



LOCAL COURT PRACTICE NOTE NO 3 OF 2005

ISSUED: 17 October 2005

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COMMUNITY CONFERENCING FOR YOUNG ADULTS PILOT (CCYAP) PROGRAM

Nature and Purpose

1. The **Community Conferencing for Young Adults Pilot (CCYAP)** program is a post plea intervention program for defendants aged between 18 and 24 years, conducted at the Liverpool Local Court and the Tweed Heads Local Court Circuit of New South Wales.
2. The program provides for the referral of defendants who have pleaded guilty or have been found guilty of offences and for whom there is a likelihood of a custodial sentence, to be referred to a conference with the victim or victims of the offence as arranged by the program Facilitator in order to develop an intervention plan for the defendant. Referral to the conference is as an additional option for the sentencing Court.
3. The program provides for greater participation in the justice process by defendants, victims and their respective support persons, with the aims of promoting the reintegration of the defendant into the community and to increase the satisfaction of victims and the community in the justice process.

4. Criteria for Eligibility to Participate in the CCYAP Program

To be eligible to participate in the CCYAP program, the defendant:

- (a) must be aged between 18 and 24 years;
- (b) must have pleaded or be found guilty of an eligible offence;
- (c) must give informed consent to participation in the scheme;
- (d) must be deemed suitable for the program;
- (e) should usually reside in the defined catchment area;
- (f) must be eligible for bail; and

(g) must not have any prior convictions at the time of referral for any offences listed in Sec 7(1)(d) of Schedule 5 of the *Criminal Procedure Regulation 2005*.

Offences that are not an eligible offence:

- Strictly indictable offences;
- Offences for which an election has been made or offences under ss 35 or 35A of the *Crimes Act 1900* - malicious wounding or infliction of GBH, or maliciously cause dog to inflict GBH;
- Offences under Division 10 or 15 of the *Crimes Act 1900*, - allegations of sexual assault or child prostitution or pornography;
- Offences under s 562AB of the *Crimes Act 1900*– stalking or intimidation with intent to cause harm;
- Offences under ss 91H, 578B or 578C (2A) of the *Crimes Act 1900*– child pornography offences;
- Any offence involving the use of firearms under ss 23(1)(b) or 23(2)(b) or s 25A of the *Drugs Misuse and Trafficking Act 1985* – supply, ongoing supply or offences with respect to prohibited plants;
- Offences of domestic violence as defined in the *Crimes Act 1900*;
- Any Commonwealth offences

General Procedure

5. Referrals to the CCYAP Program

Referrals to the program may be made by the Court on application by the defendant or their representative or by the prosecutor.

5.1 If considered eligible to participate, the defendant should be referred to the CCYAP Administrator attached to the Court for the relevant suitability assessment to be undertaken to ensure that the defendant is suitable for the program. The Court proceedings should be adjourned for a short period to allow that assessment to occur.

- (a) As part of the assessment, the CCYAP Administrator will assess the suitability for participation, based on the operating procedure.
- (b) The Administrator is to assess the defendant against the criteria for entry to the program and then formulate a suitability assessment report for the Court.
- (c) If the defendant is considered suitable for the CCYAP program, the Magistrate will consider placement of the defendant onto the program. Both the defendant and the prosecutor may be heard with respect to whether a CCYAP referral should be made. If the defendant is considered **not** suitable for the program, the matter will proceed in the usual way.

6. Where the defendant is before the Court on more than one offence, the Court will consider whether to refer the defendant for one or more than one offence after considering the advice of the Administrator as to the practicality of a referral.

7. If a referral to CCYAP is made

- 7.1 When a referral to conferencing is made, the Court should consider bail, taking into account considerations as they apply pursuant to the *Bail Act* 1978. The Court may consider adjourning the matter and making conditions that the defendant attends conferences as directed by the Administrator.
- 7.2 If the Court makes a conference participation order:
- (a) The sentencing of the defendant will be adjourned for such time as is necessary to allow the conference to occur.
 - (b) The Court will also consider requesting other sentencing aids, such as a pre-sentence report. It is anticipated that if such a report is ordered, subject to the consent of the defendant, information obtained by Probation and Parole may be made available to the Conference Facilitator.
 - (c) The Court should request and direct the police to supply, through the officer in charge, the victim's name and contact details to the Conference Administrator. Such information shall remain confidential and shall not be released to any participant at the conference.
- 7.3 It is anticipated that a conference will be held within four weeks of the referral, and the Court should adjourn sentence for a period of not less than six weeks or more than eight weeks to allow the conference to occur. It should be noted that if a full PSR is required, it will take five weeks to prepare, and if an options only report is ordered, then three weeks will be required. These times should be taken into account when setting an adjournment date.

8. Intervention Plan Orders

- 8.1 The determination of a draft **intervention plan** and participation at the conference is a matter solely within the discretion of the Administrator and Conference Facilitator. The Facilitator's role is to identify the needs, including the long and short term goals of the participants and then to oversee preparation of a draft intervention plan for presentation to the Court. The plan will specify attendances at the conference and give details of any agreement that has been reached at the conference, and whether that agreement requires any further action on behalf of the defendant that would require supervision by either the Administrator or Probation and Parole. The draft plan will also make clear if there is a recommendation to the Court for an intervention order sentence or further matters to be considered, such as financial compensation, individual and group counselling or psychiatric treatment.
- 8.2 It is anticipated that the draft intervention plan will contain detail of any special features noted at the conference.

8.3 The draft intervention plan will be filed with the Court at least two days before the adjourned date.

9. In the event that the Court is satisfied with the draft intervention plan, the Court may:

- 9.1** Make an order approving the plan and in doing so, make an order
- a) pursuant to s 36A of the *Bail Act* 1978, or
 - b) for sentence pursuant to s 10(c) (conditional discharge/dismissal), s 11(1) (b2) (deferral of sentence) or s 95A (ss 9, 10 or 12 good behaviour bonds) of the *Crimes (Sentencing Procedure) Act* 1999.
- 9.2** The successful completion of the CCYAP program is a matter of some weight to be taken into account by the Court upon sentence in the defendant's favour. At the same time, as the CCYAP program is a voluntary program, its unsuccessful completion must not, on sentence, attract any additional penalty.
- 9.3** Where the Court makes an order in which an approved plan is part of the sentence, the Court should specify who is to supervise the plan and any other part of the order, and shall set time limits within which parts of the intervention plan are to be completed. It is contemplated that an order of the Court can, if it is required, be supervised by either the Administrator, by Probation and Parole, or both.

10. In the event that the Court does not approve the draft intervention plan:

- 10.1** The Court may refer the plan back to the conference Administrator either in open Court or by correspondence. If the Administrator decides that a revised plan is feasible, the Administrator shall take such action as necessary to revise the agreement and report back to the Court within seven days.
- 10.2** No more than one referral to revise the intervention plan is permitted. If the plan is not approved and a revised plan is not approved, sentencing will proceed in the normal manner.
- 10.3** The Court has available to it full sentencing options pursuant to the *Crimes (Sentencing Procedure) Act* 1999, including community service orders and imprisonment.

11. After Sentencing

- 11.1** The Administrator is to advise the Court whether or not the plan is satisfactorily completed within the time specified by the plan, or at the end of the order, whichever occurs first.

- 11.2** In the event the Administrator advises the Court that the plan has not been satisfactorily completed, the Court may:
- (a) Take no action;
 - (b) Issue a notice of call up; or
 - (c) Issue a warrant.
- 11.3** In the event the plan is supervised by both the Administrator and Probation and Parole, the Court should ensure there is a report from both supervisors before taking action as referred to above.
- 11.4** If the plan is part of a sentence supervised only by Probation and Parole, breach action by Probation and Parole will be dealt with in the usual way.

This Practice Note commences on 17 October 2005.

Graeme Henson
Chief Magistrate