

NORTH LANARKSHIRE COUNCIL

SOCIAL WORK DEPARTMENT

Social Work Committee : 24th August, 1999.	Subject : Scottish Executive Consultation Document: The Committee on Serious, Violent and Sexual Offenders
From : Jim Dickie, Director of Social Work Prepared by : Jim Scullion, Co-ordinator, Criminal Justice	

1. PURPOSE OF REPORT

The purpose of this report is to :

- Inform Committee of the details of the consultation document
- Seek approval to forward the attached comments to the Scottish Office.

2. BACKGROUND

In March, 1999 the Government established a committee, chaired by the Hon. Lord McLean, to review various matters relating to the sentencing and treatment of serious violent and sexual offenders, including those with personality disorders.

The terms of reference of the committee are, "To consider experience in Scotland and elsewhere and to make proposals for the sentencing disposals for, and the future management and treatment of, serious violent and sexual offenders who may present a continuing danger to the public, in particular -

- to consider whether the current legislation framework matches the present level of knowledge of the subject, provides the Courts with an appropriate range of options and affords the general public adequate protection from those offenders;
- to compare practice, diagnosis and treatment with that elsewhere, to build on current expertise and research to inform the development of a medical protocol to respond to the needs of personality disordered offenders;
- to specify the services required by this group of offenders and the means of delivery;
- to consider the question of release/discharge into the community and service needs in the community for supervising those offenders".

The committee will report to the Scottish Ministers after their work is completed. This was expected to take approximately one year, but recent events relating to the group have excited

political and media interest and it seems likely that the timescale for reporting will be brought forward.

3. CONTENT OF THE CONSULTATION PAPER

The consultation paper explores numerous issues in relation to serious violent and sexual offenders and raises discussion points within each section. The report sections are noted below :

Introduction - Background to the establishment of the committee.

Definitions - Definitions of the type of offender to be considered by the committee.

The current legislative framework - An explanation of the current options available to the Courts in dealing with serious, violent and sexual offenders, including Prison Sentences, Discretionary Life Sentences, Determinate sentences and Extended Sentences. This section of the report also explores community disposals and mental health disposals, including hospital orders, restriction orders, hospital directions and other mental health disposals.

Possible new sentencing options

Offenders with Personality Disorders - Throughout the document, reference is made to those who suffer from a personality disorder, and asks for comment on management of this group.

4. COMMENT

Detailed answers to the questions posed in the consultation document are attached for consideration. The main themes in the response are :

- The additional provision of resources needed to facilitate comprehensive measures for assessment, intervention and control of those who pose a risk to others.
- The application of risk assessment which identifies those who pose a risk to others, but does not discriminate against those who do not.
- The application of additional controls over those who pose a risk to others, but does not discriminate against those who do not.

5. RECOMMENDATION

Committee is asked to :

- Note the contents of the consultation document.
- Approve the attached comments as suitable to report to the Scottish Office.



Jim Dickie
Director of Social Work

August 17th 1999

(For further information on this report contact Jim Scullion, Co-ordinator, Criminal Justice - Telephone 01698 332040)

SCOTTISH EXECUTIVE CONSULTATION DOCUMENT:

THE COMMITTEE ON SERIOUS, VIOLENT AND SEXUAL OFFENDERS

- a. **Do you have any views as to how the offenders within the terms of reference may be more clearly defined or identified ?**

There is a clear need for comprehensive Risk Assessment to be carried out at the time of sentencing. This should be a multi disciplinary and multi agency process, which would continue on a regular reviewing basis, e.g. whilst in custody, before release, in preparation for return to the community, and whilst in the community. This should be seen as a continuing process assessing the offender's risk to the community, and to themselves.

It must be recognised that mentally disordered offenders fall into several categories requiring different supports and intervention, i.e. learning disability, mental illness, brain injury, personality disorder etc. Appropriate disposals must be based on the form of mental disorder. Personality disorder should be viewed in relation to treatment and treatability, with regard to appropriate assessment, disposal and care planning. These issues should be considered within the context of crime and assessment of dangerousness.

- b. **Are there particular categories or types of offender within the broad terms of reference who require particular attention ?**

Yes.

Personality disorders - with particular regard to the need for definition of personality disorder, methods for assessment of risk, measures for control where necessary, identification of agency responsibility for processes determined, and the provision of required resources.

Young people - it should be recognised that there are many young offenders who fall into the categories described and who may require a different approach. The appropriate adult scheme relates more to people with learning disability, and should be considered within the review of legislation.

- c. **Do the Courts have an adequate range of custodial disposals to deal with serious violent and sexual offenders who may present a continuing danger to the public.**

The Courts have an extensive range of custodial disposals available, but use is perceived by the public to be inconsistent. Available disposals could be extended to include indeterminate sentences, subject to adequate assessment and review processes. They could also be amended or restructured to include the possibilities outlined in Section 37 of the report i.e.-

- extending the application of mandatory life sentences
- greater use of discretionary life sentences
- longer determinate sentences
- strengthening supervision arrangements post release

As previously stated, a thorough risk assessment with multi agency approach would help the Court make appropriate disposals. Current provision of resources is insufficient to provide adequate supervision in the community.

d. Are the current custodial sentencing options being used appropriately ?

As above - Question c.

e. Are there improvements that could be made to the options ?

As above - Question c.

f. Should some options (such as mandatory life sentences, or extended sentences) be extended to cover other situations than those to which they apply at present ?

Yes, determined by risk assessment and seriousness of offence. There is concern that prisons should not just be used as a means of containment. Mandatory programmes should be considered, in order that appropriate work (in relation to change, attitude etc.) be carried out before release into the community.

g. Are the criteria used by the Courts to determine which option to choose, or what length of sentence to impose or recommend appropriate ?

Criteria should be revisited and open to new ideas. Again we feel that improved, resourced, multi agency risk assessment should be available to the Court.

h. Do the current statutory provisions adequately address the twin aims of punishment and protection of the public, particularly in the case of a discretionary life sentence ?

Not totally, the lack of mandatory programmes within custody allows many offenders to return to the community without their offending behaviour being addressed appropriately.

I. What weight should be given to the possibility of continuing danger to the public in decisions regarding sentencing and release ?

Ongoing risk assessments are required during sentences and prior to release. These should be multi agency and combined with a detailed pre release structure. Many offenders return to the community, having chosen not to be involved in any offence related work in prison. They also feel that they have "done their time", and therefore comply with supervision in the community on a token basis. Release for some offenders should only be on the basis of clear evidence that there has been significant reduction of risk.

j. Are the procedures for deciding when a prisoner should be released appropriate ?

There are concerns about some prisoners incentive regarding working towards parole, many choosing not to apply for parole, as they will eventually be released without restrictions of parole. This has been addressed to some extent, however, through the role of the Parole Board in relation to Non Parole Licence. See also Question I.

k. Are the arrangements for supervision and recall adequate ?

No. The procedures for recall are often slow and cumbersome. Pre release case discussions and conferences combined with continued risk assessment would help prepare the offender and the supervisor for community supervision. Pre-release work is often hampered by prisoners failing to identify a community base until shortly before discharge, or changing his / her mind about a release address at the last minute. This requires to be addressed, with discharge delayed in relevant cases to ensure effective planning.

An appropriate and thorough risk assessment should also allow community based supervisors, to identify high risk clients whom they can work with in a more thorough way, rather than treat all clients the same, and follow up as per National Standards. National Standards should be revisited with a view to more intensive work being carried out with higher risk clients, but this again will demand the application of more resources.

l. Are there any changes which should be made to procedures for community supervision to improve public protection from serious offenders who may re-offend ?

As Question k.

m. Should any of the new community disposals be extended in their scope and application, or otherwise altered ?

These should be targeted towards appropriate offenders, through improved definition of e.g. personality disorder and identification of agency responsibility for this group.

n. Are the options available to the Courts for mentally disordered offenders adequate ?

The options available to the Courts for mentally disordered offenders should reflect the range of provision being considered for mentally ill people in the community. This may allow for short term intervention orders, a more flexible use of guardianship and compulsory treatment orders. An important disposal may be compulsory assessment in hospital which although available within present legislation may be broadened to include other treatment/therapeutic disposals.

o. Are there any changes which would be desirable to the process by which a Court considers making a mental health disposal ?

The process is acceptable. The availability of mental health officers social circumstances report may be useful to the Court in making a mental health disposal. This is already recommended within the code of practice to the Mental Health Act but perhaps should be embraced within legislation.

- p. Are the arrangements under which psychiatrists assess risk or dangerousness, when considering discharge of a mentally disordered offender from hospital adequate ?**

No. Psychiatrists should work jointly with social work staff in hospital settings, and the community, in relation to assessment of risk and dangerousness thereby providing a comprehensive view and consideration of adequate supervision measures in the community

- q. Is it appropriate that the continuing detention of mentally disordered offenders subject to hospital orders should be related to civil law criteria for detention ?**

The continuing detention of mentally disordered offenders should be related to civil law criteria. Once a hospital order is made mentally disordered offenders are treated in a similar way to individuals within mental health legislative provision, i.e. Section 18. They should therefore be treated in a similar way.

- r. Are the procedures for leave of absence and conditional discharge adequate to allow the recall of a mentally disordered offender should their level of dangerousness increase ?**

The procedures for leave of absence and conditional discharge radically require review in relation to mentally disordered offenders. Leave of absence does not provide the degree of supervision required. Consideration should be given to the type of provision contained within community care orders which allow a range of conditions to be placed, and also the ability to return individuals to hospital when the need arises. It is also felt that on return to the community conditional discharges should be supervised by mental health officers.

- s. Do you have any proposals for new sentencing options for serious violent and sexual offenders ?**

It is felt that the suggestion within the report of some form of indeterminate sentence, where the duration is not primarily determined by the appropriate punishment for the particular offence, but the perceived dangerousness of the offender upon release, should be considered.

- t. Do you have any views on the introduction of an indeterminate sentence for such offenders (other than those with severe personality disorders) ?**

As Question s.

We again stress the need for an appropriate intensive risk assessment, followed by an ongoing risk assessment process.

- u. Is there any evidence to show that offenders with severe personality disorders are a significant risk to public safety ?**

Yes. There are concerns about the lack of community resources, and there is a need for co-ordination of the community resources that are available. Multi agency, i.e. Social Work, Housing, Health, Police etc. should be involved in determining processes in which supervision should be addressed within the community.

- v. **Is there any evidence that current sentencing and mental disposals do not adequately deal with the risks posed by offenders with severe personality disorders ?**

Yes. Recent high profile cases, highlighted in the media, provide evidence of an inadequate response to the risk imposed by offenders with severe personality disorders. Within our own area we have also faced problems in relation to offenders with a personality disorder who are deemed as untreatable by medical bodies, and continue to pose a serious threat within the community. It must also be remembered that not all those who suffer from a personality disorder offend, and suitable safeguards must be built in to prevent discrimination.

- w. **In your view, is it possible to deal with offenders with personality disorders within the broad framework of the Mental Health (Scotland) Act, 1984 ?**

It is possible to deal with offenders with personality disorders within the framework of the Mental Health (Scotland) Act. This requires however, the review and definition and treatment options. Treatment in this respect should include aspects of confinement and non pharmaceutical treatment methods. This may also allow a greater role for social care agencies in the provision of care.

- x. **Is there a case for introducing some form of indeterminate detention for offenders with severe personality disorders ?**

Yes. This should be coupled with continued risk assessment and treatment plan.

- y. **If such an order were introduced, do you have any views on any of the matters mentioned in paragraph 74 ?**

If such an order were introduced the process of renewal and appeal should be reviewed. Perhaps by the setting up of a statutory body similar to the Parole Board but with greater expertise in mental health and mental health disposal.

- z. **Based on current knowledge, is it possible to assess the dangerousness of an offender with a personality disorder to an adequate extent for the purposes of public safety ?**

We are aware of the existence of the psychopathy check list carried out by psychologists particularly in prison. It may be useful to consider the value of this method, and, if felt appropriate, widen availability specifically within the community.

- aa. **Are there improvements that could be made to the procedures or methods of assessing the dangerousness of offenders with personality disorders, either at the time of sentencing or when considering release from prison or hospital ?**

There needs to be improvement in relation to the process of assessment to include sophisticated risk assessment and managing strategies.

- bb. **Are services in Scotland adequate to meet the needs of patients with personality disorders ?**

Services in Scotland are not adequate to meet the needs of patients with personality disorders. In line with new legislation, special forensic services, both in patient and community based, are required to deal with such patients. More structured and co-operative working within Health agencies and community based agencies is required.

cc. If not, what new services are required ?

As mentioned above, more forensic psychiatric services and with closer working relationships. between agencies.

dd. Should any new service be based in the Health Service, Prison Service or some other option ?

At present Health authorities either alone or with neighbouring Health authorities are planning medium secure units within the community, along with community based resources. Partnerships between the Health authorities and social work are required to meet the needs of the mentally disordered offender both within the community and within hospital or prison.

ee. Are there services elsewhere which could be a model for new services in Scotland ?

We recognise that there are services in other countries which could be a model for new services in Scotland. These should be researched to determine best practice.

ff. What would be the main elements that should be included in a medical protocol for personality disordered offenders ?

There is a need for the medical profession to define personality disorder. It is recognised that although many personality disorders cannot be treated there can be more than just containment for an offender who can benefit from the therapeutic nature of a hospital or the structured regime of a prison. There is a need for full and thorough co-operation and the sharing of responsibility in working with personality disordered offenders within the community, in hospital, and within the custody of prison.