

Children in need of therapeutic treatment

Therapeutic treatment orders

Introduction

There is considerable evidence that intervening early with children and young people exhibiting sexually abusive behaviour can help to prevent ongoing and more serious sexual offences. At present, the Criminal Division of the Children's Court may direct treatment as part of sentencing, where a young person is convicted of a sexual offence. Some treatment programs can only be accessed following an admission or conviction. However, for children aged 10 years and over but under 15 years, it is often difficult to prove that the requisite mental intent exists to secure a conviction. The new provisions within the *Children, Youth and Families Act 2005* (CYFA) that relate to children in need of therapeutic treatment will provide an alternative pathway into treatment when the child does not voluntarily seek help, without the need to rely on a criminal prosecution.

How it will work

From 1 October 2007, Police, or any member of the public will be able to report concerns about a child's (10 – 14 years inclusive) sexually abusive behaviour to Child Protection. Child Protection may also receive referrals from the Criminal Division of the Children's Court.

Where Child Protection assesses that a child or young person is in need of therapeutic treatment, and the child or the child's parent or carer is unable or unwilling to access treatment, an application may be made to the Children's Court for a therapeutic treatment order. These orders require the child who is the subject of the order to attend an appropriate treatment program to address their sexually abusive behaviours. They may also have conditions requiring the child's parent(s) or carer(s) to take any necessary steps to enable the child to attend the treatment.

Where a therapeutic treatment order is granted by the Court, Child Protection can also apply for a therapeutic treatment (placement) order. This order will allow the child to be placed away from home where this is necessary for the treatment. The placement order will only apply for the duration of the treatment order.

If the child does not complete treatment, the treatment order and any related placement order can be revoked.

The CYFA also provides for the establishment of a new multidisciplinary Therapeutic Treatment Board. Child Protection, Victoria Police, the Office for Public Prosecutions and treatment providers will be represented on this board, which will provide advice to Child Protection on the appropriateness of applying for a therapeutic treatment order in select circumstances. The Board will also provide advice to Child Protection on the appropriateness of revoking a therapeutic treatment order where criminal proceedings against the child have been adjourned. The Board's role is advisory, and final decisions on whether to pursue criminal justice and protective actions will remain with the Director of Public Prosecutions and the Secretary respectively. As noted above, the making of a therapeutic treatment order will always be the decision of the Children's Court.

These provisions do not replace the Police role in receiving reports and investigating and prosecuting crimes. Where a child aged 10 years and over has committed a sexual offence, it should be reported to Victoria Police. Any report made to Child Protection regarding a sexual offence will be reported to Police in cases where this has not already occurred.

Frequently Asked Questions

Sexually abusive behaviours: What are they?

There is no unequivocal definition of sexually abusive behaviour. A range of sexual behaviours may be defined as abusive where a person uses power, force or authority to involve a child, young person or adult in any form of unwanted or illegal sexual activity. Illegal sexual activities are those offences as described in the *Crimes Act 1958*. It is important to recognise that not all sexual behaviour between children or young people is abusive.

It is not necessary for a person who is concerned about a child aged 10 years and over, but under and 15 years of age, to assess the behaviour before reporting it to either the Police or Child Protection. If a person forms a belief in good faith that a child in this age range has engaged in sexually abusive behaviours, they can report that belief to Child Protection.

If I make a report to Child Protection, is my identity protected?

Yes. If you make a report to Child Protection regarding a child in need of therapeutic treatment, Child Protection cannot make your identity known to anyone other than Victoria Police, who are also required to protect your identity.

What happens if Child Protection thinks a child should be placed on a therapeutic treatment order, and the Police think the child should face criminal charges?

When a report is made to Child Protection regarding a child (aged 10 or over, but under 15 years) engaging in sexually abusive behaviours, Child Protection will inform the Police. Where appropriate, a joint investigation will be carried out. Following investigation and assessment, if Child Protection assesses that the child is in need of therapeutic treatment and this treatment is unlikely to occur without a Court order, Child Protection will apply to the Children's Court for a therapeutic treatment order. If Child Protection further assesses that in order for the child to participate in

the treatment, the child must be removed from home, Child Protection will apply for a therapeutic treatment (placement) order.

The Police will retain responsibility for criminal investigations and the Director of Public Prosecutions will retain responsibility for decision making regarding pursuing criminal prosecutions.

The legislation provides for the criminal division of the Children's Court to stand down criminal matters when a child is subject to a therapeutic treatment order and to dismiss charges where a child successfully completes a treatment program.

What happens if a child on a therapeutic treatment order doesn't attend a treatment program?

Therapeutic treatment orders cannot be breached. If a child fails to attend, the order can be revoked. In situations where a criminal charge has been stood down while the child was subject to the therapeutic treatment order, the matter can be returned to the criminal division for the hearing of the charges.

How long does a therapeutic treatment order last?

Therapeutic treatment orders can be made for a maximum of one year, with the capacity for a single extension of up to a further one year.

What if the child turns 15 years of age during the period of the order?

The order continues in force. The age limit applies to the child at the time of seeking the order, not subsequent to the order being made.

More information

For more information, contact your local Child Protection office.

For fact sheet and supporting documents, see the every child every chance website
www.dhs.vic.gov.au/everychildeverychance

Supporting documents

- Guide to court practice for Child Protection practitioners.