



Australian Government
Australian Institute of Criminology

Review of data on juvenile remandees in Tasmania

Final report

**Julia Tresidder
Judy Putt**

November 2005



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Acknowledgements

The authors would like to thank the following for their helpful comments and practical assistance:

- The Commissioner for Children, Mr David Fanning, and his research officer Ms Jennifer Muirhead
- Key stakeholders including representatives of the police, youth justice, and legal aid
- The staff at Ashley Detention Centre

Executive summary

- The Commissioner for Children in Tasmania asked the Australian Institute of Criminology (AIC) to examine one year of data on young people remanded in custody and to interpret the results in the light of relevant literature and publicly available information on Tasmania and elsewhere.
- Based on the available evidence, it is not possible to determine whether the rate of remanding juveniles to custody has increased over time or whether the length of time served on remand has increased.
- Based on available data, Tasmania's rate of remand to custody seems on par with other jurisdictions—not the highest or the lowest. Being a small jurisdiction numbers can fluctuate quite dramatically and data based on a quarterly census have to be interpreted with caution.
- The juveniles placed in detention on remand were predominantly male and three quarters of them were aged between 15 and 17 (the median age was 16). However, the age range was from 11 to 18 years. Nineteen per cent of juveniles identified as being of Aboriginal origin.
- Just under a half (45%) of the juveniles were placed on remand more than once over the one year period.
- The longest amount of time a juvenile in this group spent on remand in total over this time period was 298 days. Again focusing on total time spent on remand by these juveniles—just over a third spent 30 days or less on remand and nearly two thirds (62%) spent more than 30 days on remand. A third of the juveniles spent over 11 weeks on remand. Multiple placements on custodial remand is not surprising given that many of the juveniles are likely to be serious repeat offenders.
- In all 39 per cent of juveniles placed on custodial remand whose matters had been finalised did not receive a detention sentence as a sentencing outcome during the one year period.
- Factors that were identified by stakeholders as contributing to high custodial remand rates included:
 - juveniles being recidivists well known to local criminal justice practitioners;
 - juveniles preferring to serve time on remand, in anticipation of a custodial disposition that would be backdated; and
 - the juvenile's circumstances, such as unstable home environments or mental health concerns, militating against release on bail.
- Factors that were identified by stakeholders as contributing to lengthy periods on remand included:
 - inadequate access to or a poor level of service by legal representatives;
 - defence lawyers having to wait for evidence from the prosecution;
 - negotiations between defence and prosecution;
 - further investigation of the matters by police;
 - other matters being investigated and further charges laid; and
 - preparation of pre-sentence reports.
- Based on the stakeholder consultations, suggested changes that might effect the rate and length of time on custodial remand related to:
 - improved capacity of key criminal justice practitioners, more lawyers and smaller caseloads;
 - alternative secure placements to Ashley Detention Centre in other locations, for example Hobart;
 - alternative options to custodial remand such as supervised supported accommodation;
 - improved services to address the high needs of these juveniles;
 - improved advocacy for young people;

-
- improved mechanisms that set limits on length of time on custodial remand and which make it compulsory for magistrates to give reasons for custodial remand; and
 - improved oversight of the juvenile justice system.

Introduction

The Commissioner for Children in Tasmania contracted the Australian Institute of Criminology (AIC) to investigate the rate and patterns of juvenile remand in Tasmania. The objectives of the research were to examine:

- the main characteristics of Tasmanian juvenile remandees and remand episodes over a one year period;
- the time served on remand and wherever possible, sentencing outcomes over the one year period; and
- patterns of juvenile remand in Tasmania and other jurisdictions.

Method

The research involved a literature review, stakeholder consultations and the analysis of information about juveniles remanded into custody over a one year period. Ethical approval for the research was gained from the AIC's Research Ethics Committee in July 2005.

The Tasmanian Commissioner for Children provided the AIC with a de-identified spreadsheet of information about juveniles who had been in Ashley Detention Centre on remand between July 1 2004 and June 30 2005. The AIC was also given de-identified records that summarised court outcomes for the juveniles who had spent time on remand during this 12 month period.

In order to meet the objectives of the report the AIC also conducted a review of relevant literature, legislation and reports, and conducted consultations with stakeholders in Tasmania to gain insight into how in practice juveniles are remanded in custody in Tasmania. The consultations occurred in mid-July and in mid-August 2005.

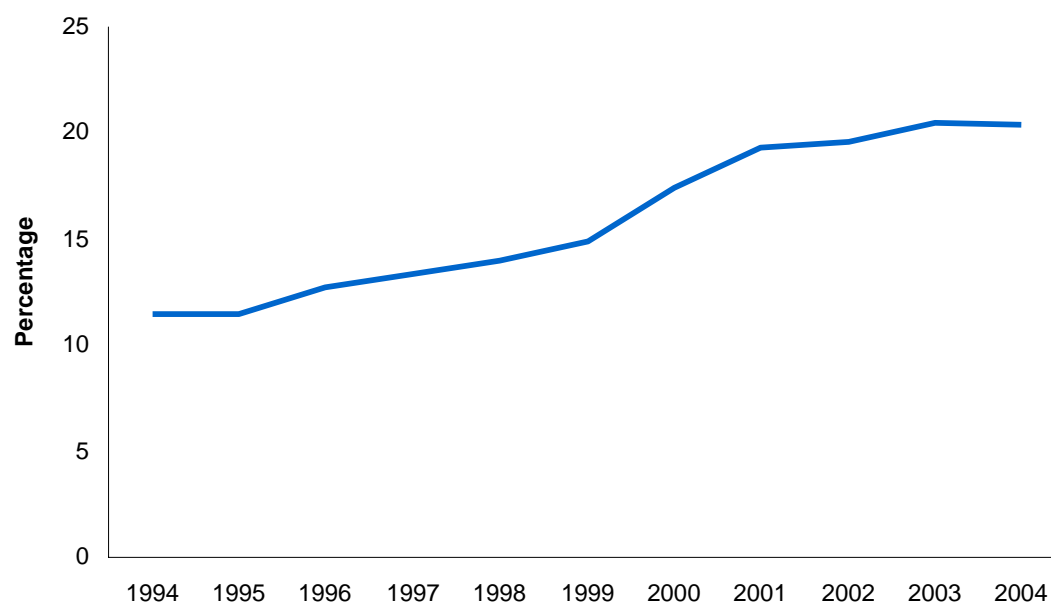
The AIC researchers did not speak directly to juveniles in the Tasmanian juvenile justice system and while this would be ideal, the timeframe for the project did not make this level of consultation with juveniles feasible.

This report presents aggregated information so that no young person can be identified. Informed consent was sought from the stakeholders interviewed about the Tasmanian juvenile justice system, and their responses are presented in such a way to ensure confidentiality.

Juvenile remand in Australia

In terms of adult remand, statistics show that since 1994 the proportion of adult prisoners nationally who are on remand has increased steadily from approximately 11 per cent to around 20 per cent in 2004. Figure 1 shows this increase. There is one significant ongoing research project that is investigating remand in the adult prison system in Victoria, South Australia and Western Australia. From this study, a report 1999 (Bamford et al. 1999) summarises research on adult remand in Australia and refers to the factors that may be considered in determining bail, such as seriousness of the charges, likelihood of attending court and of further offending, and safety of witnesses. A concern however is that a person who has not been convicted is being placed on custody and Bamford et al. (1999) refer to a South Australian study that found that up to 50 per cent of those on remand do not serve any extra time in prison other than their remand period. Other research showed that most remandees do not receive a prison term in all Australian jurisdictions.

Figure 1: Remandees as a proportion of total adult prisoner population in Australia 1994 – 2004



Source: ABS 2005. *Prisoners in Australia 2004*. Cat no. 4517.0. Canberra: ABS

There is very little published about juvenile custodial remand in Australia. A WA study on bail decision making found that legal representation was a significant predictor of bail for adult and juvenile defendants. Legal factors were significant predictors for adults but the analysis did not provide much insight into bail decision making for juveniles (Allan et al. 2003). In addition to this study, there are a few commentaries on juvenile remand and these raise issues that are similar to the ones reported above. A series of papers were presented in NSW in response to a bail amendment Bill that was introduced to NSW Parliament in 2002. One of these discussed the impact that these amendments would have on juveniles (Cunneen 2002). Cunneen points out that when a bail Act covers both children and adults it may contradict the principles of juvenile justice acts, particularly in relation to the principle that detention of juveniles should be a last resort. The detrimental effects of custody on children have been well documented (Cunneen and White 1995), including the risks for further and worse behaviour as a result of associating with other young offenders (Patterson et al 2000).

Cunneen (2002) cites figures showing that from August 2001 to May 2002 around half the young people in NSW juvenile detention centres were on remand rather than sentenced. The paper also notes that over the three years up to mid 2002 57 per cent of juvenile remandees in NSW did not receive a subsequent sentence that included detention.

During their fieldwork for research on juvenile diversion stakeholders around Australia Polk et al. (2003) reported that:

- many young offenders were being held on remand so that a significant proportion of all juveniles in detention were on remand, and
- in some jurisdictions, rather than most of these young offenders receiving a sentence to detention, a majority—in some states a large majority—were actually coming out of the court process with a non-custodial disposition of their case.

There is currently not much empirical evidence to confirm these stakeholders' perceptions. However, national statistics on juvenile detention do suggest that a large proportion of young people in such centres are on remand.

Table 1: Juveniles aged 10–17 in juvenile detention: percentage sentenced, 2002–2003

Quarterly census	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Australia
30 Sep	59.2	74.6	28.4	64.8	41.4	53.8	41.7	80	52.0
31 Dec	58.1	66.7	34.8	61.4	42.2	37.5	68.0	100	52.8
31 Mar	48.3	65.2	41.4	70.3	45.6	60.0	40.9	44.4	53.2
30 Jun	41.4	82.9	41.6	63.8	36.6	52.6	73.9	52.2	51.4

Source: Charlton K & McCall M 2004. Statistics on juvenile detention in Australia: 1981–2003, Technical and background paper No. 10. Canberra: AIC.

The most recent published national data on juveniles in detention is for 2002–2003 (McCall & Charlton 2004). It can be seen from Table 1 that the percentage of juveniles sentenced to detention fluctuated each quarter in all of the states and territories of Australia. In the Australian Capital Territory, Tasmania and the Northern Territory there are usually fewer than 35 juveniles in detention at any one time and so the proportion of those in detention who are sentenced fluctuates widely because of the small numbers involved. Overall Tasmania in 2002–2003 had about the same proportion of juveniles on remand as the total proportion across Australia as a whole. It should be noted that Victoria at this time only had a small proportion of 17 year olds in detention and they were all sentenced. Victoria sends their 17 year old remandees to a different dual track detention system for 17–21 year olds. This difference in systems may account for the seemingly higher rate of sentenced juveniles in Victoria.

In 2002 there were 54 947 juveniles aged between 10 and 17 years in Tasmania according to Australian Bureau of Statistics data. When the number of juveniles in detention during 2002–2003 is transformed into a rate per 100,000 this equates to a rate that fluctuated each quarter with a minimum of 34.6 juveniles per 100,000 on 30 June 2003 to a maximum of 54.7 on 31 March 2003. While it is not a very valid comparison because Victoria and Queensland did not include many 17 year olds in their juvenile detention centres their highest rates are substantially lower at 14.4 per 100,000 on 30 June 2003 and 23.2 per 100,000 respectively. The rates for the smaller jurisdictions come out higher and this can be seen by comparing the Northern Territory and the Australian Capital Territory rates with Tasmania. Their highest rates for 2002–2003 were 99.8 per 100,000 for the Northern Territory on 31 December 2002 and 64.2 per 100,000 for the Australian Capital Territory on 30 June 2003.

Comparisons between jurisdictions are difficult and complicated by policy and legislative differences. Until changes this year Victoria and Queensland did not allow 17 year olds to be treated as juveniles. Both states have recently changed their legislation (AIC 2005) to include adolescents up to 18 in their juvenile systems. Also in Victoria there is a dual track detention system for 17 to 21 year olds which effectively means that very few 17 year olds are housed in their juvenile detention centre. According to Charlton & McCall (2004), in Victoria no 17 year olds on remand were housed in the juvenile facility. In other states and territories where young people are charged as juveniles a decision can be made to continue to detain them in the juvenile detention centres while they are 18 or even a year or two older.

There are also differences across jurisdictions in the initiatives that exist that might reduce the number of young people remanded in custody. Polk et al. (2003) describe programs that were in place during their review in Queensland, Western Australia and Victoria aimed at reducing the likelihood that young people will be remanded in custody. Queensland had two programs, the Conditional Bail Program and the Youth Bail (Accommodation) Support Service. Both these programs were operated by the Queensland Department of Families. The Conditional Bail Program offered juveniles intensive support to help them comply with their bail conditions whilst the second program provided supported accommodation for those without stable accommodation. More information about these and other programs can be found in their report.

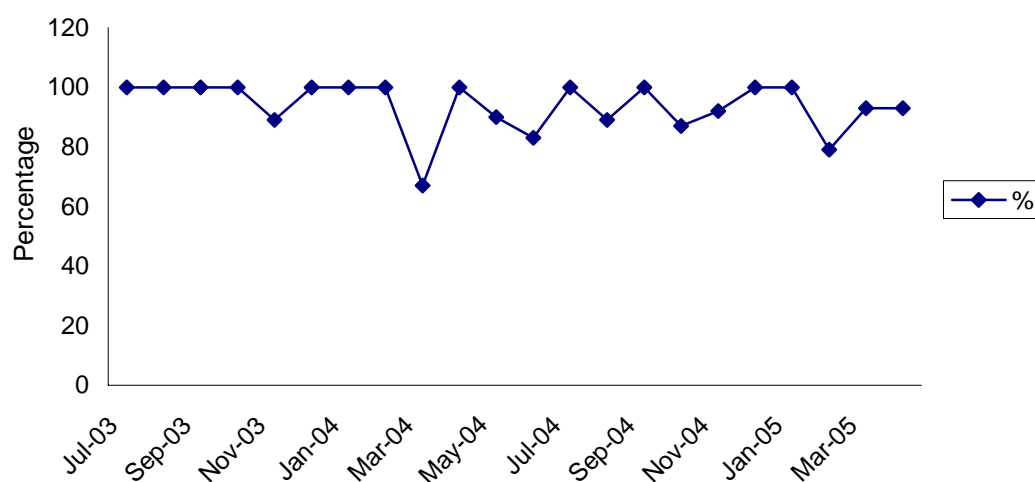
Trends in juvenile remand in Tasmania

Data collected by the Tasmanian Department of Health and Human Services do not provide a good measure of trends in juvenile remand as they rely on admissions and total daily averages of inmates to the detention centre. The available data suggest that while percentages fluctuate, overall there is no increasing or decreasing trend in admissions or in the total number of detainees.

From July 2003 to March 2005, a high proportion of admissions to the Ashley Detention Centre in Tasmania, were juveniles on remand (Figure 1). Based on figures over a four year period, the total proportion admitted on remand at the end of each financial year since 2001–2002 until April 2005 did not vary much, with the range between 92 and 95 per cent. This at least indicates that very few young people are admitted to the Centre as sentenced detainees without first serving time as remandees.

The total number of juveniles held in Ashley Detention Centre either on remand or sentenced to detention also did not vary much over the same period. The year with the highest yearly average figure was 2001–2002 at 35.2 juveniles on average in the detention centre. The lowest average was recorded in 2003–2004 with 28.3 juveniles on average, while for 2004–2005 up to April 2005 the average was 33.4 juveniles per day.

Figure 2: Remandee admissions as a proportion of total admissions



Source: Department of Health and Human Services, Tasmania [unpublished data]

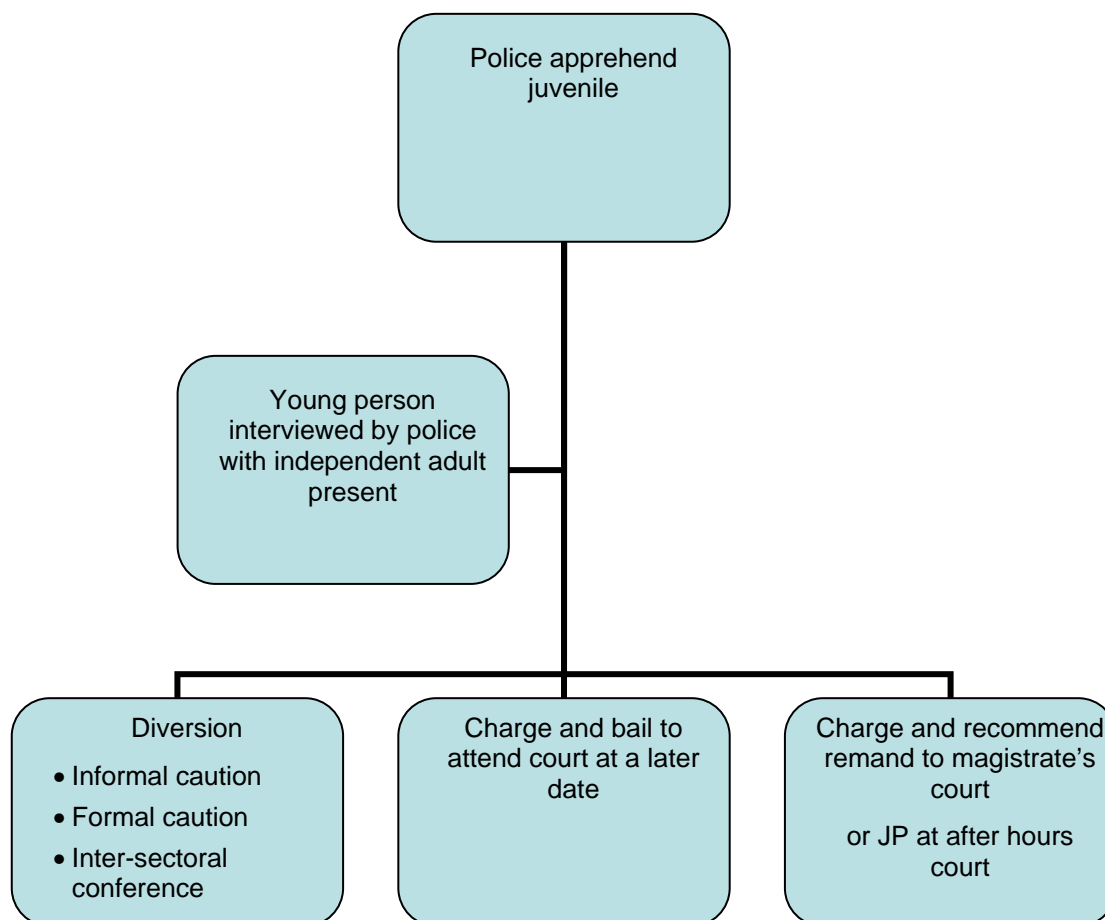
The juvenile remand process in Tasmania

Based on stakeholder consultations and published information, a basic picture emerged of the juvenile remand process in Tasmania.

Section 80 of the Tasmanian Youth Justice Act 1997 states that detention should be considered a last resort when sentencing a young person. However, the Act does not refer to remand. Under the *Bail Act 1994* in Tasmania, adults and juveniles are treated in a similar manner when it comes to bail considerations. According to stakeholders during consultations the following are taken into account when considering a bail application:

- nature of charges;
- whether the person is likely to re-offend;
- offending history;
- current address.

Figure 3: Initial police apprehension



Figures 3 and 4 illustrate the process once a juvenile comes in contact with the justice system. This process involves apprehension by police, then if charged a juvenile can be bailed or referred to court with a recommendation that bail be refused.

Once in court either a magistrate or a JP determines whether a juvenile should be remanded in custody. If the juvenile has been charged after hours then the remand decision is made by a JP. When a juvenile is remanded by a JP they are remanded to the next magistrate's Youth Justice Court sitting. This is not required by legislation but is described as 'good practice' in the Justice of the Peace Guide Section 3.4.4 in the guide (www.justice.tas.gov.au/justice/justices_of_the_peace/jps_guide). The *Justices Act 1959* (which applies to adults and juveniles) only makes reference to 28 days as being the maximum time allowed for remand in custody.

Magistrates may give reasons for refusing bail. It is possible for juveniles to make an appeal to the Supreme Court of Tasmania.

Issues raised by stakeholders regarding the procedures for apprehension and recommendation of remand by police included:

- Adults/parents/caregivers should be involved in the process. Stakeholders reported that an independent adult needed to be present when juveniles were interviewed by police and that each police station had a list of such adults. Also it was reported by stakeholders that there was a 24 hour phone line run by the Division of Children and Families (Department of Health and Human Services) that the police could use. Once a juvenile is at Ashley Detention Centre they are formally admitted; if they arrive at night this is done the next day. The admission paperwork is carried out by the Division of Children and Families (Department of Health and Human Services who contact the juvenile's family;

- Juveniles should have access to legal representation but this is not always the case, especially after hours, it was suggested that sometimes juveniles are represented after hours in Hobart but rarely anywhere else in Tasmania. Once at the Ashley Detention Centre, Legal Aid or another lawyer is also contacted. It is unusual for lawyers to visit the juveniles in Ashley Detention Centre most often contact is made by phone or by video conference;
- Magistrates' reasons for not giving bail are often a summary of the prosecution's reasons the juvenile was considered a risk to the community or that there is no responsible caregiver to ensure the juvenile does not re-offend. Once at Ashley their youth justice worker may seek to address circumstances that could be changed and effect a bail determination. Critical case conferencing, including the solicitor, has been used and occasionally the young person has been released on bail by the court;
- Youth community justice workers should be involved but because of their heavy case loads and because some juveniles are apprehended after hours, youth justice workers are not always involved. Youth justice workers are sometimes only aware of a juvenile being on remand the next day once they are already at Ashley Detention Centre;
- The location of Ashley Detention Centre is remote from many places in Tasmania and juveniles' access to their legal representatives, youth justice workers and their families is limited because of this.

Figure 4: Court process to decide on and to appeal/review a remand decision

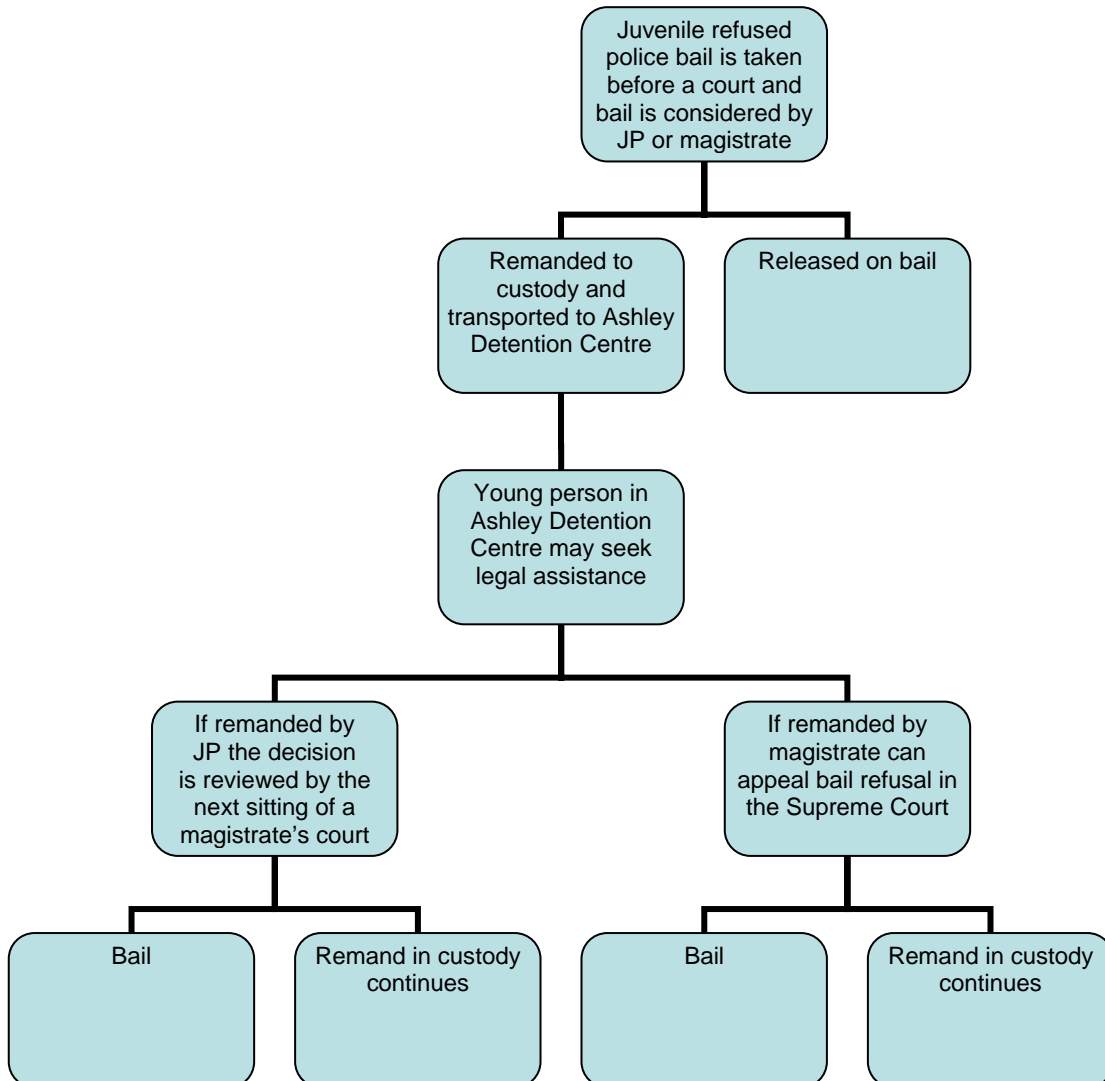


Figure 5: Process of court hearings

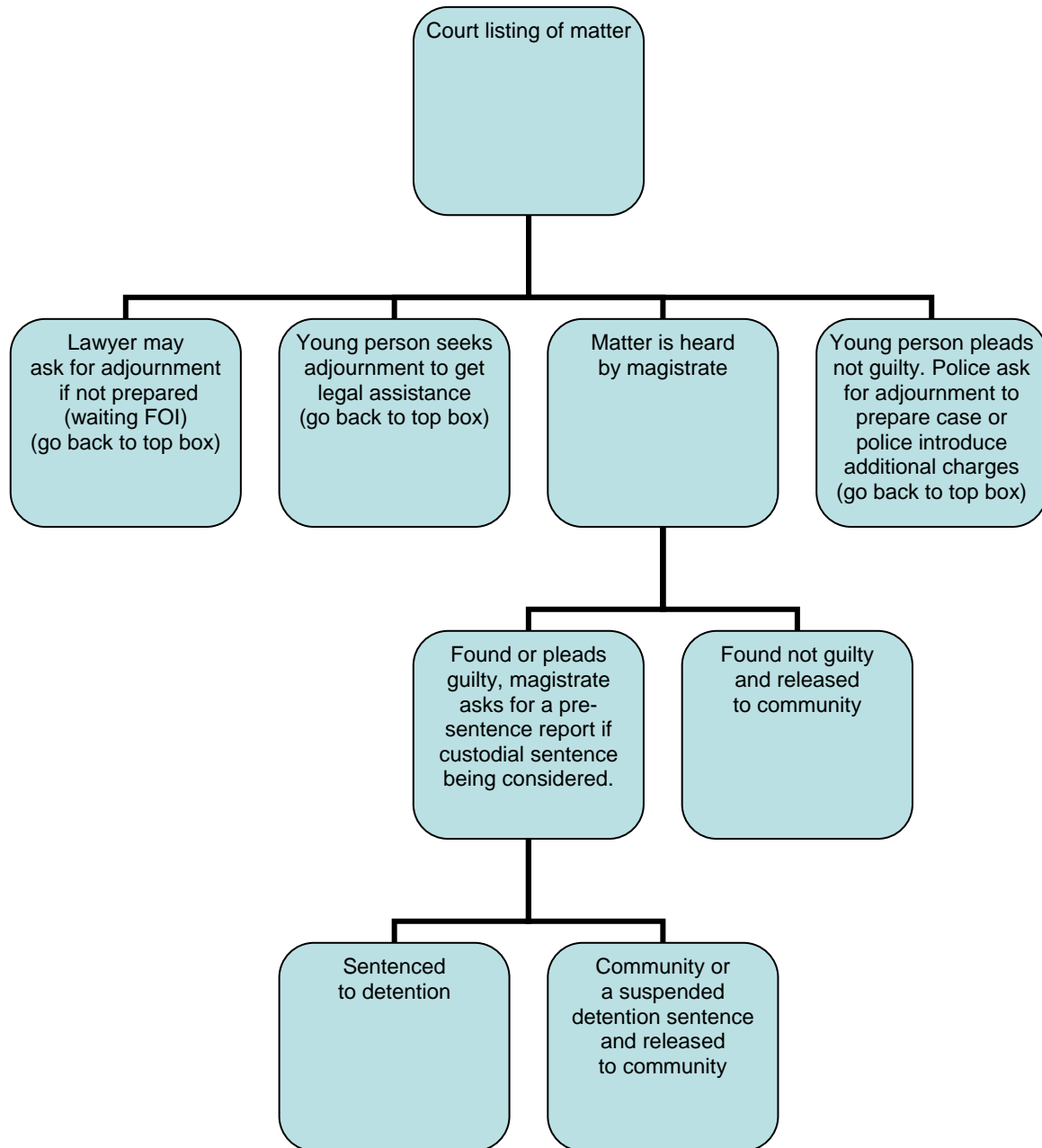


Figure 5 shows the process of the matter proceeding before the magistrates' court. This diagram shows there are several reasons that may account for it being some time before a matter is finalised.

Factors include:

- Defendant's lawyer requiring information from the police about the nature of the charges and the evidence. A Freedom of Information (FOI) request is usually made to the police for the case information and this may take some time to process. (The FOI process is used because with it there is no requirement to supply evidence to counsel within a specified period);
- If a young person pleads not guilty at the first court listing then the police may seek an adjournment to carry out a more thorough investigation of the matter;

-
- The police may have new charges that they are investigating and may seek an adjournment while this is continuing. If the juvenile pleads or is found guilty of particular charges he or she can be remanded until sentenced but there can be adjournments with these new matters;
 - After the juvenile is found or pleads guilty the magistrate may call for a pre-sentence report. Twenty eight days are allowed for the preparation of pre-sentence report (which is mandatory if the juvenile is facing a custodial sentence).

Analysis of data

This project analysed data supplied to the AIC on all juveniles on remand in Tasmania at some time between 1 July 2004 and 30 June 2005. There were some limitations to this data that have affected the way the data has been analysed.

The data provided mainly relied on records kept by the Ashley Detention Centre complemented by case file information kept by Youth Justice that included some information on sentencing outcomes. Over the one year period some young people were in and out of the detention centre and it was not always clear what their status was while they were in the detention centre and at what point they were on remand or on detention. Nor was it clear what the outcomes were for particular charges, and whether an uninterrupted remand episode was for these particular charges or affected by additional charges. There is no centralised de-identified data that enable the tracking of juveniles through the system, which made it very difficult to determine important factors such as the actual charges directly linked to a remand episode.

Bearing in mind these limitations, the data for the 12 month period was analysed using the following variables:

- the age of the adolescent in years on their first remand;
- Indigenous/non-Indigenous status;
- the number of times the young person came into Ashley on remand over the year;
- the total number of days the juveniles spent on remand in Ashley (this sometimes included time spent on remand before July 2004, other juveniles in the sample remained on remand at 1 July 2005)
- how many times the juvenile had court hearings over the year;
- whether a magistrate or JP remanded the juvenile the first time;
- whether the charges were dismissed and the juvenile was found not guilty;
- how many times the juvenile received a community based sentence;
- how many times the juvenile was given a suspended sentence;
- how many times the juvenile received a custodial sentence;
- the total length of the custodial sentences combined.

Socio-demographic characteristics

There were a total of 113 juveniles aged between 11 and 18 years who were on remand at Ashley Detention Centre at least once between 1 July 2004 and 30 June 2005. Nine of these juveniles were remanded before 30 June 2004 and remained on remand on 1 July 2004 when the data collection for this research began. These nine juveniles are included in this sample. On 30 June 2005 when the data collection ceased, 25 of the juveniles remained on remand, and these juveniles are also included in the sample.

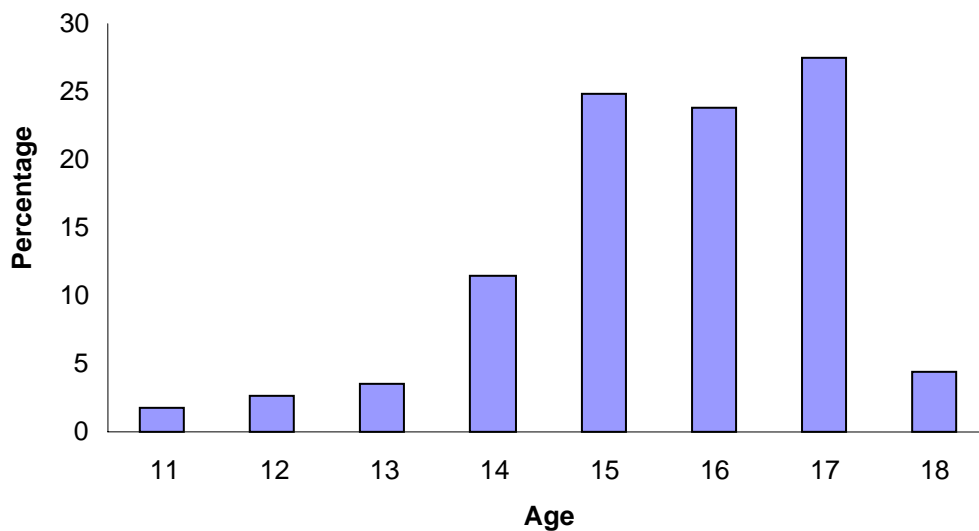
There were 96 boys in the sample and 17 girls. Table 2 shows the numbers of girls and boys in the sample by age at first remand during the data collection period. Figure 6 shows the proportion of the total sample by age. Just over three quarters of the sample were aged between 15 and 17 years. The median age was 16 and the mean age was 15.5.

Table 2: Number of remandees by age and gender

Age	Boys	Girls	Total
11	2	0	2
12	3	0	3
13	3	1	4
14	11	2	13
15	22	6	28
16	23	4	27
17	27	4	31
18	5	0	5
(Total)	(96)	(17)	(113)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Figure 6: Age of remandees, as a proportion of the total sample (n=113)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Aboriginal juveniles made up 19 per cent of those who spent time on remand in the 12 months (Table 3). When broken down by gender 17 per cent of the boys and 29 per cent of the girls were Aboriginal.

Table 3: Aboriginal identity by gender

Aboriginal	Boys	Girls	Total
No	80	12	92
Yes	16	5	21
(Total)	(96)	(17)	(113)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Courts

The court in which they appeared at the time of their first remand in the data collection period was recorded for each juvenile. In all six juveniles were remanded in Burnie Magistrates Court

(Youth Justice Division), 13 in Devonport Magistrates Court (Youth Justice Division), 50 in the Hobart Magistrates Court (Youth Justice Division), two in the Supreme Court of Tasmania at Hobart, 40 in the Launceston Magistrates Court (Youth Justice Division), and two in the Supreme Court of Tasmania in Launceston.

Of the juveniles who spent only one to four days on remand, four were placed on remand by magistrates and seven were placed on remand by JPs. In final decisions on these cases in court only two were sentenced to detention, one of those being placed on remand by a JP and one by a magistrate (the sentence outcome was missing for one of the 11 cases).

There was little difference between whether a JP or a magistrate made the decision regarding the juveniles' first remand episodes. JPs made the decision in 52 cases and magistrates in 59 cases. In two cases it was not known who had made the decision to place the juvenile on remand. It is not known however, how many juveniles were brought before JPs compared with magistrates.

Time spent on remand

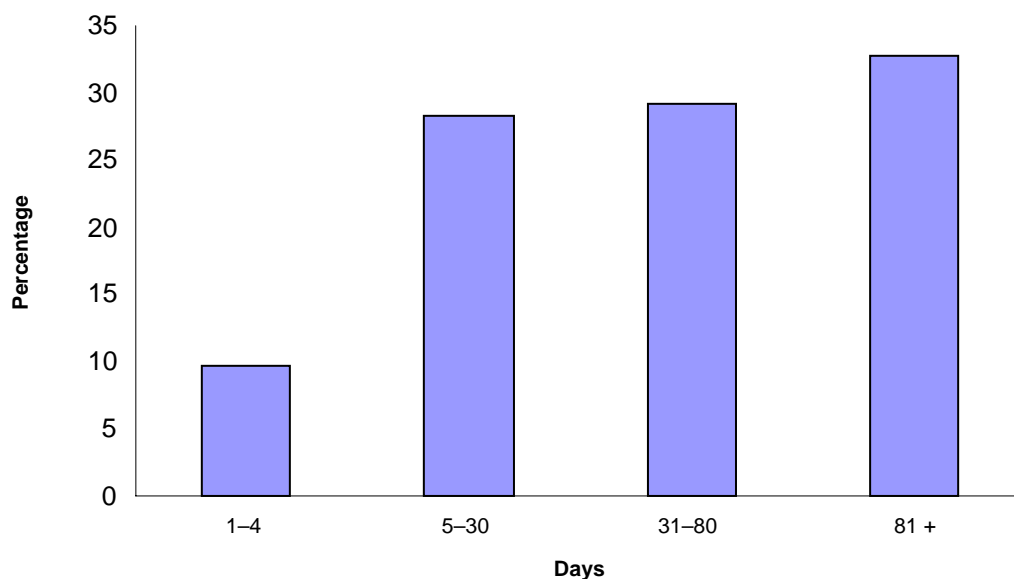
Table 4 shows four categories of time spent on remand. Ninety per cent of the sample spent five or more days on remand (Figure 7). Nearly two thirds of the juveniles spent a month or longer on remand. A third of the juveniles spent over 11 weeks on remand in the data collection period. Twenty-five juveniles in the sample remained on remand at the end of the data collection period.

Table 4: Total days spent on remand

<i>No. of days on remand</i>	<i>No. of juveniles</i>
1–4	11
5–30	32
31–80	33
81 +	37
(Total)	(113)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Figure 7: Proportion of juveniles in categories of total time spent on remand (n=113)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Tables 5 and 6 show time spent on remand by whether the juveniles remained on remand by gender as at 30 June 2005. Twenty-two boys and three girls remained on remand on 30 June 2005. For eight of these boys and one girl this was their only time on remand within the year. Nine of the boys who remained on remand were on remand for the second time within the year. There were five boys and two girls who remained on remand on 30 June 2005 for whom this remand period was at least their third for the 12 month period.

Nineteen percent of the boys who had one remand episode in the year remained on remand on 30 June 2005. Twenty-nine per cent of boys who had been on remand twice and about a half of those who had been on remand three or more times over the year were still on remand on 30 June 2005. In all 18 per cent of the girls remained on remand on 30 June 2005. Two of these three girls had been on remand three times or more in the one year period.

Table 5: Boys: number of times on remand by whether they remained on remand

<i>No. of times on remand</i>	<i>Remand ended</i>	<i>Remained on remand</i>	Total
1	43	8	51
2	22	9	31
3+	9	5	14
(Total)	(74)	(22)	(96)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Table 6: Girls: times on remand by whether they remained on remand

<i>No. times on remand</i>	<i>Remand ended</i>	<i>Remained on remand</i>	Total
1	10	1	11
2	3	0	3
3+	1	2	3
(Total)	(14)	(3)	(17)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

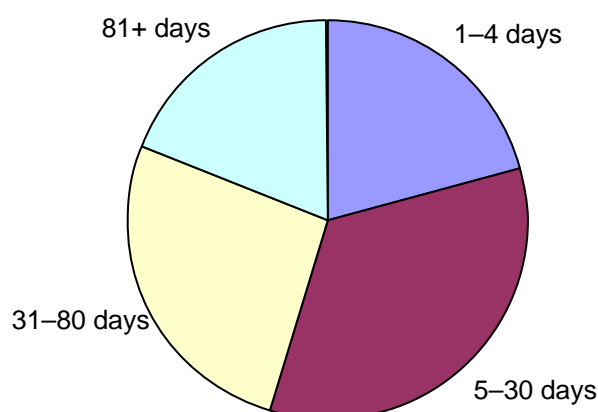
There were cases where juveniles as young as 13 had been on placed on remand seven times during the year and remained on remand at 30 June 2005. In one case where a juvenile spent a total of 222 days on remand up to 30 June and was sentenced to approximately 196 days detention, this sentence was recorded as not backdated. Juveniles such as these had been to court multiple times, for example three times in person and nine times by video link.

Total remand time for juveniles whose remand episodes were complete at 30 June 2005

There were 88 juveniles who had completed their remand episodes by 30 June 2005. The 25 juveniles who remained on remand at 30 June 2005 were excluded from the sample for the following analysis. The 88 juveniles who had completed their remand episodes were placed into three groups for analysis depending on how many times they had been placed on remand in the year.

There were 53 juveniles in the group who had been on remand just once during the 12 months. Of these, 21 per cent spent between one and four days on remand (Figure 7). Thirty-four per cent spent between five and 30 days on remand. Twenty-six per cent spent between 31 and 80 days on remand and 19 per cent spent more than 80 days on remand.

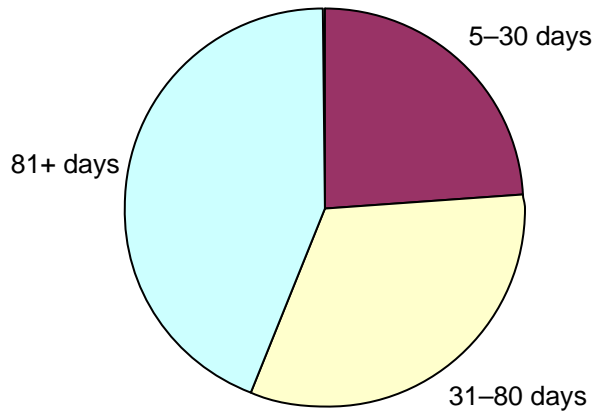
Figure 8: Juveniles with one remand episode, number of days spent on remand (n=88)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

There were 25 juveniles remanded twice whose remand periods had ended within the year. The total time spent on remand during the year was calculated for each juvenile. Almost a quarter spent between five and 30 days on remand. Almost a third spent a total between 31 and 80 days and 44 per cent spent 81 or more days on remand in total (Figure 8).

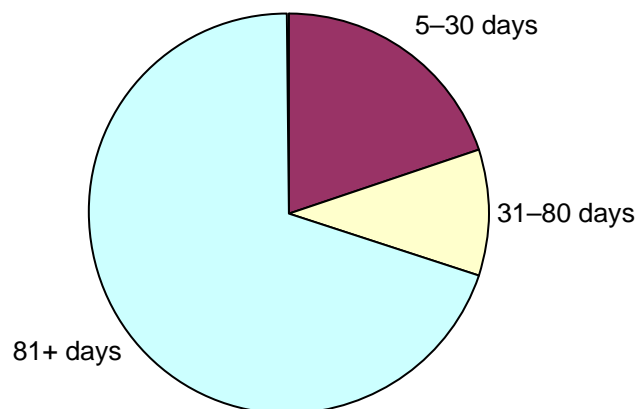
Figure 9: Juveniles with two remand episodes, number of days on remand (n=25)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Ten juveniles who had completed their remand episodes were remanded three times or more. Figure 9 illustrates the total time these juveniles spent on remand over the year. One fifth of these juveniles spent three relatively short periods on remand during the year as their total remand time was less than 31 days. One person spent in total between 31 and 80 days on remand and seven juveniles spent more than 81 days on remand over the year.

Figure 10: Juveniles with three or more remand episodes, number of days on remand (n=10)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

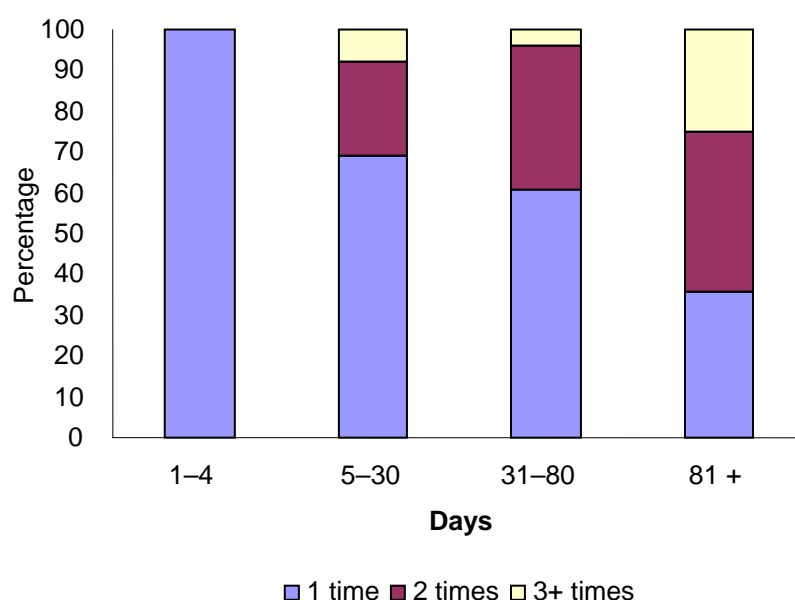
The time juveniles spent on remand was broken into four categories:

- 1–4 days;
- 5–30 days;
- 21–80 days: and
- 81 + days on remand.

In figure 11 each bar represents all the juveniles in each category. Each bar in the chart shows the proportion within each category broken down by how many times they were on remand in the year. For example:

- all the juveniles represented in the first bar were only on remand once during the 12 months;
- the second bar shows that a small proportion of those juveniles who spent between 5 and 30 days on remand were on remand 3 times or more during the year;
- the fourth bar shows that about a third of the juveniles who were only on remand once spent 81 or more days on remand during the year.

Figure 11: Total time on remand by four categories (n=88)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Number of times appeared in court

Data about court appearances while on remand were available for only 83 of the 113 juveniles in the sample. Table 7 shows how many times juveniles had been to court during their remand episodes by the four categories of time spent on remand. Just under a third had been to court once or twice during the year and 41 per cent had been to court three, four or five times. Twenty-eight percent had been to court six or more times during the year.

Table 7: Number of times appeared in court

<i>No. of times</i>	<i>No. of juveniles</i>
1–2	26
3–5	34
6–10	15
11–35	8
(Total) ^(a)	(83)

(a) missing data 30 cases

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Juveniles in Ashley Detention Centre made some of their court appearances via video link. Table 8 shows data for the 84 juveniles where an appearance via video link to a court was recorded as having occurred or not. Twenty-seven per cent of juveniles appeared in court in person each time. Seventy-three per cent had appeared at least once in court via a video link from Ashley Detention Centre. Over 50 per cent had appeared in court via a video link from Ashley two or more times during the year.

Table 8: Number of times appeared in court via video

<i>No. of times</i>	<i>No. of juveniles</i>
0	23
1	14
2	23
3+	24
(Total) ^(a)	(84)

(a) missing data 29 cases

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Table 9 below shows the number of times each juvenile had been on remand by the four categories, showing the amount of times they appeared in court over the year.

Table 9: Number of times on remand by number of times appeared in court

<i>No. times on remand</i>	<i>No. times appeared 1–2</i>	<i>No. times appeared 3–5</i>	<i>No. times appeared 6–10</i>	<i>No. times appeared 11–35</i>
1 time	10	11	7	2
2 times	6	7	3	1
3+ times	1	3	1	3
(Total) ^(a)	(17)	(21)	(11)	(6)

(a) missing data 17 cases. Excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Sentence outcomes

The following section presents the results of the analysis of sentence outcomes.

The sentence outcomes were broken into four categories:

- not guilty/dismissed;
- community sentence (community service order or probation order);
- suspended sentence; and
- detention sentence.

One of the main questions that this analysis set out to answer was whether the juveniles who were remanded to custody were subsequently given sentences that included detention. Table 10 includes the most serious sentencing outcome for each completed matter in the 12 months broken down by how many times each juvenile had been on remand. There was sometimes more than one finalised court appearance during the year even for those who had only been on remand once.

Table 10 shows that of the 83 sentencing determinations that were made for the 72 juveniles whose matters had been finalised by the end of the year, detention sentences were given in just over half of these determinations. In just under a quarter a suspended sentence was given as the most serious sentencing outcome and in just over 20 per cent of cases a community sentence was the most serious outcome. Only one person was found not guilty.

Table 10: Number of times on remand by most serious outcome each time sentenced ^(a)

<i>No. times on remand</i>	<i>Not guilty</i>	<i>Community sentence</i>	<i>Suspended sentence</i>	<i>Detention sentence</i>
1 time <i>n=43</i>	1	11	10	21
2 times <i>n=21</i>	0	3	7	15
3+ times <i>n=8</i>	0	4	3	8

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Detention sentence outcomes by age

Table 11 shows whether juveniles whose matters were finalised were sentenced to detention, regardless of how many times they received a detention sentence in the 12 months. In total 39 per cent of these juveniles were not sentenced to detention.

Table 11: Age by whether sentenced to detention or not

<i>Age</i>	<i>Detention No</i>	<i>Detention Yes</i>	Total
11	0	1	1
12	0	1	1
13	2	0	2
14	1	6	7
15	6	11	17
16	5	12	17
17	12	10	22
18	2	3	5
(Total) ^(a)	(28)	(44)	(72)

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Table 11 also shows the juvenile's age at the time of first remand in the data collection period. Both of the youngest remandees whose matters had been finalised did receive a sentence that included detention. The two 13 year olds in this group were not sentenced to detention. Seventy-one per cent of the 14 to 16 year olds were given at least one detention sentence. Just over half of the 17 year olds who were remanded did not receive a sentence that included detention.

Detention sentence outcomes by number of times on remand and gender

There were 43 juveniles whose matters were finalised within the year and remanded only once. Almost a half of them were given a sentence that included detention.

Table 12: Number of times those on remand once were sentenced to detention by gender

<i>Sentenced to detention</i>	<i>Boys</i>	<i>Girls</i>	Total
0 times	17	5	22
1 times	17	2	19
2 times	1	0	1
3 times	1	0	1
(Total) ^(a)	(36)	(7)	(43)

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

There were 21 juveniles remanded twice who had all their matters finalised. Amongst this group six juveniles did not receive a sentence that included detention during the 12 months.

Table 13: Number of times those on remand twice were sentenced to detention by gender

<i>Sentenced to detention</i>	<i>Boys</i>	<i>Girls</i>	Total
0 times	4	2	6
1 time	8	1	9
2 times	6	0	6
(Total) ^(a)	(18)	(3)	(21)

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

There were eight juveniles remanded three or more times in the twelve months whose matters were finalised. Table 14 shows that all of these juveniles were sentenced at least once in the year to a period of detention.

Table 14: Number of times those on remand more than three times were sentenced to detention by gender

<i>Sentenced to detention</i>	<i>Boys</i>	<i>Girls</i>	Total
0 times	0	0	0
1 time	6	0	6
2 times	1	1	2
(Total) ^(a)	(7)	(1)	(8)

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Table 15: Remand length by whether sentenced to detention

<i>Remand days</i>	<i>Detention No</i>	<i>Detention Yes</i>	Total
1-4	4	2	6
5-30	14	3	17
31-80	9	14	23
81 +	1	25	26
(Total) ^(a)	28	44	72

(a) excludes those whose matters are not finalised

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

All but one of the juveniles who spent a total of 81 days or more on remand in the 12 months were sentenced to detention at least once. Nearly two thirds (61%) of those juveniles who spent between 31 and 80 days on remand were sentenced to a period of detention at some time in the 12 months. Less than one fifth (18%) of those who spent between five and 30 days on remand were sentenced to detention and a third of those of spent one to four days on remand were sentenced to detention.

Table 16 shows that five juveniles received both a suspended sentence and a detention sentence at two different hearings in the 12 months.

Table 16: Sentence outcomes for those whose matters are all finalised: suspended sentences by detention sentences

<i>Suspended sentence</i>	<i>Detention sentence No</i>	<i>Detention sentence Once</i>	<i>Detention sentence Twice</i>	<i>Detention sentence Three times</i>
No	13	29	9	1
Once	15	5	0	0
(Total)	(28)	(34)	(9)	(1)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

Sentence length

The sentence length¹ for the purpose of analysis was calculated as the total of all detention sentences given within the 12 months. Only those juveniles who were on remand once and were given only one sentence were included in the analysis below.

Figure 12 shows the spread of sentence lengths with a normal distribution curve plotted for the 18 juveniles who were remanded once in the 12 months and whose outcome was a single detention sentence.

For these 18 juveniles who had one remand episode in the 12 months and where the outcome was just one detention sentence the range of the sentence lengths given was from 4 to 588 days. The mean sentence length was 232 days (the standard deviation was 182 days) and the median sentence length was 179 days.

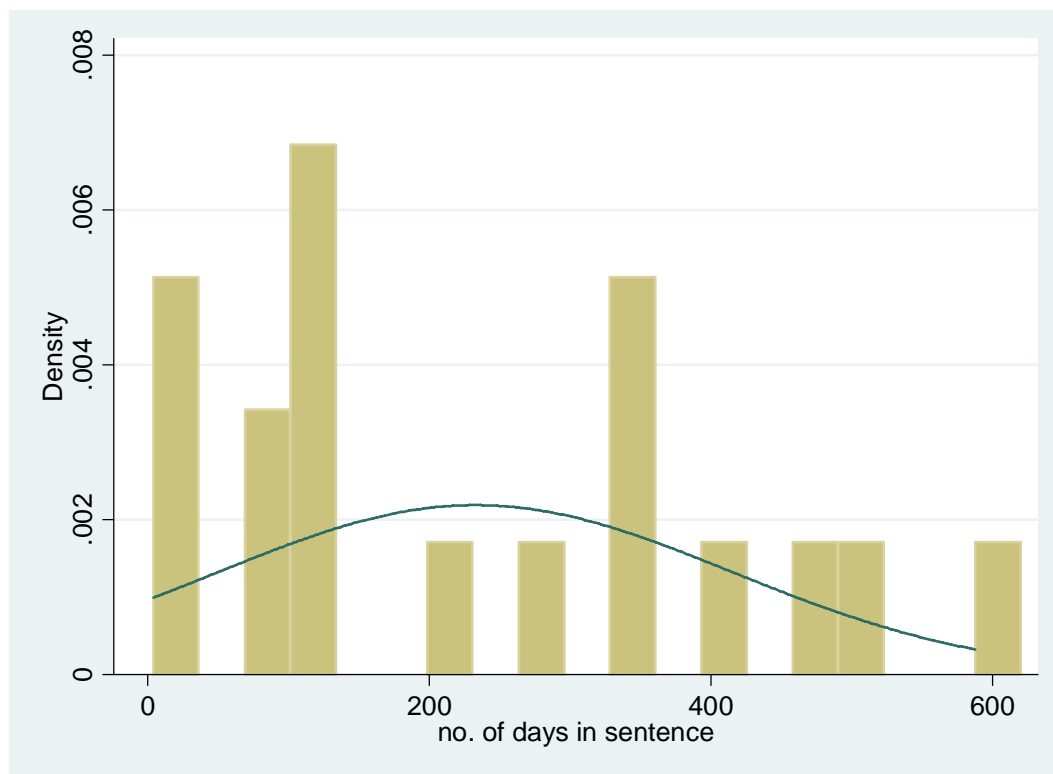
¹ Determining sentence length for detention centre records is complicated by early release dates. Once juveniles are sentenced s 3 of the *Youth Justice Act 1997* relates to the Earliest Release Date (ERD). This is defined as:

the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained (excluding any period of detention during which the youth is released under a supervised release order) or 3 months, whichever is the longer;

Under s109 (1), a youth serving a period of detention under a detention order must be released from detention under a supervised release order on the earliest release date. The Act goes on to provide for breaches of supervised release orders. Stakeholders advised that ERD provisions apply to every youth who receives a sentence of detention and in reality some of the stakeholders believe the ERD is also considered by magistrates when they are determining the length of sentence to impose, although this is not specifically stated by the magistrates.

Other stakeholders said that s 89 of the *Youth Justice Act 1997* is of relevance, as it provides that when a detention order is made, any period spent on remand pending those proceedings is taken to be a period of detention served under that order. Section 89(2) also provides discretion to backdate a sentence when a youth is serving more than one period of remand concurrently.

Figure 12: Sentence length given to juveniles on remand once with one detention sentence (n=18)



Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

The time spent on remand for this same group varied from two to 200 days. The mean time spent on remand was 75 days (the standard deviation was 54 days) and the median was 66 days. After sentencing, the range of days the sentences were backdated by was 0 to 198. The mean amount of time that sentences were backdated was 67 days (the standard deviation was 64 days) and the median was 45 days. The majority of remand lengths were less than the mean amount of time spent on remand, though the means for both time spent on remand and the amount of time that sentences were backdated were similar. This probably indicates that sentences given were at least as long as the remand period and in many cases longer as the mean sentence length was much higher than the mean amount of time spent on remand (233 compared with 75 days).

Table 17 shows the number of times juveniles were remanded by four categories of the total number of days they were sentenced to detention in the 12 months. This table includes only juveniles who had all their matters finalised. Some of the juveniles were sentenced to detention more than once in the twelve months and these sentences were added together to give a total sentence length.

Table 17: Number of times on remand by sentence length

<i>No. times on remand</i>	<i>1 to 100 days</i>	<i>101 to 200 days</i>	<i>201 to 300 days</i>	<i>300+ days</i>
1	5	5	2	9
2	6	6	1	2
3+	2	2	3	1
(Total)	(13)	(13)	(6)	(12)

Source: AIC Tasmanian Juvenile Remandee Analysis Project, 2005 [computer file]

There are several reasons that juveniles may have more than one remand period in the year. Some of these juveniles are released on bail and then breach conditions; police who breach them on orders make recommendations to the Court for remand to be reinstated. Some juveniles who are serving detention sentences and are released on supervised release orders re-offend within the year and may be placed on remand for a new offence. Juveniles in Tasmania are eligible for early release once they have completed half their sentence as long as this is longer than three months. If half of their sentence is less than three months then they can be released once they have served three months.

Discussion

The data analysis has shown that for the group as a whole whose sentence outcomes were complete (n=72) including the juveniles who had been on remand more than once, 39 per cent did not receive a sentence of detention in the 12 months data.

The data also indicate that many young people were spending a considerable period of time on remand and over a third of the young people had spent over 11 weeks in custody on remand.

The Chief Magistrate held four inter-sectoral workshops in 2003 to discuss why some juveniles spend a substantial amount of time on remand without having their matters finalised in a timely manner. Many of the findings from these consultations were also discussed with the researchers at the consultations. According to stakeholders at both consultations reasons the juveniles spent lengthy periods on remand included that cases are often adjourned for a variety of reasons, including that juveniles may have inadequate access to legal representation and that the level of service provided by some legal representatives was perceived to be inadequate.

Another reason given for adjournments in matters that add to the length of time spent on remand was that defence lawyers often have to wait a long time to get details from the prosecution. There have been difficulties in the time it takes to get the information needed from the prosecution so the legal representatives use FOI. Even using FOI it was reported as common for matters to be adjourned several times. The FOI section in the Department of Police and Public Safety was reported by stakeholders to be short staffed frequently.

Other reasons raised by stakeholders for adjournments included negotiations taking place between the defence and the prosecution; the need for further investigation of the matters by police, especially if juveniles plead not guilty; and that other matters are often being investigated and further charges are sometimes laid during the course of the original matter going to court.

It was also noted that when a juvenile was found guilty a pre-sentence report is requested and this can take 28 days because of the youth justice team workload. This delay also adds to the time the juvenile spends on remand.

During consultations with stakeholders possible reasons for high rates of remand were also identified.

These included that many of these juveniles are recidivist offenders who have come to the attention of the police and youth justice workers over a substantial period of time. Many of them are also involved in serious offences. For some of these juveniles there are no services

available that can adequately meet their needs while on bail and magistrates remand them to custody because of a lack of alternative accommodation options. Juveniles were also reported to prefer to spend time on remand, in anticipation of a custodial disposition that would be backdated, believing that it was better to serve the time on detention straight away than put it off to a later date.

Based on the consultations with stakeholders the following changes were identified that may affect the rate and length of time that juveniles serve on remand. There could be improvements made to increase the capacity of key criminal justice practitioners. While juvenile matters are heard at a designated Youth Justice Court this is not actually a separate court system. The magistrates are not specifically trained to operate Youth Justice Courts and there are no specialist magistrates as in many other Australian jurisdictions. Also some stakeholders believed that the magistrates hearing the matters are not always aware how long the juveniles had been held in custody until determination.

A suggestion from stakeholders was made that there could be increased numbers of lawyers available to assist juveniles. An alternative secure placement for juveniles on remand in addition to Ashley Detention Centre, for example in Hobart, would increase juveniles' access to youth justice workers and lawyers.

Stakeholders suggested that there is a need for more and better services so that there are realistic options available to magistrates for alternative placements such as supervised and supported accommodation. This would make it less likely that difficult and older juveniles need to be placed on remand.

It was also suggested that there could be improved mechanisms to facilitate the provision of advocacy for juveniles. Improved mechanisms could also set limits on the length of time that juveniles can spend on remand. Making it compulsory for magistrates to give reasons for placing juveniles on remand was suggested; this would allow case workers to try to address these reasons in seeking an appeal.

One other suggestion stakeholders made was that there could be improved oversight of the juvenile justice system. An independent auditor or review process could assist in ensuring that both the system itself and cases were regularly and systematically reviewed.

Health and welfare issues

Many of the juveniles on remand were recidivists. Some of these juveniles were even reported by stakeholders to be purposefully re-offending to get back to Ashley, especially those from particularly unstable home environments.

Even though the Youth Justice Act was proclaimed in February 2000 there was a belief amongst stakeholders that magistrates still remanded juveniles for welfare reasons. This was seen to be related to the lack of bail options, particularly the lack of accommodation options for older juveniles with challenging behaviour or who had mental health or other specific problems. Research back in 2001 had highlighted how many Ashley detainees have mental health problems (Bickel 2001). Most stakeholders referred to the limited number of services available for difficult juveniles or specific bail accommodation for this group. There was also perceived to be a lack of capacity because of high case loads for youth justice workers to manage, supervise and provide intensive support for difficult juveniles bailed to the community.

Section 104 of the Youth Justice Act links back to the *Children, Young Persons and Their Families Act 1997*. This allows the Court to adjourn the proceedings and make an order to investigate welfare concerns. Some stakeholders indicated that when attempts have been made to refer cases for investigation to Child and Family Services that these have not been successful. Stakeholders gave various reasons for this including that Child and Family Services will often, after assessing a referral, consider that the case is not serious enough to be a high priority for further investigation particularly when the juvenile is over 13 years of age. There was some concern amongst stakeholders about this lack of collaboration between the Youth Justice Services and the Child and Family Services teams.

Section 205 of the Act allows the Court to adjourn proceedings and make an order remanding the youth to be placed in some suitable place, for a period not exceeding 21 days, for

observation, assessment and the making of a report on the youth's condition and a recommendation as to the youth's future treatment.

This is difficult for magistrates as there is a lack of viable alternatives, as discussed above, about where to place these juveniles and Ashley is perceived by many stakeholders as the only viable program for many of these juveniles.

Conclusion

There are a number of issues that need to be addressed to reduce numbers of juveniles being held on remand for lengthy periods of time. Some of these issues were raised in 2003 after a series of consultations with stakeholders led by the Chief Magistrate. The consultations that were held for this research project indicated that while these issues have been identified previously, so far there has been little systematic change made to address them.

There also seems to be inadequate monitoring of what happens to juveniles who are in the juvenile justice system in Tasmania. The absence of systematic data collection and centralised electronic case records that include youth justice and court data makes it difficult for an independent person or even a representative of one of the agencies involved in the administration of juvenile justice to review cases systematically.

Improvements to record keeping could be made so that juveniles' progress through the justice system is tracked in an accessible way to enable de-identified analysis to investigate why juveniles spend so long on remand. Regular audits could then be implemented to check on an individual's progress through the system by relevant agencies and an automatic case review generated after a certain length of time.

A regular audit of the system could be established by an independent agency. Such a separate body could provide an overview that would enable the agencies to be held accountable.

Through the consultations many stakeholders also identified the need for more resources to be allocated to employ staff in the various agencies to act as advocates for juveniles who are recommended by police to be remanded in custody. There could be more lawyers and youth justice workers employed to ensure that juveniles are aware of their rights and are adequately represented in hearings and that other options are investigated to avoid juveniles being placed on remand.

It appears that for some juveniles there is a lack of options and a sense of inevitability about a detention sentence being the automatic outcome of their charges. This is illustrated by stakeholders reporting that juveniles do not seek bail because some of them believe there is no point and that serving time up front will mean their sentence will be backdated. More could be done to challenge this perception and find appropriate placements in the community setting other than Ashley for these juveniles prior to their court cases.

More could be done to improve juveniles' access to lawyers. It was reported by stakeholders that if a juvenile is at Ashley Detention Centre there is no appropriate space available for legal representatives to spend quiet and confidential time with their clients. It was also reported that very few legal representatives travel out to the centre. This means that most legal advice and consultation occurs over the phone or by video link.

It is now five years since the new Act has been proclaimed. It may be timely to conduct a review of the effects of the changes with particular attention being paid to whether the juveniles who find their way into the juvenile justice system on remand could have been identified earlier and offered assistance by appropriate agencies.

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