unintentionally retraumatising for victim-survivors of sexual violence who are involved in the criminal justice system (1, 18-20). Due to the strict regime and loss of autonomy, incarceration in either prison or youth detention may itself be an inherently traumatising experience for victim-survivors (1).

This is concerning given the growing prison population in Victoria (6) and the high proportion of young people and adults involved in the criminal justice system who have experienced sexual violence (1, 16). Where possible and appropriate, people who have experienced sexual violence should be diverted away from incarceration towards community-based alternatives, such as therapeutic substance use treatment.

Recommendation 1: Divert people who have experienced sexual violence away from prison and youth justice detention towards relevant community-based services and programs where possible, and ensure people have adequate access to bail and parole.

Recommendation 2: Decriminalise substance use and possession of substances for personal use as this is a likely driver of incarceration for victim-survivors, and instead have a health-centred approach to substance use that includes increased investment in community-based harm reduction and therapeutic approaches.

Given their developmental stage and frequent histories of abuse, detention may be especially traumatising for young people. Recognising this, the United Nations Committee on the Rights of the Child recommends that the minimum age of criminal responsibility be set to 14 years, and that the minimum age of criminal justice detention be set to 16 years (21). By comparison, Victoria has a low age of criminal responsibility of 10 years of age, meaning children as young as 10 years old can be charged with a crime and incarcerated (22). This is inconsistent with international human rights standards and is a driver of the incarceration of young people, particularly Indigenous young people.

Recommendation 3: Raise the minimum age of criminal responsibility in Victoria from 10 to 14 years of age to be consistent with international standards.

Recommendation 4: Implement a minimum age of youth detention in Victoria to be at least 16 years of age to be consistent with international standards.

Recommendation 5: Increase the focus of the youth justice system on young people's welfare, health and wellbeing.

During incarceration victim-survivors may be subject to potentially traumatising practices, such as strip searches and solitary confinement. The Victorian Ombudsman has investigated these practices in Victorian prisons and youth justice detention facilities to assess the practical implications of implementing the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (18, 19). In 2017, the Victorian Ombudsman found that the routine strip searches of women incarcerated in the Dame Phyllis Frost Centre (Victoria's maximum security women's prison) to be "humiliating, degrading and undignified", and was likened to sexual assault by the incarcerated women (18). In 2019, the Victorian Ombudsman investigated the use of solitary confinement on young people detained in either a youth justice facility or adult prison in Victoria (19). The Ombudsman found

that the practice of isolating young people was “widespread” and that the solitary confinement of young people is a cruel, inhuman and degrading practice (19).

Recommendation 6: Eliminate the use of strip searches in prison and youth justice detention.

Recommendation 7: Eliminate the use of solitary confinement in prison and youth justice detention.

Recommendation 8: Require correctional officers in the adult criminal justice and the youth justice systems to have relevant tertiary qualifications (e.g., social work, youth work, criminology, psychology), which includes education on the link between sexual violence victimisation and offending, and training in trauma informed practice.

Being released from prison and youth detention is a challenging time that comes with an increased risk of violence victimisation (23, 24). Women released from prison are 16 times more likely to die from violence than women in the Australian population of the same age (24). People released from prison and youth detention often have complex and co-occurring health and social needs that are associated with their risk of experiencing violence, such as unstable housing, mental health and substance use issues, and unemployment (10, 25, 26). However, there is a lack of trauma-informed, and culturally and gender sensitive transition programs for people released from incarceration that focuses on the health and wellbeing of that person in Victoria (27). Current services are often underfunded and siloed, which can be a barrier for people to access the support they need and may be retraumatising for victim-survivors, who have to repeat their story multiple times to different people and services (27).

Recommendation 9: Increase investment in trauma-informed, and culturally and gender sensitive services for people leaving prison, with support beginning while the person is incarcerated and continuing seamlessly into the community as needed.

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