‘Swift, Certain and Fair’ Approaches to Sentencing and Managing Family Violence Offenders Factsheet

The Sentencing Advisory Council has been asked to advise the Victorian Government on whether to apply ‘swift, certain and fair’ approaches when managing people who have been sentenced for family violence.

What Are ‘Swift, Certain and Fair’ Approaches?

‘Swift, certain and fair’ approaches are ways of managing offenders who are serving their sentence in the community. ‘Swift, certain and fair’ approaches aim to increase an offender’s compliance with the conditions of their sentence (such as attending treatment or staying free of alcohol and drugs), and are based on the idea that offenders are more likely to comply with the conditions of their sentence if they believe that breaches will be discovered quickly and punished quickly, consistently and fairly. Increased compliance with conditions is believed to reduce the risk of reoffending.

There are six key elements of ‘swift, certain and fair’ approaches:

1. Targeting offenders serving a sentence in the community who are subject to conditions as part of their sentence.
2. Deciding which conditions should get a fixed penalty if breached.
3. Establishing a ‘behavioural contract’ with each offender – so offenders know exactly what is expected of them and what will happen if they breach a condition.
4. Regular measures (such as drug testing) to check that each offender is sticking to the conditions of their sentence.
5. Responding to breaches quickly – by holding a hearing (where the offender must appear in court) within 72 hours of a breach being detected.
6. Responding to breaches consistently – by imposing fixed sanctions for every breach in accordance with the agreed behavioural contract.

Two other elements are sometimes included as part of ‘swift, certain and fair’ approaches: the use of short periods of imprisonment, as the fixed penalty, and therapeutic jurisprudence (sentencing that is designed to solve problems in the offender’s life).

Do ‘Swift, Certain and Fair’ Approaches Work?

Evidence for the effectiveness of ‘swift, certain and fair’ approaches is mixed. Evaluations of Hawaii’s HOPE program (which was designed to reduce drug use and drug-related crimes) and South Dakota’s 24/7 Sobriety Project (which was designed to reduce alcohol use and drink-driving) offer encouraging results. Fewer offenders managed under these programs tested positive for alcohol or drugs or were rearrested, compared with offenders managed under traditional programs.

A recent large-scale study, the HOPE Demonstration Field Experiment, examined whether the positive effects of Hawaii’s HOPE program could be reproduced. The study found that participants in the ‘swift, certain and fair’ programs in four other American states had nearly identical rates of breaching conditions and reoffending as those not in the program. In some instances, the ‘swift, certain and fair’ program participants had worse outcomes.

The logic model of Hawaii’s HOPE program
Appropriateness and Effectiveness of ‘Swift, Certain and Fair’ Approaches for Family Violence Offenders

A number of American jurisdictions have employed ‘swift, certain and fair’ approaches targeting high-risk offenders with alcohol and drug issues. Staying free of alcohol and drugs has been identified as a condition that will reduce an offender’s likelihood of reoffending, and regular testing makes breaches relatively easy to detect.

Currently there are no ‘swift, certain and fair’ programs targeting family violence offenders.

Protecting victims from further violence is the primary concern in managing family violence offenders. This differs from a therapeutic approach to managing offenders with alcohol and drug issues.

Consistency with Victoria’s Criminal Justice System

‘Swift, certain and fair’ approaches raise a number of procedural fairness issues. For example, an offender’s ability to prepare a possible defence may be limited by swift breach hearings. Also, a ‘swift, certain and fair’ approach could have a disproportionate (unfair) impact on some offenders, such as offenders with brain injuries or mental illness, or those with childcare responsibilities.

In Victoria, ‘swift, certain and fair’ approaches may not be consistent with Corrections Victoria’s new discretion-based offender management model, which commenced in January 2017. Further, Victoria Police have advised that there is currently no capacity in police cells or remand centres to house offenders on short periods of custody as part of a ‘swift, certain and fair’ program in Victoria.

Options to Implement ‘Swift, Certain and Fair’ Approaches in Victoria

The Sentencing Advisory Council has developed five possible options for introducing ‘swift, certain and fair’ (or similar) approaches to managing family violence offenders in Victoria:

1. **Corrections-imposed ‘swift, certain and fair’ program**: Corrections Victoria could identify high-risk family violence offenders on community correction orders and administratively place them in a ‘swift, certain and fair’ program.

2. **Court-imposed ‘swift, certain and fair’ program**: The law could be changed to allow sentencing courts to identify high-risk family violence offenders sentenced to a community correction order and attach a condition requiring participation in a ‘swift, certain and fair’ program.

3. **Court-imposed ‘swift, certain and fair’ sentencing order**: Similar to the drug treatment order, a new sentencing order could be created that allows courts to manage family violence offenders on a ‘swift, certain and fair’ program, and to activate brief periods of imprisonment if a condition is breached.

4. **Enhanced judicial monitoring**: The law could be changed to allow, or require, increased use of judicial monitoring. The law could also be changed to expand court powers during a judicial monitoring hearing.

5. **Enhanced alcohol exclusion orders or conditions**: Sentencing law could be changed to allow increased use of alcohol exclusion orders or conditions, or to broaden the scope of the alcohol exclusion to include any consumption.

The Sentencing Advisory Council welcomes any suggestions for alternative options that may improve swiftness, certainty and fairness in sentencing and managing family violence offenders.

Information on how to make a submission is included on our website.