



No. 64
**Detaining Aboriginal
Juveniles as a last
resort: Variations from
the theme**

Lynn Atkinson

In September 1993, an Indigenous juvenile was 17 times more likely to be held in custody in Australia than a non-Indigenous juvenile, but by June 1996 the likelihood of detention was 21 times greater. Despite the recommendations contained in the report of the Royal Commission into Aboriginal Deaths in Custody, over-representation of Indigenous juveniles has persisted, and the prognosis for the future is not good.

The surge of Indigenous births in the mid to late 1980s will provide an even larger pool of potential clients for the juvenile justice system, and ultimately for the adult corrections system. The long-term effects of involvement with the criminal justice system on individuals, on families, on Indigenous communities and on the nation as a whole are cause for concern.

In this paper, the Australian Institute of Criminology presents trend information on the number of Indigenous juveniles in detention. These data enable long-term analysis of the problem and provide the basis for policy innovation.

Adam Graycar
Director

Recognition and documentation of the massive and unrelenting problem of Indigenous over-representation in the criminal justice system began in the late 1960s, at the time of Elizabeth Eggleston's pioneering research (Eggleston 1976). Over time, the evidence of this over-representation has accumulated as jurisdictions improve their data collections and increasingly include the Indigenous status of juveniles as a variable in their data sets. Much of the information-gathering and attention, however, has been directed to the adult system, particularly to Indigenous over-representation in the prison system. In 1982, the first National Prison Census provided Australia-wide hard evidence of the disproportionate imprisonment of Indigenous adults. (Note that throughout this paper, the term Indigenous refers to Aboriginal and Torres Strait Islander peoples).

Information about the over-representation of Indigenous youth in the juvenile justice system has emerged more slowly. A picture of the disproportionate representation of Indigenous youth in the system became apparent during the 1980s. Studies from some States (Cunneen & Robb 1987; Gale et al. 1990) showed

**AUSTRALIAN INSTITUTE
OF CRIMINOLOGY**

trends
&
issues

in crime and criminal justice

December 1996

ISSN 0817-8542

ISBN 0 642 24030 2



Australian Institute
of Criminology
GPO Box 2944
Canberra ACT 2601
Australia

Tel: 06 260 9200

Fax: 06 260 9201

<http://www.aic.gov.au>

Table 1. Number of non-Indigenous and Indigenous persons aged 10-17 years in juvenile detention centres, by age, 30 June 1996

Age	NSW		Vic.		Qld		WA		SA		Tas.		NT		ACT		Aust.	
	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.	Non-Ind.	Ind.
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
12	3	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	2
13	8	3	1	0	3	3	1	1	3	2	2	1	0	0	0	0	0	10
14	14	15	6	0	7	10	1	5	1	5	3	2	1	1	0	0	0	38
15	51	24	10	3	13	25	7	12	12	2	9	1	0	1	1	0	0	68
16	69	24	16	0	19	33	15	28	16	5	2	2	3	6	1	0	0	98
17	93	34	33	1	11	13	21	14	32	4	3	0	0	1	4	1	0	68
Total	238	102	66	4	53	84	45	61	65	18	20	6	4	9	6	1	0	285
GRAND TOTAL	340		70		137		106		83		26		13		7		782	

that over-representation increased with young offenders' deeper penetration into the system. However, the information available about young offenders—particularly at the national level—is patchy and limited.

The Australian Institute of Criminology (AIC) maintains a national database on juveniles in juvenile corrective institutions (detention). The database came into being in 1977, but has existed in the current format since 1982. It comprises census information forwarded by the States and Territories at the end of each quarter. It includes information on the numbers of juveniles

detained; sex, age and detention status of detainees; and, since March 1993, Indigenous status.¹

There is now a complete and consistent dataset on Indigenous juvenile detainees for the three years from September 1993 to June 1996. Despite the rather short timespan it is now possible to make some preliminary observations about trends in Indigenous juvenile detention.

Because the numbers of juvenile detainees are relatively low, particularly in the smaller jurisdictions, and because the

data span a period of only three-years, it is important to note that caveats apply to some observations. Trend information, in particular, should be treated with caution. It should also be noted that, in a small jurisdiction such as the ACT, even one additional Indigenous juvenile prisoner can affect the makeup of the client population dramatically, leading to a skewed and variable picture of what is happening. For this reason, most of the analysis which follows involves jurisdictions with relatively high numbers of Indigenous detainees.

1. The figures in this article were provided by the relevant jurisdictions and were current as at October 1996. The figures do not include persons under 18 years held in adult prisons.

Table 2. Persons aged 10-17 years in juvenile detention centres, by age-groups and Indigenous status, Rate per 100 000 population (10-17 years), 30 June 1996

Age	Indigenous status	NSW	Vic.	Qld*	WA	SA	Tas.	NT	ACT	Aust.
10-14	Indigenous	223.1	0.0	142.7	128.6	336.1	235.5	18.3	0.0	147.6
	Non-Indigenous	6.0	2.3	4.3	1.6	5.1	17.1	10.9	0.0	4.5
15-16	Indigenous	1545.7	436.5	1774.7	2101.8	1026.0	603.1	380.1	0.0	1376.8
	Non-Indigenous	76.6	22.0	35.8	46.6	75.2	85.1	102.7	23.2	51.6
17	Indigenous	2118.4	267.8	741.7	1459.7	1052.9	0.0	116.8	2896.6	1099.1
	Non-Indigenous	111.5	51.8	23.7	88.0	165.9	45.1	0.0	85.0	78.9
10-17	Indigenous	745.9	131.9	594.4	734.5	572.3	300.8	110.1	324.1	539.8
	Non-Indigenous	36.3	13.5	14.5	23.2	41.8	36.6	29.3	17.0	25.3

* Queensland generally has more 17-year-olds in adult prisons than the other jurisdictions.

Table 3. Indigenous persons aged 10-17 in juvenile detention centres, Over-representation ratios, 30 June 1996

Age	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Aust.
10-14	37.0	0.0	32.9	78.8	66.5	13.7	1.7	0.0	32.7
15-16	20.2	19.8	49.6	45.1	13.6	7.1	3.7	0.0	26.7
17	19.0	5.2	31.3	16.6	6.3	0.0	0.0	34.1	13.9
10-17	20.5	9.8	41.1	31.6	13.7	8.2	3.8	19.0	21.3

The Situation at 30 June 1996

Table 1 shows an age breakdown of non-Indigenous and Indigenous juveniles (aged 10-17 years) held in juvenile detention centres on 30 June 1996.

Females made up a very small proportion of these detainees. There was a total of 32 non-Indigenous females aged 10 to 17 years held in juvenile detention centres across Australia on 30 June 1996, and 27 Indigenous females.

Although Indigenous youth comprise only 2.6 per cent of the youth population (10-17 years) in Australia, on 30 June 1996 they represented 36 per cent of all juveniles held across Australia in

Table 4. Persons 10-17 years in juvenile detention centres, Number and rate per 100 000 population (10-17 years), Australia, September 1993 to June 1996

	Indigenous		Non-Indigenous	
	No.	Rate	No.	Rate
Sep.93	211	408.03	472	24.06
Dec.93	220	425.43	511	26.04
Mar.94	257	486.79	525	26.76
Jun.94	271	513.31	479	24.42
Sept.94	248	469.74	465	23.70
Dec.94	249	471.64	462	23.55
Mar.95	309	585.30	509	25.90
Jun.95	260	492.47	527	26.86
Sep.95	274	518.99	497	25.33
Dec.95	254	481.11	491	25.03
Mar.96	276	522.78	478	24.36
Jun.96	285	539.83	497	25.33

juvenile detention centres. New South Wales, Queensland and Western Australia together held 87 per cent of all detained Indigenous juveniles—and 68 per cent of all detained non-Indigenous juveniles.

On 30 June 1996, Indigenous juveniles comprised 30 per cent of the detained juvenile population in New South Wales, 61 per cent in Queensland, and 58 per cent in Western Australia. In the 10 to 14 years age-group the concentration of Indigenous youth was even greater in New South Wales and Western Australia: 44 per cent of the age-group in New South Wales and 78 per cent in Western Australia (57 per cent in Queensland). While the overall number of youth detained below the age of fifteen is small, it is nevertheless of concern that very young Indigenous juveniles seem to be even more likely to end up in juvenile detention than their non-Indigenous peers.

Table 2 shows the rates² of detention of Indigenous youth, by age-groups. New South Wales (746 per 100 000) and Western

² All rates are per 100 000 relevant population: so, for example, the rate of detention of Indigenous juveniles in NSW at 30 June 1996 was 746 per 100 000 Indigenous population aged 10-17 years. Population estimates and projections provided to the AIC by the Australian Bureau of Statistics (ABS) for the period 1988 to 1994 have been used in the calculation of the rates which are shown in the tables in this publication. 1994 estimates were used as the population base for 1994-96.

Australia (735 per 100 000) had the highest detention rates for Indigenous juvenile detainees. The detention rates of non-Indigenous youth—36 per 100 000 (NSW) and 23 per 100 000 (WA)—fade into insignificance by comparison. Seventeen-year-olds in New South Wales, and 15 to 16-year-olds in Western Australia represented the age-groups with the highest detention rates for Indigenous juveniles on 30 June 1996.

Table 3 shows over-representation levels of Indigenous youth. The data show the extent of over-representation of Indigenous juveniles in juvenile detention centres by comparing Indigenous juvenile detention rates with rates for non-Indigenous juveniles.

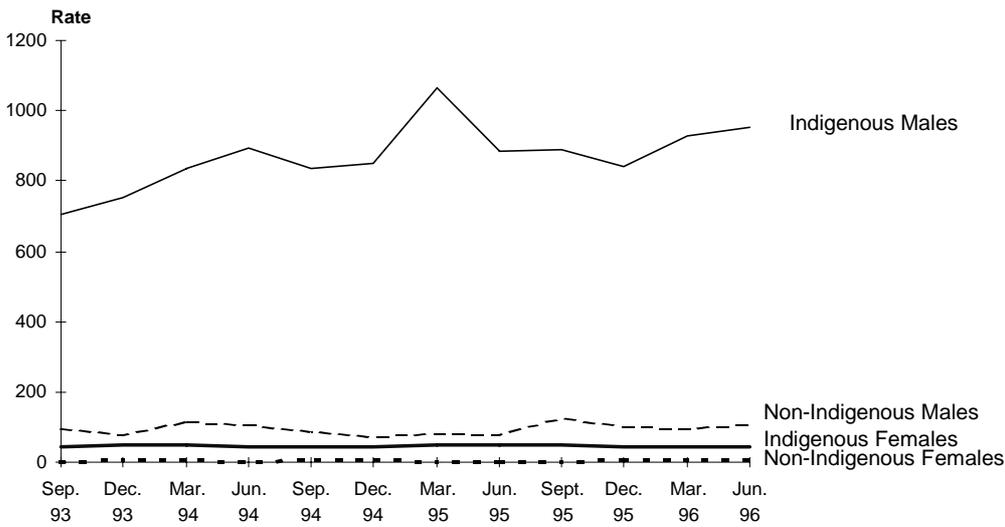
The State with the highest level of over-representation on 30 June 1996 was Queensland, followed by Western Australia, then New South Wales. On 30 June 1996, an Indigenous youth was more likely to be detained than a non-Indigenous youth in Queensland by a factor of 41 (that is, an Indigenous youth was 41 times more likely to be detained than a non-Indigenous youth), in Western Australia by a factor of 32, and in New South Wales by a factor of 21.

On the basis of the above snapshot, it is clear that the over-representation in detention of Indigenous youth is extreme. How does this compare with previous years, and are there signs of improvement?

Trends in Juvenile Detention for Indigenous Youth: Some Preliminary Observations

Given that data on the Indigenous status of juveniles held in juvenile detention centres have been collected nationally for only three-years, the following obser-

Figure 1. Persons aged 10-17 years in juvenile detention centres, by sex, Rates per 100 000 population (10-17 years), Australia, September 1993 to June 1996



variations about trends in Indigenous youth detention should be viewed as preliminary only.

Table 4 shows the numbers and rates of Indigenous and non-Indigenous youth aged 10 to 17 years who were held in juvenile detention centres in Australia at the end of each quarter since September 1993. Figure 1 gives a graphic representation of the rates of detention for Indigenous females and males, and non-Indigenous females and males.

It is clear from Figure 1 that the detention rate of Indigenous males is vastly higher than it is for the other groups—nearly 19 times higher, on average, than it is for non-Indigenous males. The figure also indicates a steady overall increase in the rate of detention of Indigenous males since September 1993, whereas the rate of detention for other males has remained relatively steady (the number of females detained is too small to allow conclusions to be drawn about trends for this group).

The steady national increase in juvenile detention rates since a low point in 1992 can be accounted for by the increase in Indigenous detention (although the evidence is only available

from 1993). To locate possible, more detailed explanations for the increase it is necessary to look at the jurisdictions, and to look at particular variables relating to the detained Indigenous population.

The majority of Indigenous youth who are detained are held in New South Wales, Western Australia and Queensland. On average, over the three years of quarterly observations, these States held 85 per cent of the detained Indigenous juvenile population (at 30 June 1996 they held 87 per cent). The number of

Indigenous juveniles held on 30 June 1996 was higher than the average in New South Wales and Queensland, and was the same in Western Australia. In each of these States the detention rates for Indigenous juveniles were higher on 30 June 1996 than they were on average across the three-year period (but only marginally so in Western Australia). The substantial upwards difference in Queensland between the average rate and the figure for 30 June 1996 was 145 per 100 000 Indigenous juvenile population.

Figure 2 shows the rates of Indigenous juveniles in detention in selected jurisdictions for each quarter between 30 September 1993 and 30 June 1996. South Australia shows an overall reduction in its rate of Indigenous juvenile detention over time, while Queensland shows a steady increase to March 1995, with a levelling out to June 1996. New South Wales and Western Australia show fluctuations resulting in an overall increase across the three-year period.

Australia is a signatory to the Convention on the Rights of the Child. Compliance with

Figure 2. Aboriginal and Torres Strait Islander persons aged 10-17 years in juvenile detention centres in NSW, Qld, WA and SA, Rate per 100 000 population (10-17 years), September 1993 to June 1996

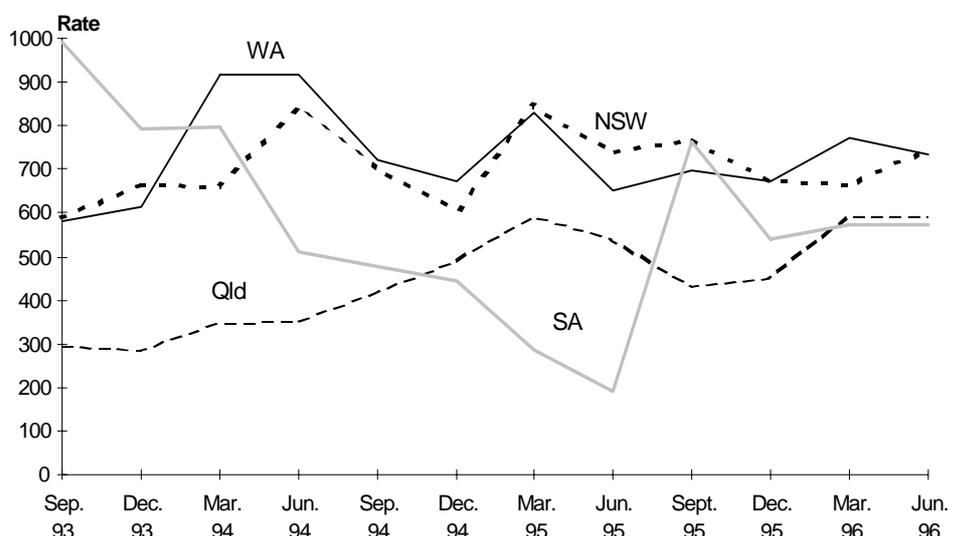
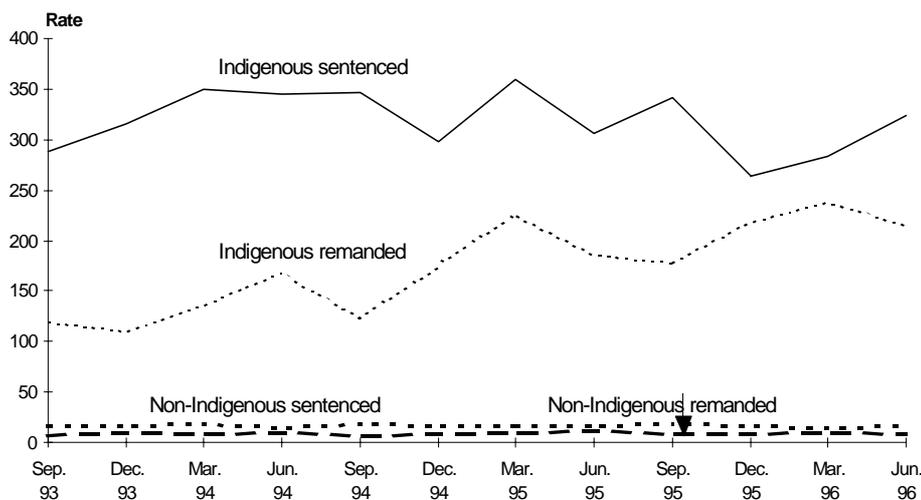


Figure 3. Juveniles in juvenile detention centres aged 10-17 years by detention status and Indigenous status, Rates per 100,000 relevant population, Australia, September 1993 to June 1996



Article 37 (b) of the Convention (detention to be used as a last resort and for the shortest possible time) requires, at least and in part, keeping the remandee, or unconvicted, population to a minimum. There are particular concerns if certain groups, such as Indigenous youth, are over-represented on remand.

Figure 3 shows juveniles by detention status, sentenced or remanded, and the rate of detention of juveniles in each category. The increase over time in the rate of remanded Indigenous juveniles, and the narrowing of the gap between rates for sentenced and remanded Indigenous juveniles is clear to March 1996. This overall pattern applies in Western Australia and Queensland in particular, and to a lesser extent in New South Wales.

On 30 September 1993 the remandee population represented approximately 30 per cent of the detained juvenile population, for Indigenous and non-Indigenous detainees alike. On 30 June 1996, the remandee population represented 40 per cent of detained Indigenous youth (an increase of 10 per cent) and 35 per cent of detained non-Indigenous youth (an increase of 5 per cent).

The overall trend towards higher detention rates, higher rates for remandees, and higher proportions of remandees, particularly with respect to Indigenous juveniles, raises questions about the commitment of Australian jurisdictions to the principle and practice of detention as a last resort.

Over-representation levels provide a further indicator of substantial and increasing involvement of Indigenous youth in detention. There has been an overall increase in the national over-representation level between September 1993 and June 1996. On 30 September 1993 an Indigenous juvenile was 17 times more likely to be detained in Australia than a non-Indigenous juvenile, but by 30 June 1996 the likelihood of detention was 21 times greater for an Indigenous juvenile. When State over-representation levels are averaged over the twelve quarters from September 1993 to June 1996, Western Australia and Queensland stand out with average levels considerably higher than in the other jurisdictions: the average level in New South Wales was 18.2, in Queensland 30.4, and, in Western Australia, 32.0. Over the three-

year period the national average level of over-representation was 19.6.

Future Scenarios—Variations from the Theme?

There appears to be little cause for optimism in relation to the over-representation of Indigenous juveniles in detention. Of particular concern are the high numbers of Indigenous youth in detention in New South Wales, Queensland and Western Australia; the unrelentingly high rates of Indigenous detention in Western Australia and New South Wales, and the increase over the three-year period in Queensland; the national increase in the detention rate for male Indigenous juveniles; and, the increase in detention rates of Indigenous remandees. Nationally, the level of over-representation of Indigenous youth in detention appears to be rising, with Queensland showing the most spectacular upward shift across the three-year time period.

The demographic context of the current situation brings an even sharper focus to this crisis in juvenile justice. A surge in Indigenous births in the second half of the 1980s (Gray & Tesfaghiorghis 1991) should be reflected from now on in boosts to the numbers of Indigenous children entering the 10-17 years age-group. The grossly disproportionate representation of Indigenous youth in the 10-14 years age-group in detention has already been noted. The potential impact of an inflated population of Indigenous youth of an age to enter the juvenile justice system is of serious concern.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down its recommendations in 1991.

Recommendation 62 of the Commission's Report (Royal Commission 1991, V. 2, p. 252) embraces the issue of high levels of Aboriginal involvement in the juvenile justice system and appeals for urgent action to address it:

... There is an urgent need for governments and Aboriginal organizations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise (RCIADC 1991, p. 252).

Five years on, there is no tangible evidence of redress.

Too often, attempts to divert youth from the juvenile justice system, including detention, impact differentially on Indigenous and non-Indigenous youth, with a net effect of further concentrating Indigenous youth in the system. Reforms and legislation grounded in law and order politics also tend to produce unequal outcomes for Indigenous youth. Policies and practices to reduce youth detention rates must be targeted specifically to the Indigenous youth sector, and of necessity must include both juvenile justice system-centred as well as broad reaching reforms. Active recognition of Indigenous wisdom, expertise and processes, as outlined in RCIADIC recommendations 235-6 (Royal Commission 1991, V. 4, p. 177) is essential to the development of effective policies and programs:

... the primary sources of advice about the interests and welfare of Aboriginal

juveniles should be the families and community groups of the juveniles and specialist Aboriginal organizations . . .

. . . local community based and devised strategies have the greatest prospect of success . . . (RCIADC 1991, p. 177).

No jurisdiction can escape the fact of Indigenous youth over-representation in its juvenile justice system, although the size of the problem differs from State to State. It is unacceptable for policy makers merely to note these statistics and acknowledge the fact of Indigenous youth over-representation in the juvenile justice system, especially in detention. The evidence is on the table and it is time for resolute action.

References

- Eggleston, E. 1976, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria*, South Australia and Western Australia, Australian National University Press, Canberra.
- Cunneen, C. & Robb, T. 1987, *Criminal Justice in North-West New South Wales*, Bureau of Crime Statistics and Research, Attorney General's Department, Sydney.
- Gale, F., Bailey-Harris & Wundersitz, J. 1990, *Indigenous Youth and the Criminal Justice System: the Injustice of Justice*, Cambridge University Press, Melbourne.
- Gray, A. & Tesfaghiorghis, H. 1991, *Social Indicators of the Indigenous Population of Australia*, CAEPR Discussion Paper No 18, Centre for Indigenous Economic Policy Research, Australian National University, Canberra.
- Royal Commission into Aboriginal Deaths in Custody 1991, *National Report*, Vol. 2, (Commissioner Elliott Johnston), AGPS, Canberra.

Lynn Atkinson is a Criminologist with the Australian Institute of Criminology



Submissions for consideration for the Trends and Issues series should be forwarded to:

Dr Adam Graycar, Director
Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601 Australia