

SWIFT, CERTAIN AND FAIR APPROACHES TO SENTENCING FAMILY VIOLENCE OFFENDERS DISCUSSION PAPER

Introduction

We would like to make a general statement about there being two cohorts of offenders. There is a general group of offenders for whom intervention orders and court processes are serious matters and who will comply with any arrangements governing contact and their access to their ex partner. The second group are the high risk offenders for whom a different approach is required. These men require a problem solving Court framework, a tightening up of processes when they breach conditions of their intervention orders and an improved system for assessing risk.

Any improvement in the monitoring system should take place within the court system. It will require considerable additional resources. There is no question that it will increase the volume of work for all stakeholders including courts, Corrections, Victoria Police and Legal Aid.

Question 1 Evidence Base

a. Is there sufficient evidence for the effectiveness of ‘swift, certain and fair’ (SCF) approaches to warrant their application in Victoria?

It does not appear that there is sufficient evidence from the discussion paper.

Question 2 ‘Swift, certain and fair’ as a response to family violence

Do SCF approaches align with the evidence of best practice for the sentencing and management under sentencing of family violence offenders?

It does not appear so given the variables of the Australian system as opposed to systems in other countries.

Question 3 Managing risk to victim survivors or protected person.

a Would SCF sanctions, in the form of short periods of custody, increase the short-term risk to victim survivors or protected persons?

In our opinion we have no way of knowing the answer to this question given the current state of knowledge and evidence based research.

Question 4 ‘Swift, certain and fair’ approaches to managing family violence offenders on a community correction order.

Should an SCF approach to the management of a family violence offender on a community correction order (CCO) be implemented in Victoria?

No.

Question 5 Reforms to judicial monitoring

a Should judicial monitoring form part of an SCF approach to the management of family violence on a CCO and if so how?

If family violence offenders are on a CCO they should be monitored by the courts. This should be done by bringing them back to court for a mention. For this to be effective it requires them to come back before the same magistrate as often as is feasible. It is important that high risk offenders are dealt with by specialist magistrates who are seen as a legitimate authority figure who will deal with them fairly.

b Should the powers available to a court at a judicial monitoring hearing be expanded and if so how?

The court should be allowed to sanction for non-compliance.

Question 6 ‘Swift, certain and fair’ as a new sentencing order for family violence offenders.

Should an SCF approach be implemented in Victoria in the form of a new family violence offender compliance order.

No. The current system should be tightened up and given more resources so that it functions more effectively.

Question 7 Offender identification - level of risk

If an SCF approach were to be implemented in Victoria

a Should it only be directed at family violence offenders who are high risk of reoffending and/or high risk of non-compliance with a sentencing order.

As previously noted we are not in favour of a SCF approach. However, high risk offenders and those at risk of non-compliance need dealing with differently to the bulk of family violence offenders who will be compliant.

b How should those offenders be identified?

There needs to be a body of work undertaken to identify high risk offenders and what vulnerabilities make them high risk. Also there should be some evidence based research as to what approaches work best with this cohort. Whilst we can give them substantial jail sentences they will come back out into the community. We need to know what it is that needs to change for them to have an alteration in their attitudes and behaviour.

Question 8 Offender identification – alcohol and/or substance abuse

No comment.

Question 9 Alcohol exclusion orders and conditions

Offenders who are identified as being more likely to offend when affected by alcohol and/or drugs should be targeted with exclusion orders. Courts should have expanded powers to prohibit family violence offenders from consuming alcohol and drugs entirely if they are seen as serious contributing factors to their offending. Clearly there is a problem with prohibiting the use of drugs given the majority of them are already illicit.