
**POLICE AND EARLY INTERVENTION:
PROCEDURES AND ALTERNATIVES**
Constable Kathryn Ford,
Tasmania Police (TAS)

Tasmania Police have recognised that Juvenile Offending and its management is a key and critical issue in crime and offence management. As a police service we have looked for new and innovative ways to break the cycle of repeat offending involving juvenile offenders. In 1995 Tasmania Police commenced a process of Diversionary Conferencing. It has become formalised with the introduction of the *Youth Justice Act 1997*.

This approach to dealing with the young offender is based on restorative justice principles.

What is Restorative Justice?

Restorative justice is a new way of thinking about and responding to crime. It emphasises one fundamental fact: crime damages people, communities and relationships. If crime is about harm, then the justice process should emphasise repairing the harm.

We ask three questions about the crime: What is the nature of the harm resulting from the crime? What needs to be done to “make it right” or repair the harm? Who is responsible for the repair?

Defining the harm and determining what should be done to repair it are best accomplished with input from the victim of the crime, the community and offenders in a decision making process that maximises their participation. We focus on the future rather than the past, when looking at who is responsible for the repair of the harm.

Instead of punishment, we look to the offender to repair the harm caused by his or her crime. We ensure the offender is held accountable for the damage and suffering caused both to the victims and victimised communities.

The crime victims and the community play critical roles in setting the terms of accountability, monitoring and supporting the completion of the offender’s obligations in repairing the harm.

There are three simple goals of restorative justice:

- restoration of the victim;
- Restoration of the offender to a law abiding life; and
- restoration of the damage caused by the crime to the community.

Achieving Restoration through Conferencing

The view of restorative justice and achieving its goals are best served when the needs of the victim, the community, and the offender are all met and each is involved in the process to the greatest extent possible. Conferencing is one of the strategies that attempt to achieve this outcome in a positive way. In February 2000 the *Youth Justice Act 1997* was proclaimed and it formalised the process known as Diversionary Conferencing which was commenced by Tasmania Police in 1995.

Diversiory Procedures

The *Youth Justice Act 1997* allows for four processes in dealing with young offenders. They are Informal Cautions, Formal Cautions, Community Conferences and Court. Police are actively involved in the Informal Caution, Formal Caution and the Community Conference processes.

Police have been made the gatekeepers of the youth justice system as they will be responsible for diverting youth, who have admitted the commission of an offence, away from the court to a Formal Caution process or a Community Conference.

Informal Caution: Section 8 of the Youth Justice Act 1997

If a youth admits the commission of an offence and a police officer is of the opinion that the matter does not warrant any formal action, the officer may informally caution the youth against further offending and proceed no further against the youth. If a youth is informally cautioned under this section, no further proceedings may be taken against the youth for the offence in relation to which the youth was cautioned.

More Formal Proceedings: Section 9

If the youth admits the commission of an offence and a police officer is of the opinion that the matter warrants a more formal action under the Act than an informal caution, the officer may deal with the matter as follows:

- a) Require that the youth be formally cautioned against further offending.
- b) Require the Secretary to convene a Community Conference to deal with the matter.
- c) File a complaint for the offence before the Court.

Formal Caution: Section 10

- (1) A formal caution against further offending is to be administered to the youth by an authorised officer. (An authorised officer means a police officer who has been authorised by the Commissioner of Police to administer formal cautions against further offending).
- (2) If an authorised police officer administers a formal caution against further offending, the officer may also require the youth to enter into one or more of the following undertakings to:
 - (a) pay compensation, in the manner specified in the undertaking, for
 - (i) loss of or damage to offence-affected property;
 - (ii) injury suffered, expenses incurred or other loss suffered by the victim of the offence; and
 - (iii) injury suffered, expenses incurred or other loss suffered by any other person by reason of the offence;
 - (b) make restitution of offence-affected property;
 - (c) perform a specified period (not exceeding 35 hours) of community service which is for the benefit of the victim of the offence;
 - (d) apologise to the victim of the offence;
 - (e) do anything else that may be appropriate in the circumstances of the case.

At the Formal Caution, the victims and their family and friends are brought together with the offender and their family and friends. The meeting is facilitated by a police officer who is authorised to do so by the Commissioner of Police. During this

meeting the offender tells the story of what happened and this is followed by the reactions from the victim and the others participating in the caution process. The young offender confronts how their behaviour has affected family and friends and the community. It is not an easy process for the young offender and could never be described as a “soft option”.

Once this discussion has taken place a formal caution against further offending is administered to the youth by the authorised police officer facilitating the process. An agreement between the persons participating as to how to repair the harm caused by the young offender may be reached and the young offender may enter into one or more undertakings

Before entering into the undertaking, a youth and any guardian or responsible adult present, has an opportunity to make representations with respect to the matter.

The emphasis is placed on the offending behaviour and not the young person. The young person is held accountable for their behaviour. There is a focus on the appropriate level of punishment with an emphasis on the young person being given the opportunity to repair the harm they have caused, develop new skills and change behaviour. This process also allows the victim to be involved in the sanctions, and may assist with the healing process of the victim. We allow the young person to acknowledge wrong-doing but encourage them to believe they are worthwhile and accept them back into the community. We aim to make a better present and future for the community, the victim and the offender.

Any undertaking has a maximum duration of three months.

All discussions and outcomes of the formal caution process remain confidential to protect the rights of the young offender.

Guidelines for Diversion from Court

Formal Cautions may only be conducted where a youth admitted the commission of the offence. In determining the appropriateness of diverting a youth to a Formal Caution, the age, previous offending history and remorseful attitude of the youth will be considered in conjunction with the nature and seriousness of the offence.

Formal Cautions and Community Conferences should be held where they are in the best interests of the youth, the victim and the community.

A Formal Caution is not appropriate where:

1. The offence is a “prescribed offence” or may be dealt with by way of an infringement notice at the time of detection of the offence.
2. The facts in issue concerning guilt are disputed.
3. The youth’s pattern of behaviour, or their home or social environment, is such that they may benefit from more intensive and structured proceedings such as a Community Conference.
4. The youth will not co-operate in the Formal Caution process.
5. Special legislative provisions governing reparation exist or where a youth is still in possession of property and restitution or property or compensation of victims cannot be made other than an appearance in court (eg disqualification and reparation provisions concerning motor vehicle stealing under the *Police Offences Act 1935*).

Referral to a Community Conference

In considering whether to deal with a matter by a police formal caution (Diversionary Conference) or referral to a Community Conference the authorised officer should consider:

- the nature of the offence;
- whether the youth has been formally cautioned (Diversionary Conferenced) in the past and how many formal cautions have previously been administered;
- the nature of the previous offending history for which the youth was conferenced or cautioned; and/or
- the attitude of the youth to previous formal cautions.

Commitment to Diversion at a local level – Caution and Conferences

In Glenorchy, like other cities, the activities of young people are highly visible. On reviewing the crimes and offences committed by young persons in the Glenorchy area over the past two years, they show similar patterns of crime and offence behaviour recognised across Australia. Tasmania Police in Glenorchy have recognised the need for a committed approach to minimising the incidence of youth crime.

To enhance and reinforce this approach, it was necessary to have a committed approach to youth justice with the proper regard for the principles and objectives outlined in *the Youth Justice Act 1997*. Therefore a full time officer was appointed to manage and participate in youth justice matters in the Glenorchy Police Division.

Tasmania Police also recognises that the community is a tremendous and largely untapped resource confronting the causes of juvenile crime and developing long-term strategies that offer lasting remedies to delinquency. To enhance service to its local community it is important that Tasmania Police are involved in the development of strategies for youth. Tasmania Police need to participate with other agencies, local government and appropriate community groups, in looking at the needs of youth, their strengths and the problems facing youth.

We need to continue to build partnerships at a local level and have a full understanding of what is available for youth and in support of youth at a local level. It is not unusual to be confronted by youth with extreme needs during the Formal Caution process. To assist youth during this process, they may be guided to an appropriate agency or group with their consent as part of their undertakings. An example of some of the agencies utilised are:

- Salvation Army “Changes” Program.
- Holyoak Drug and Alcohol Program.
- Housing Tasmania.
- Stepping Stone for homelessness.
- Project Hahn.
- Reconnect.

Conclusion

The programs that are devised for reducing juvenile delinquency must involve youth in their development, and this involvement will be most effective when there is mutual trust and a strong line of communication. It is important that the youth involved in this process come from a broad spectrum of backgrounds and abilities, including representatives of those young people who need these programs the most.

Whatever strategy we pursue in dealing with youth offenders, if it is to succeed, the entire community, families, schools, public agencies, social service organisations, and businesses must be involved. We cannot afford to sit apart from the community. We must forge partnerships in this important challenge to ensure livable, safe and thriving communities. We should be prepared to take risks and try alternatives to save at-risk children and their families and restore them to our community.

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