



Queensland Homicide Victims' Support Group

27 July 2018

Victoria Moore
Manager – Policy
QLD Sentencing Advisory Council
GPO Box 2360
Brisbane Qld 4001

Dear Victoria

QSAC SUBMISSION – Comparing Child to Adult Homicide in the Criminal Justice System

There are key differences between many aspects of child versus adult homicide. This is supported by an abundant array of statistics from the Australian Institute of Criminology, the Queensland Sentencing Advisory Council's Consultation Paper on Sentencing for Criminal Offences Arising from the Death of a Child (May 2018) and the Child Homicide Research Report of July 2018. Differences stem not only from the obvious age of the victim, but also in motive, circumstance, perpetrator characteristics, pathway through the criminal justice system and sentencing, to mention a few.

The predominant feedback from families who are supported by Queensland Homicide Victims' Support Group after losing a child to homicide is dissatisfaction with the charge that ultimately results, and the sentencing outcome. The percentage of families who are dissatisfied in this regard is exceptionally high, significantly higher than those who endure homicide of an adult. This lived experience of child homicide families fits with QSAC's findings which highlight the fact that child homicide in Queensland is more likely than adult homicide to result in a sentence for manslaughter not murder.

The resultant downgrading of charges, pleas to lesser charges, and discounts related to parole eligibility has a direct negative impact on surviving family members and friends, who place their trust in the justice system to deliver an appropriate outcome.

QHVSG identifies the following contexts in child homicide that make this felony different to that of adult homicide:

1. The child's vulnerability and dependency on primary carer for all basic needs
2. The concept of duty of care which is especially relevant in child homicide where parents and / or carers have this responsibility. (e.g. acts of negligence causing death)
3. The Impact that failure to provide for the child may have on survival
4. The perpetrator's common direct relationship to the child
5. The position of trust that the perpetrator held prior to the act
6. The predominant location of the homicide in the child's home (a safe place)
7. The motive for child homicide is almost always different to adult
8. The child's greater physical vulnerability to the impact of violence
9. The level of violence to take the life of a child is less than for an adult

It is QHVSG's viewpoint that the many differences in child versus adult homicide warrants further investigation from a legal and sentencing perspective. Our current legal system manages both child and adult homicide with the same set of criteria. Whilst it is acknowledged that aggravating and mitigating circumstances can provide some balance to the process, it is our suggestion that the system as it is, does not adequately reflect the vulnerabilities of the child nor the circumstances of the death.

QHVSg proposes revisiting aggravating factors specific to child homicide, with a vision of developing a specific set of criteria that would apply when the victim is a child. This new set of criteria would carry more weight from an aggravating perspective and be reflected in the severity of the sentence handed down. QHVSG is currently assisting one family who would ultimately like to see this new set of criteria formalised and termed "Hemi's Law" in memory of their late son, who lost his life to homicide.

QHVSg also recommends revisiting the mitigating factors for child homicide. The average age of child homicide offenders is younger than adult homicide offenders. As being younger is considered a mitigating factor in sentencing, this may be a contributing factor to more lenient average sentencing outcomes of child homicide offenders.

It is also common occurrence for families to report conversations they have had with the ODPP at the time of sentencing when pleas were accepted, or charges were downgraded, due to the particular difficulty in proving intent with child homicide. QHVSG suggests that specific consideration be made to the lack of obvious motive often found in child homicides compared to adult homicide. Expecting to find intent is almost impossible to substantiate in child homicides, and therefore should not be considered exclusively within its current context. With this in mind, QHVSG suggests that criteria to meet standards of duty of care for a child be given greater influence in respect to determining intent.

QHVSg looks forward to the opportunity to working with QSAC with regard to the submissions made in this proposal.

Regards



Elaine Henderson
Family Support Coordinator
Queensland Homicide Support Group



Brett Thompson
Chief Executive Officer
Queensland Homicide Support Group

QHVSg recognises the outstanding contributions of Elaine Henderson and Kavita Raj in the preparation of this submission.