Juvenile Crime and Juvenile Justice

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edited by
Christine Alder

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Foreword

Seeking explanations for young people's participation in crime is an ongoing task. The Australian Institute of Criminology provided a forum in June 1997 for the nation's leading analysts to probe the issues, develop the data and place our policies and practices within a broad social context.

The papers produced here show that policy makers need a very clear understanding of the issues, for simplistic and stereotyped responses often produce counterproductive outcomes for young people. The assembling of these papers goes part of the way.

At the conference a statistical volume entitled *Juvenile Crime and Justice, Australia 1997* (S. Mukherjee, C. Carcach, & K. Higgins, Research and Public Policy Series No. 11) was made available to delegates. The 86 pages of data will be a useful companion volume to this, and together they will help us develop suitable and realistic approaches to young people who are at risk of becoming part of the criminal justice system.

Adam Graycar
Director
Australian Institute of Criminology
January 1998

Introduction

CHRISTINE ALDER

Academics, policy makers and practitioners do not always agree either in terms of their analysis of the issues or the solutions they recommend. Nevertheless, in general, at the 1997 Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond conference there was consensus across the papers delivered that we are going dangerously astray in both our overall youth policy in this country and in coercive trends in current juvenile justice reform. In general we live in a time when we have "abandoned" our youth (Polk 1997).

Overall, those attending this conference, who were experts in juvenile justice and juvenile offending, were critical of policies that further exacerbate the exclusion of young people from society. A theme reiterated across the papers was that the well-being of our young people, and the safety of our society, calls for recognition that "It is only by continually seeking to re-connect young people to major developmental socialising institutions that we provide them with pathways of participation in society and strengthen social bonds" (O'Connor, Chapter 1).

This task is not one that juvenile justice can do alone, and so the need was frequently expressed for interagency / interdepartmental partnerships in developing and implementing more wholistic strategies of working with young people.

Calls to "get tough on crime" most often involve recommendations for the implementation of more punitive measures, despite the evidence that they are ineffectual at best, and often counterproductive in terms of reducing crime. Campaigns of this ilk are often supported by the media's generation of misconceptions about youth crime. These misconceptions flourish in the media and in political rhetoric partly because of the lack of high quality, accurate, statistical information to counter the claims. However, when such research is able to be carried out the inaccuracy of these accounts is apparent.

The majority of young people who appear in juvenile court are not violent offenders, and those who first appear for a property offence do not escalate into violent offenders. In fact the majority of those who appear in juvenile court do not appear again. Further, those who receive the more severe sentences for their first offence (custody, supervised probation or community service order) are more likely to re-offend than a first offender who is given a lesser penalty (Cain, Chapter 2).

The "hastily conceived political responses" (Buttrum, Chapter 8) to calls "to get tough" which preoccupy media attention to juvenile justice tend to generate punitive and coercive strategies which have a high public profile and can be implemented quickly. These strategies do nothing to address the underlying social and personal problems experienced by young offenders, and in fact further exacerbate the exclusion from society which

plays a part in the generation of their behaviour.

Those who work with young offenders are aware, on more than a theoretical level, of the consequences for young people of their social context which includes unemployment, lack of income, school exclusion, and family disruption. Indigenous young people are particularly disadvantaged on these dimensions, for example, the unemployment rate for Indigenous young people is more than twice that of all Australian youth (Cunneen, Chapter 6). O'Connor points out that the period in which there has been a return to punitive frameworks for juvenile justice is also a time during which the youth labour market has collapsed and the transition from school to work has been disrupted, or is not possible, for increasing numbers of young people. Out of work, out of school, and out of income, our response to the situation of young people has been to introduce policies that further exclude them from public places and communities.

Talk of restorative justice, with its inclusionary rhetoric, held the promise for some of a way out of the punitive/coercive darkness. However, as O'Connor (Chapter 1) points out, its translation into practice in Australia has been distorted by the "strength of the punitive and exclusionary discourses" which have frequently transformed objectives into "making the offender pay" and "letting the victim get his pound of flesh". Wundersitz (Chapter 5) makes clear that while it was anticipated in South Australia that the introduction of Family Group Conferencing might be more sensitive to the situation of Indigenous young people, thus far Aboriginal young people are not being referred to them. The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and their Families (NISTATSIC) (1997) expressed concern about the imposition of Family Group Conferences on the Indigenous community and the potential for harsher outcomes for Indigenous children (Cunneen, Chapter 6).

The situation of Indigenous young people in juvenile justice is captured in the conclusion to Wundersitz's paper on the situation in South Australia:

> *...despite the optimism with which the new system was introduced and despite trends which are now emerging for other youths, it is clear that Aboriginal young people continue to be over-represented in their contact with the criminal justice system. They are more likely to be directed straight to court rather than being given the option of diversion to either cautioning or conferencing, are more likely to be sentenced to detention and are more likely to be placed in custody* (Wundersitz, Chapter 5*).*

Cunneen argues that the high levels of criminalisation and incarceration of Indigenous young people "effectively amounts to a new practice of forced separation of Aboriginal and Torres Strait Islander children and young people and their families" (Cunneen, Chapter 6). The lack of Indigenous consultation, negotiation and control has been a major problem in the development of juvenile justice policies for Indigenous young people.

We live in a time of significant reductions in public spending, of shrinking funds available to social welfare, community projects and juvenile justice. Community-based projects which in the past have offered some alternatives and options to those young people who may otherwise have ended up in the juvenile justice system, are becoming increasingly selective about their clientele. Consequently the options and services available in the community are reduced for some young people. It is not a context in which the needs of minority groups in juvenile justice, such as girls, are likely to be given priority. It is in this context, and also in recognition of the broad-based needs of young offenders, that the call is made for increased cooperation between agencies, services, and departments to share and consolidate resources.

Juvenile justice personnel at all levels who are concerned, committed and informed, face a time of great challenge. The young people they work with, and for, face a situation of economic and social marginalisation far worse than they have in many years. They are working in a time when the thrust of political and economic thinking and practice is bereft of commitment to social justice. They continually have to respond to ill-conceived, ill-informed, quick-fix solutions that soak up public funds but have little impact.

Across the papers given by our nation's experts in juvenile justice, there is an awareness that increasing levels of punishment, and exclusion from public space, are not the solutions to juvenile crime either at the individual or social level. It is recognised that we need policies that are inclusionary, that connect and involve young people in their communities; policies that value young people and are committed to recognising and developing their potential; and policies that recognise and respond to the economic and social marginalisation of our young people. The biggest challenge for those people with vision in juvenile justice today rests not in the young people they work with, but with those who control their funds and set their agendas.

2

An Analysis of Juvenile Recidivism

MICHAEL CAIN

In 1996, the NSW Department of Juvenile Justice published a report, entitled "Recidivism of Juvenile Offenders in New South Wales" [1], which is based on a study of 52 935 juvenile offenders who appeared before the Children's Court from 1986 to 1994.

The recidivism report examined the pattern and characteristics of juvenile offending and re-offending. Its findings are a "good news" story. The report destroys some commonly held beliefs concerning juvenile crime and juvenile re-offending, and the media, the public and politicians should not disregard the findings.

The study

Description of the sample

The recidivism study examined those records for juvenile offenders who met the following conditions:

- they were *first* convicted of a criminal offence in the Children's Court on or after 1 January 1986; and,
- they had reached the age of 18 years by the end of 1994.

Expressed another way, the study captured all juvenile offenders who had commenced *and* effectively ended their *juvenile* criminal careers within the study period.

These selection processes resulted in a final sample of 91 230 records relating to the proven appearances of 52 935 individual juveniles, of whom 43 331 (81.9 per cent) were male and 9604 (18.1 per cent) were female. It should be noted that these data are far larger, more detailed, more representative, and more timely than is usual in criminal justice research.

Within the final sample, 36 723 records pertain to juveniles who had one and only one proven appearance, that is, that number of non-recidivist juvenile offenders. The remaining 54 507 records refer to the first and subsequent proven appearances of 16 212 recidivist offenders.

Limitations of the study

As is the case with most research, the recidivism study did have a number of limitations and restrictions:

- the NSW Children's Court does not routinely collect information on a young offender's family life, socioeconomic conditions, education, employment or unemployment, drug and alcohol use, culture or Aboriginality. These factors, despite their recognised importance to an understanding of juvenile crime, were not available for analysis;

[1] This report is available from the NSW Department of Juvenile Justice, Level 5, 24 Campbell Street, Sydney 2000.

- the study was not able to access a young person's prior involvement in police cautioning or pre-court diversionary schemes;
- the study only examined *juvenile* recidivism as there is no easy way to track juvenile offenders into the adult justice and correctional systems.

Findings

If there are two things we can safely say about juvenile crime they are that:

- the majority of juvenile offenders will not reappear after their first proven offence; and,
- it is a small proportion of juvenile offenders that accounts for a large percentage of juvenile offences.

The recidivism study found that around 70 per cent of juvenile offenders had one, and only one, proven criminal appearance in the Children's Court. A further 15 per cent had just two proven appearances. That is, 85 per cent of juvenile offenders had reasonably limited involve-ment with the criminal justice system. Nevertheless, the study also uncovered some concerning figures, including that:

- 9 per cent of juvenile offenders were responsible for almost one-third of all criminal appearances; and,
- less than 2 per cent of juvenile offenders were responsible for almost 10 per cent of all criminal appearances.

These findings show that there would be great value in identifying those juveniles who are most at risk of re-offending, particularly if this could be done at the time of their first court appearance. This, in fact, is what this study attempted to do.

The characteristics of juvenile re-offenders

Who are the juvenile offenders who are most likely to become repeat and persistent offenders? Logistic regression methods were applied to the data, and yielded the following findings (*see* table 1):

- males are one-third more likely to re-offend than females;
- the younger an offender is at first court appearance the greater the risk of future offending;
- juveniles who commit, as their first offence, a common assault, break and enter, or motor vehicle theft are more likely to re-offend, whereas those that first commit a sexual offence, drug offence or offence against good order are unlikely to re-offend;
- juveniles given a custodial sentence, community service order, or supervised probation as their first penalty are more likely to re-offend than juvenile first offenders given lesser penalties, such as fines or nominal penalties;
- juveniles from western and eastern Sydney, the Hunter area, and Western NSW were more likely to return to crime after their first court appearance. On the other hand, juveniles from southern Sydney, and northern and southern country areas of NSW were less likely to re-offend;
- juveniles who were dealt with by a non-specialist Children's Court were also more likely to re-offend than juveniles who first appeared before a specialist magistrate.

The recidivism study also identified a number of general characteristics of juvenile crime and juvenile recidivism:

- persistence in juvenile crime is marked by progressively shorter periods to the next offence;
- the majority of offences (86 per cent) for which juveniles appear and re-appear in the Children's Court are property offences and not crimes of violence;
- juveniles who re-offend, including persistent offenders, do not escalate to more serious and violent crimes. Even those juveniles who first committed a violent offence, when they re-offended, were more likely to commit a subsequent property crime. The differential association of these factors with re-offending allows a model to

A model for predicting juvenile recidivism risk

Example 1: For a 14-year-old boy from the Sydney west metropolitan area given a custodial order by a children's magistrate for a first offence of assault (note, this combination of factors is bordering on a worst case scenario), the predicted risk of re-offending may be estimated by including the appropriate logistic coefficients in the model:

$$\text{Estimated prob (recidivism)} = 1/(1 + e^{-(6.1449 + 14(-0.4540) + 0.2828 + 0.1777 + 0.2872 + 0.1429 + (-.0636))})$$
$$= 0.649$$

That is, this juvenile's estimated risk of re-offending is around 65 per cent.

Example 2: The predicted risk of re-offending for a 16-year-old female from the south coast of NSW given an unsupervised recognizance by a local court for an initial drug offence is 18.9 per cent, which is calculated as:

$$\text{Estimated prob (recidivism)} = 1/(1 + e^{-(6.1449 + 16(-0.4540) + 0 + (-0.2007) + (-0.1011) + (-.0342) + 0)})$$
$$= 0.189.$$

be developed to predict recidivism risk at time of first court appearance. The two examples above indicate how the logistic regression model may be applied.

Notably, the logistic regression model has an overall accuracy of 72 per cent in predicting which juvenile offenders will or will not re-offend. It is 91 per cent accurate in predicting which juveniles will not re-offend.

The beauty of the recidivism risk model is not only its impressive degree of predictive utility, it has other benefits.

Firstly, because it is based on factors which are determined through the court process, there is good reason to believe that many of the important social factors not contained in the model have been considered in arriving at the sentencing decision. Expressed another way, the penalty a juvenile first receives is a proxy for a whole range of personal and social conditions which affect a young person's criminal propensity, and thus the sentence they receive. Children's Courts regularly request a background report on a juvenile prior to sentencing. These reports may flag problems in a juvenile's home life or education, and other things such as their association with known offenders, drug and alcohol problems, and so on. Courts generally will consider these factors in arriving at their sentencing decision.

Secondly, because the model identifies non-recidivists as well as those at increased risk of re-offending, valuable program resources can be diverted and better directed to those juveniles identified as being at greatest risk of re-offending. One may ask, what is the point of intervening in the lives of the 70 per cent of young offenders who are unlikely to re-offend anyway? There is certainly value, both financial and social, in reducing the number of young people who are unnecessarily involved in the juvenile justice system.

Thirdly, targeting high-risk juveniles at first court appearance will mean not only a more rational and economic use of juvenile justice resources. It will also mean that many troubled youth, in need of help, will have their problems and issues identified and addressed much earlier in the process. Early intervention by justice *and* welfare agencies into the troubled lives of young offenders and their families is the preferred strategy for attempting to address the juvenile crime problem.

It is important to remember that it is a small proportion of juvenile offenders who are responsible for a large percentage of offences. The identification of these high risk juveniles at their first court appearance, and selectively targeting these young offenders with programs and services to stop or minimise their further offending will have immense social and economic benefits for the people of NSW.

Furthermore, there is every indication that the findings of this research are equally

applicable to juvenile justice administrators in other States and Territories. All governments must recognise that the later they leave their attempts at addressing the social and personal problems of young offenders and their families, the less effective such interventions are likely to be in changing antisocial attitudes and criminal behaviours that are at risk of becoming entrenched.

Table 1: Logistic regression analysis (main effects model[a]) of the relationship between juvenile recidivism and sex, age at first proven CA, first offence, first penalty, place of residence and type of court, all juveniles (n=52,935), Children's Court, 1986 to 1994

Juvenile recidivism *(DV)* [b]					
Independent variables (IVs) [c]	B	**SE**	**Sig**	**Odds Ratio**	**99% CI**
Age 1st	-.4540	.0073	.0000		
Sex					
(Male)	.2828	.0144	.0000	**1.33**	1.28 - 1.38
First offence			.0000		
Serious person	-.0393	.0482	.4145	**0.96**	0.84 - 1.08
Robbery	.1113	.0765	.1453	**1.12**	0.92 - 1.36
Sexual	-.3719	.0982	.0002	**0.69**	0.61 - 0.78
Assault	.1777	.0395	.0000	**1.19**	1.08 - 1.32
Drug	-.2007	.0482	.0000	**0.82**	0.72 - 0.93
Break & enter	.1868	.0289	.0000	**1.21**	1.12 - 1.30
Steal motor vehicle	.2141	.0317	.0000	**1.24**	1.20 - 1.28
Theft	.0342	.0256	.1816	**1.03**	0.97 - 1.11
Justice & good order	-.1121	.0269	.0000	**0.89**	0.83 - 0.96
First penalty			.0000		
Custodial orders	.2872	.0713	.0001	**1.33**	1.11 - 1.60
CSOs	.2022	.0648	.0018	**1.22**	1.04 - 1.45
Supervised orders	.2258	.0297	.0000	**1.25**	1.16 - 1.35
Fines	-.2260	.0252	.0001	**0.80**	0.73 - 0.87
Unsupervised orders	-.1011	.0331	.0000	**0.90**	0.85 - 0.96
Nominal penalties	-.3881	.0255	.0000	**0.68**	0.64 - 0.72
NLGA - place of residence (Departmental region)			.0000		
Eastern Sydney	.0794	.0258	.0020	**1.08**	1.03 - 1.14
Western Sydney	.1429	.0271	.0000	**1.15**	1.08 - 1.24
Southern Sydney	.0452	.0244	.0641	**1.05**	0.98 - 1.11
Hunter	.1112	.0264	.0000	**1.12**	1.04 - 1.20
Northern NSW	-.0142	.0307	.6446	**0.99**	0.91 - 1.07
Western NSW	.1614	.0335	.0000	**1.18**	1.08 - 1.28
Southern NSW	-.0342	.0273	.2096	**0.97**	0.90 - 1.04
Interstate/unknown	-.4917	.0406	.0000	**0.61**	0.55 - 0.68
Court Type					
(Specialist Children's Court)	-.0636	.0126	.0000	**0.94**	0.91 - 0.97
Constant	6.1449	.1170	.0000		

[a] *The model does not contain an analysis of interaction terms because of limitations in computer processing capacity.*

[b] *Juvenile recidivism is a dichotomous variable.*

[c] *Age 1st is a continuous variable. Sex, First offence, First penalty, NLGA, and Court Type are categorical variables. CI = Confidence Interval.*

3

Public Space and Youth Crime Prevention:
Institutions and Strategies

ROB WHITE

The aim of this paper is to map out three broad perspectives on youth crime prevention. In particular, the concern is to highlight the nature of, and differences between, "coercive", "developmental" and "accommodating" approaches to dealing with young people. In doing so, the key concepts, main institutional players, primary methods and techniques, and substantive criticisms of the three perspectives are outlined.

Several preliminary points need to be made. First, the three approaches have been constructed here as "ideal types" in that each presents an exaggerated view of particular clusters of ideas and techniques. The actual practices of police, justice officials and others involved in crime prevention are often more complicated than suggested by the models,
and may involve a wide range and diverse combinations of techniques and ideas. Secondly, the three models are not necessarily mutually exclusive in that they can, to some degree, co-exist in any particular jurisdictional setting.

The weight given to any one model in practice, however, does have major social implications. That is, the *overall strategic orientation* of youth crime prevention has major ramifications for the position and experiences of young people in society. The philosophical basis of intervention and the particular mix of programs is crucial in whether or not the juvenile justice system will act so as to best protect the rights of children, while simultaneously making a concrete and positive difference in addressing the causes of juvenile offending.

"Coercive" forms of crime prevention are detrimental to the best interests of children and young people, for a number of reasons. In many instances, the use of coercion is unnecessary, unduly penalising all young people, and ultimately socially discriminatory. It may well be that coercive measures need to be used in particular circumstances to protect and defend persons and property from actual instances of criminal behaviour. However, the adoption of coercion as a *strategy,* and as the main plank of juvenile crime prevention, carries with it major problems from the point of view of youth rights and the causes of youth crime.

Conversely, "developmental" and "accommodating" approaches offer a more youth-friendly perspective on crime prevention, and are premised upon the inclusion of young people as legitimate participants in decision-making and mainstream institutional processes. While tactically the use of coercion may have its place in specific instances of juvenile crime control, crime prevention is best dealt with through strategic measures which address

youth concerns and youth needs directly, and in a positive and constructive manner. In these approaches the emphasis is on diverting young people away from negative, antisocial or criminal behaviour; on enhancing their leisure, employment and educational opportunities; and in providing a social environment which is inclusive of young people.

Social Institutions and Young People

Various agencies and institutions play a number of different roles in relation to criminal justice issues and practices, covering both broad welfare and educational concerns (such as schools, welfare agencies and the like) and more directly regulatory and coercive concerns (such as private security guards and justice depart-ment officials).

If we are to assess adequately the nature of diverse youth crime prevention approaches, then we need first to discuss the institutional setting for much of the activity related to crime prevention. A distinction can be drawn between *particular institutions* (which have specific structural imperatives to perform certain social roles), and *particular crime prevention approaches* (which are evident in each institutional sphere, regardless of the dominant functional imperative of the institution). The institutional rationale of any particular agency or organisation will have a major influence on the type of approach adopted in youth crime prevention.

There are three main types of institutions which predominate in the lives of young people: coercive, developmental and commercial. These can initially be described in terms of core operational imperatives — that is, their guiding rationale.

Coercive Institutions

These institutions are those which are designed primarily to enforce rules, regulations and laws of some kind. They operate mainly or ultimately on the basis of violence or the threat of violence, and their agents are generally seen as legitimate wielders of coercion in the enforcement of particular kinds of behaviour and codes of conduct. Such institutions include the police, private security guards, the courts, corrections, transit police, and welfare workers engaged in administering control and protection orders.

By their very nature, coercive institutions are involved in the negative labelling of young people (Polk 1994). That is, the impact of these institutions on young people is by and large one which constructs an "illegitimate identity" for those caught up in the net of social control (Polk & Kobrin 1973). Furthermore, much of the work of these institutions is meant to separate out certain groups of young people from the rest of society — through means of exclusion from particular physical sites or by containment in secure facilities. Their activities are thus often premised upon ensuring a dis-connection between some young people and other people and institutions, including their peers.

The main purpose of such institutions is to meet broad system needs by symbolically and practically constructing boundaries between what is "acceptable" behaviour and what is not, and between who is deemed to be "conforming" and who is "deviant". The overall orientation is one which is "society-centred" insofar as the stress is on rule maintenance and upholding conventional social interaction. The point of intervention is to curtail perceived deviant or criminal activity. This often involves the denial of usual freedoms or the detainment of young people against their will.

Developmental Institutions

These institutions are those which are designed first and foremost to assist young people on the basis of developmental potential, work oppor-tunities and social functioning. They operate to provide young people with resources, skills and knowledge which they can then use to more fully integrate into mainstream social life. Such institutions include the family, school, work,

recreation- and leisure-based organisations, social workers, and youth and community workers.

Developmental institutions vary in practice, but one outstanding feature is that they have the power to confer positive as well as negative social labels (Polk 1994). They thus embody both negative and positive social aspects (for example, success at school or alienation; family as safe haven or place of child abuse; wages for work or exploited labour). In a similar vein, while developmental institutions may involve some degree of compulsion (for example, compulsory schooling), they nevertheless can be seen as operating mainly through "consent" rather than "coercion". That is, contact with such institutions is generally seen as desirable and of benefit to the person who engages with them. There is an assumption that there will be social benefits and rewards for the participants (for example, certificates, knowledge, wages). Such institutions are often an important point and source of social connection for young people, both in terms of peer group relationships and with regard to active participation in other mainstream social institutions (that is, there is an intersection of participation in the family, at school, in work). To put it differently, positive participation in any one developmental institution usually implies that a young person is simultaneously nested in a web of supportive relationships involving more than one such institution.

The main purpose of such institutions is to meet system needs for well socialised, work-ready, healthy young people. The services and benefits provided are "youth-centred", as part of the process of working toward the achievement of wider social aims. One institutional feature of most developmental institutions today is a concern to be as flexible as possible in meeting young people's needs.

Commercial institutions

These institutions are those which are designed first and foremost to make a profit.

The over-riding purpose of the commercial enterprise is to bring buyers and sellers together in the cash nexus. They operate so as to entice patrons and customers to buy certain goods and services. Such institutions include shopping centres, malls, specific retail outlets, fastfood shops, restaurants, video-game arcades and commercial providers of sport and leisure activities.

As with developmental institutions, these institutions have the capacity to apply both positive and negative social labels to young people. Through participation with such institutions young people may develop particular forms of "consumer-related identity". Alternatively, as non-consumers they may be labelled "troublemakers" or "undesirables". Given the physical location and the diverse congregations of people who engage with them, young people see commercial institutions as important places for social connection and social activity.

The main purpose of such institutions is business. They are "money-centred", and the raison d'etre of any such institution is to produce and sell enough goods and services to make a profit. The main focus of attention is on business, and customer, needs. Young people are variously perceived as either direct customers or as potential threats to the commercial trading process.

Three Approaches to Youth Crime Prevention

Each of the three types of social institutions described so far occupies an important place in the lives of young people. For example, young people have extensive contact with the police, with teachers and with shopkeepers. The relationships that young people have with the agents of these institutions are crucial to consider in any discussion of youth crime prevention. Bearing in mind the main institutional imperatives across the three areas, we turn now to consider three approaches to crime prevention — each of which has implications for how the agents within the different social institutions might perform their tasks.

A major concern is to discern how different intervention strategies might be operationalised within the context of the diverse institutional settings.

Coercive Approaches to Crime Prevention

A broad survey of youth crime prevention strategies here and overseas indicates that in many places the favoured approach is to use coercion or the threat of unpleasant sanctions as the principal way to "keep young people in line". The privileged position of coercive measures is reinforced by a combination of "law and order" rhetoric and media hype, situational crime prevention strategies which are oriented first and foremost to crime control (rather than community building), and a casual dismissal of any notion that young people have the same basic civil and human rights as other members of the population (*see* White in press; Davis 1994; Jeffs & Smith 1996; National Crime Prevention Council 1996).

The key concept of this approach is that of crime control. The emphasis is on deterrence, reducing opportunities for crime commission, and the exclusion of certain potential offenders from public places and community life. The focus is on criminal or antisocial offences, on potential offensive behaviours, and on addressing the perceived threats to the public posed by certain groups of people, usually in the public domain.

The institutional responsibility for such measures rests mainly with the formal agents of social control, such as the police, supported by special legislation directed in the main at young people. The agents of coercion are generally located in state criminal justice institutions (police, courts, corrections), with an auxilliary role played by welfare workers, private security guards, Neighbourhood Watch types of community organisations and local councils.

The methods utilised in this approach emphasise ongoing surveillance, and include maintaining a visible coercive presence on the streets (for example, police patrols), extensive use of "move on" powers and "name checks" by police, and use of closed circuit television monitors in public places. Operationally, such strategies go under different guises, and originate from different institutional bases. The concept of *zero tolerance*, for example, has been used to describe police strategies where antisocial behaviour which falls short of criminality is dealt with severely by authorities in an effort to "clean up the streets" (*see* Slapper 1996; Wilson & Kelling 1982). Campaigns such as "Operation Sweep" in Western Australia in 1994 which involved a massive effort to pick up teenagers off the streets of Perth and Fremantle is an example of a similar type of approach in the Australian setting (Cunneen & White 1995).

Likewise, the efforts of state and local governments to impose youth curfews, to enact anti-gang laws, and to grant private security guards the power to exclude particular individuals and groups from use of certain city sites are directed at making young people unwelcome in the shopping centre, mall or street *(see* White 1996; Jeffs & Smith 1996; National Crime Prevention Council 1996; White, Murray & Robins 1996).

Such coercive measures, however, have never proved to be particularly effective over the long term in preventing crime, and in some cases exacerbate or create social problems in their own right (due to the resistance of young people to such measures). Coercive approaches can be criticised on a number of grounds (*see* White in press). They are premised upon social exclusion, and emphasise the control and containment of young people, rather than seeing young people are bona fide rights-holders and members of the community. They use coercion as a means of first, rather than last, resort, which is contrary to major international human rights instruments (namely, the United Nations Convention on the Rights of the Child). Such strategies involve the active stigmatisation and criminalisation of children who may normally have had little to do with the

formal justice system, and can make worse police-youth relations due to youth perceptions of unfair treatment, excessive restrictions and unnecessary intervention in their daily affairs. Broad and sweeping "street cleaning" measures can also displace youth crime, and congregations of young people, into other city areas.

Developmental Approaches to Crime Prevention

Developmental approaches can be characterised as approaches which are directed at enhancing the opportunities of young people through encouraging their participation in activities which reflect youth interests and needs. The guiding idea is that young people be given some ownership of the solutions to youth problems and that various people and agencies at a local level should work together to advocate for the wider involvement and participation of all young people, including the most marginalised (Polk 1997). In this perspective, it is important to involve young people themselves in any crime prevention strategy; to see them as part of the community, not merely as threats to it.

The key organising concept of the developmental approach is that of dealing with social problems. Emphasis is placed on enhancing youth opportunities, diversion from potential criminal behaviour and bad peer influences, and reforming institutional processes which disadvantage and marginalise young people. The core idea behind such an approach is to provide space for young people to develop a greater sense of competence, usefulness, belongingness and power or potency (Polk & Kobrin 1973). To assist the development of young people requires that analysis and strategic action be undertaken to improve the performance of social institutions in working with young people.

The primary institutions associated with this approach are public bodies such as schools, welfare and health authorities, and local councils. The main players are social workers, youth and community workers, teachers, parents, police youth liaison officers and employers. The police and security guards generally play an auxilliary role, providing links and referrals to appropriate agencies as required.

The methods of developmental crime prevention revolve around *problem-solving*. This translates at an operational level into strategies designed to improve the access of young people to "legitimate identities" in school, work and politics, and to reduce their access to "illegitimate identities" associated with the formal institutions of criminal justice such as police arrest, court and juvenile justice sanctions (Polk & Kobrin 1973). The developmental approach generally tries to involve a more wholistic approach to youth needs and issues, and thus often incorporates multi-agency collaboration into its framework. This means that youth and community workers, local councils, the police and other interested parties attempt to work in partnership to provide young people with positive options in relation to work, education and leisure pursuits. An emphasis is placed on encouraging both positive and empowering peer relationships among young people, and in bringing young people directly into institutional decision-making processes. A central concern of this approach is to open up lines of communication between various parties, including young people themselves, and thereby to foster a sense of community and solidarity through honest and open dialogue across a range of social and legal issues.

One of the biggest problems with the adoption of these kinds of approaches is the lack of adequate community investment in developmental institutions generally (for example, education sector, welfare services, health and community services), which in turn makes inter-agency collaborative work difficult from a resources point of view. Government cutbacks in needed public services, changes to rules guiding service provision and benefit allocation for young people, and the dearth of concerted state

action on issues such as unemployment, restrict the ability of people at the local level to "solve" problems which have their source in wider political-economic transformations and national policy development. Specific institutions, such as the police, can likewise be evaluated from the perspective of internal allocation of resources (for example, education and training packages) and staffing (for example, number and training of youth liaison personnel) in the area of police-youth relations.

Conceptually, there exist difficulties over how certain preferred methods are to be interpreted in practice (*see* Stokes & Tyler 1997). For example, multi-agency collaboration often begs the question of who is to coordinate the process, and what criteria is to be used for evaluating the purposes and performance indicators of such cooperation. The issue of accountability looms large here, particularly given the different institutional sectors which may be represented in any such collaborative effort.

Problems may also arise from how the term "developmental" is construed. If it is interpreted in narrow individualistic terms, the core problem of a developmental approach may simply mean attention to the presumed "deficits" and "at risk" behaviours of selected young people. How the problem is conceptualised has major implications for the kind of intervention strategy adopted. Rather than focussing on the ways in which institutions marginalise young people (for example, analysis of how schooling processes alienate some young people), or emphasising the existing strengths of young people (that is, through reinforcing their sense of power, competency, belonging and usefulness), some psychology-based concepts of development concentrate on how to *change the young person* via therapy, remedial education or treatment. Other modes of intervention stress the importance of wider institutional change and better institutional provision for young people; as illustrated in recent discussions of "prosocial" and "antisocial" paths within different institutional spheres (*see* Catalano & Hawkins 1996). Instead of seeing a developmental project as something done to, or for, young people, the broad social development approach emphasises the role of young people as direct participants and decision-makers.

Accommodating Approaches to Crime Prevention

An accommodating approach is not concerned with either coercion or developmental concerns per se. The approach arises out of conflicts experienced at a practical level in youth-adult interactions. In this sense, the accommodating perspective basically originated as a reaction to a social problem, rather than being institutionally tied to wider communal projects such as law enforcement or socialisation processes.

The key concept of the accommodating approach is that of *negotiation*. The approach is premised on the idea that there may be diverse and competing perspectives regarding how certain publicly accessible resources are, or ought to be, used. Recognition of the specific needs and desires of different parties is then linked to the importance of public participation in any decisions which affect the concerned parties. From a crime prevention perspective, the accommodating approach attempts to use participatory methods as a means to reduce youth crime, antisocial behaviour and fear of crime in particular settings and locales.

The primary institutions involved in these kinds of approaches are shopping centre managements, developers, commercial sport and recreational outlets, retailers, and local councils. Business proprietors, youth and community workers, architects, social planners and town planners are the central players, with police, welfare and justice officials also having advisory and minor intervention roles (usually oriented toward supporting any rules of behaviour and diversionary

procedures which may be negotiated between the parties).

The main method of the accommodating approach is that of direct interaction between interested parties. Young people are considered as legitimate "stakeholders" who ideally should have a say in any consultative process. Similar to the developmental approach, much consideration is given to problem-solving and to multi-agency collaboration. Importantly, the approach is based on the idea that young people do have legitimate concerns, particularly over how they are treated in public spaces such as shopping centres and the street, and that they should be involved in negotiating outcomes which are beneficial to all parties in some way. Rather than attempting to exclude young people — as users of certain public spaces, as active participants in community life, as rightsholders — this approach is based on the notion of social inclusion. In some instances, the approach may also be directly linked in to developmental strategies insofar as provision of youth services and youth-friendly spaces can be an outcome of the negotiation process.

Accommodating approaches explicitly recognise the importance of involving the private commercial sector in non-coercive forms of youth crime prevention. They also take into account that much police-youth contact, and conflict, occurs in the precincts of shopping centres and malls, and that a large proportion of young offending involves shopstealing offences. Not surprisingly, such approaches therefore tend to be dominated by commercial imperatives. There are a number of questions which arise from the tension between a "commercial" and a "community" rationale for specific youth crime prevention schemes (*see* White et al. 1996). For example, at a practical level, protocols need to be developed that spell out the lines of accountability and responsibility when youth intervention projects are funded collaboratively by commercial enterprises, local governments and the community sector.

In many cases, the accommodating approach takes place in the context of privately-owned public space. Given this, it is important to explore the implications of the approach for the possible transformation of such space, from use for relatively narrow commercial purposes to broader communal objectives and purposes. This raises issues of how best to extend public access, public control and public ownership over community spaces regardless of whether the current managers are state governments, local councils or private companies. It also alerts us to the social implications of constructing crime prevention approaches which do not challenge the commercial imperatives and setting of many youth activities. For instance, the approach may simply reinforce the profit imperative of commercial enterprise by orienting youth activity toward what is offered on a commercial basis (for example, video games). Especially given the concerns of developmental approaches to widen the intellectual, physical, spiritual, political and community horizons of young people, major questions can be asked regarding the social significance of consumer-oriented commercial settings in their lives.

Conclusion

This paper has provided an overview of three broad approaches to youth crime prevention. It is important in any such discussion to distinguish the diverse and distinctive operational logics of different social institutions (that is, coercion, development, commercial imperatives), and the ways in which different crime prevention approaches have relevance and specific applications within the context of each of these institutional spheres (that is, coercive, developmental, accommodating measures). In analysing the pros and cons of each crime prevention perspective, it is essential to appreciate the limits and possibilities of institutional support for

adoption of a particular approach, and the conflicts and debates within different institutional settings on crime prevention matters.

The approaches identified in this paper are not mutually exclusive. However, the overall direction of youth intervention is dictated by the particular approach adopted as the main organising philosophy of crime prevention. With respect to this, in the light of the very difficult social, economic and political climate within which many young people are trying to make ends meet and make sense of their world (*see* Wyn & White 1997), it is surely preferable to adopt approaches to crime prevention which do the least amount of harm to young people. Regardless of existing conceptual difficulties and practical limitations, it is clear that the developmental and accommodating approaches offer the most constructive avenues for positive and socially inclusive forms of youth crime prevention.

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4

The Psychology of Cost-Effectiveness in Juvenile Justice

TIMOTHY KEOGH

Personal schemas, like all others, are both intellectual and affective. We do not love without seeking to understand, and we do not hate without a subtle use of judgement.
(Piaget, quoted in Flavell, 1963*)*

Introduction

The aim of this paper is to outline the rationale for the provision of specialist psychologically-based programs for serious repeat-offenders, notably sexual and violent offenders. An attempt will be made to demonstrate the nexus between empiricism and quality which is seen as the chief determinant of outcome with such programs. The importance of outcome and the associated need for economic evaluation of programs is considered in the context of increasing financial constraints on public sector services.

Factors influencing Juvenile Justice Programming

Crime and its remediation have always presented a dilemma to society. Discomfort with the notion of a continuum of offending behaviour has resulted in confusion and ambivalence about what constitutes the most appropriate response to juvenile offending. This in part has been manifest in the constant tension between a justice and a welfare model approach. In practice, a mixture of the two approaches has been seen at any point in time (Mann 1976).

The debate about what approach to take has underlined the multi-causational nature of crime. Those favouring a justice model perceived young people to be disadvantaged by a system that incarcerated them with welfare problems. It was felt that this was doubly problematic when the experience of institutionalisation did little if anything to remediate their problems (Woolridge 1988).

This concern historically was linked with a growing sceptisicism in the 1950s about the success of attempts to rehabilitate young offenders. A series of meta-analytic studies was in fact conducted as a result of these concerns. These studies suggested that when looked at closely rehabilitation programs did not work. This "evidence" caused a rethink at the time about the approach to take with young offenders resulting in a focus on justice rather than welfare issues . The studies conducted by Martinson (1974) and others were later criticised on methodological grounds, but it is probably fair to say that the approach to rehabilitation at the time was rather inconsistent and poorly conceptualised compared to more current approaches.

Since that time there have been considerable developments in both the knowledge about offenders and therapeutic techniques available to help them. Research methods have also become increasingly

sophisticated. Particular research knowledge has accrued around certain types of offenders, notably, violent and sexual offenders.

In the light of this new data, theorists and philosophers in the area of juvenile justice in the last decade began to re-evaluate the utility of offender therapy. The conclusion reached has been that, although there was originally some merit in the argument against the welfare model, research points to the fact there is a case to be made for the treatment of offenders. The left realist philosophers argued the case for offering treatment to young offenders within a justice model on both a moral basis and also on the basis of cost-effectiveness.

Most personnel working with young offenders, particularly those working with more serious and repeat offenders, have anecdotally acknowledged clear evidence about the emotional adversity in the backgrounds of these young people which appear to be central to understanding their propensity to offend.

During the time of this debate and the meta-analytic studies, psychology was also discovering more about the link between attachment patterns and later adjustment. The research of Bowlby (1969) originally provided the empirical evidence of the connection between attachment and mental health. Ainsworth (1978) and others demonstrated three attachment types linked to different forms of adjustment. One particular pattern was shown to be predictive of delinquent behaviour. Most recently Lyons-Ruth (1996) has been able to show the relationship between a disruptive / disorganised maternal attachment pattern and the development of aggressive and violent behaviour in childhood leading to more frank violent behaviour in adulthood.

Longitudinal studies have also identified a chronic stable pathway of development in cohorts of children who pass through predictable stages of early conduct problems, the onset of associated drug and alcohol problems and increasingly serious interpersonal offending through to a complete antisocial personality (Rutter 1994). Studies have also shown the high incidence of sexual and physical abuse in the backgrounds of serious offenders.

An acknowledgement of such data has led to a trend of offering psychologically-based interventions to young offenders in the hope of reducing their propensity to offend. Coincidently, a second wave of evaluation studies and meta-analyses from 1985 onwards (for example, Izzo & Ross 1990) ensued. Theses studies revealed evidence for a renewed optimism in a rehabilitative approach. The evidence showed that there was definite proof that recidivism could be reduced by appropriate psychologically-based interventions when these were applied in a consistent manner.

Although this has resulted in some change in the thinking and approach to young offenders, change has not always been paralleled at the public opinion and political levels. Most recently, despite mounting evidence of the ineffectiveness of incarceration in reducing recidivism, there are still governments advocating stricter penalties, bootcamp-style approaches and even the introduction of death penalties. This has often followed sensational press and other media coverage of highly emotive crimes.

Treating serious offenders of course does not imply that offenders are responsible for their crimes. Rather, it urges a different approach to their disposition.

In addition to these above-mentioned influences on juvenile justice programs, costs associated with incarcerating serious offenders have become a major consideration. It has, for example, been estimated that it can cost up to $1000 per week to incarcerate a young offender. Some authors have estimated the costs to all agencies involved, for one offence, can be as

Table 1: ***Offences before the Children's Court in NSW 1987-88 to 1995-96***

Violent Offences	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96
Against the person	**1400 (9.1%)**	**1920 (12.3%)**	**2186 (13.8%)**	**2112 (13.2%)**	**1954 (14.2%)**	**1790 (14.3%)**	**2429 (17.6%)**	**2801 (19.6%)**	**3010 (20.4%)**
Robbery & extortion	**181 (1.2%)**	**201 (1.3%)**	**245 (1.5%)**	**275 (1.7%)**	**300 (2.2%)**	**293 (2.3%)**	**415 (3.0%)**	**348 (2.4%)**	**490 (3.3%)**
Sexual offences	**132 (0.9%)**	**148 (1.0%)**	**136 (0.9%)**	**106 (0.7%)**	**98 (0.7%)**	**102 (0.8%)**	**116 (0.8%)**	**116 (0.8%)**	**116 (0.8%)**

much as $180 000. These figures are especially sobering given the current pressures on administrators to reduce costs.

Such a focus on costs has followed the reform of the public sector, triggered by the Wilenski Report in the late 1970s (Wilenski 1977). Other political and economic changes such as the floating of the Australian dollar have also contributed to a more accountable public sector with pressures to demonstrate the cost-effectiveness of service provision. In the juvenile justice system the costs associated with incarceration are by far the greatest. Pressures concerning these costs have necessistated a greater scrutiny of spending and outcome. In the recent restructure of the NSW Department of Juvenile Justice, for example, it was discovered that 80 per cent of departmental resources were being invested in the 20 per cent of clients who were incarcerated.

As a consequence, there has been a radical attempt to develop new and more strategic approaches to managing resources, with renewed efforts to tackle serious repeat offenders cost-effectively. One such strategy has been to target specialist empirically-based programs on serious repeat offenders whilst maximising efforts on the front end of the system at diversion and appropriate early intervention.

Other Current Knowledge and Challenges

In NSW, not unlike other jurisdictions, the majority of young offenders have been found to be non-recidivist. The NSW Bureau of Crime Statistics and Research has shown that 70 per cent of first-time offenders do not in fact re-offend. A further NSW Department of Juvenile Justice study presented at this conference has also shown that, of the remaining offenders, a further 15 per cent go on to commit one further crime and the remaining 15 per cent become recidivist. This suggests then that a small group of offenders are responsible for a large proportion of serious crimes committed and subsequent cost to the tax-payer. It is this group of offenders who have not been specifically targeted to explore the possibility of more cost-effective ways of dealing with their offending behaviour.

What is clear from the data available is that, although juvenile crime may not be increasing overall there is evidence that certain types of crime have increased, notably violent crime (*see* Table 1). The national and international juvenile crime trends demonstrate this as do the re-appearance rates in NSW.

Recidivism research which is based on official re-offending rates may of course underestimate the true recidivism rates. Many who work with sex offenders for example claim that they often indicate

having committed far more offences for which they have not been convicted. This is felt to be so particularly in the case where the offences have been against children who are either too young or too frightened to report such offences. As such, there is a cautionary note to be applied when interpreting such recidivism data into policy.

Characteristics of Serious Offenders and Approaches to Treatment

As a group, serious recidivist offenders are characterised by escalating crimes that usually involve varying (usually increasing) levels of interpersonal violence or sexual violence. In common with juvenile offenders as a group, they share high impulsivity, poor ability to manipulate abstract concepts, egocentricity and lowered capacity for empathy. The most significant family factors relate to rather poor parental supervision, erratic and harsh parenting, separation and disruption in their attachment, cold and rejecting parents as well as frank sexual or physical abuse in some cases. There is also a link with criminality in the parents (Hollin 1996).

As a consequence successful intervention needs to be multi-modal in its approach, with a focus on individual and family factors (Borduin et al. 1990).

In addition to these general characteristics, recidivist violent offenders have also been found to exhibit higher levels of personal impairment and substantially disturbed family relations. Psychological theorists have pointed out that violent offenders can be distinguished into those whose violence is instrumental and those in whom it can be seen to be reactive. Theorists have suggested different approaches to the treatment of both groups. Often offenders themselves have histories of their own victimisation sometimes entailing extreme cruelty and violence. These data have obvious implications for the formulation and treatment of violent offenders.

Serious repeat sex offenders are distinguished from other offenders according to Finklehor (1986) by the histories of their own sexual abuse. Sex offenders may be diagnosed psychiatrically with one of the paraphilias. In terms of their offending specifically, however, they can be broadly distinguished in terms of whether they offend against children or adults and in terms of whether they commit hands-on versus hands-off offences. It is, of course, the hands-on offenders who are at issue when it comes to serious and repeat offending. Juvenile sex offenders account for about one-third of all sexual offences against children and about 20 per cent of all rapes (Brown et al. 1984). Any program which reduces their recidivism will thus represent a major child abuse prevention strategy.

Approaches which have been effective in the treatment of such offenders are those which involve cognitive-behavioural techniques and interventions with families. Cognitive-behavioural approaches focus on assisting offenders with ways of thinking and appraising situations in which they are likely to offend. This in turn is linked to techniques designed at skill acquisition, particularly de-arousal techniques such as relaxation. Although insight oriented approaches have received little support from the outcome literature, their utility should not be discounted. Research methods have been criticised for their unsuitability in evaluating these techniques. Given what appears to be the importance of victim issues in many instances, with more serious offenders, these approaches may have more to offer than has yet been realised.

In terms of the success of offender treatments the second wave of meta-analytic reviews of the previous outcome research (that Martinson (1974) had been so pessimistic about) has suggested that overall interventions do have a net positive effect on recidivism reducing it on average by 10-12 per cent. Lipsey (1995) went further and

suggested treatment can produce decreases in recidivism of 20-40 per cent above baseline. On the basis of such findings Hollin (1996) has suggested that it is more than reasonable to conclude that treatment works. McGuire (1996) also supports this view but adds that research indicates that the most intensive treatments should be provided for the most serious offenders and that these should address the variety of systems that influence the adolescent including peers and school. McGuire has also commented on the basis of research what he considered to be the most important features of successful programs for serious juvenile offenders. These are:

- taking a multi-systemic approach;
- including family therapy;
- focussing on peer systems where relevant;
- avoiding "a one size fits all" approach;
- maximising program integrity and related consistency;
- focussing on the criminogenic aspects of the client's behaviour;
- inclusion of a cognitive behavioural component;
- inclusion of relapse prevention strategies;
- focussing on the special needs of clients;
- responsivity of programs.

Borduin et al. (1990) on the other side of the Atlantic have also argued for an increased emphasis on addressing all the systems impacting on the young offender. They have noted that until recently there was little evidence to support the long-term efficacy of treating serious antisocial behaviour (including violent behaviour) in adolescents. Treatments that were empirically derived failed to produce lasting effects. The most likely explanation for this is that such programs did not incorporate the knowledge that offending behaviour is multi-determined and that the treatment needs
to reflect this. Hengeler et al. (1994) suggested
that what was necessary was a multi-systemic (MST) / multi-modal approach to treatment that takes account not only of the individual and family factors but also the influence of peers and neighbourhood factors. In fact multi-systemic therapy as described by these authors in controlled studies has recently demonstrated that favourable long-term results can be achieved with the type of intervention. Henggeler and his colleagues (1994) have presented evidence of three of the most recent studies of MST with serious offenders (including violent juvenile offenders). These outcome studies build on earlier studies which have demonstrated the effectiveness of this approach (Borduin et al. 1990).

With sex offenders, there is a trend of data which suggests recidivism rates can be significantly reduced by focussed intervention programs. Davis and Leitenberg (1987) have reviewed outcomes for juvenile sex offenders following treatment and have shown recidivism rates as low as 3-10 per cent in treated offender cohorts. Similarly with violent offending Henggeler et al. (1994) have shown lasting results with MST intervention.

Economic Evaluation, Quality Assurance and Accountability

An appropriate response to these data suggests the value of taking a more strategic approach focussing specialist resources on the most serious offenders as noted by McGuire (1996).

The research also suggests, importantly, that there should be a careful evaluation of young offenders when they first come into contact with the juvenile justice system.
This evaluation should look at their profile in the light of what is now known about offenders who are likely to develop further entrenched patterns of criminal behaviour and attempt to get other services involved as part of early intervention. The extensive database concerning the development of conduct

problems suggests that early intervention should really commence before their offending career gets under way. Most appropriately this should be somewhere between five to seven years with an emphasis on family intervention (Fonagy 1996).

With respect to the issue of specialist services, however, if resources are to be directed into such services for serious offenders, government funding bodies will demand some demonstrated outcome to justify such expenditure. This means that an economic evaluation of the service will be required. But what is economic evaluation, what is the most relevant form of economic evaluation and how is it carried out?

Drummond, Stoddart and Torrance (1994) have provided a useful framework for such economic evaluations. They describe the components of economic evaluation as largely the resources consumed related to the health improvement in a program or treatment such as a psychological one. The resources consist of the cost of various types which go into the program and these relate to the effects, utilities and benefits. From these basic components, there are four basic types of analysis that can be performed to evaluate the effectiveness of a program. These are: cost; cost-effectiveness; cost-utility; and cost-benefit.

- Cost analysis involves an analysis of the costs only.
- In a cost-effectiveness analysis, the consequences of the program are measured in the most appropriate units, such as months or years without re-offending. There is no attempt to value the outcome and it is assumed to have an inherent value.
- In a cost-utility analysis the consequences are measured in terms of utility weights. This is a broader form of cost-benefit analysis as it looks at the value of outcomes associated with the change in (mental) health status relative to one another. This form of analysis is particularly useful when looking at interventions which attempt to minimise harm.
- Cost-benefit analysis attempts to value the consequences of programs in monetary terms. This represents the broadest form of economic evaluation where the focus is on the question of whether the consequences of a program justify the cost. Clearly this is the type of evaluation of most interest to juvenile justice managers and executives. Economic evaluation, of course, assumes that there is a program which is measurable. Indeed, one of the major problems in researching or evaluating programs is whether there is something that can be called a program which can be legitimately measured.

The most effective method of ensuring a consistent program product is by ensuring quality assurance (QA) standards built into the paradigm which is set up. QA ensures that there are standards of practice and training which means there is a substantial program. In the area of juvenile justice programming these QA features can be referred to collectively as program integrity. Hollin (1996) views program integrity as essential to the success of any program and equally essential to evaluation and outcome research. Program integrity requires, at a minimum :

- standard training for all those involved in delivering a program;
- standard assessment and treatment procedures which are used consistently;
- the establishment of treatment manuals, assessment protocols and other pro forma;
- supervision structures for program staff which ensure program application;
- ongoing competency-based training to maintain specialist skills;

- assessment and treatment based on best practice at all times.

Once program integrity is in place, it is possible to derive outcomes which can be targeted for measurement. These outcomes need to have construct validity, that is they need to relate to the empirical findings concerning the problem in focus. An appropriate outcome for serious offenders, for example, is clearly reduced recidivism.

Leonard Bickman (1997) has noted that it is not always feasible to measure the ultimate outcome and, that it is not always necessary. For this reason, he has posited the notion that outcomes can be broken down into different categories. Outcomes can be described as interim, proximal, and distal.

In the case of a program for sex offenders, the distal outcome would most certainly be the re-offence rate. It might also be important to know at the end of involvement with a treatment program that the level of deviant sexual arousal had diminished and that a young person had gained greater impulse control. These outcomes would be meaningful as they relate empirically to the distal outcome. A recently established family worker program for juvenile offenders in NSW has increased family functioning as one of its proximate outcomes.

An interim outcome is seen as a much more immediate indicator of effect and would normally be defined as something such as the level of engagement of a young person in therapy sessions week by week.

These sorts of outcomes differ from those concerning the processes of the program such as the number of clients seen in the program and the reliability of the service to magistrates. These outcomes normally have performance indicators associated with them which relate to these processes in terms of quantity and time, for example, that each referral is processed within two days of its receipt.

The abovementioned research findings, concepts and practices are currently the basis for the approach to serious offenders within the NSW Department of Juvenile Justice to address the challenge of dealing more effectively with these young people who are so costly in the system and whose lives are often so troubled.

The salient feature in the establishment of these programs has been an emphasis on building in best practice features from the research literature which stresses the nexus between quality and outcome with particular emphasis on program integrity.

Ultimately, the enterprise is a very human one and involves helping rather disturbed young people understand themselves and develop skills to deal with life more satisfactorily. This process requires young offenders to accept what they have done and be able to take responsibility. This is usually not possible until the young person feels understood. This in turn requires an understanding of and a sensitivity to cultural issues, the effect of social adversity, family disruption, loss, abuse and disillusionment with adults.

As such there is a premium placed on the therapeutic relationship, the need to model appropriate behaviour and consistency. For such programs to be successful there also needs to be organisational support for the work. As consistency has been shown to be such a vital ingredient in successful programming, an appropriate culture needs to be developed to support such programs in juvenile justice organisations.

In conclusion, it is clear that in the mid-1990s a new strategic approach is indicated with serious juvenile offenders. During the ten years when resorting to incarceration increased and the three strikes approach was applied in California the juvenile crime rate worsened. All research points to the cost benefit of treating offenders, and specifically, the most serious offenders. Programs that

have been found to be effective overseas, however, cannot be incorporated blindly because of the unique socio-cultural Australian context. What is needed is a uniquely Australian approach that incorporates best practice features with built-in outcome research to articulate the most appropriate model of treatment for serious offenders. Nonetheless, programs will only be successful if they ensure QA standards and focus on program integrity issues. Only then will programs be in a position to make legitimate claims about outcome.

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5

Aboriginal Youth and the South Australian Juvenile Justice System:

Has anything Changed?

JOY WUNDERSITZ

In handing down its final report in October 1992, a Select Committee Inquiry into the South Australian Juvenile Justice System acknowledged that the system then in operation had failed to respond effectively to Aboriginal young offenders. The Committee identified four key themes in the evidence presented to it in relation to Aboriginal youths: namely, that:

- attempts to resolve the issue of Aboriginal youth offending must adopt an wholistic approach by addressing the contextual circumstances of offending;
- reforms to the juvenile justice system itself must focus on empowering the family, with control being taken out of the hands of non-Aboriginal professionals and returned to the parents and the extended family. As a corollary to this, Aboriginal people must participate at all levels of the decision-making process and there must be greater emphasis on developing and resourcing programs and support systems within the Aboriginal community;
- changes in police / Aboriginal relations are essential prerequisites for any improvement in the juvenile justice system's treatment of young Aboriginal people; and
- in making its recommendations, the Committee must pay close attention to the findings of the Royal Commission into Aboriginal Deaths in Custody and must be fully aware of the impact which its planned reforms will have on Aboriginal youth (South Australia 1992, p. 86).

In addition to these specific Aboriginal issues, the Committee identified a range of other requirements which it considered needed to be addressed. These included:

- the need to give the victim a more central role in the process;
- the need to make the young person aware of the consequences of his / her behaviour and to take responsibility for that behaviour;
- the need to streamline the system and to introduce new ways of processing which would provide an immediate response to offending behaviour;
- the need to develop a broader range of sanctions or penalties relevant to the offender and the offending behaviour;
- the need to involve the family in the process and to make them more directly responsible for their offending children;
- the need to give police a greater role in the juvenile justice area; and
- the need to provide greater protection for the community.

Guided by these various (and not necessarily compatible) concerns, the Select Committee recommended a major overhaul of

the existing juvenile justice system. The result was the *Young Offenders Act 1993*. At a philosophical level, this Act gave precedence to the notions of accountability, community protection and deterrence and, for the first time, acknowledged the rights of the victim to receive compensation and restitution for the damage caused. At a structural level, the existing pre-court diversionary process of Aid Panels was replaced by a front-end police cautioning system, while a new diversionary option — that of Family Conferences — was added.

Cautioning

The front-end cautioning system, which includes the option of both informal and formal cautioning, was seen as an ideal way of streamlining the system — of allowing the more minor matters to be dealt with quickly and efficiently at the lowest level. It also represented a significant extension of police powers, particularly given that, as part of a formal caution, the legislation gave police the option to place the young person on an undertaking, which could include up to 75 hours of community work and the payment of compensation.

Conferencing

Family conferences were hailed as the most innovative element of the new juvenile justice system and it was this mechanism in particular which was seen as having the greatest potential to offer a more effective and more culturally appropriate way of responding to young Aboriginal offenders. The fact that conferences were designed to involve all relevant family members and supporters was viewed as an ideal way of including members of the extended Aboriginal kin networks. It also seemed to accord with the expressed wish of many Aboriginal parents and community representatives that they play a greater role in determining how their young people should be dealt with. Finally, the perceived flexibility of conferencing offered a way of accommodating the differing cultural needs of Aboriginal youth, irrespective of whether they came from an urban setting or the more traditional remote communities.

Apart from the perception that conferences offered a more appropriate method of responding to Aboriginal young offenders, they also had other advantages, including the ability to involve the victim in the process and to facilitate his/her access to restitution and reparation; the ability to hold young people directly accountable for their actions, particularly by requiring them to confront the victim and to be involved in deciding appropriate outcomes; and (since it was the key protagonists who were determining the outcomes rather than the professionals) the potential for more appropriate and more relevant sanctions.

The Youth Court

At the court level relatively few changes were made, although there was a clear "toughening" of outcomes. Most notably, penalties were strengthened, with the maximum period of detention being extended from two years to three years and community service orders being extended from 240 hours to 500 hours. The notion of deterrence (initially intended to be general deterrence but later interpreted by the Supreme Court as specific deterrence) was also to apply at this level. These tougher options were justified on the grounds that under this new system, the Youth Court would only be dealing with the most serious offenders and the hard core recidivists (estimated at 10 per cent of all youth apprehensions), who had already been given the benefit of, but had failed to respond appropriately to police cautioning and/or a family conference.

In summary then, the new system, with its range of processing options and its stronger emphasis on pre-court diversion, was viewed as having the ability to fulfil a range of aims, including the ability to provide a more culturally appropriate system for Aboriginal youths. However, despite this intention, a review of the new system conducted in 1996, coupled with additional statistical information accumulated since that time, indicates that, in the main, Aboriginal youths continue to be over-represented in their dealings with the juvenile justice system. The most important aspects of this over-

representation will be outlined in the following discussion.

A Methodological Note

The ensuing sections provide a statistical overview of Aboriginal involvement in the new juvenile justice system and draw attention to those points in the system where the outcomes recorded for Aboriginal youths differ significantly from those accorded non-Aboriginal youths. The paper does not, however, attempt to identify the reasons for these differences. Much more detailed statistical analysis than that so far undertaken would be required before any possible explanations could be offered. It merely seeks to draw attention to areas of difference where further evaluation and investigation is required.

Since there is no way of identifying how many informal cautions involve Aboriginal young people, the figures presented do not include any matters dealt with in this way. The statistics presented here then, relate only to formal apprehensions — that is, to those incidents which result in the young person either being arrested or reported by police.

In the main, the data relate to the 1995-96 financial year, the most recent year for which statistics are currently available. Where possible, data relating to 1992-93 and 1994-95 are also cited to provide some comparison with the previous system and to identify early trends in the new system.

Finally, it should also be noted that whether or not a young person is classified as Aboriginal is based primarily on the police assessment of the youth's physical appearance at the point of contact, rather than on any direct questioning of the young person involved. While this is an unsatisfactory way of identifying Aboriginal youths, it is the only method so far available in South Australia. There is the additional problem that in 18 per cent of all apprehensions, information on racial identity was not recorded at all.

Extent of Contact with the Juvenile Justice System

As indicated in Table 1, in 1995-96 police lodged 8138 juvenile apprehension reports and of these, 14.3 per cent involved Aboriginal young people. Given that Aboriginal people account for only 1.7 per cent of the State's youth population, this indicates that their rate of representation was 8.4 times greater than expected. This is slightly higher than in 1994-95, when Aboriginal youths accounted for 14 per cent of all juvenile apprehensions. It is also considerably higher than in 1992-93 — the last (financial) year of operation of the old system — when they accounted for 12.9 per cent of the 11 089 apprehensions dealt with by Screening Panels.

Table 1: ***Police apprehensions by racial identity 1 July 1995-30 June 1996, South Australia***

Racial identity	No.	Per cent
Aboriginal	**1165**	**14.3**
Non-Aboriginal	**6973**	**85.7**
Total	8138	100.0

Unknown = 1785 / 9923

Clearly then, Aboriginal youths are still substantially over-represented in their contact with the formal criminal justice system and, while comparisons with the previous system are somewhat tenuous because of the different processing options now available to police, nevertheless there is the possibility that they are more over-represented than under the old system.

Method of Apprehension

It is generally acknowledged that when dealing with young people, arrest is to be used as an option of last resort. In comparison with other States such as Queensland, South Australian police have, in the past, tended to use arrest rather sparingly. For example, in 1990-91 only 11.8 per cent of all juvenile apprehensions involved arrest, while in the remaining 88.2 per cent of cases, the youth was reported. However, under the new system, the use of arrest has increased quite substantially, accounting for 28.1 per cent of the 8396 apprehensions for which this information was available in 1995. Moreover, the use of arrest for Aboriginal youths was 1.7 times higher than for non-Aboriginal youths. As indicated in Table 2, in 1995 42.7 per cent of Aboriginal apprehensions were arrest-based compared with only 25.6 per cent of

Table 2: ***Police apprehensions: method of apprehension by racial identity 1 January 1995-31 December 1995, South Australia***

Method of Apprehension	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Arrest	**532**	**42.7**	**1829**	**25.6**
Report	**714**	**57.3**	**5321**	**74.4**
Total	1246	100.0	7150	100.0

Unknown = 1722 / 10 118

non-Aboriginal apprehensions.

Under the old system, Aboriginal youths were also more likely to be arrested. In 1992-93 for example, 38.6 per cent of Aboriginal apprehensions were arrest-based, compared with only 16 per cent of non-Aboriginal apprehensions. However, because of the overall increase in the use of arrest, a higher proportion of Aboriginal youths are now entering the system in this way than was previously the case.

The increased use of arrest for young people in general under the new system may be linked to the introduction of an informal cautioning system. It is possible that, with the introduction of this low-key response, police are now dealing on the spot with youths who would previously have been the subject of a formal report-based apprehension. The remainder who are selected may therefore be more likely to warrant arrest. However, the introduction of informal cautioning does not explain the continuing disproportionate use of arrest for Aboriginal youth.

The type of action taken

Once police have decided to proceed with a formal police apprehension, three main options are available:

- **first, police may choose to administer a formal caution, which may include an undertaking to perform community work, pay compensation etc.;**
- **second, the matter may be referred to a family conference; and**
- **third, the case may result in a formal prosecution before the Youth Court.**

In a small proportion of cases, the police may subsequently decide to withdraw the charges and take no further action.

If a youth is dealt with by way of a formal caution or is referred to a family conference, no formal charges are laid, and the youth does not acquire a criminal record. For this reason alone, diversion is therefore generally perceived as a preferable option to court prosecution where, if the charges are proved, youths acquire a criminal record which stays with them for the rest of their lives. In addition, under the new system, diversion to a caution or to a conference is also seen as offering more constructive and more innovative ways of responding to young offenders — hence, the assumption by the

Table 3: ***Police apprehensions: type of action taken by racial identity 1 July 1995-30 June 1996, South Australia***

Type of action	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Formal caution	**152**	**13.2**	**2373**	**34.8**
Refer to family conference	**160**	**13.9**	**1038**	**15.2**
Refer to Youth Court	**810**	**70.6**	**3174**	**46.6**
Withdrawn	**26**	**2.3**	**231**	**3.4**
Total	1148	100.0	6816	100.0

Unknown = 1959 / 9923

Select Committee that 90 per cent of cases would be dealt with at these earlier pre-court levels.

Despite these intentions, statistics indicate that under this new system Aboriginal youths are far less likely to be given the option of diversion than are non-Aboriginal youths, and conversely, are far more likely to be referred direct to the Youth Court. As indicated in Table 3, in 1995-96 only 13.2 per cent of Aboriginal youths received a formal police caution, compared with 34.8 per cent of non-Aboriginal youths. The rate of Aboriginal referral to family conferences was also lower (albeit only slightly) than that for non-Aboriginal youths (13.9 per cent compared with 15.2 per cent). At the other end of the scale, seven in 10 Aboriginal apprehensions (70.6 per cent) resulted in a referral to court compared with less than half (46.6 per cent) of non-Aboriginal apprehensions.

Also disturbing is the fact that the rate of diversion of Aboriginal youths seems to be declining. In 1994-95, for example (*see* Table 4), 32.8 per cent of Aboriginal youths received either a formal caution or were referred to a family conference compared with 27.1 per cent in 1995-96. Thus, within a twelve month period, the proportion of Aboriginal youths judged suitable for diversion decreased by 5.7 per cent. Moreover, this decrease occurred at a time when considerable publicity was being given to the need to increase the rate of referrals to conferences, particularly for Aboriginal youths.

This disproportionate access by Aboriginal youths to diversion is nothing new in South Australia. Under the previous system, a much higher proportion of Aboriginal than non-Aboriginal youths were referred to court annually, while conversely, a lower proportion were diverted by screening panels either to no further action, a police caution or a children's aid panel. In 1992-93 for example, (*see* Table 5) 65.0 per cent of Aboriginal youths went to court, compared with only 39.5 per cent of non-Aboriginal youths.

However, the continuance of this pattern under the new system is more disturbing for several reasons. For a start, it could be argued that, because of a widely accepted (albeit erroneous) assumption that only the most serious offenders and hard core recidivists now end up before the court, the potential stigmatisation and labelling associated with a court appearance is greater now than it was under the old system. Moreover, the penalties now being imposed by the Youth Court seem to be more severe than previously. Hence, because more Aboriginal than non-Aboriginal youths are finding themselves in court, they are more likely to receive tougher penalties and potentially, experience greater stigmatisation than was the case under the previous system.

There is also the added problem that because of their high court referral rate, Aboriginal youths are being excluded from that very mechanism — namely family conferences — which is considered to offer the more culturally appropriate and effective way of responding to this group of young people. There is little point, it could be argued, in setting up a highly innovative and potentially culturally sensitive alternative if Aboriginal youths are not being directed to

Table 4: ***Police apprehensions: type of action taken by racial identity 1 July 1994-30 June 1995, South Australia***

Type of action	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Formal caution	**195**	**17.2**	**2527**	**35.8**
Refer to family conference	**177**	**15.6**	**1245**	**17.6**
Refer to Youth Court	**716**	**63.0**	**3001**	**42.5**
Withdrawn	**48**	**4.2**	**283**	**4.0**
Total	1136	100.0	7053	100.0

Unknown = 1805 / 9994

Table 5: ***Screening panel referrals* by racial identity 1 July 1992-30 June 1993, South Australia***

Type of action	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
No action	**65**	**4.6**	**353**	**3.6**
Formal caution	**108**	**7.6**	**2149**	**22.2**
Children's aid panel	**326**	**22.9**	**3344**	**34.6**
Youth Court	**927**	**65.0**	**3817**	**39.5**
Total	1426	100.0	9663	100.0

As in the data relating to 1994-95 and 1995-96, the counting unit used here is the police apprehension report.

this option in the first place.

The reasons for the disproportionate rate of referral to court are inevitably complex and beyond the scope of this paper to explore in depth. In the absence of complex statistical analysis, the only option is to draw on past research and qualitative evidence. Previous research conducted by Gale et al. (1990) found that one of the main determinants of a court referral under the old system was the method of apprehension. That research found that arrested youths were significantly more likely to be referred to court than were those youths brought into the system by way of a report. This applied even when the nature of the offence, the number of offence charges and the youth's prior record were taken into account. Hence, the fact that more Aboriginal youths were arrested proved to be one of the most important contributors to their high court referral rate.

There is some indication that this may still be the case. Table 6 indicates that in 1995, of those apprehensions based on an arrest, only 10.1 per cent received a formal caution while over three-quarters (77.3 per cent) resulted in a court referral. By contrast, for those youths brought into the system by way of a report, 41.5 per cent received a formal caution, while only 35.7 per cent were directed to court. Clearly then, under the new system there is still a significant relationship between the referral process and the method of apprehension, although the element of causality has yet to be proved. If it is proved, the implications are obvious for Aboriginal youth, given their continuing disproportionately high rate of arrest.

The 1990 research by Gale et al. also found that, in addition to such factors as the nature of the charge and prior record, a range of non-legal factors influenced the referral decision of screening panels. Unemployed youths, for example, were more likely to be arrested and referred to court irrespective of the nature and extent of their offending behaviour, as were youths from non-nuclear family backgrounds and those from the "poorer" areas of Adelaide. Again, there is the possibility that this may still be the case. In fact, police guidelines now clearly specify that non-legal factors may be taken

Table 6: ***Police apprehensions: type of action taken by method of apprehension 1 January 1995-31 December 1995, South Australia***

Type of action	Arrest		Report	
	No.	Per cent	No.	Per cent
Caution	**271**	**10.1**	**2974**	**41.5**
Refer to family conference	**285**	**10.7**	**1320**	**18.4**
Refer to Youth Court	**2065**	**77.3**	**2557**	**35.7**
Withdrawn	**52**	**1.9**	**321**	**4.5**
Total	2673	100.0	7172	100.0

Unknown = 273 / 10 118

into account by police when deciding whether to caution a youth or send them to a conference or to court. These include the attitude of the young person to the offending, the attitude of the youth's parents, and the personal circumstances of the youth (including character, age, mental or physical condition and cultural identity). The danger of including these extra legal variables is that they leave the way open for certain racial or class groups to be treated differently because their behaviour deviates from the accepted norms of middle class "white" Australia. The review of the juvenile justice system (Wundersitz 1996) recommended that these guidelines be modified to omit all criteria relating to extra legal variables.

Family conferences

In 1995-96, 1587 young offenders[1] were dealt with at a family conference. Information relating to racial identity was available for 1484 of these youths. Of these, 13.3 per cent were listed as Aboriginal.

At this stage, no empirical evaluation of the effectiveness of conferences for Aboriginal youths has been undertaken. However, existing statistical and anecdotal evidence provides some positive signs. From the start, the Family Conference Team placed particular emphasis on trying to develop procedures and approaches which are culturally appropriate for Aboriginal young people and their families, and to adapt these to the varying requirements of urban, rural and traditional communities. In metropolitan Adelaide, there are two Aboriginal youth justice coordinators, while a third is based at Port Augusta to service the State's remote Aboriginal communities. Wherever possible, it is these coordinators who convene and run conferences for Aboriginal youths, and they have introduced some different procedures designed to elicit greater Aboriginal participation in the process. For a start, at the pre-conference stage, contact is always made by way of a home visit as well as by phone or letter; particular attention is placed on ensuring that appropriate members of the extended kin network are invited; and where possible and with the approval of the family, respected community elders will also be invited, as will a field officer from the Aboriginal Legal Rights Movement.

While conferences convened for Aboriginal youths in urban and rural areas are not all that different from those convened for non-Aboriginal youths, this is not the case in remote communities such as in the Anangu Pitjantjatjara Lands. Here, cultural and language differences, combined with the remote locality, require a far more innovative and flexible approach, with considerable time being spent in the initial stages on establishing rapport with the relevant groups, explaining the purpose and negotiating how the conference should be run, ensuring that all significant kin members are invited, seeking the involvement of an appropriate translator who in many cases may also act as the key facilitator, and holding the conference at a time and place which is acceptable to the key participants and which does not coincide with "business" associated with customary law.

The limited amount of statistical information currently available contains both positive and negative elements. For example, in 1994-95, of all Aboriginal youths referred to a conference, some 84.1 per cent experienced a "successful" conference in the sense that an agreement was reached and the matter was resolved. However, the proportion who did not attend a conference, although comparatively low (13.5 per cent) was still much higher than the non-participation rate for non-Aboriginal youths (4.6 per cent). There is also some indication that the extent of compliance with undertakings is lower than for non-Aboriginal youths, although the situation is improving as a result of a concerted effort by the youth justice coordinators to provide appropriate post-conference support and follow-up.

Overall, though, the key issue is the fact

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[1] These figures differ slightly from the referral figures cited earlier because of a difference in counting rules. Referrals relate to individual apprehension reports, while the data cited here relate to cases, with several apprehension reports potentially being consolidated into the one case. Moreover, the statistics in this section refer to youths who were not only referred to, but who actually attended, a conference. Inevitably, some referred youths never experience a conference, for such reasons as an inability to locate them, failure to appear, failure to admit the allegation etc.

Table 7: ***Finalised appearances before the Youth Court where at least one charge was proved: Age by racial identity, 1 July 1995-30 June 1996, South Australia***

Age*	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
10-12	**31**	**7.3**	**45**	**2.0**
13-15	**188**	**44.2**	**672**	**30.8**
16 & over	**206**	**48.5**	**1458**	**67.0**
Total	425	100.0	2175	100.0

Age is calculated at time of offence
Unknown = 670/3270

that, as already discussed in this paper, Aboriginal youths are simply not being diverted to conferences in the first place. It is this issue which needs to be addressed as a matter of priority.

The Youth Court

In 1995-96, Aboriginal youths accounted for 16.4 per cent of all finalised appearances before the Youth Court. This is virtually the same as under the old system. In fact, in 1992-93, Aboriginal people accounted for 16.5 per cent of all finalised court appearances. In this sense then, nothing much has changed.

As indicated in Table 7, Aboriginal youths brought before the court tend to be younger than their non-Aboriginal counterparts, with 7.3 per cent aged 12 years and under (compared with only 2.0 per cent for non-Aboriginal youths) and 51.5 per cent aged 15 and under (compared with 32.8 per cent of non-Aboriginal people).

Table 8 details the nature of the major charges involved in these finalised appearances. As shown, there were some

Table 8: ***Finalised appearances before the Youth Court where at least one charge was proved: "major penalty" offence by racial identity, 1 July 1995-30 June 1996, South Australia***

"Major penalty" charge	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Offences against the person (n.e.c.)	**60**	**13.9**	**204**	**9.4**
Sexual offences	**3**	**0.7**	**13**	**0.6**
Robbery and extortion	**26**	**6.0**	**70**	**3.2**
Burglary, break and enter	**51**	**11.8**	**271**	**12.3**
Fraud, forgery and false pretences	**2**	**0.5**	**19**	**0.9**
Larceny, illegal use of a motor vehicle	**74**	**17.1**	**230**	**10.4**
Other larceny	**39**	**9.0**	**288**	**13.1**
Receiving	**16**	**3.7**	**88**	**4.0**
Property damage and environmental	**33**	**7.6**	**176**	**8.0**
Offences against good order	**82**	**18.9**	**383**	**17.4**
Drug offences	**22**	**5.1**	**209**	**9.5**
Driving offences	**9**	**2.1**	**181**	**8.2**
Other offences	**16**	**3.7**	**71**	**3.2**
Total	433	100.0	2206	100.0

Unknown = 631/3270

Table 9: ***Finalised appearances before the Youth Court where at least one charge was proved: all penalties for "major penalty" offence by racial identity, 1 July 1995-30 June 1996, South Australia***

Penalties	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Detention	**63**	**11.3**	**193**	**6.3**
Detention suspended	**58**	**10.4**	**214**	**6.9**
Community service order	**82**	**14.7**	**352**	**11.4**
Obligation	**59**	**10.6**	**367**	**11.9**
Licence disqualification	**67**	**12.0**	**333**	**10.8**
Fine	**94**	**16.8**	**795**	**25.8**
Compensation	**31**	**5.6**	**291**	**9.4**
Other	**35**	**6.3**	**292**	**9.5**
Discharge without penalty	**69**	**12.4**	**246**	**8.0**
Total	558	100.0	3083	100.0

areas of difference, with a higher proportion of Aboriginal cases involving offences against the person and larceny / illegal use of a motor vehicle, while proportionately more non-Aboriginal appearances involved drug offences and driving offences. Overall, however, for both groups, offences against property dominated the charge profiles, featuring in 40.7 per cent of all non-Aboriginal and 42.1 per cent of all Aboriginal appearances. Offences against good order were the second most frequent group, accounting for 18.9 per cent of Aboriginal and 17.4 per cent of non-Aboriginal appearances.

Table 9 details the most serious penalty imposed per appearance. As indicated, cases involving Aboriginal youths were somewhat more likely to result in a detention or suspended detention order (21.7 per cent compared with 13.2 per cent for non-Aboriginal cases) while a slightly higher proportion also resulted in a discharge without penalty (12.4 per cent of Aboriginal compared with 8.0 per cent of non-Aboriginal cases). By contrast, a higher proportion of non-Aboriginal appearances (25.8 per cent compared with 16.8 per cent) resulted in a fine.

Although comparisons with the previous system must be treated with caution, nevertheless there is some indication that the proportion of youths receiving a detention order is no higher than in the past. An analysis of the most serious penalty imposed in those Children's Court appearances finalised in 1992-93 (*see* Table 10) indicates that in that year, 13.2 per cent of Aboriginal cases resulted in detention (compared with 11.3 per cent in 1995-96). Figures for non-Aboriginal youths were also comparable — 6.1 per cent in 1992-93 and 6.3 per cent in 1995-96. However, under the new system, there

Table 10: ***Most serious penalty imposed per finalised appearance by racial identity, Children's Court, 1 July 1992-30 June 1993, South Australia***

Penalties	Aboriginal		Non-Aboriginal	
	No.	Per cent	No.	Per cent
Detention	**48**	**13.2**	**110**	**6.1**
Detention suspended	**33**	**9.0**	**157**	**8.6**
Good behaviour bond	**92**	**25.2**	**608**	**33.5**
Community service order	**0**	**0**	**0**	**0**
Fine	**72**	**19.7**	**487**	**26.8**
Discharge	**120**	**32.9**	**455**	**25.0**
Total	365	100.0	1817	100.0

Table 11: ***Admissions to secure care, 1994-96, South Australia***

Racial identity	Admissions 1995-96		Admissions 1994-95	
	No.	Per cent	No.	Per cent
Aboriginal	**289**	**20.6**	**245**	**15.9**
Non-Aboriginal	**1115**	**79.4**	**1298**	**84.1**
TOTAL	1404	100.0	1543	100.0

Unknown: 1995-96 = 20/1424
1994-95 = 0/1543

has clearly been an across-the-board reduction in the proportion of cases discharged without penalty, which reflects the "tougher" approach now being taken by the Youth Court.

Secure Care

South Australia has two youth detention centres — the Magill Training Centre and the Cavan Training Centre. These cater for all youths sentenced to detention by the courts, as well as those youths on remand.

There are a number of ways in which secure care statistics can be presented. But irrespective of what figures are used, Aboriginal youths continue to be substantially over-represented at this level of the system.

Table 11 details the number of separate admissions to secure care in 1995-96. As indicated, Aboriginal youths accounted for 20.6 per cent of the total. Given that they represent only 1.7 per cent of the state's youth population, their rate of representation was therefore 12.1 times higher than would be expected on a per capita basis. Also disturbing is the fact that the 1995-96 figure is actually higher than that recorded in 1994-95, when Aboriginal youths accounted for only 15.9 per cent of all admissions. However, on the positive side, the 1995-96 figure is lower than that recorded in 1993 under the old system. In that year, Aboriginal youths accounted for 23.0 per cent of all admissions, which meant that their rate of representation at this level was 13.5 times greater than expected.

Perhaps a more accurate way of assessing Aboriginal involvement in secure care is to focus on average daily occupancy figures. These are detailed in Table 12. In 1995-96, on average there were 23.58 Aboriginal youths in secure care on any given day, compared with 62.89 non-Aboriginal youths. This means

Table 12: ***Average daily occupancy: most serious authority by racial identity 1 July 1995-30 June 1996, South Australia***

Most Serious Authority	Aboriginal	Non-Aboriginal	Aboriginal
	No.	No.	Per cent
Detention	**17.68**	**42.56**	**29.3**
Invoked Suspended Detention	**0.01**	**0.56**	**1.8**
Review Board Warrant	**0**	**0.11**	**0**
Return to Centre	**0**	**0.10**	**0**
Warrant in default	**0.20**	**1.90**	**9.5**
Remand	**5.07**	**15.19**	**25.0**
First Instance Warrant	**0.28**	**0.86**	**24.6**
Police Custody	**0.32**	**1.59**	**16.8**
Other	**0**	**0.01**	**0**
Total	23.58	62.89	27.3

that Aboriginal people accounted for 27.3 per cent of total daily occupancies. When the data are broken down according to the most serious authority under which the youths were held, Aboriginal youth accounted for 29.3 per cent of average daily occupancies involving youths on a detention order, 25.0 per cent of youths on remand and 24.6 per cent of those serving a first instance warrant. Aboriginal over-representation in the State's two training centres therefore holds true not only for sentenced offenders, but for remandees as well — an issue which is frequently overlooked.

In summary then, despite the optimism with which the new system was introduced and despite some positive trends which are now emerging for other youths (Wundersitz 1996), it is clear that Aboriginal young people continue to be over-represented in their contact with the criminal justice system. They are more likely to be directed straight to court rather than being given the option of diversion to either cautioning or conferencing, are more likely to be sentenced to detention and are more likely to be placed in custody.

This pattern is very similar to that which applied under the old *Children's Protection and Young Offenders Act 1979*, and suggests that the key problems confronting the juvenile justice system in dealing with young Aboriginal people have not yet been resolved.

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6

The New Stolen Generations

CHRIS CUNNEEN

The following discussion draws directly on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997) (hereafter NISATSIC).[1] The high levels of criminalisation and subsequent incarceration of Indigenous young people in Australia effectively amounts to a new practice of forced separation of Aboriginal and Torres Strait Islander children and young people from their families. The failure to reform juvenile justice law and practice, the failure to remedy the social justice issues facing Indigenous youth, and the failure to respect the right of self-determination of Indigenous people means that in practice the human rights of Indigenous young people and their families are being abused. This abuse of human rights parallels the earlier genocidal policy of assimilation.

The NISATSIC Inquiry found that the disproportionate number of Indigenous children and young people in the juvenile justice system, and in particular in detention centres, has been identified as a problem for two decades. During the 1980s there were numerous reports which outlined the over-representation of Indigenous young people in various State or Territory jurisdictions (Cunneen & Robb 1987; Semple 1988; Gale et al. 1990; Cunneen 1990). These studies indicated Aboriginal over-representation in police interventions, in court appearances and in juvenile detention centres.

The Inquiry reviewed research which indicated that Aboriginal child care agencies and Aboriginal legal services throughout Australia consistently drew attention during the 1980s to the problems associated with the high levels of criminalisation of Indigenous youth (D'Souza 1990). Some commentators argued that the over-representation of Indigenous young people in juvenile corrections represented a continuation of earlier assimilationist removal policies by way of a process of criminalisation rather than by way of "welfare" (Cunneen 1990 & 1994; O'Connor 1994). Aboriginal organisations in their submissions to the NISATSIC have supported this interpretation (1997, p. 489). Empirical evidence supporting this

[1] The author worked as a consultant to the Inquiry on matters relating to contemporary juvenile justice removals, social justice / underlying issues and self-determination. The sections used in this paper are drawn from the work prepared for the Inquiry. However, the views expressed are his own.

argument can be found in research covering most Australian jurisdictions which indicated that, not only were Indigenous young people over-represented in the juvenile justice system, they were most over-represented at the most punitive end of the system, in detention centres (Gale et al 1990; Wilkie 1991; Crime Research Centre 1995; Luke & Cunneen 1995; Criminal Justice Commission 1995).

During the 1980s and early 1990s many Indigenous communities also grappled with developing alternative mechanisms for dealing with young people who offend. These alternative Indigenous mechanisms have tended to be localised, inadequately funded and without any legislative base. The principle of self-determination and the need for the development of Aboriginal community responses to deal with Indigenous young people was fundamental to the main recommendation from the Royal Commission into Aboriginal Deaths in Custody designed to prevent the removal of Indigenous youth through juvenile justice or welfare intervention. Recommendation 62 called on governments to negotiate with Aboriginal communities and organisations to find solutions. The recommendations of NISATSIC (1997, pp. 62-580) reiterated the importance of self-determination as a solution to the problems facing Indigenous young people.

Contemporary Removal

The 1995 Police Custody Survey showed that 40 per cent of all young people held in police custody during the survey period were Indigenous. This figure demonstrates a staggering use of police custody for Indigenous children and young people given that they comprise only 2.6 per cent of the national youth population. In fact, the rate of custody per 100 000 of Indigenous young people is 1333 compared to a rate of 52 for non-Indigenous youth. The over-representation factor is 26. The issue of Indigenous children and young people in police custody was addressed by the Royal Commission into Aboriginal Deaths in Custody. A key recommendation was "that, except in exceptional circumstances, juveniles should not be detained in police lock-ups" (Recommendation 242). *The Convention on the Rights of the Child* also requires that arrest and detention following arrest should be measures of last resort (Article 37(b)). Alternatives should be utilised unless the circumstances are exceptional. An evaluation of State and Territory responses to Recommendation 242 found that it has not been adequately implemented (Cunneen & McDonald 1997, pp. 182-4).

Nationally some 36 per cent of youth in juvenile correctional institutions on 30 June 1996 were Indigenous. The rate of incarceration was 540 per 100 00 for Indigenous young people compared to a non-Indigenous rate of 25 per 100 000. There are also important variations between jurisdictions with the highest rates in New South Wales and Western Australia and the lowest in Northern Territory and Victoria (NISATSIC 1997, p. 495). There are also important gender differences. Although Indigenous boys comprise 90 per cent of all Indigenous youth incarcerated, Indigenous girls form a higher proportion of all girls in detention centres than do Indigenous boys for all boys. Indigenous girls comprise 46 per cent of all girls incarcerated; Indigenous boys comprise slightly less than 36 per cent of all boys.

Since 1993 national information has been available which identifies whether a young person is Indigenous or not, thus permitting comparisons to be made. There were *26 per cent more Indigenous young people in detention*

at the end of June 1996 than there were at the end of September 1993. The rate per 100 000 had also *increased by 24 per cent* from 408.0 to 539.8. During the same period, the number of non-Indigenous young people in detention centres increased by 5 per cent, while the rate increased by a similar percentage (4.7 per cent). There has been a fluctuating but overall increase in Indigenous rates of incarceration in NSW and WA. In Queensland there was a steady rate of increase until early 1995 and then a levelling out of the rate (NISATSIC 1997, pp. 497-8).

Policing

The Inquiry dealt extensively with issues relating to policing Indigenous young people, such as Aboriginal / police relations, police powers, the utilisation of police discretion and the regulation of police behaviour (NISATSIC 1997, pp. 510-21). Poor Aboriginal / police relations, racism and over-policing were seen to be an issue in many parts of Australia. Addressing the issue of over-policing and the establishment of protocols were also major recommendations of the Royal Commission into Aboriginal Deaths in Custody (Recommendations 88, 214, 215 and 223). Other research has shown that these recommendations have been poorly implemented (Cunneen & McDonald 1997, pp. 94-7, 100-2). The need for protocols to regulate the interaction between police and Aboriginal communities was reiterated by NISATSIC.

The Inquiry found that arrests for public order offences still constitute a significant reason for the involvement of Indigenous young people in the juvenile justice system. Evidence from various jurisdictions showed that arrests for Indigenous young people in this area were increasing (NISATSIC 1997, p. 511). The use of various types of legislation, including welfare, local government and "parental responsibility", to regulate the behaviour of Indigenous young people in public places was also criticised (NISATSIC 1997, pp. 512-13).

The Inquiry also considered the issue of police discretion and the use of cautions for Indigenous young people. It concluded that the available research evidence shows overwhelmingly that Indigenous young people do not receive the benefits of cautioning to the same extent as non-Indigenous young people. Unfortunately, many police services do not provide routine data on cautioning which is capable of comparing Indigenous and non-Indigenous cautioning rates. This lack of information severely hinders policy evaluation (NISATSIC 1997, p. 513).

The Inquiry also commented upon the recent trend to provide, in legislation, for Indigenous elders to issue cautions in place of police officers. This is proposed in section 12 of the new Tasmanian *Youth Justice Bill* and in the NSW *Young Offenders Act 1997*. Section 14 of the Queensland *Juvenile Justice Act 1992* provides for cautioning by Aboriginal and Torres Strait Islander elders instead of police, at the *request* of an authorised police officer. However, Queensland police are not using Indigenous elders to administer cautions (Cunneen & McDonald 1997, p. 181). Not only is this contrary to the intent of the legislation, it is in breach of the Royal Commission into Aboriginal Deaths in Custody's Recommendation 234 requiring Indigenous community input. It is also contrary to the specific wishes of Indigenous people themselves who desire to have greater input (Cunneen & McDonald 1997, p. 181).

The Queensland example shows that without control over police discretion it is unlikely that Indigenous people will be given the opportunity to caution their young people, despite legislative provisions (NISATSIC 1997, pp. 515-16). Simply "making a

provision" for cautioning by elders without any obligation or shift in decision-making power is tokenism. The decision as to who cautions an Indigenous young person should reside with Indigenous communities and organisations.

The Royal Commission into Aboriginal Deaths in Custody recommended (Recommendation 239) that legislation and instructions be reviewed to ensure that young people are not proceeded against by way of arrest unless such an action is necessary. The recommendation is consistent with the *Convention on the Rights of the Child* which demands that arrest should be used only as a last resort. However, Aboriginal organisations view the use of arrest as the preferred option by police in most jurisdictions (Cunneen & McDonald 1997, pp. 178-9). Available research varies somewhat between States but strongly supports the view of Indigenous organisations in this regard. In both New South Wales and Queensland approximately two-thirds of matters before the Children's Court are brought by way of arrest and one-third by way of summons (Luke & Cunneen 1995, Criminal Justice Commission 1995). Even in jurisdictions where summons are used more frequently Indigenous youth do not benefit from the use to the same extent as non-Indigenous youth. In the Northern Territory in 1994-95, Indigenous young people comprised 70 per cent of young people proceeded against by way of arrest and 53 per cent of young people proceeded against by way of summons. In Victoria non-Aboriginal young people are more often brought before the Children's Court by way of summons than arrest. However, for Aboriginal young people arrest is still the favoured police option (NISATSIC 1997, p. 516).

NISATSIC considered issues relating to notification and interrogation of young people. In most jurisdictions notification of a solicitor is provided for only in police guidelines, and is only required when requested by the young person. The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations (243, 244, 245) requiring police to advise Aboriginal Legal Services and parents when young people are taken to a police station for interrogation or after arrest. No interrogation should take place without the presence of a parent, responsible person, or officer from an organisation with responsibility for Aboriginal juveniles. The NISATSIC report noted evidence that in many jurisdictions the police were reluctant to contact Aboriginal Legal Services prior to a young person being questioned. Aboriginal organisations were not always notified when a young person was placed in custody (NISATSIC 1997, pp. 518-19).

In relation to bail and the use of police custody, the Inquiry found that the available evidence showed widespread and disproportionate use of police custody for Indigenous juveniles. In some cases the lack of alternative facilities may well explain the over-use of custody. However, the lack of facilities is itself indicative of governmental failure to address the issues of adequate resourcing, particularly where there are already limited but innovative alternative bail programs which utilise Indigenous community responses (NISATSIC 1997, p. 521).

Diversion

The Inquiry found that one of the most critical issues in relation to the development of diversionary schemes has been the lack of Indigenous consultation, negotiation and control over those schemes (NISATSIC 1997, p. 521).

In particular, the Inquiry considered the use of "family group conferencing" and found that the available theoretical, observational and empirical evidence strongly suggests that family group conferencing, far from being a panacea for offending by Indigenous young people, is likely to lead to harsher outcomes for Indigenous children and young people. It is a model that, by and large, has been imposed on Indigenous communities without consideration of Indigenous cultural values, and without consideration of how communities might wish to develop their own Indigenous approaches to the issue (NISATSIC 1997, p. 525). In particular, police control over the referral process in many jurisdictions is not likely to benefit Indigenous access to conferencing. More fundamentally, there is *no* provision for Indigenous organisations and communities to *make decisions* about whether their children would be best served by attending a conference. The best that is included in conferencing models is that when conferences are held which involve Indigenous youth, then an elder or other representative of the young person's community must be invited (NISATSIC 1997, p. 526).

Sentencing

The issues relating to the failure to use imprisonment as a last resort, and discrimination against Indigenous young people in the use of imprisonment were considered by the Inquiry. Research data from across Australia indicates that Aboriginal and Torres Strait Islander young people generally receive harsher outcomes in the Children's Court than non-Aboriginal young people, particularly at the point of being sentenced to detention (Gale et al. 1990, Crime Research Centre 1995, Luke & Cunneen 1995, Criminal Justice Commission 1995). The Inquiry noted that sentencing is a complex area, however, there were a range of factors which lead to greater likelihood of incarceration. These included the following:

- Greater likelihood to come from rural backgrounds and appearing before a non-specialist Children's Court (or Justice of the Peace). Geographic isolation also raises issues of inadequate legal representation, fewer non-custodial sentencing options and harsher sentencing attitudes by non-specialist magistrates.
- Greater likelihood of having been previously institutionalised, less likely to have received a diversionary alternative to court, and are more likely to have a greater number of prior convictions. Each of these factors increases the likelihood of a custodial order.
- Formal intervention occurs at a younger age with Indigenous children, they accumulate a criminal record at a much earlier age than non-Indigenous children.
- Earlier discrimination in the system results in Indigenous young people being less likely to receive diversionary options and being more likely to receive the most punitive of discretionary options. These factors compound as the young person moves through the system. Apparently equitable treatment at the point of sentencing may simply mask earlier systemic biases.
- Mandatory and "repeat offender" sentencing legislation will have the greatest negative impact on Indigenous young people. They are precisely the group who, because of the reasons discussed above, are more likely to have longer criminal histories.

The availability of non-custodial sentencing options was also considered

by the Inquiry. The *Convention on the Rights of the Child* requires that "a variety of dispositions... shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence" (Article 40(4)). Several recommendations (111-114, 236) from the Royal Commission into Aboriginal Deaths in Custody were designed to increase the availability and use of non-custodial sentencing options as well as Indigenous input and control over the nature of community-based orders. Recommendation 236 in particular noted that "governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding" (NISATSIC 1997, pp. 531-2).

Consistent with the principle of self-determination, the Royal Commission into Aboriginal Deaths in Custody recognised that Indigenous organisations should play a key role in the sentencing process of Indigenous young people. Recommendation 235 states that governments

> *... be committed to ensuring, through legislative enactment, that 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 organisations, including Aboriginal Child Care Agencies (*emphasis added*).*

The Inquiry found that nowhere is this recommendation adequately implemented. Recent research on the extent to which Indigenous organisations have a role in the sentencing process shows only limited and discretionary input.

A national problem is that, by and large, the main diversionary schemes which operate in the various States and Territories have been introduced without proper negotiation with Indigenous communities and organisations, and without providing a framework for control by Indigenous organisations where communities desire such control. Often this occurs at the same time as State and Territory governments publicly espouse a commitment to self-determination (NISATSIC 1997, p. 502). There is also a lack of adequate funding for the few Indigenous community-based alternatives which do operate. The lack of alternatives undermines self-determination at the local level and results in greater numbers of Indigenous young people ending up in institutions, effectively removed from their families and communities.

Legislation

A common inadequacy in juvenile justice legislation is the failure to recognise the cultural background of the young person, particularly Indigenous young people. Some States have adopted a general principle on the need to consider the cultural background of a child in any decisions made under juvenile justice legislation (for example section 4(g) of the Queensland *Juvenile Justice Act 1992*). However, these are inadequate in ensuring that key principles such as the right of Indigenous self-determination and the maintenance of Indigenous children with their families and communities are adhered to. There is no obligation to negotiate with Aboriginal and Torres Strait Islander communities. When asked by the National Inquiry how the Court was provided with information which makes section 4(g) a meaningful obligation, the Queensland Government responded that "Aboriginal and Torres Strait Islander staff or community members provide information directly to the courts or indirectly through Departmental staff" (NISATSIC 1997, p. 501). However, other evidence suggests

that consultation as a day-to-day practice may be poor (Cunneen & McDonald 1997, pp. 174-6).

Indigenous interests are also largely ignored when legislation is being introduced or amended. This failure has direct implications for assessing the extent to which State and Territory Governments adhere to the principle of self-determination. Indigenous submissions, and other evidence from Western Australia, Northern Territory and New South Wales indicate that various sentencing and public order legislation was introduced without consultation or in opposition to proposals put forward by Indigenous people (NISATSIC 1997, pp. 501-2). Inadequate consultation and negotiation with Aboriginal organisations of legislative changes remains a national problem and contrary to specific recommendations (Cunneen & McDonald 1997, pp. 125-30, 170).

Underlying Social, Cultural and Economic Issues

The Inquiry considered the poor socio-economic conditions which make Indigenous young people more susceptible to criminalisation and removal, as well as the ongoing effects of earlier removals under assimilationist policies on later generations (NISATSIC 1997, pp. 543-58). Cultural difference, particularly different familial structures and child-rearing practices can lead to adverse decisions by juvenile justice, welfare and other agencies, particularly where cultural difference is not understood or does not inform policy development and implementation. Other related issues considered by the Inquiry included the incidence of domestic violence, alcohol and other substance abuse, poor health and mental illness. Drawing on other research the Inquiry noted that substance abuse is a major problem for Indigenous young people in some communities and can spark intervention by welfare or juvenile justice authorities (NISATSIC 1997, p. 547). Other health factors which were considered included problems with mental health, environmental health, hearing loss and poor nutrition — all of which can be associated with juvenile justice intervention.

The Inquiry referred to Australian Bureau of Statistics survey data which shows that Indigenous young people were more likely to be living in crowded rental accommodation which they regarded as unsatisfactory. In addition Indigenous families were twenty times more likely to be homeless than non-Indigenous families (NISATSIC 1997, p. 550).

In relation to employment and income the Inquiry reviewed research which showed that Indigenous people were three times more likely to be unemployed and experience greater longer-term unemployment; the employment situation of Indigenous men had worsened in urban areas; average incomes had declined relative to the national average; and there had been no reduction in welfare dependency (NISATSIC 1997, p. 551). The unemployment rate of Indigenous young people was more than twice that of all Australian youth. ABS data showing that one in five young people report no income at all is a disturbing feature and one likely to increase the probability of criminalisation.

It was also found that the level of unemployment among Indigenous young people is an important indicator of the likelihood of coming into contact with juvenile justice agencies (Gale et al. 1990; Walker & McDonald 1995). Recent ABS survey data show that all other things being equal, the fact of having been arrested within the previous five years prior to the survey reduced the chances of employment by half (NISATSIC 1997, p. 552).

The Inquiry considered education and found that while there had been some increase in retention rates and participation in post-secondary education and training, the rates were still much lower than average (NISATSIC 1997, p. 553). The poor educational outcomes for Indigenous students are also reflected in the rates of suspensions and exclusions from schools. The AECG noted that Indigenous children and young people comprise 12 per cent of school suspensions in New South Wales, although they make up only 3 per cent of the student population (NISATSIC 1997, p. 554).

Finally, the Inquiry considered the effect which the removal of Indigenous people under the previous assimilationist policies has had on later generations — the inter-generational transmission of problems. The Inquiry found that removal and institutionalisation had a number of effects including the severing of cultural knowledge, the severing of knowledge about being a parent and a sense of unresolved psychological trauma. All of these factors have impacted negatively on children and increased *their* likelihood of institutionalisation (NISATSIC 1997, p. 555).

A New Framework

New juvenile justice legislation has done little to face the issues which affect Indigenous young people or reduce the levels of police and detention centre custody. Some of the legislative changes such as the repeat-offender sentencing regimes are unashamedly punitive in their intent. Others, such as the introduction of new diversionary schemes, have been perceived as more enlightened. Whole legal systems regulating juvenile justice have changed in some States like South Australia, Western Australia and Queensland in the last few years. Yet a recent review and evaluation of the new South Australian system could be applied to most of Australia:

> ***These figures clearly suggest that, in overall terms, the position of Aboriginal youths within the new juvenile justice system does not seem to be any better than under the old system. They are still being apprehended at disproportionate rates and once in the system, are still receiving the "harsher" options available*** **(Wundersitz 1996, p. 205).**

Why have new regimes failed? The evidence before the Inquiry suggests several reasons. Many of the more progressive changes have been restricted in form, content and applicability. In other words they are designed and implemented as non-Indigenous systems with the expectation of finding solutions to the problems facing Indigenous people. In addition, tokenism pervades some of the changes, particularly in relation to police cautioning and family conferencing schemes. Finally, there has been the failure to address the "underlying issues" which contribute so substantially to Indigenous offending levels (NISATSIC 1997, pp. 539-40). Recommendation 42 of NISATSIC calls on Australian governments to develop and implement a social justice package and to also implement the recommendations from the Royal Commission into Aboriginal Deaths in Custody which addressed underlying issues.

The Inquiry argues for a new framework which respects the right to self-determination for Indigenous people and complies with other international obligations for the treatment of children and young people. It seeks to achieve this through a two-tiered approach in the recommendations. One tier is concerned with self-determination and the second

with the establishment of national minimum standards.

The Inquiry considered in detail the draft *Declaration on the Rights of Indigenous Peoples* as containing emerging human rights norms which reflect the aspirations of Indigenous people. The draft Declaration contains a number of basic principles, including self-determination, which directly impact on the development of self-government and the exercise of control over matters affecting Indigenous children and young people, particularly in regard to child welfare, custody and juvenile justice issues. The draft Declaration affirms "the right of Indigenous people to control matters affecting them" including the right of self-determination (Coulter 1995, p. 128).

Article 4 of the draft Declaration on the Rights of Indigenous Peoples provides that,

> *Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they choose, in the political, economic, social and cultural life of the State* (emphasis added).

Article 31 sets out the extent of governing powers of Indigenous peoples.

> *Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy, or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.*

The Inquiry noted the widespread desire of Indigenous people in Australia to exercise far greater control over matters affecting young people. The Inquiry also noted that self-determination could take many forms from self-government to regional authorities, regional agreements or community constitutions. Some communities or regions may see the transfer of jurisdiction over juvenile justice matters as essential to the exercise of self-determination. Other communities may wish to work with an existing modified structure which provides greater control in decision-making for Indigenous organisations. The level of responsibility to be exercised by Indigenous communities must be negotiated with the communities themselves (NISATSIC 1997, pp. 575-6).

The recommendations from NISATSIC stress the importance of self-determination, as well as greater controls over decision-making in the juvenile justice system, and matters relating to welfare. Recommendation 43 is the key recommendation pertaining to self-determination. It requires that national legislation be negotiated and adopted between Australian governments and key Indigenous organisations to establish a framework of negotiations for the implementation of self-determination. The national framework legislation should adopt principles which bind Australian Governments to the Act; that allow Indigenous communities to formulate and negotiate an agreement on measures best suited to their needs in respect of their children and young people; that adequate funding and resources be available to support the measures adopted by the community; and that the human rights of Indigenous children are ensured. Part (c) of

recommendation 43 authorises negotiations to include either the complete transfer of juvenile justice and / or welfare jurisdictions, the transfer of policing, judicial and / or departmental functions or the development of shared jurisdiction where this is the desire of the community (NISATSIC 1997, p. 580).

Recommendation 44 is concerned with the development of national legislation which establishes minimum standards for the treatment of all Indigenous children and young people, irrespective of whether those children are dealt with by government or Indigenous organisations (NISATSIC 1997, p. 582). Recommendation 45 requires a framework for the accreditation of Indigenous organisations who perform functions prescribed by the standards (NISATSIC 1997, p. 583).

The Inquiry sets out a number of minimum standards which provide the benchmark for future developments. Standards 1-3 consider principles relating to the best interests of the child. Standard 4 sets out the requirement for consultation with accredited Indigenous organisations, thoroughly and in good faith, when decisions are being made about an Indigenous young person. In juvenile justice matters this includes decisions about pre-trial diversion, bail and other matters. Standard 5 requires that in any judicial matter the child be separately represented by a representative of the child's choosing or appropriate, accredited Indigenous organisation, where the child is incapable of choosing.

Standard 8 of the recommendations deals specifically with matters relating to juvenile justice (NISATSIC 1997, pp. 593-7). There are 15 rules established within the standard:

- **Rules 1 and 2 seek to minimise the use of arrest and maximise the use of summons and attendance notices;**
- **Rule 3 requires notification of an accredited Indigenous organisation whenever an Indigenous young person has been arrested or detained;**
- **Rule 4 requires consultation with the accredited organisation before any further decisions are made;**
- **Rules 5 to 8 provide protection during the interrogation process;**
- **Rules 9-12 ensure that Indigenous young people are not denied bail and that detention in police cells is eliminated except in truly exceptional circumstances;**
- **Rule 13 prioritises the use of Indigenous-run community-based sanctions;**
- **Rule 14 establishes the sentencing factors which need to be considered;**
- **Rule 15 requires that custodial sentences be for the shortest possible period, and that reasons must be stated in writing.**

Many submissions to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families drew attention to the fact that the contemporary juvenile justice system was replicating the old policies of removal. The previous assimilationist policies have been characterised as genocide and Australian governments must now bear the responsibility of these previous policies. However, the evidence also shows that the hugely disproportionate rate at which Aboriginal and Torres Strait Islander children and young people are being incarcerated today is reflective of a systemic denial of Indigenous rights. *Bringing Them Home,* the report of NISATSIC provides a framework for progressive change which respects the rights of Aboriginal and Torres Strait Islander people.

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7

Young Women & Juvenile Justice: *Objectives, Frameworks and Strategies*

CHRISTINE ALDER

Please note that the term "girl" replaces "young women", in deference to the move by some girls to "reclaim their power *as girls*" (Carlip 1995, p. 7) and to give a new and different connotation to the word.

A good place to start reviewing present, or considering future, "objectives, frameworks and strategies" might be an examination of what we think we know about them. Unfortunately, girls are still barely visible in our theories, research and policy documents in juvenile justice. For example, while there has been a good deal of interest in recent years with a variety of juvenile justice practices often referred to under the same rubric of "family group conferences", girls' experiences of such programs and the consequences for them have barely been identified, let alone seriously addressed in the mounting literature on these practices (an exception being the work of Jan Kitcher in Adelaide) (Baines 1996). There is a lack of good research to draw upon to frame recommendations.

The statistics

When we look to some basic national data on youth detention, a couple of general parameters about the changing nature of girls in juvenile justice are apparent. In the late 1980s and into the early 1990s most states in Australia in one way or another separated their handling of juvenile criminal offending from what might generally be referred to as "care" matters. Subsequently there has been a general reduction in the number of young people held in detention: the overall rate of detention has decreased for both boys and girls. Particularly in the case of girls, it has also resulted in a significant change in the nature of the female juvenile population held in detention. While in December 1983, 58 per cent of the female population were non-offenders, by December 1996 there were none (Table 1).

Table 1: ***10-17 Year-olds in juvenile correction institutions by reason for detention and gender, Australia***

	Male	Female
31/12/83	No.	No.
Alleged/offender	**779**	**59**
Non-offender	**113**	**102**
Total	892	161
(Rate)[1]	**83.9**	**15.8**
31/12/96		
Alleged/offender	**658**	**58**
Non-offender	**(1)***	**0**
(Rate)[1]	**63.5**	**5.9**

1. Rate per 100 000 relevant population
*** Not included in rate calculation.**
Source: "Persons in Juvenile Corrective Institutions Nos. 23 & 77" Australian Institute of Criminology, Canberra

As a point of interest, on the face of it, this contrasts with the situation in the United States which began a process referred to as the "deinstitutionalisation of status offenders" in the mid-1970s. By 1993 females constituted only 24 per cent of all juvenile arrests and most of their offences were predominantly relatively minor, with 67 per cent of girls arrested for non-index offences, close to one-third (27 per cent) of which were for "runaway". The other most predominant offences in order were "all other offences (except traffic)", "simple assault", "disorderly conduct" and "liquor laws" (Poe-Yamagata & Butts 1996, p. 3). A similar pattern is apparent in detention statistics. In " both private and public facilities, a greater proportion of young women is incarcerated than males for status and 'nonlegal' offences"(Austin & Krisberg 1993). In 1991, 87 per cent of girls (compared with 49 per cent of boys) in *private* facilities were there as either status offenders, non-offenders or as voluntary commitments. This is of particular concern given that more girls were held in private facilities (n=10 389) than in public facilities (n=6328).

On the face of it these figures might suggest that we have been more successful in de-institutionalising our welfare cases than has been the case in the United States. However, US research on this policy has documented a number of problems which are indicated in some observations of the Australian situation. It should be noted that the situation in the US in regard to girls in private institutions suggests that a close eye needs to be maintained on the consequences of the privatising of juvenile justice services such as that being considered in Victoria.

Issues of concern

In developing this paper the lack of research, including evaluation data, upon which to draw, was extremely frustrating. The discussion of the following issues is derived from the following: some research findings which are like nuggets of gold in the wilderness, such as Leanne Beikoff's work in Queensland (Beikoff 1996, pp. 15-25); workshops and papers delivered at a conference on Working with Young Women in Juvenile Justice held at the Criminology Department at The University of Melbourne in 1996 (Alder & Baines 1996); and discussions with people working in juvenile justice in Northern Territory, New South Wales, Queensland and Victoria.

Small numbers: an "insignificant" problem?

Table 1 documents what we all know, that is, that girls make up a relatively small proportion of the juvenile detention population. My educated guess is that girls, as a consequence of the nature of their offending and their offending histories, are more likely than boys to receive non-custodial sentences and will therefore constitute a higher proportion of clients on these sentences. Nevertheless, at all stages of the juvenile justice system there are likely to be far fewer girls than boys and in these days when economic and political expediency are significant factors in determining policies and practices in juvenile justice this constitutes a major problem for the development and implementation of policies and practices designed to address the needs and interests of this relatively small client group.

Small numbers also contribute to the work being carried out by people specifically concerned with girls being devalued. In the current employment environment, everyone is under pressure to work on areas that are valued. This operates against people being able to put their creative energies to work on developing ideas and projects in this area.

The relatively fewer girls than boys in juvenile justice undoubtedly accounts to some extent for difficulties faced in keeping girls on the agenda, but it also reflects a broader devaluing of women and marginalisation of women's issues. There is no doubt, however, that even for those committed to improving the life opportunities of girls in juvenile justice, small numbers present particular problems in terms of being able to offer a range of suitable services. This challenge was frequently raised during the Working with Young Women conference.

Diversity

Especially in the context of relatively few girls, another challenge facing people working with girls is the recognition of, and the appropriate responses to, the diversity of girls with whom they work. There is an over representation of indigenous girls in juvenile justice detention. In December 1996, there were 33 non-Indigenous girls aged 10-17 years in juvenile detention centres in Australia and 25 indigenous girls. The detention rate for indigenous girls was 97.4 per 100 000 compared with an overall rate for girls of 5.9 (Australian Institute of Criminology 1996). The particular needs of lesbian girls and girls from non-English speaking backgrounds also need to be identified and appropriate strategies developed.

Caring and Protecting?

Many girls in juvenile justice are, or have been, wards of the state. The recent draft recommendations *paper Children and the Legal Process* produced by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission (ALRC), noted that:

> ***The evidence presented to the Commissions consistently deplored the significant failures of the care and protection systems to provide for and address the needs of the children for whom they are directly responsible, with many such children experiencing multiple placements, having limited education or drifting into the juvenile justice system* (Australian Law Reform Commission 1997, p. 8).**
>
> ***Children who have been made wards of the state in NSW are 15 times more likely to enter a juvenile justice centre than the rest of the juvenile population* (ALRC 1997, p. 9).**

The movement from wardship to juvenile justice may not always be one of "drift", but rather more direct. It has been suggested that girls involved in incidents, or who are "acting out" in welfare placements or foster care are being charged with criminal offences such as property damage, with subsequent bail refusal, guilty plea, and control order, resulting in the girl being characterised as a "serious offender".

In drawing conclusions from the Working with Young Women Conference, Howard notes:

> ***The discussants felt that there was a blurring of the distinctions between welfare and justice areas with consequent confusion over responsibilities...There was concern that this could act in two ways...young women could either slip through the net with no one taking sufficient responsibility for working with them, or the net could be widened and young women would be unnecessarily drawn into the juvenile justice system.* (Howard 1996, p. 106)**

We need to acknowledge that simply separating "care" cases from offender" cases does not mean that the difficult situations in which some girls found themselves have been removed. Girls' lives and circumstances cannot be split into two distinct categories to be

dealt with by one government department or the other. A consistent theme throughout the Working with Young Women conference was the need to re-think the links, the nature of the responsibilities and the methods of referral between welfare and juvenile justice agencies.

The consequences of the more limited use of care applications need to be monitored more closely. Some initial statistical analysis in Victoria and Queensland suggest that there is a relationship between the decline in Care and Control applications and the increase in young women appearing before court for criminal matters (Beikoff 1996).

Violent girls?

Some concern has been expressed (particularly in South Australia and Queensland) that girls in juvenile justice are increasingly there on the basis of violence offences. However, a more detailed analysis in Queensland revealed that the offences were of the "less serious" nature, frequently involving fights between girls in public spaces such as shopping centres (Beikoff 1996). In one-third of cases the police were named as victim. Perhaps indicating that common public order offences for juveniles, obscene language, resist arrest and assault police are replacing the care and protection applications of the past?

This is not to say that girls never engage in serious violent offending, but more extensive research in the US in response to claims of the new violent female juvenile offender have similarly found that the offences involve public fights between girls. Aggression is most often viewed as unacceptable when displayed by girls, and onlookers, including juvenile justice personnel and welfare officers, may feel more outraged, threatened, uncomfortable, and uncertain about how to handle such scenarios involving girls than when boys engage in similar levels of violence. We need to ensure in Australia that policy development and implementation are founded on detailed and extensive analysis of girls offending.

"Girls are more difficult"

The following issue has been less frequently raised in considering policy and practice in regard to girls, but may have a significant impact on our responses to their behaviour. In general those working with delinquent youth find girls more difficult to work with than boys (Baines & Alder 1996). Girls are described as "verbally aggressive", "hysterical", "manipulative", "dishonest" and "untrusting". Boys, on the other hand, are described as "honest', "open", "less complex" and "easier to manage". Concerns regarding sexuality, emotionality and vulnerability run through youth workers' reasons for why they find girls more difficult to work with. This is an often heard, but rarely examined, lament among youth workers, the implications of which require further investigation.

Other issues consistently raised in relation to girls include the use of *remand* on the basis of minor offending that does not ultimately result in a custodial sentence. This is a particular problem in regard to girls in remote or rural areas and Indigenous young women for whom remand means removal from the vicinity of family.

Concern has been expressed regarding the use of *psychiatric services*. Interestingly, this takes two different forms. In NSW the concern is in regard to the appropriate use of such services and whether or not they are being used more extensively than previously, while in Victoria, the concern is about the lack of suitable services. In general, one of the issues consistently raised in regard to girls in the juvenile justice system is

the lack of suitable service options for girls.

The Framework

In sharing some thoughts about a framework for further action that might allow us to address some of these issues, there are some concerns about our understanding of what it is to be a girl, within which any framework will be developed.

In her research on the development of juvenile justice and child welfare in Victoria (Australia) in the late 1800s Donella Jaggs (1986, p. 62) noted that girls' "...general 'wildness' and sexual misbehaviour" was of great concern. She notes : "Passionate and wilful, they posed problems for administrators and socially concerned citizens alike". We may not use terms such as "passionate" and "wilful" any longer, but the concern with girls' sexuality and independence which they signify, remain in the framing of our responses to young women in juvenile justice and related areas. The content and nature of these concerns mesh with dominant understandings of femininity, sexuality and adolescence. While these constructions are ultimately embedded in the structural and institutional arrangements of our society, at the same time they are "...produced , actively and collaboratively in everyday life" (Thorne 1993, p. 4; Cain 1989). Given that "...girlhood is produced in the practices in which girls are regulated" (Walkerdine 1993, p. 15) we are in a position to participate in a re-working and re-framing, not only of our approaches to working with girls, but at the same time, what it means to be a "girl". This process of change requires that we consistently confront, question, and examine critically, the content and consequences of our assumptions about what it is to be a girl, (and a boy) and how they inform our practices.

We cannot begin to take on the issues that need to be addressed if we are genuinely concerned with enabling and empowering girls to lead safe, independent lives, until we are able to think about and understand girlhood in terms of independence, and fundamental to doing this, is examining our constructions of girlhood in relation to sexuality and femininity.

Juvenile justice practice, perhaps less so now than in the past, reflects a wider social construction of girls' sexuality as problematic and to be constrained. Education literature has documented how girls learn about sexuality in terms of victimisation and disease. For the adolescent girl sexuality is potentially exciting, but this is overlaid with apprehension, anxiety and worry. Klotash observes:

> *Suddenly her body is no longer at her own disposal but has become a zone where others have competing interests ¾ parents and boyfriends and social workers and ad agencies ¾ a territory liable to a whole series of catastrophes: diseases, pregnancy, rape, and abortion. (*Klotash 1987, p. 175 cited in Reitsma-Street 1991, p. 21.*)*

In school sexuality classes and elsewhere, female pleasures and sexual agency are rarely discussed. Fine concludes that "A discourse of desire is missing from the ways in which adolescent female sexuality is conceived of and discussed" (Fine 1992, p. 40). Fine argues, that the "...silencing a discourse of desire buttresses the icon of women-as-victim" (p. 48).

In framing female adolescent sexuality in a language of danger and victimisation, we justify the practices of "protecting" girls which have in practice meant constraining girls. It may be however, that this is not the best way to protect girls, either from unwanted pregnancy, disease or sexual exploitation. Without a discourse of

desire, but within discourses of victimisation and disease, we deny the female sexual subject, we deny girls sexual agency, they cannot speak about their sexuality or their sexual experiences, both desired and imposed. So that, for example, US evidence indicates that negative attitudes toward sexuality rarely deter sexual activity, but they do *discourage* contraceptive use.

Understandings of girls' sexuality and at the same time their femininity, have constituted the basis for constraining/controlling not only their sexual activities, but a broad range of behaviours. The constitution of girls as victims within a discourse of sexuality has formed the basis of the curtailment of girls' independence and underpins policies of "pathology" and "protection" which have framed juvenile justice practice.

Historically and currently, girls' behaviour is predominantly understood in personal, pathological terms. The girl is "the problem" rather than the world with which she has to deal. The pervasive tendency to pathologise girls' problems is no more apparent than the way in which knowledge about the extent of sexual abuse among girls has been incorporated into practice. For example, Baines (1997) provides data indicating that whether or not a girl has spoken of abuse, it is being used as a catch-all explanation for a range of her behaviours. Insinuations of sexual abuse are invoked in ways which pathologise her problems, constitute her as a victim and obscure her agency, and limit the range of options considered (*see* Haaken 1994). Sexual abuse becomes another of the "deficit discourses" (Carrington 1993) framing responses to female delinquency. Expressions of anger or multiple sex partners are explained as a consequence of abuse, and the possibility of the anger constituting a legitimate emotion in the context of existing circumstances, or of her sexuality being dealt with in terms of health and safety issues, are less likely to be options considered.

Coercive, restrictive responses to signs of girls' independence and wilfulness" are founded in constructions of girl-as-victim/girl-as-passive. In order to consider responses other than coercive/penal, we need to understand girls as already the subject of "oppressive conditions which they negotiate, challenge and reject as social agents" (Griffin 1993, p. 158). For some girls the excitement, friendship and fun of youthful law breaking may be a way of resisting the sheer boredom of poverty (Carlen 1988). Sexual activity may constitute a form of rebellion against the confines of girlhood for some girls, "which unlike other forms of adolescent resistance does not jeopardise femininity" (Nava 1984, p. 15).

Rather than being treated as problematic, girls' wilfulness, their efforts to seek independence and safety, need to be considered in the context of their lives, and their strengths understood as a resource to be built upon. We need to be prepared to think reflexively about our actions and ask ourselves "how we can honour and support girls' individual talents, will and volition?" (Robinson 1994, p. 92). We need to recognise and acknowledge girls' strengths and potential as independent actors in ways that will allow us to re-think our definitions of problematic behaviour, and re-frame our responses from the coercive and punitive to the positive and developmental.

To do this, we have to be ready to listen to girls and to take their statements about themselves seriously (Robinson 1994, p. 13). In doing so we may learn that while others may be preoccupied with their sexuality, most girls are not. Both Australian and US research indicates that when young

women in the juvenile justice system are asked about their most pressing needs, they will talk about their desperate need to find economic means of independent survival, including jobs, housing and medical services (Chesney-Lind & Shelden 1992). In Victoria, girls identified the following as their most important needs in regard government services:

> ***1.To be less dependent on services;***
>
> ***2. The power and resources to influence services;***
>
> ***3. A more positive environment within services;***
>
> ***4. Secure long-term housing options;***
>
> ***5. increased cultural sensitivity services*** **(Community Services Victoria 1992, p. 13).**

Thus far we have been reluctant to situate our understanding of girls needs in this context: we continue policies which undermine rather than facilitate independence. For example, we do not give priority to issues of employment, education, and accommodation in the provision of services to young women.

Objectives

An example of objectives for girls in juvenile justice and related areas which reflect a framework consistent with a re-thinking of girlhood is provided in the document "Becoming Stronger: An Action Plan for Young Women" which was developed in 1992 by the then Community Services Victoria.

> ***a. Help young women become independent in ways which recognise the inequalities which have shaped their development as children and young women and have an impact on their ongoing opportunities for independent adulthood.***
>
> ***b. Ensure safe environments for young women while they achieve greater independence and participation in their communities.***
>
> ***c. Change those conditions (policies, service distribution, administrative and professional practices) which act to exclude young women from mainstream services and supports.***
>
> ***d. Provide programs promoting personal and social growth and increasing young women's skills in controlling their experiences and utilising opportunities.***
>
> ***e. Ensure that programs are accessible and relevant to the experiences of young women, particularly in terms of their geographic location and the way in which they are provided*** **(Community Services Victoria, 1992, p.1).**

Conclusion

Some final thoughts on where to from here:

- ***Maintain the rage*****: we have to struggle to keep girls on the research and policy agenda. They have all but disappeared in recent years, and their numbers in juvenile justice means that they can very easily be forgotten or left off reform agendas which have to be both economically and politically expedient. We need to work at keeping girls' issues "on the burner" so to speak. Without always using the precise words, we have to relentlessly ask ourselves and others "what about the girls?".**
- ***Have a go: take on the world:*** **Let's be as daring, adventurous and exciting as the girls we are working with in creating new opportunities that have potential to open up positive ongoing possibilities for them into the future. In so doing, let's shift the focus of our efforts from the girls themselves to the worlds in which**

they live. Let's identify institutional barriers to girls independence and develop strategies to tackle them. Let's shift the focus of our thinking about girls problems, to issues directly related to enabling them to live more secure, independent in the future, to matters of employment, education, training and housing.

- ***Give girls a go:*** **Question your own and others assumptions of girls as passive, sick, incapable, dependent, in need of protection. No doubt some girls are in some circumstances, but we have to shift from assuming such. Certainly some, perhaps most, of the girls in juvenile justice are going to stand up to you and for themselves, they are going to speak out at you, they can be feisty, assertive, and even if it is no longer expressed in these terms, the notion is certainly there, that they are likely to be viewed as "unladylike" and a bit "rough". Instead of trying to explain such behaviours in pathological terms, instead of responding negatively, or instead of trying to change or "fix" them, we have to begin to recognise in positive terms the potential of the strength and independence these girls are exhibiting. We need to frame our policies and actions in terms of principles of recognising and encouraging girls individual talents, their will and volition, of enabling and empowering girls. This process can begin at the shop front with us listening to girls, involving them in key decision making, and working *with* them rather than *for* them.**
- ***Grab a colleague or two*****: Those working with girls need to seek out and work with colleagues who are equally concerned about the situation of girls. There is strength in numbers both personally and politically. For a range of reasons including lack of experience and available options, it is not easy to work with girls. We do not have all the answers to questions about everyday interactions between workers and girls, or long range strategies and policies. The development of these is going to depend on a willingness to share our uncertainties, our successes and our failures with others. So — let's begin!**

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8

Juvenile Justice: What Works and What Doesn't!

KEN BUTTRUM

There are many factors and influences that shape policy on juvenile justice. Current policy is flawed by political expediency and "knee-jerk" responses to perceived problems of antisocial and delinquent youth behaviour. Juvenile justice should follow a systemic approach which demands that policy makers, juvenile justice administrators, and politicians pay particular heed to research findings rather than gut-level populist opinion.

There are key components to effective young offender programs. Many current and popular strategies for dealing with and managing young offenders in Australian States and Territories are characterised by features that research has shown to be ineffective in terms of their justice, rehabilitative and reintegrative effects. Such strategies are borne from hastily conceived political responses to public calls for governments to come down tough on juvenile offending and antisocial behaviour.

Community perceptions about youth crime

Whether or not the danger is real or imagined, community fear of crime and, in particular, youth crime is real. This fear shapes political and social responses to juvenile offending as surely as it shapes political party policies and their commentaries and approach to youth justice issues.

Yet juvenile crime does happen, and it effects all of us, directly or indirectly. The majority of offences committed by juveniles are property crimes, such as break and enters, motor vehicle theft, and stealing. The effect of property crime, while it may not result in physical injury, can be extremely damaging and personal. The shock of having one's property stolen and the feeling of violation often make the actual cost of replacing stolen property a secondary concern for many victims.

Community perceptions and attitudes to youth crime are shaped to a large degree by media presentations of youth lawlessness and, to a lesser extent, by the entertainment industry. The media may be accused of inciting moral panics in relation to youth crime through their negative, inaccurate, exaggerated and sensational characterisation of young people's street behaviour and involvement in criminal activities (Cohen 1980). Aside from the media's cliched portrayal of juvenile offending as a "juvenile crime wave", there is the unjust imputation that most uncleared crimes are committed by juveniles and young people. Juvenile crime is also portrayed by the media as being "predatory", "drug crazed", and directed towards the elderly and defenceless. It is almost always portrayed as being characterised by extreme and wanton violence.

But what do we really know about juvenile crime in Australia? We know that there has been no juvenile crime wave, either nationally or within any State or Territory. Using New South Wales as an example, criminal matters before the Children's Court, whilst increasing slightly during the last two to three years, are still at a substantially lower level than they were in the late 1980s (NSW Department of Juvenile Justice, Information Package, 1995-96). Also, two recent and complementary research studies (Coumarelos 1995, Cain 1996) which sampled extremely large numbers of young people appearing before the children's court on criminal matters dispelled a substantial number of urban myths about juvenile crime and juvenile recidivism.

Seventy per cent of juveniles offend just once before desisting from further criminal activity; a further 15 per cent of juveniles offend on only one subsequent occasion before desisting from crime. In addition, violent offences and drug offences were in the minority *even* for those few juveniles who persisted to become chronic, repeat offenders. That is, serious crimes involving violence or drugs are not commonly committed by juveniles as a first offence or, as a later offence, if a juvenile goes on to persist in committing crime.

Political hysteria and the shaping of juvenile justice policy

The real nature and extent of juvenile crime is ignored by the media because it is bad-news stories, not good-news stories, that sell newspapers and capture the attention of television and radio audiences.

Talk back radio is a principal medium for propagating the urban myths about juvenile crime. Members of parliament are regularly invited to discuss law and order issues on these shows and are commonly badgered by the hosts and radio audiences to give a commitment to toughening the government's stance towards youth lawlessness.

This may result in a political competition to get tough on youth crime, with both governments and oppositions trying to outdo one another through the introduction of more and more draconian legislation and law enforcement practices targeting young people, particularly those experiencing extreme social disadvantage.

Populist responses to perceived problems of youth lawlessness are characterised by one or more of the following commonly held beliefs:

- **Boosting the punitive element of sanctions increases their value as deterrents;**
- **Labelling a criminal will shame an individual to adopt prosocial behaviours and attitudes;**
- **Offenders will better appreciate the social cost of their offending by being required to perform community service work or otherwise repair the damage done to society.**

These responses, however, must be recognised as largely ineffective in changing the offending behaviour of many young people and can best be described as myths.

- ***The myth of punishment/deterrence:*** **Deterrence, of course, only works when a person feels they have something to lose. Many of the more hardened young offenders have already lost everything, or feel that society has denied them everything.**
- ***The myth of labelling/shaming:*** **Labelling only works when a person is ashamed of the label "criminal" or "social misfit". Chronic young offenders readily accept these labels, and may even aspire to them. Their accepted social clique is to be "outside" mainstream society. Shaming best works on a person with a developed social conscience. The Brady Bunch kids are a good example of when "shaming" would work!**

- ***The myth of reparation:*** **Many young people offend because they feel society owes them something because they have been ill-treated or neglected, abandoned by the educational system, have no job prospects, etc. For these young people fines, compensation orders and community reparation work may be construed as further abuse by a system that has already failed them. In their eyes, the social ledger may be far from balanced by requiring them to perform community service.**

The principles of deterrence, shaming and reparation become the rationale for the political games played by some politicians and governments. Inevitably, these political measures and others masquerade as enlightened social reforms. Some recent examples include:

- ***Getting young people off the streets*** **(the "two's company, three's a crowd" law): Examples include the proposed NSW Street Safety Bill and the *WA Young Offenders Act.***
- ***Get them off the streets and hold their parents responsible*****: One recent example is the NSW *Parental Responsibility Act.***
- ***Lock them up / get them out of our hair*****: Examples include Western Australian "three strikes and you're in" legislation and the imposition of mandatory minimum sentences for scheduled property offences (excluding shoplifting and armed robbery) in the Northern Territory.**
- ***Lock them up, get them out of town, and toughen them up:*** **Examples include the Western Australian and Northern Territory "boot camps".**
- ***Scare them straight:*** **"Day in gaol" programs are the definitive example.**
- ***Shame them:*** **The Northern Territory has just introduced new legislation that includes punitive work orders and the compulsory wearing of bibs in public when undertaking community service work ("I am a criminal" labelling).**

And what is the end result of these political games in response to media and public hype? Some politicians and governments get elected partly on the basis of their commitment to tougher law-and-order actions. Huge budgets are blown in constructing new facilities and policing these resource intensive "social reforms". Expected program outcomes are not achieved because the basic underlying social causes of crime are not solved. Their strategies inevitably do not work and politicians and governments are held responsible by the communities which become disillusioned that the level of crime has not diminished as was promised.

Steps in dealing effectively with young offenders

The main feature of an effective juvenile justice system is that it adopts a minimal interventionist approach at every stage of dealing with young people who come to the attention of justice authorities. Dealing expeditiously with minor offenders through diversion can take many forms but it means that whenever possible there must be:

- **a decision in favour of police warning or cautioning rather than charging young people;**
- **a decision in favour of dealing with young people by pre-court interventions rather than official court processes;**
- **a decision in favour of the least severe community-based sanction where custody is not considered necessary (as a last resort);**
- **a decision in favour of direct community-based alternatives to custody in cases where custody is being considered. This strategy applies also to the granting of bail in preference to remanding juveniles in custody to await their court appearances;**

- **the shortest term in custody where all other options have been exhausted;**
- **incarceration used as a last resort and only for those young offenders convicted of violent crimes or persistent offending of a serious nature.**

These strategies should necessarily apply to all young people, but especially to those who are homeless, those with few or severed community ties, and those who come from identified disadvantaged and discriminated groups, most notably Aboriginal young people and young people from non-English speaking backgrounds.

The recent research studies mentioned earlier are also instructive in terms of the ways in which juvenile justice authorities can identify and target specialist interventions for those young people who are at increased risk of becoming habitual or chronic re-offenders. This is the other side to a concerted program of diversion; focusing the official justice response on those individuals who are likely to occupy most of the system's time and resources. For example, Cain (1996) found that 9 per cent of juvenile offenders were responsible for 31 per cent of all children's court appearances. He also developed a model for identifying, at the time of first court appearance, juvenile offenders at increased risk of re-offending. What better way of focusing scant resources, ensuring minimal intrusion and effect on the lives of the majority of young people who are unlikely to offend again?

Working with entrenched offenders typically identifies a constellation of personal and social problems which appear to have contributed directly to their criminal behaviour. This group of contributing factors can be called "breaches in social bonding". They include:

- **significant relationship breakdowns;**
- **abuse (physical, emotional, sexual) and / or neglect;**
- **learning difficulties, school failure;**
- **poor skills development, lack of employment opportunities;**
- **social inadequacy, alienation, and disadvantage;**
- **emotional instability;**
- **loss of self worth;**
- **alcohol and other drug abuse.**

The need for a systemic response to juvenile crime

What good can come from "get tough" measures on juvenile crime when the underlying social and personal problems experienced by young offenders remain unattended or, worse still, are exacerbated by draconian social "reforms" and justice interventions? There is a need for a consensus approach by all key stakeholders: justice agencies, social welfare agencies, and the community.

Because society demands just desserts in relation to the perpetration of criminal offences, young offenders must be punished. However, the punishment young offenders receive must be commensurate to the seriousness of the offence and the criminality of the individual. Consequently, laws relating to children and young people clearly differ from legislation relating to adult offenders.

Juvenile laws require the court to consider the immaturity, inexperience and impressionability of a young offender. They also require the court to protect the young person's social, emotional, psychological, educational development and well-being in determining an appropriate penalty. Juvenile laws also require the court to recognise that young offenders have enhanced prospects for rehabilitation and community reintegration, and every opportunity should be afforded to maintain the young person in the community (the principle of custody as the sanction of last resort).

As Luke and Cunneen (1995) in NSW and Gale et al. (1993) in South Australia identified, policing and law enforcement practices have as much to do with juvenile justice inequities as do deficient laws or ineffective young offender programs and services. Because police are the gatekeepers of the juvenile justice system, their commitment to diversion and discretion, particularly regarding the use of informal warnings, formal cautions and referrals to pre-court conferencing programs, is paramount.

The second point is that shrinking federal and state budgets resulting from economic rationalist approaches are likely to hit social welfare agencies and community funded organisations the hardest. Social welfare agencies, such as Housing, Health and Community Services are often forced to retract services from particular client groups. Not surprisingly, young offenders tend to lose targeted services in these situations. Young offenders are seen as undesirable housing clients; they receive few services from the mainstream health system and their particular health problems (for example, drug and alcohol abuse) are seen to be a direct consequence of their lifestyle choices; they appear to be less vulnerable and, therefore, are often determined to be less in need of care and protection services than infants and young children.

As government agencies retreat into their core business, community organisations are generally required to fill in the service gaps. Also, when money is short, government funding of community service delivery agencies is highly likely to be decreased or terminated. Ironically, at the grass roots level, community organisations and not government agencies have the skills, networks and experience to ensure a continuum of seamless, appropriate services for troubled young people.

There must be a commitment from governments, government agencies and criminologists to effectively disseminate accurate information about the true extent and nature of juvenile crime to counterbalance media and political hype concerning youth lawlessness. The community has a role, too, in disregarding the hype. Only then, without scare mongering and political expediency driving government decisions, can level-headed and rational juvenile justice policies be developed.

Juvenile justice authorities have an important role to play in striking partnerships with community youth agencies in the provision of effective community-based programs for young offenders. A notable example of effective partnerships between government and non-government service providers at the local level is the Purfleet Project.

The Purfleet Project in New South Wales involves government and community agencies planning and providing a range of support, recreational, educational and job-skills programs from a "one stop shop" established in the local community, which is largely Aboriginal. The aim of these programs is ultimately to break the cycle of disadvantage suffered by the people living in the Purfleet community.

Some key components of effective young offender programs

The most successful programs for young offenders will incorporate the following key components:

- assist young people to accept, rather than avoid, responsibility for their own behaviour;
- focus on helping young people to resolve problems identified as contributing to their offending behaviour;
- assist young people to develop practical alternative ways of coping with stressors;

- involve, wherever possible, the young people's families in working on family issues likely to reduce reoffending;
- focus on remediating educational deficits in the basic skills to raise social competence;
- help young people to develop market place workskills which can lead to further training opportunities, qualifications and real jobs;
- assist in establishing and strengthening relationships with significant others who can then become mentors and role models;
- involve the young persons in the empowering experiences of assessing their own needs and planning and monitoring their agreed case plans.

In their book *Reclaiming Youth at Risk*, Brendtro et al. (1990) write:

> *Fighting against feelings of powerlessness, some youth assert themselves in rebellious and aggressive ways. Those who believe they are too weak or impotent to manage their own lives become the pawns of others. These young people need opportunities to develop the skills and the confidence to assert positive leadership and self discipline.*

We in juvenile justice would do well to remember this assertion as we work to develop more effective programs for young people caught in the youth crime net.

In the final chapter of *Folk Devils and Moral Panics*, Stanley Cohen states:

> *The intellectual poverty and total lack of imagination in our society's response to its adolescent trouble makers during the last twenty years, is manifest in the way this response compulsively repeats itself and fails each time to come to terms with the real "problem" that confronts it.*

It is to be hoped that those involved in the development of juvenile justice policies and strategies will take note of available research such as that so thoroughly scrutinised in the work of James McGuire and his colleagues at the University of Liverpool (UK). For instance, in their outstanding book *What Works: Reducing Offending*, they have provided an exceptionally useful programming model for developing the understanding and skills of young offenders involved in either community-based or custodial services.

It is only by basing future juvenile justice strategies on such thorough research that we will have any success in breaking the juvenile crime cycle and moving away from reactive, counterproductive measures espoused by those creating "urban myths, folk devils and moral panics" about youth crime.

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Those with perception can see that the hardened criminal of tomorrow is the severely punished juvenile of today. Juveniles with socioeconomic disadvantage, with lack of family and social support, without access to education and employment, will often resort to antisocial behaviour. Lack of normal life opportunities should not necessarily lead to further punishment via the criminal justice system. All these issues are debated here. A recurring theme in the papers given at the 1997 conference, *Juvenile Crime and Juvenile Justice: Toward 2000 and beyond*, is the crisis in juvenile justice which has lead to reduced availability of services to assist troubled young people in Australia today.

Juvenile Crime and Juvenile Justice: Toward 2000 and beyond contains papers by academics, policy makers and practitioners. Issues discussed include: the effectiveness of particular juvenile justice programs; juvenile recidivism; the rate of criminalisation and incarceration of Indigenous young people; the particular issues facing young women; restorative justice; and much more.

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