Youth Crime

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### Contents

**CHAPTER 1**

**CRIME AND YOUNG PEOPLE**

- Juvenile offender profiles ..... 1
- Juvenile offending rates ..... 3
- What makes juvenile offenders different from adult offenders? ..... 5
- Youth victimisation and offending: a statistical snapshot ..... 13
- Legal definition of a juvenile ..... 15
- Age-old question: when should children be responsible for their crimes? ..... 16

**CHAPTER 2**

**YOUNG OFFENDERS AND THE CRIMINAL JUSTICE SYSTEM**

- The juvenile justice system in Australia ..... 18
- Youth justice in Australia: an overview ..... 24
- Children’s courts ..... 25
- Trends in juvenile detention in Australia ..... 27
- Juvenile detention population in Australia ..... 34
- Indigenous young people enter juvenile justice supervision earlier, stay longer ..... 35
- Review of effective practice in juvenile justice ..... 36
- Prevention the only hope for young offenders, because cure is failing ..... 39
- What is wrong with our youth justice system? ..... 41
- Jailing children will just make them better criminals ..... 42
- Restorative justice and the criminal justice system in Australia and New Zealand ..... 44
- Restorative justice may not work for all young offenders ..... 46
- The effect of youth justice conferencing on re-offending ..... 48
- Naming and shaming young offenders: reactionary politicians are missing the point ..... 49

- Exploring issues – worksheets and activities ..... 51
- Fast facts ..... 57
- Glossary ..... 58
- Web links ..... 59
- Index ..... 60
Youth Crime is Volume 363 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC
According to the latest national crime figures, young people aged between 15 and 19 years commit three times more offences than any other members of the Australian population. Certain types of offences are committed disproportionately by young people; juveniles are more likely than adults to come to the attention of police, for a variety of reasons. Young people are not only disproportionately the perpetrators of crime; they are also disproportionately the victims of crime.

Compared to adults, young people are also more at risk of a range of problems conducive to offending, including mental health problems, alcohol and other drug use, and peer pressure due to their immaturity and reliance on peer networks.

What makes juvenile offenders different from adult offenders? When should children be responsible for their crimes? What kinds of diversionary measures are available to keep young offenders from detention and reduce the likelihood of re-offending into adulthood?

This book presents the latest statistical findings on the types of offences committed by young people. Youth Crime also provides a national overview of the juvenile justice system in Australia, and explores current trends in the detention and diversion of young offenders.

SOURCES OF INFORMATION
Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:
- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION
As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES
The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH
This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.
Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population. In 2010-11, the offending rate for persons aged 15 to 19 years was almost three times the rate for all other offenders (5,667 per 100,000 compared with 1,872 per 100,000 respectively).

For the past four years, the rate of offending has consistently been highest in the 15 to 19 year age group. In 2010-11, the rate of offending within this age group was 5,667 per 100,000 compared with a rate of offending of 4,248 per 100,000 population for persons aged 20 to 24 years.

Between 2009-10 and 2010-11, there was an overall decrease in the offending rate of two per cent, decreasing from 1,917 to 1,872 per 100,000 population. However, the group that showed the greatest decline was in the 10-14 year age group, where offending decreased from 1,589 per 100,000 to 1,442 – a total decrease of 10 per cent.

Between 2007 and 2008, the rate of offending in the 25 years and over age group has been increasing gradually. Offending increased by seven per cent.
between 2007-08 and 2008-09 and then again by six per cent in 2009-10 to 1,285 per 100,000 population. In 2010-11, however, the rate did not change significantly and was recorded at 1,280 per 100,000 population.

The pattern across most crimes showed that offending rates were highest in the 15-19 year age group. For example, the rate of robbery/extortion offending was 23 per 100,000 population of 10 to 14 year olds compared with 115 per 100,000 population of 15-19 year olds and 44 per 100,000 population of 20 to 24 year olds.

In 2011, the rate of offending for acts intended to cause injury in the 15 to 19 year age group was 886 per 100,000 population. However, the rate of offending was lower in each of the subsequent age groups, with offenders aged 55-59 years committing acts intended to cause injury at a rate of 85 per 100,000.

While the rate of sexual assault offending was highest in the 15 to 19 year age group, the rate of offending by 10 to 14 year olds was higher than the rate of offending among individuals aged 50 years or over. Specifically, 10 to 14 year olds committed sexual assault at a rate of 27 per 100,000 population compared with a rate of 22 per 100,000 population in the 50-54 year age group and 18 per 100,000 in the 60 to 64 year age group.

Homicide was the only crime where the offending rate was not highest in the 15-19 year age group. Though never greater than 10 per 100,000 population in any age group, homicide offending was highest among offenders aged 20-24 years (8 per 100,000).

In 2011, the rate of theft was 1,407 per 100,000 population in the 15 to 19 year age group. This was significantly higher than the rates of offending in either the 10 to 14 year age group (514 per 100,000 population) or the 20 to 24 age group (584 per 100,000 population). However, after 45 years of age, the rates of offending remained low; for instance, 27 per 100,000 population in the 65 years and over age group.

The rate of offending in the 10-14 year age group was higher for UEWI than for property damage. Specifically, the rate of offending was 206 per 100,000 for UEWI compared with 155 per 100,000 population for property damage. However, the offending rates for property damage remained higher for subsequent age groups compared with that of UEWI.

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References
19. Extract from unpublished data from AIC’s Drug Use Monitoring in Australia Program.
JUVENILE OFFENDING RATES

The rate of juvenile offending has been consistently higher than that of adult offending over the last three years. The following data from the Australian Institute of Criminology profiles alleged offenders aged between 10 and 17 years.

- There are differences among the states in their definition of a juvenile. Data in this section include alleged offenders aged between 10 and 17 years.
- The rate of juvenile offending has been consistently higher than that of adult offending over the three year period. Specifically, in 2010-11, adults offended at a rate of 1,727 per 100,000 population, compared with juveniles who offended at a rate of 2,936 per 100,000 population.
- While adult offending has remained relatively consistent, averaging approximately 1,726 per 100,000 population per year, juvenile offending decreased between 2009-10 and 2010-11. In 2010-11, the juvenile offending rate was six per cent lower than that recorded in 2009-10 (3,118 per 100,000 population).

In 2010-11, there were only four homicides committed by female juvenile offenders compared with 44 by male juvenile offenders. This equates to a rate of offending of four per 100,000 population for males and less than one per 100,000 for female juveniles.

Male and female juveniles had the highest rates of offending for the categories of theft, AICI and public order offences. In 2010-11, the offending rate for theft was 1,082 per 100,000 for males and 792 per 100,000 population for females. For AICI, it was 617 per 100,000 for males and 345 per 100,000 population for females. Finally for public order offences, males offended at a rate of 583 per 100,000 and females at a rate of 221 per 100,000 population.

In no category of criminal offence did the rate of juvenile female offending exceed that of male juvenile offending. This was especially noticeable in the categories of UEWI and property damage. In both instances, male offending was almost five times that of female offending, with females offending at a rate of only 79 per 100,000 for UEWI and 78 per 100,000 population for property damage.

While adult offending has remained relatively consistent, averaging approximately 1,726 per 100,000 population per year, juvenile offending decreased between 2009-10 and 2010-11.

For homicide, AICI, abduction/harassment and robbery/extortion, rates of offending were highest among 17 year olds. Specifically, in 2010-11, 17 year olds offended at a rate of 10 per 100,000 population for homicide, 39 per 100,000 for abduction/harassment, 137 per 100,000 for robbery/extortion and 922 per 100,000 for AICI.

Compared with any other juveniles in the 10 to 19 year old age group, 15 year olds had the highest rate of sexual assault offending. In 2010-11, 15 year olds committed sexual assault at a rate of 64 per 100,000 population, compared with 59 per 100,000 for 14 year olds and 62 per 100,000 for 16 year olds.

Overall, young people committed AICI at a greater rate than any other type of violent crime. This included at the very bottom end of the age spectrum, where 10 year olds committed AICI at a rate of 35 per 100,000 population. This is almost five times lower than the
rate of AICI committed by 19 year old offenders, which was 886 per 100,000 population in 2010-11.

Source: References 2 and 19

For property crimes, offenders were slightly younger than offenders of violent crimes (where offending most commonly peaked around 17 years of age). In 2010-11, theft and property damage was highest among offenders who were 16 years of age, while UEWI was highest among 15 year olds.

➤ Theft was committed at a rate of 321 per 100,000 population among 12 year old offenders. This was substantially lower than the rate of theft offending among 16 year olds (1,641 per 100,000 population). Despite the rate of offending being lower among offenders older than 16 years, theft remained the most commonly committed property offence. For example, theft occurred at a rate of 974 per 100,000 for 19 year olds, compared with a rate of 208 per 100,000 for UEWI and 341 per 100,000 population for property damage.

➤ Unlike theft and UEWI, the rates of property damage were not lower among offenders aged greater than 16 years. While offending was highest among 16 year olds at 395 per 100,000, on average, property damage occurred at a rate of 386 per 100,000 population for offenders aged 17 and 18 years.

REFERENCES
19. Extract from unpublished data from AIC’s Drug Use Monitoring in Australia program.
WHAT MAKES JUVENILE OFFENDERS DIFFERENT FROM ADULT OFFENDERS?

A Trends & issues in crime and criminal justice paper prepared by Kelly Richards for the Australian Institute of Criminology

FOREWORD

Responding to juvenile offending is a unique policy and practice challenge. While a substantial proportion of crime is perpetrated by juveniles, most juveniles will ‘grow out’ of offending and adopt law-abiding lifestyles as they mature. This paper outlines the factors (biological, psychological and social) that make juvenile offenders different from adult offenders and that necessitate unique responses to juvenile crime.

It is argued that a range of factors, including juveniles’ lack of maturity, propensity to take risks and susceptibility to peer influence, as well as intellectual disability, mental illness and victimisation, increase juveniles’ risks of contact with the criminal justice system. These factors, combined with juveniles’ unique capacity to be rehabilitated, can require intensive and often expensive interventions by the juvenile justice system.

Although juvenile offenders are highly diverse, and this diversity should be considered in any response to juvenile crime, a number of key strategies exist in Australia to respond effectively to juvenile crime. These are described in this paper.

Adam Tomison, Director

Historically, children in criminal justice proceedings were treated much the same as adults and subject to the same criminal justice processes as adults. Until the early twentieth century, children in Australia were even subjected to the same penalties as adults, including hard labour and corporal and capital punishment (Carrington & Pereira 2009).

Until the mid-nineteenth century, there was no separate category of ‘juvenile offender’ in Western legal systems and children as young as six years of age were incarcerated in Australian prisons (Cunneen & White 2007). It is widely acknowledged today, however, both in Australia and internationally, that juveniles should be subject to a system of criminal justice that is separate from the adult system and that recognises their inexperience and immaturity. As such, juveniles are typically dealt with separately from adults and treated less harshly than their adult counterparts.

The United Nations’ (1985: 2) Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’) stress the importance of nations establishing a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights.

In each Australian jurisdiction, except Queensland, a juvenile is defined as a person aged between 10 and 17 years of age, inclusive. In Queensland, a juvenile is defined as a person aged between 10 and 16 years, inclusive. In all jurisdictions, the minimum age of criminal responsibility is 10 years. That is, children under 10 years of age cannot be held legally responsible for their actions.

HOW JUVENILE OFFENDING DIFFERS FROM ADULT OFFENDING

It is widely accepted that crime is committed disproportionately by young people. Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population group.

In 2007-08, the offending rate for persons aged 15 to 19 years was four times the rate for offenders aged more than 19 years (6,387 and 1,818 per 100,000 respectively; AIC 2010). Offender rates have been consistently highest among persons aged 15 to 19 years and lowest among those aged 25 years and over.

The proportion of crime perpetrated by juveniles

This does not mean, however, that juveniles are responsible for the majority of recorded crime. On the contrary, police data indicate that juveniles (10 to 17 year olds) comprise a minority of all offenders who come into contact with the police. This is primarily because offending ‘peaks’ in late adolescence, when young people are aged 18 to 19 years and are no longer legally defined as juveniles.

The proportion of all alleged offending that is attributed to juveniles varies across jurisdictions and is impacted by the counting measures that police in each state and territory use.

The most recent data available for each jurisdiction indicate that:

➤ Juveniles comprised 21 per cent of all offenders processed by Victoria Police during the 2008-09 financial year (Victoria Police 2009)
➤ Queensland police apprehended juveniles (10 to 17 year olds) in relation to 18 per cent of all offences during the 2008-09 financial year (Queensland Police Service 2009)
➤ Juveniles comprised 16 per cent of all persons arrested in the Australian Capital Territory during the 2008-09 period (AFP 2009)
➤ Eighteen per cent of all accused persons in South Australia during 2007-08 were juveniles (South Australia Police 2008)
➤ Juveniles were apprehended in relation to 13 per cent of offence counts in Western Australia during 2006 (Fernandez et al. 2009), and
In the Northern Territory during 2008–09, eight per cent of persons apprehended by the police were juveniles (NTPF&ES 2009).

It should be acknowledged in relation to the above that the proportion of offenders comprised by juveniles varies according to offence type. This is discussed in more detail below.

**Growing out of crime: the age-crime curve**

Most people ‘grow out’ of offending; graphic representations of the age-crime curve, such as that at Figure 1, show that rates of offending usually peak in late adolescence and decline in early adulthood. Although the concept of the age-crime curve has been the subject of much debate, critique and research since its emergence, the relationship between age and crime is nonetheless ‘one of the most generally accepted tenets of criminology’ (Fagan & Western 2005: 59). This relationship has been found to hold independently of other variables (Farrington 1986).

**Juvenile offending trajectories**

Research consistently indicates, however, that there are a number of different offending patterns over the life course. That is, while most juveniles grow out of crime, they do so at different rates. Some individuals are more likely to desist than others; this appears to vary by gender, for example (Fagan & Western 2005). The processes motivating desistance have not been well explored and it appears that there may be multiple pathways in and out of crime (Fagan & Western 2005; Haigh 2009).

Perhaps most importantly, a small proportion of juveniles continue offending well into adulthood. A small ‘core’ of juveniles have repeated contact with the criminal justice system and are responsible for a disproportionate amount of crime (Skardhamar 2009).

The study of Livingstone et al. (2008) of a cohort of juveniles born in Queensland in 1983 or 1984 and with one or more finalised juvenile court appearances identified three primary juvenile offending trajectories:

- **Early peaking–moderate offenders** showed an early onset of offending, with a peak around the age of 14 years, followed by a decline. This group comprised 21 per cent of the cohort and was responsible for 23 per cent of offences committed by the cohort

- **Lateonset–moderate offenders**, who displayed little or no offending behaviour in their early teen years, but who had a gradual increase until the age of 16 years, comprised 68 per cent of the cohort, but was responsible for only 44 per cent of the cohort’s offending, and

- **Chronic offenders**, who demonstrated an early onset of offending with a sharp increase throughout the timeframe under study, comprised just 11 per cent of the cohort, but were responsible for 33 per cent of the cohort’s offending (Livingstone et al. 2008).

**The proportion of juveniles who come into contact with the criminal justice system**

Despite the strong relationship between age and offending behaviour, the majority of young people never come into formal contact with the criminal justice system. The longitudinal study by Allard et al. (2010) found that of all persons born in Queensland in 1990, 14 per cent had one or more formal contacts (caution, youth justice conference or court appearance) with the criminal justice system by the age of 17 years, although this varied substantially by indigenous status and sex. Indigenous juveniles were 4.5 times more likely to have contact with the criminal justice system than non-indigenous juveniles. Sixty-three per cent of indigenous males and 28 per cent of indigenous females had had a contact with the criminal justice system as a juvenile, compared with 13 per cent of non-indigenous males and seven per cent of non-indigenous females (Allard et al. 2010).

**The types of offences that are perpetrated by juveniles**

Certain types of offences (such as graffiti, vandalism, shoplifting and fare evasion) are committed disproportionately by young people. Conversely, very serious offences (such as homicide and sexual offences) are rarely perpetrated by juveniles. In addition, offences such as white collar crimes are committed infrequently by juveniles, as they are incompatible with juveniles’ developmental characteristics and life circumstances.

On the whole, juveniles are more frequently apprehended by police in relation to offences against property than offences against the person. The proportion of juveniles who come into contact with the police for property crimes varies across jurisdictions, from almost one-third in New South Wales to almost two-thirds in Victoria (Richards 2009). Differences among jurisdictions can result from

![Figure 1: Example of an Age-Crime Curve](chart.png)
a variety of factors, including legislative definitions of offences, counting measures used to record offences and recording practices, as well as genuine differences in rates of offending.

Although not available for all jurisdictions, the most recent data indicate that:

➤ In Victoria during 2008–09, 66 per cent of juvenile alleged offenders, compared with 46 per cent of adult alleged offenders, recorded by police were apprehended in relation to property crime (Victoria Police 2009).

➤ In Queensland during the same period, property offences comprised 58 per cent of offences for which juveniles were apprehended by police, compared with 22 per cent of offences for which adults were apprehended (Queensland Police Service 2009), and

➤ In South Australia during 2007–08, property crimes comprised 46 per cent of all crimes for which juveniles were apprehended, compared with 24 per cent for adults (South Australia Police 2008).

Offences for which juveniles were most frequently adjudicated by the Children’s Courts in Australia during 2007–08 were acts intended to cause injury (16%), theft (14%), unlawful entry with intent (12%), road traffic offences (11%) and deception (fare evasion and related offences – also 11%; ABS 2009). Combined, these offences accounted for nearly two-thirds of defendants appearing before the Children’s Courts during this period (ABS 2009).

By comparison, offences for which adults were most frequently adjudicated in the Higher Courts during 2007–08 were acts intended to cause injury (23%), illicit drugs offences (18%), sexual assault (15%), robbery/extortion (11%) and unlawful entry with intent (9%; ABS 2009).

Offences for which adults were most frequently adjudicated in the Magistrates Courts during 2007–08 were road traffic offences (45%), public order offences (11%), dangerous or negligent acts endangering persons (9%), acts intended to cause injury (8%), offences against justice procedures (6%), theft (5%) and illicit drugs offences (also 5%; ABS 2009).

The nature of juvenile offending

Juveniles are more likely than adults to come to the attention of police, for a variety of reasons.

As Cunneen and White (2007) explain, by comparison with adults, juveniles tend to:

➤ Be less experienced at committing offences
➤ Commit offences in groups
➤ Commit offences in public areas such as on public transport or in shopping centres, and
➤ Commit offences close to where they live.

In addition, by comparison with adults, juveniles tend to commit offences that are:

➤ Attention-seeking, public and gregarious, and
➤ Episodic, unplanned and opportunistic (Cunneen & White 2007).

Some offences committed disproportionately by juveniles, such as motor vehicle theft, have high reporting rates due to insurance requirements (Cunneen & White 2007). This may result in young people coming to police attention more frequently. In addition, some behaviour such as under age drinking are illegal solely because of the minority status of the perpetrator. Research has demonstrated that some offence types committed disproportionately by juveniles (such as motor vehicle thefts and assaults) are the types of offences most likely to be repeated (Cottle, Lee & Heilbrun 2001).

It is also important to note that broad legislative or policy changes can disproportionately impact upon juveniles and increase their contact with the police. Farrell’s (2009) analysis of police ‘move on’ powers clearly demonstrates, for example, that the introduction of these powers has disproportionately affected particular groups of citizens, including juveniles.

Why juvenile offending differs from adult offending

It is clear that the characteristics of juvenile offending are different from those of adult offending in a variety of ways. This section summarises research literature on why this is the case.

Risk-taking and peer influence

Research on adolescent brain development demonstrates that the second decade of life is a period of rapid change, particularly in the areas of the brain associated with response inhibition, the calibration of risks and rewards and the regulation of emotions (Steinberg 2005). Two key findings have emerged from this body of research that highlight differences between juvenile and adult offenders. First, these changes often occur before juveniles develop competence in decision making:

Changes in arousal and motivation brought on by pubertal matur ation precede the development of regulatory competence in a manner that creates a disjunction between the adolescent’s affective experience and his or her ability to regulate arousal and motivation (Steinberg 2005: 69-70).

This disjunction, it has been argued, is akin to ‘starting an engine without yet having a skilled driver behind the wheel’ (Steinberg 2005: 70; see also Romer & Hennessy 2007).

Second, in contrast with the widely held belief that adolescents feel ‘invincible’, recent research indicates that young people do understand, and indeed sometimes overestimate, risks to themselves (Reyna & Rivers 2008). Adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour) despite understanding the risks involved (Boyer 2006; Steinberg 2005). It appears that adolescents not only consider risks cognitively (by weighing up the potential risks and rewards of a particular act), but
socially and/or emotionally (Steinberg 2005). The influence of peers can, for example, heavily impact on young people’s risk-taking behaviour (Gatti, Tremblay & Vitato 2009; Hay, Payne & Chadwick 2004; Steinberg 2005).

Importantly, these factors also interact with one another:

Not only does sensation seeking encourage attraction to exciting experiences, it also leads adolescents to seek friends with similar interests. These peers further encourage risk-taking behavior (Romer & Hennessy 2007: 98-99).

It has been recognised that young people are more at risk of a range of problems conducive to offending – including mental health problems, alcohol and other drug use and peer pressure – than adults, due to their immaturity and heavy reliance on peer networks. Alcohol and drugs have also been found to act in a more potent way on juveniles than adults (LeBeau & Mozayani cited in Prichard & Payne 2005) and substance use is a strong predictor of recidivism (Cottle, Lee & Heilbrun 2001). As Haigh (2009) explains, adolescence is a time of complex physiological, psychological and social change. Progression through puberty has been shown to be associated with statistically significant changes in behaviour in both males and females and may be linked to an increase in aggression and delinquency (Najman et al. 2009).

**Intellectual disability and mental illness**

Intellectual disabilities are more common among juveniles under the supervision of the criminal justice system than among adults under the supervision of the criminal justice system or among the general Australian population. Three per cent of the Australian public has an intellectual disability and one per cent of adults incarcerated in New South Wales prisons was found to have an IQ below 70 in a recent study (Frize, Kenny & Lenning 2008; see also HREOC 2005). Frize, Kenny and Lenning’s (2008) study of 800 young offenders on community-based orders in New South Wales found that the over-representation of intellectual disabilities was particularly high among indigenous juveniles and that juveniles with an intellectual disability are at a significantly higher risk of recidivism than other juveniles.

Mental illness is also over-represented among juveniles in detention compared with those in the community. The Young People In Custody Health Survey, conducted in New South Wales in 2005, found that 88 per cent of young people in custody reported symptoms consistent with a mild, moderate or severe psychiatric disorder (HREOC 2005).

**Young people as crime victims**

Young people are not only disproportionately the perpetrators of crime; they are also disproportionately the victims of crime (see Finkelhor et al. 2009; Richards 2009). Young people aged 15 to 24 years are at a higher risk of assault than any other age group in Australia and males aged 15 to 19 years are more than twice as likely to become a victim of robbery as males aged 25 or older, and all females (AIC 2010). Statistics also show that juveniles comprise substantial proportions of victims of sexual offences.

In 2007, the highest rate of recorded sexual assault in Australia was for 10 to 14 year old females, at 544 per 100,000 population (AIC 2008). For males, rates were also highest among juveniles, with 95 per 100,000 population 10 to 14 year olds reporting a sexual assault (AIC 2008).

In addition, it is important to recognise that juveniles are frequently the victims of offences committed by other juveniles. Between 1989-90 and 2007-08, almost one-third of homicide victims aged 15 to 17 years, for example, were killed by another juvenile (Richards, Dearden & Tomson forthcoming). As Daly’s (2008) research demonstrates, the boundary between juvenile offenders and juvenile victims can easily become blurred. Cohorts of juvenile victims and juvenile offenders are unlikely to be entirely discrete and research consistently shows that these phenomena are interlinked.

The high rate of victimisation of juveniles is critical to consider, as it is widely acknowledged that victimisation is a pathway into offending behaviour for some young people.

**THE CHALLENGE OF RESPONDING TO JUVENILE CRIME**

Preventing juveniles from having repeated contacts with the criminal justice system and intervening to support juveniles desist from crime are therefore critical policy issues. Assisting juveniles to grow out of crime – that is, to minimise juvenile recidivism and to help juveniles become ‘desisters’ (Murray 2009) – are key policy areas for building safer communities.

Although juvenile crime is typically less serious and less costly in economic terms than adult offending (Cunneen & White 2007), juvenile offenders often require more intensive and more costly interventions than adult offenders, for a range of reasons.

**Juvenile offenders have complex needs**

Juvenile offenders often have more complex needs than adult offenders, as described above. Although many of these problems (substance abuse, mental illness and/or cognitive disability) also characterise adult criminal justice populations, they can cause greater problems among young people, who are more susceptible – physically, emotionally and socially – to them. Many of these problems are compounded by juveniles’ psychosocial immaturity.

**Juvenile offenders require a higher duty of care**

Juvenile offenders require a higher duty of care than adult offenders. For example, due to their status as legal minors, the state provides in loco parentis supervision of juveniles in detention. Incarcerated juveniles of school age are required to participate in schooling and staff-to-offender
ratios are much higher in juvenile than adult custodial facilities, to enable more intensive supervision and care of juveniles. For these reasons, juvenile justice supervision can be highly resource-intensive (New Economics Foundation 2010).

**Juveniles may grow out of crime**

As outlined above, many juveniles grow out of crime and adopt law-abiding lifestyles as young adults. Many juveniles who have contact with the criminal justice system are therefore not ‘lost causes’ who will continue offending over their lifetime. As juveniles are neither fully developed nor entrenched within the criminal justice system, juvenile justice interventions can impact upon them and help to foster juveniles’ desistance from crime. Conversely, the potential exists for a great deal of harm to be done to juveniles if ineffective or unsuitable interventions are applied by juvenile justice authorities.

**JUVENILE JUSTICE INTERVENTIONS**

A range of principles therefore underpin juvenile justice in Australia. These are designed to respond to juvenile offending in an appropriate and effective way.

**The doctrine of doli incapax**

The rate at which children mature varies considerably among individuals. Due to their varied developmental trajectories, children learn the difference between right and wrong – and between behaviours that are seriously wrong and those that are merely naughty or mischievous – at different ages. The legal doctrine _doli incapax_ recognises the varying ages at which children mature. In Australia, juveniles aged 10 to 13 years inclusive are considered to be _doli incapax_. _Doli incapax_ is a rebuttable legal presumption that a child is ‘incapable of crime’ under legislation or common law. In court, the prosecution is responsible for rebutting the presumption of _doli incapax_ and proving that the accused juvenile was able at the relevant time to adequately distinguish between right and wrong. A contested trial can only result in conviction if the prosecution successfully rebuts this presumption.

The principle of _doli incapax_ has existed since at least the fourteenth century (Crofts 2003) and is supported by the United Nations Convention on the Rights of the Child (1989: 12), which requires signatory states to establish ‘a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.’ There has, nonetheless, been a great deal of debate about its continued relevance (Crofts 2003; Urbas 2000) and the principle was abolished in 1998 in the United Kingdom.

**Welfare and justice approaches to juvenile justice**

Western juvenile justice systems are often characterised as alternating between welfare and justice models. The welfare model considers the needs of the young offender and aims to rehabilitate the juvenile. Offending behaviour is thought to stem primarily from factors outside the juvenile’s control, such as family characteristics. The justice model conceptualises offending as the result of a juvenile’s free will, or choice. Offenders are seen as responsible for their actions and deserving of punishment.

In reality, the welfare and justice models are ideal types and juvenile justice systems rarely reflect purely welfare or justice models. Instead, individual elements of the juvenile justice system in Australia reflect each of these paradigms. Even specific policies such as restorative justice conferencing (see Richards forthcoming for an overview) can be underpinned by both welfare and justice principles. As noted above, juvenile justice systems are, on the whole, more welfare-oriented than adult criminal justice systems.

**Reducing stigmatisation**

A range of measures aim to protect the privacy and limit the stigmatisation of juveniles. Prohibitions on the naming of juvenile offenders in criminal proceedings, for example, exist in all Australian jurisdictions (Chappell & Lincoln 2009). In each jurisdiction, except the Northern Territory, juveniles’ identities must not be made public, although exceptions are sometimes allowed. In the Northern Territory, the reverse is the case – juvenile offenders can be named, unless an application is made to suppress identifying information (Chappell & Lincoln 2009). In some instances, juveniles’ convictions may not be recorded. This strategy aims to avoid stigmatising...
juveniles and assist juveniles to ‘grow out’ of crime rather than become entrenched in the criminal justice system. In most jurisdictions, for example, juveniles who participate in a restorative justice conference and complete the requisite actions resulting from the conference (such as apologising to the victim and/or paying restitution), do not have a conviction recorded, even though they have admitted guilt. Similarly, in some jurisdictions, a juvenile can be found guilty of an offence without being convicted.

In the Australian Capital Territory during the three month period from January to March 2008, 25 per cent of juveniles who appeared before the ACT Children’s Court pleaded guilty but did not have a conviction recorded. A further 18 per cent pleaded not guilty and did not have a conviction recorded (although no juvenile who pleaded not guilty during this period was acquitted; ACT DJCS 2008). The proportion of juveniles’ convictions that were not recorded varied by offence type, from zero per cent for homicide and sexual assault offences to 100 per cent for public order offences. Although these calculations are based on very small numbers and must be interpreted cautiously, they demonstrate the principle of avoiding the stigmatisation of juveniles. It is unknown to what extent this occurs in jurisdictions other than the Australian Capital Territory (Richards 2009).

It is important to consider in this context the extent to which juveniles’ psychosocial immaturity affects their pleading decisions in court. One study found that juveniles aged 15 years and younger are significantly more likely than older adolescents and adults to have compromised ability to act as competent defendants in court (Grisso et al. 2003). One-third of 11 to 13 year olds and one-fifth of 14 to 15 year olds were found to be ‘as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults who would likely be considered incompetent to stand trial’ (Grisso et al. 2003: 356).

This pattern of age differences was found to apply even when gender, ethnicity and socioeconomic status were controlled for and was evident among both juveniles who had had contact with the criminal justice system and those in the general community. This demonstrates that immaturity is a significant factor in shaping juveniles’ competence in court, irrespective of other influences.

Related to the above discussion is the theory of labelling. Labelling theory, which emerged in the 1960s, posits that young people who are labelled ‘criminal’ by the criminal justice system are likely to live up to this label and become committed career criminals, rather than growing out of crime, as would normally occur. The stigmatisation engendered by the criminal justice system therefore produces a self-fulfilling prophecy – young people labelled criminals assume the identity of a criminal.

Labelling and stigmatisation are widely considered to play a role in the formation of young people’s offending trajectories – whether young people persist with, or desist from, crime. Avoiding labelling and stigmatisation is therefore a key principle of juvenile justice intervention in Australia.

**Addressing juveniles’ criminogenic needs**

Underpinned by the welfare philosophy, many juvenile justice measures in Australia and other Western countries are designed to address juveniles’ criminogenic needs. Outcomes of juveniles’ contacts with the police, youth justice conferencing and/or the children’s courts often aim to address needs related to juveniles’ drug use, mental health problems and/or educational, employment or family problems.

Youth policing programs, for example, often focus on increasing juvenile offenders’ engagement with education, family or leisure pursuits. Specialty courts, such as youth drug and alcohol courts (see Payne 2005 for an overview), are informed by therapeutic jurisprudence and seek to address specific needs of juvenile offenders, rather than punish juveniles for their crimes.

Although many of the measures described in this paper – including specialty courts, restorative justice conferencing and diversion – are also available for adult offenders in Australia, this is the case to a far more limited extent. Many of these approaches are differentially applied to juveniles, whose youth, inexperience and propensity to desist from crime make these strategies especially appropriate for young people. This is also demonstrated...
by the range of measures that have recently emerged specifically for young adult offenders, such as Victoria’s dual-track system (under which 18 to 20 year old offenders can be detained in a juvenile rather than an adult correctional facility) and restorative justice measures that specifically target young adult offenders (People & Trimboli 2007).

These measures further demonstrate the criminal justice system’s focus on helping young people desist from crime without being ‘contaminated’ by older, life-course persistent criminals and the importance of providing constructive interventions that will assist young people to grow out of crime and adopt law-abiding lifestyles.

**Diversion of juveniles**

Each of Australia’s jurisdictions has legislation that emphasises the diversion of juveniles from the criminal justice system (see Table 1). Although there are variations among the jurisdictions, juveniles are often afforded the benefit of warnings, police cautions and youth justice conferences rather than being sent directly to court. As Richards (2009) shows, this is the case for about half of all juveniles formally dealt with by the police, although this proportion varies according to a number of factors, including offence type and juveniles’ age, gender and indigenous status. Even those juveniles adjudicated in the children’s court are overwhelmingly sentenced to non-custodial penalties, such as fines, work orders and community supervision (ABS 2009).

In all jurisdictions’ juvenile justice legislation, detention is considered a last resort for juveniles. This reflects the United Nations’ (1989) Convention on the Rights of the Child.

**Avoiding peer contagion**

It is widely recognised that some criminal justice responses to offending, such as incarceration, are criminogenic; that is, they foster further criminality.

It is accepted, for example, that prisons are ‘universities of crime’ that enable offenders to learn more and better offending strategies and skills, and to create and maintain criminal networks. This may be particularly the case for juveniles, who, due to their immaturity, are especially susceptible to being influenced by their peers. As Gatti, Tremblay and Vitaro (2009: 991) argue, peer influence plays a fundamental role in orienting juveniles’ behaviour and ‘deviant behavior is no exception’. Separate juvenile and adult criminal justice systems were established, in part, because of the need to prevent juveniles being influenced by adult offenders (Gatti, Tremblay & Vitaro 2009).

Gatti, Tremblay and Vitaro’s (2009) longitudinal study of 1,037 boys born in Canada who attended kindergarten in Montreal, Canada in 1984, found that intervention by the juvenile justice system greatly increased the likelihood of adult offending, such as incarceration, and crimes of serious violence. In comparison with adults, juveniles tend to be over-represented as the perpetrators of certain crimes (e.g. graffiti and fare evasion) and under-represented as the perpetrators of others (e.g. fraud, road traffic offences and crimes of serious violence).

In addition, by comparison with adults, juveniles are at increased risk of victimisation (by adults and other juveniles), stigmatisation by the criminal justice system and peer contagion. Due to their immaturity, juveniles are also at increased risk of a range of psychosocial problems (such as mental health and alcohol and other drug problems) that can lead to and/or compound offending behaviour.

**TABLE 1: MAIN JUVENILE JUSTICE LEGISLATION IN AUSTRALIA, BY JURISDICTION**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Legislation</th>
</tr>
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<tbody>
<tr>
<td>NSW</td>
<td>Young Offenders Act (1997)</td>
</tr>
<tr>
<td>Vic</td>
<td>Children, Youth and Families Act (2005)</td>
</tr>
<tr>
<td>QLD</td>
<td>Youth Justice Act (1992)</td>
</tr>
<tr>
<td>WA</td>
<td>Young Offenders Act (1994)</td>
</tr>
<tr>
<td>SA</td>
<td>Young Offenders Act (1993)</td>
</tr>
<tr>
<td>NT</td>
<td>Youth Justice Act 2005</td>
</tr>
<tr>
<td>ACT</td>
<td>Children and Young People Act (2008)</td>
</tr>
<tr>
<td>Tas</td>
<td>Youth Justice Act (1997)</td>
</tr>
</tbody>
</table>

It is widely recognised that some criminal justice responses to offending, such as incarceration, are criminogenic; that is, they foster further criminality.

An increase in the intensity of interventions was also found to increase negative impacts later in life. The more restrictive and intensive an intervention, the greater its negative impact, with juvenile detention being found to exert the strongest criminogenic effect. Gatti, Tremblay and Vitaro (2009) therefore recommend early prevention strategies, the reduction of judicial stigma and the limitation of interventions that concentrate juvenile offenders together.

**CONCLUSION**

Juvenile offenders differ from adult offenders in a variety of ways, and as this paper has described, juveniles’ offending profiles differ from adults’ offending profiles. In comparison with adults, juveniles tend to be over-represented as the perpetrators of certain crimes (e.g. graffiti and fare evasion) and under-represented as the perpetrators of others (e.g. fraud, road traffic offences and crimes of serious violence).

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Some of the key characteristics of Australia’s juvenile justice systems (including a focus on welfare-oriented measures, the use of detention as a last resort, naming prohibitions and measures to address juveniles’ criminogenic needs) have been developed in recognition of these important differences between adult and juvenile offenders.

It should be noted, however, that while juvenile offenders differ from adults in relation to a range of factors, juvenile offenders are a heterogeneous population themselves. Sex, age and indigenous status, for example, play a part in shaping juveniles’ offending behaviour and criminogenic needs.

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and these characteristics should be considered when responding to juvenile crime.

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12 Youth Crime
Issues in Society | Volume 363
Youth victimisation and offending: a statistical snapshot

Youth involvement in crime is a perennial issue of interest for the media, government and researchers. The Australian Bureau of Statistics brings together in this article various statistical data sources to create a cohesive picture of youth involvement in crime and justice as a key priority in addressing this issue. Youth are broadly defined as those aged under 25 years.

This special article is based on a December 2011 report, In Focus: Crime and Justice Statistics, December 2011 (4524.0). The report collated findings from several ABS statistical collections and provided an overview of youth victims and youth offenders. Information was sourced predominantly from Recorded Crime – Offenders, 2007-08 to 2009-10, and Crime Victimisation, Australia, 2008-09 and 2009-10. Data sourced from Crime Victimisation, Australia were only available for persons aged 15 years and over and data from Recorded Crime – Offenders were only available for persons aged 10 years and over.

All differences between estimates sourced from Crime Victimisation, Australia presented throughout this article are statistically significant differences.

Physical assault was the most common form of assault experienced by the youth population.

Youth and their experiences of victimisation: selected offences

Physical assault was the most common form of assault experienced by the youth population in 2009-10. In the 12 months prior to interview, 6% of persons aged 15-17, and 6% of persons aged 18-24, experienced at least one physical assault. These rates are more than double the estimated victimisation rates for physical assault for persons aged 25 years and over (2.3%).

Youth as criminal offenders

A comparison of the proportion of total offenders who were aged 10-24 in 2009-10 (48%) with the proportion of the general population who were aged 10-24 in Australia as at December 2009 (23%), clearly shows the higher proportion of young people in the offender population (Graph S13.1).

Youth offenders demonstrate different types of offending in comparison to adult offenders. The most common principal offence for youth offenders aged 10-24 was Theft (21% of young offenders), while for adult offenders aged 25 years and over, the most common principal offence was Acts intended to cause injury (22%).

Are youth crime victimisation and offending increasing?

Overall, there was a significant decrease in estimated victimisation rates for physical assault and threatened assault between 2008-09 and 2009-10. For the youth population, there was a significant decrease for youth aged 15-17 in physical assault (9% to 6%) and threatened assault (8% to 5%). For youth aged 18-24, there was a significant decrease for threatened assault (7% to 5%).

GRAPH S13.1: AGE DISTRIBUTION OF RECORDED CRIME OFFENDER POPULATION COMPARED WITH THE ESTIMATED RESIDENT POPULATION (ERP) – 2009-10

Source: Recorded Crime – Offenders, 2009-10 (4519.0); Australian Demographic Statistics, Dec 2009 (3101.0).
Estimated victimisation rates for sexual assault slightly decreased between 2008-09 and 2009-10, at 0.6% and 0.5% respectively for those aged 18-24, and 0.3% to 0.2% for those aged 25 and over. While the victimisation rates for these selected personal offences have generally decreased over time, the proportion of youth victims has remained relatively high. In 2008-09, 32% of victims of total assault (including physical and threatened assault) were aged 15-24, compared with 29% in 2009-10.

Offender rates for persons aged 10-14 years and persons aged 15-19 years have increased each year since 2007-08. This trend is in contrast to the offender rates for adults, which have decreased each year since 2007-08.

**Gender differences**

For males aged 15-24, 7.4% experienced at least one physical assault, compared to 4.1% of females in this age group in the 12 months prior to interview. However, the rates were very similar for threatened assaults (Graph S13.2).

Theft was the most common principal offence for female offenders aged 10-24 (36%), whilst for males it was Public order offences (22%).

**Location and relationship of offender to victim**

Persons aged 18-24 were more likely than persons aged 15-17 to report that they did not know their offender (49% and 20% respectively).

The tendency for persons aged 18-24 to not know their offender can perhaps be better understood when combined with information about the most common location for an incident to occur. For physical assault incidents, the most common location for an incident to occur was at a place of entertainment/recreation (25%).

For persons aged 15-17, a pattern emerged between the location of the incident and the relationship to the offender. The offender was most commonly reported as being a colleague/school student/professional relationship (38%), and the incident most commonly occurred at a work/place of study location (32%).

**Physical injuries arising from physical or threatened assault victimisation**

Over half of the victims of physical assault aged 15-24 reported being physically injured in their most recent incident of physical assault (57% for 15-17 year olds and 55% for 18-24 year olds). In addition, approximately 1 in 5 reported seeking formal medical treatment (21% of 15-17 year olds and 19% of 18-24 year olds).

**FURTHER INFORMATION**

Further information on this topic can be obtained from In focus: Crime and Justice Statistics, December 2011 (4524.0).
Introduction

One of the most difficult areas of criminal justice policy lies in providing appropriate legal mechanisms to reflect the transition from the age of innocence through to maturity and full responsibility under the criminal law. Australian jurisdictions have recently arrived at a uniform minimum age for criminal responsibility of 10 years. *Doli incapax*, or the maximum age of presumption against criminal responsibility, is also uniform at under 14. The maximum age of treatment as a child for criminal responsibility varies somewhat – in most jurisdictions it is 17 years, except in Queensland where the maximum age is 16 years.

**AGE OF CRIMINAL RESPONSIBILITY**

**TABLE 1: AGES OF CRIMINAL RESPONSIBILITY BY AUSTRALIAN JURISDICTION (AS AT 12 JULY 2005)**

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NO CRIMINAL RESPONSIBILITY</th>
<th>PRESUMPTION AGAINST CRIMINAL RESPONSIBILITY</th>
<th>TREATMENT AS CHILD/JUVENILE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Not specified</td>
</tr>
<tr>
<td></td>
<td>Crimes Act 1914, s 4M</td>
<td><em>Criminal Code Act 1995, s 7.1</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code Act 1995, s 7.2</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code 2002, s 25</em></td>
<td><em>Criminal Code 2002, s 26</em></td>
<td><em>Children and Young People Act 1999, ss 8, 69 ('young person')</em></td>
</tr>
<tr>
<td>New South Wales</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Children (Criminal Proceedings) Act 1987, s 5</em></td>
<td><em>Common law doli incapax</em></td>
<td><em>Children (Criminal Proceedings) Act 1987, s 3 ('child')</em></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code Act, s 38(1)</em></td>
<td><em>Criminal Code Act, s 38(2)</em></td>
<td>*Youth Justice Act 2005, s 6 ('youth')</td>
</tr>
<tr>
<td>Queensland</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 17 years</td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code Act 1899, s 29(1)</em></td>
<td><em>Criminal Code Act 1899, s 29(2)</em></td>
<td><em>Juvenile Justice Act 1992, Sch 4 ('child')</em></td>
</tr>
<tr>
<td>South Australia</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Young Offenders Act 1993, s 5</em></td>
<td><em>Common law doli incapax</em></td>
<td>*Young Offenders Act 1993, s 4 ('youth')</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code Act 1924, s 18(1)</em></td>
<td><em>Criminal Code Act 1924, s 18(2)</em></td>
<td>*Youth Justice Act 1997, s 3 ('youth')</td>
</tr>
<tr>
<td>Victoria</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Children, Youth and Families Act 2005, s 344</em></td>
<td><em>Common law doli incapax</em></td>
<td><em>Children, Youth and Families Act 2005, Sch 3 ('child')</em></td>
</tr>
<tr>
<td>Western Australia</td>
<td>Under 10 years</td>
<td>10 to less than 14 years</td>
<td>Under 18 years</td>
</tr>
<tr>
<td></td>
<td><em>Criminal Code Act Compilation Act 1913, s 29</em></td>
<td><em>Criminal Code Act Compilation Act 1913, s 29</em></td>
<td>*Young Offenders Act 1994, s 3 ('young person')</td>
</tr>
</tbody>
</table>

**REFERENCES**

Age-old question: when should children be responsible for their crimes?

The age of criminal responsibility acts as the gateway to the criminal justice system – under a certain age you are kept out. Thomas Crofts discusses

Most jurisdictions have this age barrier because it’s widely understood children need sheltering from the criminal law consequences of their behaviour until they are developed enough to understand whether their behaviour is wrong.

But what age is the right age? And how do legal systems deal with this difficult question?

**WHAT IS THE AGE OF CRIMINAL RESPONSIBILITY?**

The United Nations Convention on the Rights of the Child, requires states to set a minimum age “below which children shall be presumed not to have the capacity to infringe penal law”. The convention does not actually indicate what age level should be set as a minimum.

But in fixing a minimum age, the commentary on the United Nation’s Beijing Rules notes that: “The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child ... can be held responsible for essentially antisocial behaviour.”

In this regard all Australian criminal jurisdictions have a modern approach, with two age levels of criminal responsibility: a lower one under which a child is always presumed too young to ever be capable of guilt and can, therefore, never be dealt with in criminal proceedings (currently under the age of 10); and a higher one where the presumption that a child is incapable of crime (termed the presumption of *doli incapax*) is conditional.

Children in the higher age group, between 10 and 14 years old, can be convicted of criminal offences only if the prosecution can refute the presumption of *doli incapax*. This can be done by proving the child understood that what he or she had done was wrong according to the ordinary standards of reasonable adults. This requires more than a simple understanding that the behaviour was disapproved of by adults.

The presumption that children lack capacity to understand whether their behaviour is wrong is not new. Its roots can be traced back at least to the time of King Edward III.

**CHANGING VIEWS**

The presumption that children lack capacity is not new. Its roots can be traced back at least to the time of King Edward III. But in recent years many have questioned it, mainly due to the perceived escalation in youth crime and the changes made to the criminal justice system for dealing with the young.

Indeed, criticism was so strong in England and Wales that *doli incapax* was abolished for 10- to 14-year-olds in 1998, following the outcry over the James Bulger case. This concerned the abduction, torture and killing of three-year-old James Bulger by two ten-year-old boys.

Now in England and Wales, as soon as a child reaches...
the age of ten, he or she can be convicted of criminal offences without any examination of his or her capacity to understand whether their behaviour is wrong.

This leaves England and Wales with one of the lowest age levels of criminal responsibility in the world and subject to ongoing criticism by the international community.

For example, the former Council of Europe’s Human Rights Commissioner expressed concern, commenting that he had “extreme difficulty in accepting that a child of 12 or 13 can be criminally culpable for his actions, in the same sense as an adult”.

Even England’s closest neighbours, Scotland and the Republic of Ireland, have recently increased the minimum age level to 12.

**CRIMINAL EXAMPLE: Sexting**

The relatively recent phenomenon of ‘sexting’ serves here to show the need for higher age levels. ‘Sexting’ involves the digital recording of sexually explicit images and distribution by mobile phone texts or through social network sites.

Children who engage in this practice run the risk of being prosecuted under child pornography laws and face severe sanctions, including placement on the sex offender register, with all the flow-on consequences that this entails.

Children who engage in sexting run the risk of being prosecuted under child pornography laws and face severe sanctions, including placement on the sex offender register.

It is highly unlikely that even a 14-year-old child who takes a photo of him or herself and consensually sends this to a friend will understand that this behaviour is regarded by adults as wrongful or unlawful.

Nonetheless, as the current law stands there is little to protect children aged 14 and over from a criminal conviction.

**INCREASE THE LIMIT, KEEP IT FLEXIBLE**

In Australia, in particular in NSW, many are now calling for an increase in the minimum age level to 12.

But this might not be the great leap forward that it appears to be if it means that the flexible age period (that is, the period where children cannot be prosecuted unless it’s proven they can understand their actions) is abolished. This would take away protection for 12- and 13-year-olds, who may not be mature enough to understand the wrongfulness of their behaviour.

This is the case in Scotland and Ireland, where a child can be convicted of a criminal offence from the age of 12 without an assessment of whether he or she had the capacity to understand the wrongfulness of his or her behaviour.

The advantage of retaining a flexible age period beyond a minimum age, as presently exists in all Australian jurisdictions, is that it recognises that around the age of puberty children develop at vastly different and inconsistent rates.

It allows for the conviction of children who are sufficiently developed to be criminally responsible while protecting those children who are not so developed.

The best outcome would be to raise the minimum age level while retaining and raising the higher flexible age level. This would be a welcome development for children and the justice system in Australia.

Thomas Crofts is Associate Professor at the Sydney Law School, University of Sydney.

**THE CONVERSATION**


The Conversation | theconversation.com/au
The juvenile justice system in Australia

The juvenile justice system is the set of processes and practices for dealing with children and young people who have committed or allegedly committed an offence. Following is chapter two from the ‘Juvenile justice in Australia 2010-11’ report by Australian Institute of Health and Welfare

In Australia, juvenile justice is the responsibility of the state and territory governments, and each state and territory has its own juvenile justice legislation, policies and practices. These systems share a number of characteristics, including the general process through which children and young people are proceeded against by police, charged and sentenced, and the types of legal orders handed down by the courts.

BACKGROUND TO THE JUVENILE JUSTICE SYSTEM

The juvenile justice system

In Australia, the juvenile justice system has been shaped by three key philosophies towards young people’s offending behaviour: the welfare, justice and restorative justice models (Chrzanowski & Wallis 2011). The juvenile justice systems in each state and territory include elements of all three philosophies, to different degrees. In each state and territory, there are separate justice systems for young people and adults, governed by specific legislation.

Across Australia, children and young people are deemed to have criminal responsibility if they are aged 10 or older. Children under the age of 10 cannot be charged with a criminal offence because of their immaturity. In addition, in all jurisdictions, young people are presumed to be incapable of crime between the ages of 10 and 14 (known as doli incapax in common law), but this presumption can be rebutted, or challenged, in court (AIC 2005; Crofts 2003; Urbas 2000).

The age limit for treatment as a young person is 17 years in all states and territories except Queensland, where the age limit is 16 years. This refers to the age of the young person when the offence was committed (or allegedly committed), which means that people who are aged 18 or older (17 or older in Queensland) when they (allegedly) commit an offence will be dealt with under the criminal legislation relating to adults.

It is possible for young people aged 18 or older to be under juvenile justice supervision.

Reasons for this include:

➤ Young people aged 18 or older who are under juvenile justice supervision may have been apprehended for an offence (allegedly) committed when they were aged 17 or younger
➤ Young people who entered supervision when aged 17 or younger may continue to be supervised within the juvenile justice system once they turn 18 (or they may be transferred to the adult correctional system)
➤ In some states and territories, juvenile justice agencies may supervise young people aged 18 and older due to their vulnerability or immaturity
➤ Young people in Victoria aged 18-20 may be sentenced to detention in a juvenile detention centre rather than an adult prison where the court deems this appropriate (known as the ‘dual track’ sentencing system).

Diversion is a key aspect of the juvenile justice system in Australia, and the ability to divert or steer young people away from further involvement in the system when appropriate is...
Juvenile diversion takes a number of forms, including complete diversion (such as an informal warning by police); referral to services outside the justice system, such as drug and alcohol treatment services; and diversion from continued contact with the system, either by police or the courts (such as conferencing).

Another principle upon which the Australian juvenile justice system is based is the notion that young people should be detained only as a last resort. This is consistent with the United Nations Convention on the Rights of the Child Article 37(b) (Office of the United Nations High Commissioner for Human Rights 1989), which states that children should be deprived of liberty only as a last resort and for the shortest appropriate period of time. It is also consistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as ‘The Beijing Rules’ (Office of the United Nations High Commissioner for Human Rights 1985). This principle is legislated in each state and territory.

Overall, few young Australians are involved in the juvenile justice system and fewer still end up under juvenile justice supervision. Each year, around 3% of the Australian population aged 10-17 will be proceeded against by police, just over 1% will have a case finalised in a Children’s Court, around 0.5% will be supervised by a juvenile justice agency in the community, and less than 0.3% will be detained (ABS 2012a, 2012b, 2012c) (Tables 6.3 and 7.3).

Key policy directions in 2010-11

Juvenile justice policies are determined by state and territory governments and largely implemented by juvenile justice agencies.

In 2010-11, some of the most commonly identified policy directions included:

- Enhancing diversion, including the use of warnings, cautions and conferencing
- Improving bail assistance for young people
- Providing effective assessment processes
- Implementing co-ordinated case management systems and improving data collection and availability
- Developing and providing a range of evidence-based programs to address the offending behaviour of young people under supervision
- Improving detention facilities
- Improving the pre- and post-release support provided to young people leaving custody, including accommodation support.

More broadly, young people’s involvement in the juvenile justice system is also affected by policy developments in a range of areas such as child protection, accommodation and housing assistance services, education, employment, family and community services, and health.

YOUNG PEOPLE IN THE JUVENILE JUSTICE SYSTEM

Young people involved in crime

Research shows that involvement in crime tends to be highest in adolescence or early adulthood and diminishes with age (Fagan & Western 2005; Farrington 1986). In Australia, rates of offending during 2010-11, as measured by rates of people proceeded against by police, were highest among those aged 15-19 years (57 per 1,000), and decreased steadily as age increased (Figure 2.1). When each single year of age is considered, rates were highest among those aged 18 (64 per 1,000) followed by those aged 17 (60 per 1,000) (ABS 2012c). Males had substantially higher rates of offending than females in every age group.

Young people tend to come into contact with the juvenile justice system for particular types of offences.
Overall, young people are more likely to commit property crimes than crimes against the person (Chrzanowski & Wallis 2011). In 2010-11, theft was the most common principal offence for young people aged 10-17 proceeded against by police and accounted.

In addition, the nature of young people’s offending behaviour tends to be somewhat different from that of adults: young people are often less experienced at committing crime and commonly commit offences in an opportunistic manner, in groups, in public areas and close to their home. This may mean that they are more likely to come to the attention of police (Cunneen & White 2011).

**Aboriginal and Torres Strait Islander young people**

Aboriginal and Torres Strait Islander young people are substantially over-represented in the juvenile justice system in Australia. This over-representation has a long history; 20 years ago, the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991) first highlighted the high rates of incarceration of indigenous young people and adults.

Despite the reforms to policy and practice prompted by the Royal Commission, indigenous young people remain substantially over-represented in juvenile justice, particularly in the most serious processes and outcomes. In 2010-11, indigenous young people aged 10-14 were around 6 times as likely as non-indigenous young people to be proceeded against by police in New South Wales, Queensland and the Northern Territory and around 10 times as likely in South Australia.
Among those aged 15-19 in those states and territories, indigenous young people were 3-5 times as likely to be proceeded against by police as non-indigenous young people (ABS 2012c). Nationally, indigenous young people aged 10-17 were 14 times as likely to be under community-based supervision and 24 times as likely to be in detention as non-indigenous young people on an average day in 2010-11 (Tables 6.3 and 7.3).

PATHWAYS THROUGH THE JUVENILE JUSTICE SYSTEM

The juvenile justice system involves a number of government departments and agencies that are involved in various stages and processes. Key stages in the process include young people’s contact with police, contact with the courts, supervision by juvenile justice agencies and contact with parole boards (Figure 2.2). Information about the key services and outcomes in the juvenile justice system in Australia is provided in Table 2.1.

STATE AND TERRITORY COMPARISONS

The outcomes available for young people in the juvenile justice system in Australia are similar in each state and territory (Table 2.2). They can be categorised into those that divert the young person from...
In 2010-11, there were around 30 young people aged 10-17 proceeded against by police for every 1,000 in the population, compared with around 18 per 1,000 aged 18 and over (ABS 2012b, 2012c). In contrast, adults are more likely than young people to be supervised in the justice system. There were 3.1 adults in community-based corrections for every 1,000 in the population on an average day during the June quarter 2011, compared with around 18 per 1,000 aged 18 and over (ABS 2012b, 2012c). This means that adults were 1.4 times as likely as young people to be supervised in the community, and almost 5 times as likely to be in detention on an average day.

There were higher proportions of indigenous young people under juvenile justice supervision than indigenous adults under adult justice supervision. In 2010-11, almost half (48%) of young people in detention on an average day were indigenous compared with around one-quarter (26%) of adults in full-time custody in the June quarter.

**TABLE 2.2: JUVENILE JUSTICE SERVICES AND OUTCOMES, STATES AND TERRITORIES, JANUARY 2012**

<table>
<thead>
<tr>
<th>SERVICES AND OUTCOMES</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DIVERSIONARY OUTCOMES</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Informal caution/warning</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Formal caution</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Conferencing</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td><strong>SUPERVISION NOT REQUIRED</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Discharge without penalty or reprimand</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Fine</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Obligation without supervision</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td><strong>REQUIRES SUPERVISION – UNSENTENCED</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Supervised or conditional bail or similar</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Police-referred detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Remand</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td><strong>REQUIRES SUPERVISION – SENTENCED</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Good behaviour bond</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Probation and similar</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Community service</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Suspended detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Home detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Parole or supervised release from detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td><strong>DETENTION</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Detention</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

(a) In the Northern Territory, supervised release from detention includes probation and parole. Note: Shaded cells indicate items that are within JJ NMDS scope and for which data are collected in the JJ NMDS. Other ticked cells indicate juvenile justice outcomes and services that the states and territories offer that are outside the scope of the JJ NMDS.
supervision of young people include England and Wales, the United States (10 years), and Canada (12 years). Although there is little information available on the numbers of young people involved in the broader juvenile justice systems, some data are available on the numbers and rates of young people in detention in these countries.

Rates of young people in detention generally reflect the principles and operation of the juvenile justice systems; high rates are commonly seen in countries that operate under a justice model, which emphasises accountability and punishment, and lower rates in countries with primarily welfare-based systems, which focus on rehabilitation and addressing the needs of the young person (Noetic Solutions 2010). Although, traditionally, English-speaking countries tend to employ a justice-based model and European and other countries employ a welfare-based model, aspects of both approaches are increasingly used in many countries.

On an average day, the rate of young people aged 10-17 in juvenile detention in England and Wales was similar to the rate in Australia (both around 0.35 per 1,000) (Table 2.4). Young people in Canada were around 2 times as likely as those in Australia to be in detention (0.7 per 1,000), while young people in the United States were around 5 times as likely (1.86 per 1,000).

### INTERNATIONAL COMPARISONS

Internationally, the philosophies, systems and processes for dealing with young people involved in criminal behaviour vary substantially. Many countries have a higher minimum age of criminal responsibility than Australia, which means that young people in these countries who are involved in crime and antisocial behaviour are treated very differently from young people in Australia. For example, the minimum age of criminal responsibility is 12 years in Canada; 13 in France; 14 in Germany, Italy and New Zealand (except for murder and manslaughter); and 15 in Scandinavian countries (Table 2.3) (Noetic Solutions 2010; Urbas 2000).

Countries with a similar minimum age of criminal responsibility to Australia and similar options for the supervision of young people include England and Wales, the United States (10 years), and Canada (12 years). Although there is little information available on the numbers of young people involved in the broader juvenile justice systems, some data are available on the numbers and rates of young people in detention in these countries.

Rates of young people in detention generally reflect the principles and operation of the juvenile justice systems; high rates are commonly seen in countries that operate under a justice model, which emphasises accountability and punishment, and lower rates in countries with primarily welfare-based systems, which focus on rehabilitation and addressing the needs of the young person (Noetic Solutions 2010). Although, traditionally, English-speaking countries tend to employ a justice-based model and European and other countries employ a welfare-based model, aspects of both approaches are increasingly used in many countries.

On an average day, the rate of young people aged 10-17 in juvenile detention in England and Wales was similar to the rate in Australia (both around 0.4 per 1,000) (Table 2.4). Young people in Canada were around 2 times as likely as those in Australia to be in detention (0.7 per 1,000), while young people in the United States were around 5 times as likely (1.9 per 1,000).

![Image of young person and words: Crime, Prison, Punishment]

**TABLE 2.3: MINIMUM AGE OF CRIMINAL RESPONSIBILITY, SELECTED COUNTRIES**

<table>
<thead>
<tr>
<th>Age</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Australia, England and Wales, United States</td>
</tr>
<tr>
<td>12</td>
<td>Canada, Greece, Netherlands, Scotland</td>
</tr>
<tr>
<td>13</td>
<td>France, Israel</td>
</tr>
<tr>
<td>14</td>
<td>New Zealand (except murder and manslaughter), Austria, Germany, Italy</td>
</tr>
<tr>
<td>15</td>
<td>Denmark, Iceland, Finland, Norway, Sweden</td>
</tr>
<tr>
<td>16</td>
<td>Japan, Portugal, Spain</td>
</tr>
<tr>
<td>18</td>
<td>Belgium, Luxembourg</td>
</tr>
</tbody>
</table>

2011; similarly, 37% of young people supervised in the community were indigenous compared with 19% of adults in community corrections (ABS 2011, tables 6.2 and 7.2). Similar proportions of young people and adults under justice supervision were male: around 92% of young people in detention and 93% of adults in prison were male, along with 82% of both young people and adults supervised in the community.

Young people in detention were more likely than adults in prison to be unsentenced. On an average day in 2010-11, half (50%) of young people in detention were on remand awaiting the outcome of their legal proceedings, compared with almost one-quarter (24%) of adults in prison in the June quarter 2011 (ABS 2011 and Table 7.6).

**TABLE 2.4: YOUNG PEOPLE AGED 10-17 IN DETENTION ON AN AVERAGE DAY, SELECTED COUNTRIES, 2010-11**

<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
<th>Number per 1,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia(a)</td>
<td>800</td>
<td>0.35</td>
</tr>
<tr>
<td>England and Wales(c)</td>
<td>2,040</td>
<td>0.39</td>
</tr>
<tr>
<td>Canada(b)</td>
<td>1,793</td>
<td>0.71</td>
</tr>
<tr>
<td>United States(d)</td>
<td>60,861</td>
<td>1.86</td>
</tr>
</tbody>
</table>

(a) Includes estimates for Western Australia and the Northern Territory.
(b) Data for Canada are for young people aged 12-17 in detention on an average day during 2009-10.
(c) Average daily number in juvenile detention between April 2010 and March 2011.
(d) Number in juvenile detention on 24 February 2010.
Almost 7,000 young people are under youth justice supervision on an average day

On an average day in 2011-12, there were almost 7,000 young people aged 10 and older under youth justice supervision in Australia due to their involvement or alleged involvement in crime. Most (83%) were male and the majority (79%) were aged 14-17. Indigenous young people were over-represented – although less than 5% of young Australians are indigenous, 39% of those under supervision were indigenous.

Among all those aged 10-17 in Australia, this equates to a rate of 26 young people under supervision on an average day per 10,000 in the population, or 1 in every 385 young Australians.

Most young people are supervised in the community

Almost 6,000 (86%) young people were supervised in the community on an average day in 2011-12, and the remaining 1,000 (14%) were in detention. However, 2 in every 5 young people (41%) under youth justice supervision in Australia were in detention at some time during the year.

Young people spend an average of 6 months under supervision

The median duration of periods of youth justice supervision was about 11 weeks (78 days). Periods of community-based supervision completed during 2011-12 were typically longer (84 days, on average) than both unsentenced (4 days) and sentenced detention (55 days).

Some young people experienced more than one supervision period during the year. When all the time spent under supervision during 2011-12 is considered, young people spent an average of about 6 months (185 days) under supervision.

Trends are stable, but vary among the states and territories

Nationally, the rates of young people aged 10-17 under supervision on an average day remained relatively stable (about 26-27 per 10,000) over the 4 years to 2011-12. This stability occurred in both community-based supervision and detention.

However, there were differences in trends among the states and territories. Between 2008-09 and 2011-12, rates of young people under supervision on an average day increased in Victoria and the Australian Capital Territory, and decreased in New South Wales, Queensland, South Australia and Tasmania.

Information is not available for Western Australia and the Northern Territory as standard data were not provided.
INTRODUCTION

This chapter presents information about defendants finalised in the Children’s Courts in 2011-12. This jurisdiction specifically deals with juvenile offenders charged with summary criminal offences, and in some states and territories those charged with indictable offences. The power of the Children’s Court to hear serious criminal matters varies across states and territories.

In all states and territories, children aged under 10 years cannot be charged with a criminal offence. The maximum age that defendants are considered a child or juvenile is under the age of 18 years in all states and territories, except in Queensland where defendants are considered adults if aged 17 years and over at the time the offence was committed.

Note that the age of defendants in the Children’s Courts data are based on age at finalisation in the courts, not age at the time of the alleged offence. Therefore, some defendants of adult age will be processed by the Children’s Courts and included in the collection.

Children’s Courts data presented here exclude cases such as bail reviews and applications to amend sentences or penalties which do not require the adjudication of charges. Also excluded are breach of bail or parole cases, appeal cases, tribunal matters and defendants for whom a bench warrant is issued but not executed.

The offence categories referred to relate to the principal offence – that is, the most serious offence type for the defendant’s case.

The data in this chapter are drawn from the Children’s Courts data cube and selected State and Territory data cubes. Indigenous Status data are drawn from the Criminal Courts, Indigenous Status data cube.

Juvenile justice

Juvenile justice is a complex area of the criminal justice system that can involve a range of bodies such as police, courts, juvenile justice departments, legal advocates and young people and their families. A key feature of juvenile justice is the diversion of young people away from the formal criminal justice system where appropriate. Not all young people who come into contact with criminal justice authorities will appear in court. Police and other non-court agencies can divert juvenile offenders away from the courts by way of warnings, cautions, conferences, and other programs. Pre-court contact with juveniles may vary considerably across jurisdictions and therefore could potentially impact on the number of juvenile defendants who appear in court and the duration of their cases.
Furthermore, the Children’s Courts can also initiate programs as part of the court process by transferring defendants to drug and other specialist courts, or non-court agencies, and programs where defendants return to the Children’s Court upon program completion. Some defendants may be referred to a program as a sentencing outcome. There can be many differences in the types of court programs or sentencing options available in each state and territory, therefore caution should be used when making comparisons between states and territories.

**SENTENCE OUTCOMES**

Sentence refers to the principal sentence a proven guilty defendant receives from the court.

Differences in sentencing result from the offence with which the defendant was proven guilty, as well as a range of aggravating and mitigating factors taken into account by the court, such as prior convictions, level of violence, whether the offender can successfully claim provocation was involved, and demonstrations of remorse. The range of sentences available also differs across states and territories.

### Custodial orders

Of defendants proven guilty in the Children’s Courts in 2011-12, 2,836 (11%) were sentenced to custodial orders. Of all guilty defendants, 6% were sentenced to custody in a correctional institution, while defendants sentenced to custody in the community accounted for 2% and those with fully suspended sentences accounted for 3%.

The proportion of defendants proven guilty receiving a custodial order varied across states and territories. The Northern Territory (21%), Tasmania (15%) and New South Wales (14%) had the highest proportions of defendants receiving a custodial order. Queensland and Western Australia had the lowest proportion (both 7%).

The offence with the highest proportion of custodial sentences was robbery and extortion (36% or 381 defendants). Most of these defendants were sentenced to custody in a correctional institution.

Custodial orders were issued to 12% of guilty male defendants and 5% of guilty female defendants.

Defendants aged 17 years were the most likely to receive a sentence of custody in a correctional institution (7% or 473 defendants). Those aged 10 to 12 years were the least likely (1%) to receive a sentence of custody in a correctional institution.

### Non-custodial orders

During 2011-12, 89% (23,689) of defendants proven guilty in the Children’s Courts were sentenced to non-custodial orders. Of guilty defendants, 28% received a sentence of community supervision or work orders, while 15% received a principal sentence of a monetary order.

Defendants proven guilty of robbery and extortion were most likely to be issued with a community supervision or work order (49%) followed by unlawful entry with intent (47%), homicide (46%) and sexual assault (44%). Defendants proven guilty of traffic offences were most likely to be issued with a monetary order (53%), followed by miscellaneous offences (47%) and dangerous or negligent acts (38%).

Of the 20,954 male defendants proven guilty, over one-quarter (29%) received a community supervision or work order, while 16% received a monetary order. Sentences for female defendants were similar to males: 26% received a community supervision or work order and 14% received a monetary order.

The proportion of defendants receiving community supervision or work orders generally decreased with age, from 40% of 13 year old defendants to 15% of those aged 19 years and over. Older defendants were more likely to be sentenced to monetary orders: 33% of those aged 18 years and over received this order compared to 2% of 10 to 12 year olds.
Trends in juvenile detention in Australia

Australian Institute of Criminology issues paper prepared by Kelly Richards

Foreword | An overview of key trends in juvenile detention in Australia since 1981 is provided in this paper, based on data contained in the Australian Institute of Criminology’s Juveniles in Detention in Australia Monitoring Program database. In addition, two key trends in juvenile detention in Australia are discussed.

First, the substantial increase in the proportion of juvenile detainees that is remanded, rather than sentenced, is identified as a concerning trend. A number of potential drivers for the increased use of remand are outlined in this paper. It is argued that the apparent increase in the use of remand should be a key focus of future juvenile justice research.

Second, the over-representation of indigenous juveniles continues to be an important issue to be addressed. Although rates of indigenous over-representation have increased steadily, this appears to be due to decreases in rates of non-indigenous juveniles in detention, rather than increases in rates of indigenous juveniles in detention. It is argued that rather than attempting to determine how juvenile justice policies have failed to keep indigenous juveniles out of detention, consideration might be given to what has worked in reducing rates of non-indigenous juveniles in detention.

Adam Tomison, Director

Although prior to the mid-nineteenth century, there was no separate category of ‘juvenile offender’ in Western legal systems (Cunneen & White 2007), it is widely acknowledged today that juveniles should be subject to a system of criminal justice that is separate from the adult system and that recognises their inexperience and immaturity. As such, juveniles are typically dealt with separately from adults and treated less harshly than their adult counterparts.

In all Australian jurisdictions, detention is considered a last resort for juvenile offenders. Juvenile justice legislation in each state and territory provides for the diversion of juveniles from the criminal justice system via measures such as police cautioning, restorative justice conferencing, specialty courts (such as youth drug and alcohol courts) and other diversionary programs.

This paper provides an overview of key trends in juvenile detention in Australia, based on data contained in the Australian Institute of Criminology’s (AIC’s) Juveniles in Detention in Australia Monitoring Program database and then provides a discussion of two key trends in juvenile detention – the national increase in the proportion of juvenile detainees that is remanded (rather than sentenced) and the increase in the over-representation of indigenous juveniles in detention.

METHODOLOGY

The AIC has monitored juveniles in detention in Australia since 1981 (see AIC 2000; Bareja & Charlton 2003; Cahill & Marshall 2002; Carcach & Muscat 1998; Charlton & McCall 2004; Richards & Lyneham 2010; Taylor 2006, 2007, 2009; Veld & Taylor 2005). The AIC reports annually on all juveniles in detention in Australia, including information on juveniles’ age, sex, Indigenous status, legal status (remanded or sentenced) and jurisdiction.

In all Australian jurisdictions, detention is considered a last resort for juvenile offenders.

Data for the monitoring program are provided by the relevant juvenile justice authority in each jurisdiction. A census count is undertaken in each juvenile correctional facility on the last day of each quarter of the year; that is, 31 March, 30 June, 30 September and 31 December. The population estimates used to calculate the rate of people aged 10 to 17 years in detention per 100,000 population aged 10 to 17 years, are taken from Population by Age and Sex (ABS 2009) for 30 June of each year. More detailed information about the methodology of the AIC’s Juveniles in Detention in Australia Monitoring Program, including its limitations, can be found in Richards and Lyneham (2010).

TRENDS IN JUVENILE DETENTION

Since 1981, there has been an overall decline in both the number and rate of persons aged 10 to 17 years in juvenile detention in Australia.

At 30 June 1981, there were 1,352 juveniles in detention in Australia, or 64.9 juvenile detainees per 100,000 population. At 30 June 2008, there were 841 juveniles in detention, or 37 juvenile detainees per 100,000 population (see Figure 1).

This decline in the number and rate of juveniles in detention was most evident between 1981 and 2002; a 61 per cent decline in rates occurred during this period. A small but steady increase in both numbers and rates of juveniles in detention is, however, evident since 2004 (see Figure 1). This national trend has not been mirrored in every jurisdiction. A range of factors, including legislative, policy and demographic changes have shaped trends in juvenile detention across Australia’s jurisdictions (see...
Figures 2 and 3). It is important to note that in Queensland, unlike all other jurisdictions, a ‘juvenile’ is defined as being aged between 10 and 16 years inclusive. In all other states and territories, a ‘juvenile’ is defined as being aged between 10 and 17 years inclusive. In Queensland, 17 year olds are therefore dealt with as adults in the criminal justice system. Although there are young people aged 17 years and above in juvenile detention in Queensland (due to juveniles who commit their offence prior to the age of 17 years completing their sentences in juvenile detention rather than being transferred to an adult facility), it is important to note this difference when interpreting trends and making comparisons among jurisdictions.

As would be expected due to its large population, trends in New South Wales closely reflect national trends. Rates of juveniles in detention in New South Wales have, however, been fairly consistently higher over time than the national average (see Figure 2).

As Figure 2 shows, the decline in the rate of juveniles in detention in Victoria has been very pronounced. Although rates of juveniles in detention were relatively close to the national average during the first decade of data collection (1981 to 1991), Victoria has had a consistently lower rate of juveniles in detention, compared with the national average, since the early 1990s. Victoria has maintained a strong emphasis on diverting juveniles from the criminal justice system during this time.

Rates per 100,000 juveniles in detention in Queensland have been relatively stable compared with the national trend (see Figure 2). In 1981, the rate of juveniles in detention in Queensland was about half of the national rate (at 32.9 juveniles in detention per 100,000 population). Although at 30 June 2008, Queensland’s rate remained lower than the national average, the difference between the two is not nearly as pronounced and has not been as pronounced since about 1995.

Rates of juveniles in detention in Western Australia have been consistently higher than the national average since the early 1990s, although they have broadly reflected national trends since this time (see Figure 2). In South Australia, rates of juveniles in detention mirrored national trends over time until about 1990. Since then, they have fluctuated much more than the national average (see Figure 3). This is to be expected in a jurisdiction with a relatively small population of juvenile detainees.

As Figure 3 shows, rates of juveniles in detention in Tasmania, the Northern Territory and the Australian Capital Territory have not closely reflected the national picture, and have fluctuated considerably since 1981. This is to be expected in jurisdictions with very small numbers of juvenile detainees.

Age of juveniles in detention

Juveniles in detention in Australia are not evenly distributed throughout the age range of 10 to 17 years. Since 1994, when data on juveniles’ ages began to be collected, those aged 10 to 14 years have comprised a minority of all juveniles in detention in Australia (see Figure 5). More detail on the sex
and age of juveniles in detention in Australia is available in Richards and Lynham (2010).

### Indigenous status of juveniles in detention

Indigenous juveniles have been substantially over-represented among the juvenile detention population in Australia since 1994, when data on indigenous over-representation began to be collected. Although indigenous people are also over-represented among adult prisoners, over-representation appears more pronounced among juvenile detainees. A higher proportion of juvenile than adult detainees is indigenous – at 30 June 2008, 54.7 per cent of juvenile detainees were indigenous, compared with 24.3 per cent of adult prisoners in Australia (ABS 2008).

The rate of over-representation of indigenous juveniles has steadily increased since 1994 (see Figure 6). The rate ratio of over-representation, which is calculated by dividing the rate per 100,000 indigenous juveniles in detention by the rate per 100,000 non-indigenous juveniles in detention, has increased from 17 in 1994 to 23.9 in 2008. The over-representation of indigenous juveniles in detention was highest in 2006-07, when indigenous juveniles were 28 times as likely as non-indigenous juveniles to be detained, and another in 2004 when they were 52 times as likely), trends over time in Western Australia have broadly reflected national trends.

Between 1994 and 2002, trends in over-representation of indigenous juveniles in detention in Queensland broadly reflected national trends, although rates in Queensland were consistently slightly higher. While nationally, there had been a steady increase in over-representation across Australia since 2002, a steady decline in over-representation occurred in Queensland until 2006. Following this, slight increases in indigenous over-representation have occurred.

Reliable data on the indigenous status of juveniles in detention in Tasmania were not available between 1997 and 2002. It is therefore difficult to assess trends in over-representation. For periods of time when data have been available, Tasmania has had lower rates of over-representation of indigenous juveniles.

### FIGURE 3: RATES OF JUVENILE DETENTION PER 100,000 POPULATION AT 30 JUNE 1981-2008, SOUTH AUSTRALIA, TASMANIA, NORTHERN TERRITORY, AUSTRALIAN CAPITAL TERRITORY AND AUSTRALIA

![Graph showing rates of juvenile detention per 100,000 population from 1981 to 2008 for different jurisdictions in Australia.]

### FIGURE 4: JUVENILES IN DETENTION IN AUSTRALIA, 1981-2008, BY SEX (RATE PER 100,000)

![Graph showing rates of juvenile detention by sex from 1981 to 2008.]

Juvenile justice legislation in each state and territory provides for the diversion of juveniles from the criminal justice system via measures such as police cautioning, restorative justice conferencing, specialty courts (such as youth drug and alcohol courts) and other diversionary programs.
Youth Crime Issues in Society | 30

Legal status of juveniles in detention (remanded or sentenced)

Juveniles in detention in Australia have either been sentenced by the court to a period in detention or are in detention on remand (i.e. awaiting a court hearing, outcome or penalty).

Since 1981, the proportion of juveniles in detention in Australia that is remanded, rather than sentenced, has increased substantially. At 30 June 1981, 21 per cent of all detained juveniles were on remand, compared with 59.6 per cent of all detained juveniles at 30 June 2008 (see Figure 7).

Since 1981, a consistently higher proportion of female than male juveniles in detention has been remanded (see Figure 7). This proportion has fluctuated over time more so than the proportion of male detainees, as is to be expected given the smaller number of female juveniles in detention. There has, however, been a greater increase in the proportion of male than female juveniles on remand during this time. At 30 June 1981, 33.1 per cent of female juveniles in detention were remanded. By 30 June 2008, this had nearly doubled to 64.8 per cent. For male juveniles, the proportion has almost trebled, from 20 per cent of male juvenile detainees being remanded at 30 June 1981, to 59.2 per cent at 30 June 2008.

Statistical techniques were applied to test this difference between trends over time for indigenous juveniles in detention that is remanded has increased from 32.8 per cent at 30 June 1994 to 55.1 per cent at 30 June 2008. The proportion of non-indigenous juveniles in detention that is remanded has increased slightly more, from 37 per cent at 30 June 1994 to 65.1 per cent at 30 June 2008. Statistical techniques were applied to test this difference between trends over time for indigenous
and non-indigenous juveniles. Two sub-samples of similar juveniles were created (1994-2000 and 2001-08) for each. The mean proportion of indigenous \((t=3.74; p<0.005)\) and non-indigenous \((t=4.28; p<0.001)\) juveniles on remand was significantly higher in period two than in period one. Differences between indigenous and non-indigenous juveniles in period one \((t=0.49; NS)\) and period two \((t=1.63; NS)\) were not, however, significantly different.

This suggests that although indigenous juveniles are over-represented on remand (and in the justice system more broadly), the proportion of indigenous juveniles on remand has increased at approximately the same rate as the proportion of non-indigenous juveniles.

A far higher proportion of juvenile than adult detainees in Australia is remanded. At 30 June 2008, 23 percent of adult prisoners were on remand (ABS 2008), compared with 59.6 percent of juvenile detainees. Data on adult remand, which have only been published since 2000, demonstrate that the sharp increase in the proportion of juvenile detainees that is remanded has also occurred in relation to adult prisoners. As Figure 8 shows, since 2000, the proportion of adult prisoners that is remanded has increased from 17.4 per cent to 23 per cent (an increase of 32%), compared with an increase from 40.8 per cent to 59.6 per cent (an increase of 27%) for juvenile detainees.

**KEY ISSUES IN JUVENILE DETENTION TRENDS**

The trends described above suggest two key issues in juvenile detention in Australia that would benefit from consideration by legislators, policymakers, practitioners and researchers in the juvenile justice area.

**Increase in the proportion of remanded juveniles**

The substantial national increase in the proportion of juvenile detainees that is remanded has been identified as a key area of concern. The increasing proportion of remanded detainees is problematic for a number of reasons.

First, the widespread use of remand is inconsistent with the principle of detention as a last resort for juveniles (Boyle 2009; Wong, Bailey & Kenny 2010). This principle underpins each jurisdiction’s juvenile justice legislation and is a feature of UN instruments that seek to protect young people who come into contact with the criminal justice system (see United Nations 1990). Second, only a small proportion of remand episodes result in the juvenile being convicted and sentenced to a custodial order (Mazerolle & Sanderson 2008).

It should be noted, however, that this varies by jurisdiction (AIHW 2008) and increases with the age of juveniles (Mazerolle & Sanderson 2008). Third, periods of remand represent missed opportunities to intervene in juveniles’ lives with constructive and appropriate treatment because of their remand status, it is difficult to plan and provide appropriate programs for these individuals, as detention centre staff do not know how long they will be detained or what the outcome of their charge will be (Mazerolle & Sanderson 2008: 10).

This is particularly important for juveniles, whose youth can make them uniquely receptive to criminal justice interventions (see Richards 2011). Finally, increases in the juvenile remand population place substantial resource demands on juvenile justice departments (Mazerolle & Sanderson 2008; Vignaendra et al. 2009).

The median length of a juvenile remand episode during 2007-08 was 11 days (AIHW 2009). Most juvenile remandees completed only one period of remand during this period, but nearly one-fifth completed three or more remand episodes; the average number of days juveniles spent on remand during 2007-08 was 46 (AIHW 2009).

Two factors underpin the increase in juvenile remand described above – increased numbers of juveniles...
Youth Crime Issues in Society

A range of administrative delays, that some juveniles do not apply for bail (20% in one NSW study (Wong, Bailey & Kenny 2010)). Many of these delays appear to reflect ‘welfare’ concerns about juveniles that do not usually apply to adults. Juveniles are often unable to meet bail conditions and/or may be more robustly monitored by police while on bail than adults (Stubbs 2009; UnitingCare Burnside 2009; Vignaendra et al. 2009); a lack of appropriate accommodation options for juveniles due to homelessness (Boyle 2009) or housing instability (Uniting Care Burnside 2009); and some juveniles do not apply for bail (20% in one NSW study (Wong, Bailey & Kenny 2010)).

As described above, however, the over-representation of indigenous juveniles has increased steadily since data began to be collected. It is important to note that over-representation ratios, used to demonstrate indigenous over-representation, reflect rates of indigenous juveniles in detention relative to rates of non-indigenous juveniles in detention. This means that a high over-representation rate may be due to an unusually high number of indigenous juveniles in detention relative to non-indigenous juveniles, or an unusually low number of non-indigenous juveniles in detention relative to indigenous juveniles.

Further research on the high proportion of juvenile detainees on remand in Australia should be considered a priority area for juvenile justice research.

**Indigenous juveniles in detention**

Another area of concern is the continued over-representation of indigenous juveniles in detention in Australia. The AIC’s Juveniles in Detention in Australia Monitoring Program emerged following the Royal Commission into Aboriginal Deaths in Custody (RCIADIC 1991), which recommended the ongoing monitoring of rates of indigenous juveniles in detention.

As described above, however, the over-representation of indigenous juveniles has increased steadily since data began to be collected. It is important to note that over-representation ratios, used to demonstrate indigenous over-representation, reflect rates of indigenous juveniles in detention relative to rates of non-indigenous juveniles in detention.

This means that a high over-representation rate may be due to an unusually high number of indigenous juveniles in detention relative to non-indigenous juveniles, or an unusually low number of non-indigenous juveniles in detention relative to indigenous juveniles.

Figure 9 shows the rate of indigenous and non-indigenous juveniles in detention per 100,000 population, from 1994 to 2008. It demonstrates that indigenous juveniles have been substantially over-represented in juvenile detention over this period. Importantly, however, it also demonstrates that although indigenous over-representation has increased since 1994 (see Figure 6), rates of indigenous juveniles in detention have not increased substantially over this period.

At 30 June 1994, there were 413.9 indigenous juveniles in detention per 100,000, compared with 420.4 indigenous juveniles in detention per 100,000 at 30 June 2008 (see Figure 10). There has been some fluctuation in the rate over this time.

By comparison, there were 24.3 non-indigenous juveniles per 100,000 population in detention at 30 June 1994, and 17.6 non-indigenous juveniles per 100,000 in detention at 30 June 2008. The rate of detention of non-indigenous juveniles has decreased 27.6 per cent since 2004, while the rate of detention of indigenous juveniles has increased 1.6 per cent.

By contrast with rates of indigenous over-representation, which show a steady increase since 1994, rates of indigenous juveniles in detention per 100,000 have neither increased substantially nor shown any definitive trend during this period (see Figure 9). This suggests that rather than attempting to determine how juvenile justice policies have failed to keep indigenous juveniles out of detention, consideration might be given to what has worked in reducing rates of non-indigenous juveniles in detention.

Given the substantial decrease since 1981, it appears that changes to legislation and policy, and the introduction of diversionary programs for juvenile offenders may have played a role in reducing the number of juveniles in detention in Australia. This appears to have been the case for non-indigenous juveniles more so than indigenous juveniles.
A key issue to address, therefore, may be why juvenile justice initiatives have not been able to lower rates of detention of indigenous juveniles to the same extent as rates of detention of non-indigenous juveniles and how this might be addressed. There is evidence to suggest, for example, that while police cautioning and restorative justice measures have had some success in diverting juveniles from the formal criminal justice system, indigenous juveniles are often not afforded the benefits of these or other diversionary measures (Allard et al. 2010; Snowball 2008).

This is the case even where other factors (including offence type and offending history) have been controlled for (Allard et al. 2010; Snowball 2008). Research into reasons for this discrepancy and what can be done to address it should therefore be considered a priority for the future.

As Snowball (2008: 6) argues, it is important to remember that ‘diversionary policies are more likely to achieve their objective of reducing contact with the criminal justice system if they are effective in reducing reoffending’. Research into effective strategies for reducing offending by indigenous juveniles is therefore also a priority (see Richards, Rosevear & Gilbert 2011).

**CONCLUSION**

This paper has identified a number of key trends in juvenile detention in Australia, including that:

➤ Overall, the number and rate per 100,000 juveniles in detention in Australia has decreased substantially since 1981;

➤ A far higher proportion of juvenile than adult detainees in Australia is remanded; and

➤ Indigenous juveniles remain substantially over-represented in detention. While rates of non-indigenous juveniles in detention have declined, rates of indigenous juveniles in detention have remained at very high levels.

Key areas for future consideration therefore include:

➤ What initiatives have worked in reducing rates of detention for non-indigenous juveniles and how these or other initiatives might be used to reduce rates of indigenous juveniles in detention;

➤ Reasons for the increased proportion of juvenile detainees that is unsentenced and how this might be addressed; and

➤ Reasons for variations in rates of juveniles in detention among jurisdictions. For example, the consistently lower rate of juveniles in detention in Victoria could be explored.

It is not possible, based on existing data, to determine conclusively the reasons for the substantial reduction in the number and rate per 100,000 of juveniles in detention between 1981 to 2002, or the more recent small but steady increase in this number and rate per 100,000. It may be the case that policies aimed at reducing...
the number of juveniles in detention in Australia have been somewhat successful, although the evidence about the efficacy of diversionary measures in reducing juveniles’ future contact with the criminal justice system is inconclusive (e.g. Vignaendra & Fitzgerald 2006).

It is nonetheless important for legislators, policymakers and practitioners to consider how the reduction in the use of juvenile detention might be continued and how the recent increase in rates of juveniles in detention might be addressed.

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THE SPINNEY PRESS and: Trinity College, East Perth, library@trinity.wa.edu.au

JUVENILE DETENTION POPULATION IN AUSTRALIA

Although most young people in Australia who have committed, or allegedly committed, a criminal offence are supervised in the community, some are in detention. This Australian Institute of Health and Welfare report presents information on the juvenile detention population, focusing on trends over the 4-year period from the June quarter 2008 to the June quarter 2012.

Few young people are in detention in Australia

There were 1,024 young people in detention on an average night in the June quarter of 2012. Most (78%) were aged 10-17. This equates to a rate of 0.35 young people in detention per 1,000 aged 10-17, or around 1 in every 3,000 young people. Just over half (53%) of those in detention were indigenous and most (91%) were young men.

Numbers and rates of detention are stable

Numbers and rates of young people in detention on an average night remained relatively stable over the 4-year period to the June quarter 2012. There was little overall change in either the number of young people (of all ages) in detention (down 1%) or the rate of detention among those aged 10-17 (from 0.37 to 0.35 per 1,000) over the period.

One in two young people in detention have not been sentenced

Just over half (52%) of those in detention on an average night in the June quarter 2012 were unconvicted – that is, awaiting the outcome of their court matter or sentencing.

There was little change in the number and proportion of young people in detention who were unconvicted over the 4-year period. In the most recent year, there was an increase in the unconvicted population (up 9%) and a decrease in the sentenced population (down 9%).

Trends vary among the states and territories

There were differences in the trends in the detention population among the states and territories. Over the 4-year period, rates of young people in detention on an average night decreased in New South Wales, Tasmania and Victoria, remained relatively stable in Western Australia and increased in the other states and territories.

Indigenous over-representation has increased, particularly in unconvicted detention

On an average night in the June quarter 2012, indigenous young people aged 10-17 were 31 times as likely as non-indigenous young people to be in detention, up from 27 times in the June quarter 2008.

The level of indigenous over-representation (as shown by the rate ratio) increased in unconvicted detention over the 4-year period (from 24 to 31 times), but decreased slightly in sentenced detention (from 32 to 30 times).

Indigenous young people enter juvenile justice supervision earlier, stay longer

Indigenous young people entered juvenile justice supervision at younger ages than their non-indigenous counterparts, and spent longer under supervision, according to a report by the Australian Institute of Health and Welfare

The report, Indigenous young people in the juvenile justice system, shows that 58% of indigenous young people under supervision during 2010-11 had first entered supervision when they were aged 10-14, compared with less than one-third of non-indigenous young people.

While indigenous young people tended to complete slightly shorter individual periods of supervision than non-indigenous young people (average period of 62 days compared with 68), they generally spent more time under supervision overall in 2010-11.

While indigenous young people tended to complete slightly shorter individual periods of supervision than non-indigenous young people, they generally spent more time under supervision overall.

“On average, indigenous young people spent about 3 weeks longer (200 days compared with 178) under supervision during the year,” said AIHW spokesperson Tim Beard.

There were 2,820 indigenous young people under supervision in Australia on an average day (meaning around 2 in 5 young people under supervision were Indigenous) and 5,195 at some time during the year.

“The report shows that 14-16% of indigenous young people experienced supervision at some time when they were aged 10-17, compared with just over 1% of non-Indigenous young people,” Mr Beard said.

Over the five years to 2010-11 there was a slight drop in the level of indigenous over-representation under juvenile justice supervision. Indigenous young people were 15 times as likely as non-indigenous young people to be under supervision on an average day in 2010-11, down from 16 times as likely in 2006-07.

The largest fall in indigenous over-representation was in detention, where the ratio dropped from 28 to 24 times as likely over the period.

The report also found that indigenous young people’s over-representation increased as their level of involvement in the system became more serious.

“During 2010-11, indigenous young people were 4-6 times more likely than their non-indigenous counterparts to be proceeded against by the police; 8-11 times as likely to be proven guilty in a Children’s Court; 14 times as likely to be under community-based supervision; and 18 times as likely to be in detention,” said Mr Beard.
Review of effective practice in juvenile justice

Executive summary from a report prepared by Noetic Solutions for the NSW Minister for Juvenile Justice. This report identifies and describes effective practice in juvenile justice and reviews international and Australian juvenile justice systems in the process.

This report forms part of a broader review of the New South Wales (NSW) juvenile justice system which is currently being undertaken by Noetic Solutions Pty Ltd (Noetic) for the Minister for Juvenile Justice. The purpose of the review is to propose a plan for future policy, programs, and practices within the NSW juvenile justice system. This plan was developed through the identification of emerging trends, evaluating existing government legislation, policy and practices, with the aim of reducing re-offending (particularly of indigenous offenders). In doing so, the Review took into account relevant national and international research, and provides the costs and benefits of various strategies and options available to the NSW Government.

This report identifies and describes effective practice in juvenile justice. The report reviews important international and Australian juvenile justice systems and draws from the ‘what works’ literature to evaluate a range of programs, as well as traditional penal and ‘get tough’ programs including juvenile incarceration.

Specific issues of reducing indigenous overrepresentation, and realising and coordinating whole-of-community action are also discussed. The report will be used to build a comprehensive evidence base from Australia and overseas in order to test current practice and new ideas in the NSW context.

International juvenile justice systems

There are significant differences between international juvenile justice systems. The majority of English-speaking countries operate within a justice model focused on holding young people accountable for their actions and enforcing punitive measures through due process. A range of other countries, generally in Europe, tend to employ a welfare-based model characterised by an informality of proceedings and interventions based on the best interests of the young person. There is however a growing trend towards hybrid juvenile justice systems incorporating elements of both justice and welfare models.

There is a large variation in the rate at which young people are placed in custody across the jurisdictions examined. In Finland for example, the rate is 0.2 per 100,000 young people, while in the UK that figure is 23. These custody rates are generally characteristic of the types of juvenile justice systems in place within those jurisdictions, with high custody rates associated with justice-based systems and lower rates with welfare-based systems.

The majority of countries reviewed believe that diverting young offenders, and utilising community-based programs when they do enter the juvenile justice system, is the most effective way to reduce juvenile crime. While there will always be a need for incarcerating certain young offenders, the critical issue is finding the most effective balance between such punitive measures and preventative and diversionary approaches.

Australian juvenile justice systems

The average national rate at which young people are placed in custody in Australia is 31 in every 100,000. The rate at which young people are placed in custody in NSW is 38 in every 100,000. This compares with 56 in Western Australia, 99 in the Northern Territory and 9 in Victoria (where greater emphasis is placed on diversionary and preventative programs). In response to these high ratios (compared to international figures), the majority of states have undergone reform in recent years with a focus on diversion and restorative justice. For example, most states and territories now have a youth justice conferencing program (or equivalent) and formal cautioning. It is difficult to compare the effectiveness of juvenile justice initiatives between Australia’s jurisdictions due to the general lack of evidence and formal evaluations concerning state juvenile justice systems and programs. Further, it is important to consider particularities in population, demographics and crime trends when comparing the effectiveness of juvenile justice outcomes between Australian jurisdictions.

Juvenile justice programs – overview

Empirical studies conducted in Australia, the USA, New Zealand and Europe clearly show that traditional penal or ‘get tough’ methods of reducing juvenile crime, such as juvenile incarceration, overly strict bail legislation, trying juveniles in adult courts, ‘scared straight’ programs and so on, are not effective. Traditional penal or ‘get tough’ approaches are ineffective due to the stigmatising effect of labelling young offenders, reinforcement of offenders’ criminal behaviour resulting from the collective detention, lack of pro-social influences and failure to address the underlying behaviour behind the offending behaviour. Not only do these methods tend to be ineffective in reducing recidivism among young people, but they are also amongst the most costly means of dealing with juvenile crime due to high immediate costs and ongoing long-term costs to the juvenile justice system due to continued contact with the criminal justice system.

Effective juvenile justice programs focus on addressing the underlying factors behind the offending behaviour of juveniles. This may
involve focusing on reducing ‘risk factors’, such as family dysfunction, a delinquent peer group, truancy or alcohol abuse, as well as the adding or strengthening of ‘protective factors’ such as good parenting, having a positive role model or part-time employment. They generally emphasise the need to divert young offenders from entering the juvenile justice system. Effective responses to youth crime often include programs which deliver family, school or community-based therapies and services.

In particular, prevention programs are very cost-effective in generating long-term savings to taxpayers through reduction in future demand on the juvenile justice system. They can also produce further benefits to the community by avoiding the incurrence of costs by victims of crime. Early intervention programs (for children of preschool age) which provide parenting training and support (from teachers, nurses or other agents) for disadvantaged households are among the most effective of prevention programs in terms of their ability to reduce the number of juvenile crime outcomes and deliver substantial long-term savings to taxpayers.

Institutional programs and post-release programs are essential components of any juvenile justice system, especially where the safety of the community or the young offender is at risk. In these circumstances, the evidence suggests that the most effective secure corrections programs are those which serve only a small number of participants and provide individually tailored services.

**Indigenous overrepresentation**

The rate, proportion and actual numbers of indigenous people in custody continues to rise. While the national indigenous juvenile imprisonment rate has declined by 33% since 1997, over half of people aged 10-17 years in juvenile corrective institutions in 2006 were indigenous. In NSW, 52% of people aged 10-17 years in juvenile corrective institutions in 2005 were indigenous, despite only making up 2-3% of the total population. A range of diversionary alternatives to imprisonment (e.g. cautioning, conferencing etc.) have proven to be effective in reducing reoffending, however, indigenous young offenders are less likely to be diverted than non-indigenous offenders. For example, in NSW, indigenous young people are more likely than non-indigenous young people to be taken to court (64% compared with 48%) and less likely to be cautioned (14% compared with 28%) by the NSW Police Force.

International and national research shows that the following responses are effective in addressing indigenous overrepresentation in the juvenile justice system:

- maximum access to and utilisation of alcohol and substance abuse programs;
- avoidance of incarceration wherever possible;
- promotion of sustained engagement with the education system;
- a high level of participation by the indigenous community in formulating and implementing responses to indigenous youth crime; and
- adequate provision of local community-based support and parental training for ‘at risk’ families.

**Whole-of-government and community approaches**

The complexity and scope of an...
Effective juvenile justice programs focus on addressing the underlying factors behind the offending behaviour of juveniles. This may involve focusing on reducing ‘risk factors’, such as family dysfunction, a delinquent peer group, truancy or alcohol abuse, as well as the adding or strengthening of ‘protective factors’ such as good parenting, having a positive role model or part-time employment.

Effective response to juvenile crime requires a whole-of-community approach involving co-ordination between government, the non-government sector and the community. This is because youth offending is often related to other problems that the juvenile justice system cannot address in isolation (e.g. mental illness, substance abuse etc.).

Therefore, juvenile justice systems need to coordinate and cover the full spectrum of required services including early intervention, family and school-based therapies, drug and alcohol rehabilitation services, mental health services, foster care services, specialist indigenous services, housing and employment services and detention services etc.

Conflicting institutional attitudes and perceptions which exist between the child welfare and justice systems can also inhibit juvenile justice outcomes. Measures need to be established to ensure maximum buy-in from stakeholders and effective multi-agency engagement in formulating and implementing new programs, services and initiatives.

In the US for example, San Diego has implemented a strategy that recognises the importance of whole-of-community participation in order to create an effective juvenile justice system. This involves collective teams whose role it is to develop cross system communication, multi-agency partnerships, joint responses, services and policies to support youth. Partnerships are also established between government entities and community organisations to maximise resources, eliminate duplication of services, and develop strength-based services to support youth in their communities.

**Effective practice summary**

This report identifies six key principles to support the implementation of effective practice in juvenile justice:

- **Evidence-based policy formulation.** Policy makers need to take into account the empirical evidence concerning ‘what works’ and what does not work. While ‘get tough’ approaches may be politically attractive, evidence indicates they are not effective. Hence, effective juvenile justice systems are those which ensure policy is guided by scientific research and cost-benefit analyses rather than by political convenience.

- **Avoidance of youth incarcerations wherever possible.** Evidence suggests that the majority of incarcerated juvenile offenders could be treated safely and more effectively outside of custody. Therefore, tertiary responses to youth offending should emphasise community-based programs rather than incarceration. Effective juvenile justice systems should set guidelines to reduce the population of juveniles in custody.

- **Comprehensive and complementary programming.** This requires a suite of primary, secondary and tertiary risk-based programs to address delinquency across the entire developmental lifecycle. Emphasis should be placed on delinquency prevention through early-age intervention, school, family and community-based prevention programs. Where custody is required, appropriate institutional and post-release therapy must also be provided in order to effectively reduce recidivism.

- **Tailored strategies for indigenous and other culturally diverse groups.** Disproportionate minority contact with the juvenile justice system can only be reduced through tailored strategies which address the unique risk-factors associated with each minority group. For indigenous Australians, this may involve increasing access to alcohol and substance abuse programs and ensuring culturally relevant programming through encouragement of indigenous participation in juvenile justice and human service initiatives.

- **Whole-of-government collaboration.** Integration of the juvenile justice and welfare/human services systems with police, courts, education and health authorities is crucial. Measures should be taken to maximise stakeholder buy-in and strengthen multi-agency collaboration in all areas, including policy formulation, information sharing, and personnel training.

- **Whole-of-community collaboration.** Effective juvenile justice systems address risk-factors in all facets of the environments of young people through collaboration with a range of community agents including schools, indigenous and other minority communities and non-government organisations. Government effort is required to encourage community participation in program design and delivery.
Prevention the only hope for young offenders, because cure is failing

It can be too easy to look for someone to blame for youth crime. But what is harder to find are effective solutions, writes Gino Vumbaca

In the aftermath of the Kings Cross police shooting of Aboriginal teenagers driving a stolen vehicle, the Herald has published an investigation into juvenile justice and how we deal with children that get into serious trouble.

It’s sometimes too easy to look for someone to blame for youth crime – be it parents, government departments or others. What is harder to find are effective solutions, especially when they challenge the prevailing political and media orthodoxy.

Tonight, however, in what may be the start of some long overdue reform in NSW, the Governor, Marie Bashir, will launch a campaign to reduce the staggeringly high rate of young indigenous people in detention centres. It is led by the Aboriginal Legal Service and includes Michael Kirby, Mick Dodson, Bob Debus, Adam Goodes, Mick Gooda, Marcia Ella Duncan, Naomi Mayers, Nick Cowdery and other prominent Australians who want to make “justice reinvestment” the new norm.

If the current trajectory continues we are in real danger of losing a generation of young indigenous people. In NSW, they make up more than half of the detention population yet just 2.2 per cent of the general population. An Aboriginal youth facing the court system is 28 times more likely to be placed in juvenile detention than their non-indigenous counterparts. This is a shameful indictment of our current approach, which routinely consigns young Aboriginal people to detention. It cries out for a new approach that includes early intervention, prevention and diversion with incarceration as a last resort only – in short, what is becoming known around the world as “justice reinvestment”.

Justice reinvestment is not about spending more of our taxes; it is about redirecting the current ineffective investments we are making in the justice system into areas and programs that can provide better, safer and healthier communities. It also reduces the extraordinary costs each time we put a juvenile in a detention centre or an adult in prison.

If the current trajectory continues we are in real danger of losing a generation of young indigenous people.

In NSW, the Auditor-General has revealed that the average annual cost of supervising and caring for juvenile offenders last year was $237,980 a person – a quarter of a million dollars a year for each young person locked up, and what do we get in return? The Australian Institute of Criminology has estimated that more than 30 per cent of adult prisoners were actually first incarcerated within the juvenile detention system. Given there are about 30,000 adult prisoners in the country and fewer than 1,000 juveniles in detention in any given year, that is a lot of...
prison, that it is an intimidating and violent system, and the last place where we can expect rehabilitation.

In contrast, justice reinvestment is about prevention rather than cure – about creating alternative pathways for young people who may otherwise be destined to lifelong offending, drug and alcohol misuse and suicide. When young people offend, there are likely to be other issues at play that are contributing. Justice reinvestment is our best option to target these causes and factors.

When young people offend, there are likely to be other issues at play that are contributing. Justice reinvestment is our best option to target these causes and factors.

A think tank called Australia 21 recently called for a rethink on drug policy based on a review of the evidence and current approaches. One can only wonder how we can keep ignoring the evidence of our law and order policies. Just as a war on drugs can descend into a war against its citizens, a tough on crime approach can degenerate into a war against its most disadvantaged.

Gino Vumbaca is the executive director of the Australian National Council on Drugs and a member of the Campaign Committee, www.justicereinvestmentnow.net.au

First published in The Sydney Morning Herald Opinion, 2 May 2012

juveniles going from detention to adult prison. It is also a system in which just under 60 per cent of NSW prisoners have previously served a sentence. In effect, our juvenile detention centres have become the learning centres for a cycle of offending and imprisonment.

The choices facing NSW today as the jurisdiction with the largest prison and juvenile detainee population are quite stark. We can continue on what is called the tough-on-crime path and replicate what is now known as the American disease. The US is home to 5 per cent of the world's people and 25 per cent of the world's prisoners. The prominent New York-based public health physician Ernie Drucker's recent book describes in epidemiological terms how this prisons "plague" has led to more than 2 million people being incarcerated, 800,000 on parole, and more than 4 million on probation. The ancillary effect of this type of justice means millions of children and family members of those incarcerated also come into regular and potentially damaging contact with the justice system.

The US, Russia and China lead the world in imprisonment. They show us the inevitable outcome of such tough policies. Enormous resources are being sucked out of other budget priorities, such as education and health, and they have high re-offending rates as people are churned through a brutal penal system and returned to the community.

The Australian Institute of Criminology has estimated that more than 30 per cent of adult prisoners were actually first incarcerated within the juvenile detention system.

NSW has not reached this point but finds itself on a similar path. I am not sure when developing policy based on evidence became synonymous with being soft rather than smart, but I think we should ask the next journalist, commentator or politician who portrays options other than prison as being "soft" what their view would be if their family member were facing incarceration. I would bet London to the proverbial brick they would stop at nothing to have them spared. This is because deep down they know, as does anyone who works or has been in
What is wrong with our youth justice system?

If we want to stop kids reoffending, we have to stop them offending in the first place with the health of government, writes Dan Haesler

In the wake of two teenagers being shot by police in Kings Cross, The Sydney Morning Herald has been running a series of articles focusing on the effectiveness of the juvenile justice system.

The facts presented by the NSW Bureau of Crime Statistics within the articles are startling. A 10-year study shows that domestic violence cases involving 10- to 17-year-olds have increased by 167 per cent, with other violent crime, break and enter, and malicious damage to property all rising 21, 13 and 47 per cent respectively.

Approximately 5,000 young people per year have their first contact with the juvenile justice system, but of particular concern is the rate of recidivism of those juveniles brought before the courts. Of the 4,938 juveniles who came before NSW courts in 1999, over 2,600 of them reoffended, on average four times before 2010. For indigenous kids, the rate of recidivism was 84 per cent.

What is going wrong with our juvenile justice system? Why are kids released only to return a few months or years down the track?

Some have blamed the restorative justice practices that have been used extensively with juveniles as being too soft. I agree with Dr Don Weatherburn from the Bureau of Crime Statistics when he says:

It’s naive to imagine that a young offender after years of involvement in crime will experience an ‘epiphany’ and suddenly become law abiding.

Change takes time, effort and support. And the issue with restorative justice may not be the practice itself; rather, this kind of process needs engagement from the community in order for restoration to take place. Often in Australia, this doesn’t happen – the very reason the child has gone off the rails is because of the lack of community engagement.

Predictably, many are calling for a tougher approach to juvenile crime. Politicians condemn those who have ‘gone soft’ on crime; local mayors call for eight-year-olds to be criminally liable for their actions.

And of course, “bring back corporal punishment” can be heard at regular intervals on talkback radio.

But when society grabs only a bigger stick in the hope it will affect the behaviour of our youth, it fails to recognise that many of these kids have been swept up in a perfect storm of poverty, dysfunction, poor education, and unemployment.

In 2007, UNICEF’s report on Child Poverty in the OECD stated that Australia has a relative child poverty rate of nearly 12 per cent; that is, 12 per cent of children living in a house where the family income is 50 per cent or less of the median wage. Some people argue that the poverty level is higher than this, as relative poverty only looks at those who (for whatever reason) earn very little and not those who earn nothing at all.

More than 500,000 Australian children live without an employed parent in their household. Education is often seen as the silver bullet – a passport out of poverty so to speak. But the fact is, as it stands, our education system is clearly failing to engage kids from poorer backgrounds.

A key finding of the Gonski Report stated:

[There is] an unacceptable link between low levels of achievement and educational disadvantage, particularly among students from low socioeconomic and Indigenous backgrounds.

In 2009, only 56 per cent of children from low socioeconomic backgrounds completed Year 12. Research from the Joseph Rowntree Foundation (JRF) in the UK has shown that by the age of seven or eight, many boys from low socioeconomic backgrounds have disengaged from their educational experience. Many more follow in the early years of high school.

The JRF’s research also shows that in comparison to their middle-class peers, children as young as nine know their education is inferior; they know their access to extra-curricular activities is diminished; and they know they will get lower paying jobs (if they get a job at all – the unemployment rate for 15- to 19-year-olds in NSW is over 20 per cent, the highest in any age group).

In some areas like the Illawarra, the rates of 15- to 19-year-olds not in work or full-time education is closer to 35 per cent.

Drugs and alcohol, family dysfunction and the adolescent brain – capable of making incredibly poor choices – only serve to compound these issues. For many, they learn early on in life that crime does pay.

The fact is, if we want to stop these kids reoffending, we have to stop them offending in the first place. We must address poverty in earnest. We need to be creative in how we run our schools. We need to provide genuine learning and employment opportunities, and better funding for youth workers, outreach programs and schools. We need to support families.

The government must realise that society as a whole is responsible for our youth, and funding in this area should not be seen as a cost but an investment. The fact that both sides of politics have shied away from endorsing the recommendations contained in the Gonski review is just one example of the short-sightedness that plagues our ‘leaders’ in this regard.

Dan Haesler is a teacher, writer and the founder of YouthEngage.

Source: ABC, The Drum, Opinion, 4 May 2012
Australian Broadcasting Corporation
www.abc.net.au/unleashed
JAILING CHILDREN WILL JUST MAKE THEM BETTER CRIMINALS

Imprisonment does nothing to reduce the chance that an individual will reoffend. In fact, studies have found that imprisonment makes an individual more likely to reoffend, with the reoffending often more violent than the initial crime, writes Jordana Cohen.

In a bid to prove its tough-on-crime credentials, the Baillieu government is powering forward with its plan to mandate a minimum sentence of two years' detention for 16 and 17-year-olds convicted of crimes involving gross violence. According to Attorney-General Robert Clarke, this was necessary because current sentencing practices were falling far below community expectations and not deterring children from offending.

Assuming for a moment that the Children's Court is in fact routinely letting offenders who commit “gross violence” off the hook (published statistics from the Children's Court do not support this), and assuming also that the community has in fact lost faith in judges to determine appropriate sentences (rather than politicians and the media feeding community fears and appetite for revenge), will statutory minimum sentences really make the streets safer and meet community expectations?

Firstly, the threat of future punishment is a very blunt instrument for deterring people from committing crimes. According to the Victorian Sentencing Advisory Council’s 2011 report on imprisonment as a deterrent (SAC Report), harsher punishments were not linked to reduced rates of offending. As a case in point, property crime in the Northern Territory increased under their mandatory sentencing laws and decreased once the laws were repealed.

People will be deterred by the threat of punishment only if they are rational actors who weigh up the costs and benefits of committing a crime before deciding whether to commit it. Does that sound like any teenager that you know?

A study by the Australian Institute of Criminology indicates that people will be deterred by the threat of punishment only if they are rational actors who weigh...
up the costs and benefits of committing a crime before deciding whether to commit it. Does that sound like any teenager that you know? Young people are more likely to be deterred by the threat of being caught than punished.

But surely the offenders themselves become less likely to reoffend after experiencing some cold hard jail time? Again, the evidence says no. The SAC Report found that at best, imprisonment did nothing to reduce the chance that an individual will reoffend. In fact a number of studies have found that imprisonment makes an individual more likely to reoffend, with the reoffending often more violent than the initial crime.

Of course detention is the appropriate penalty for some criminals. But a 2009 study cautioned that imprisonment can turn low-risk offenders, and most 16 and 17-year-olds do have low chances of reoffending, into the ones destined to offend again. One reason for this is that prisons are criminal training camps. Detention is a place for impressionable youths to pick up anti-social values and make friends with other criminals, all the while losing supportive links on the outside and reducing prospects of reintegration.

Attorney-General Clarke said recently that “Rehabilitation is not the sole consideration when sentencing juvenile offenders”. Perhaps not, but that doesn’t mean it should be taken off the agenda completely through a mandatory imprisonment regime.

Even a victim who wants to see an offender “put away” would take little comfort from the knowledge that when the perpetrator is returned to the community they are at least as likely, if not more likely, to commit another violent offence.

Rehabilitation through community-based sentences is often the best bet for the victim, the offender, and for the welfare of the whole community.

And the facts back it up. A Department of Human Services study from 2001 found that “addressing the needs of young offenders through individualised client assessment and planning, and appropriate interventions, is an effective response to prevent further offending”.

Community-based sentences are rigorous and demanding, the offender hasn’t “gotten off”, and ultimately the young person is less likely to reoffend because they have started to address the causes of their offending behaviour.

As for community expectations, would the community expect a “violent thug [who] inflicts premeditated gross violence on innocent victims” to get the same sentence as the intellectually disabled boy who stuck around the tough guys and did what he was told? Or the good kid, your son or daughter, who found themselves in the wrong group of friends on the wrong day when an argument suddenly got out of hand?

Under the proposed laws, the minimum sentence will be the same as the maximum possible Children’s Court sentence for a single offence, meaning that the worst of the worst gets the same result as the least culpable offender.

This contradicts the Children, Youth and Families Act, which says that sentences must address the circumstances of the child, minimise community stigma and ensure that the child bears responsibility for his or her actions. Detention must be a last resort.

Young people are more likely to be deterred by the threat of being caught than punished.

These sentencing principles uphold rights enshrined in the United Nations Convention on the Rights of the Child (which Australia has signed) and the Victorian Charter of Human Rights and Responsibilities.

Statutory minimum sentencing breaches human rights and leads to avoidable injustices. It is a superficial, short-term fix that the evidence shows simply doesn’t work.

Jordana Cohen is a lawyer at Youthlaw is a specialist law centre for young people under 25 years.

First published in The Age Opinion, 3 June 2011
Although there are many definitions of restorative justice, the following definition by Tony Marshall has gained widespread acceptance: ‘[restorative justice is] a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future’ (“The evolution of restorative justice in Britain” (1996) European Journal on Criminal Policy and Research 4(4): 21-43 at 37).

While there are a number of reasons for using restorative justice programs within Australian and New Zealand, in general, restorative justice measures seek to actively involve offenders, victims and communities in the criminal justice process and repair the harm caused by crime.

This article provides an overview of restorative justice programs for criminal matters or programs that operate under restorative justice principles across Australia and New Zealand. It also contains links to New Zealand, Commonwealth, State and Territory websites which contain specific information on these restorative justice programs.

**DEVELOPMENT OF RESTORATIVE JUSTICE IN NEW ZEALAND AND AUSTRALIA**

**NEW ZEALAND**
The Children, Young Persons and Their Families Act 1989 brought about major reform to the way juvenile justice and family welfare were addressed in New Zealand. This Act aimed to include elements of traditional Māori practices of conflict resolution, while also setting out new principles and process for the juvenile justice system. Initially, the legislation did not specifically mention the term 'restorative justice'. In 2002, restorative justice was formally recognised in New Zealand legislation.

Today, the scope of restorative justice programs in New Zealand has broadened and includes a range of minor to serious offences for both adult and juvenile offenders.

In the adult criminal justice system, restorative justice is a voluntary, relatively informal victim-centred process, that gives victims an opportunity to tell the offender how they have been affected by the crime, receive an apology, and suggest how the impact of the offence could be addressed. Restorative justice processes for adult offenders receive formal statutory recognition in the Sentencing, Parole and Victims’ Rights Acts 2002 and the Corrections Act 2004.

**AUSTRALIA**
It has been said that the development of restorative justice processes in Australia has been greatly influenced by the conferencing model developed in New Zealand. By the 1990s, all Australian States and Territories had developed a conferencing program for young offenders, and most had done this with the aim of diverting offenders from the criminal justice system. By 2007 all Australian States and Territories had legislated the use of restorative justice within their criminal justice systems.

**RESTORATIVE JUSTICE TODAY**

Restorative justice is a broad concept and many justice programs incorporate restorative justice components. The restorative justice programs referred to in this overview are focused on activities that require a particular offender to consider the
needs of a particular victim.

There is considerable variation in restorative justice programs across Australia. Restorative justice practices used in Australia occur at different stages of the criminal justice system such as arrest, diversion, pre-sentencing, prosecution, actions in parallel with court decisions and on release from prison.

In the New Zealand adult criminal justice system, restorative justice can occur as part of the Police Adult Diversion process, before sentencing (following a guilty plea, to inform sentencing), and after sentencing (as part of parole and re-integration into the community).

Practices and programs include conferencing, victim-offender mediation, circle sentencing and meetings between offenders and victims in correctional institutions. Conferencing is the most common type of restorative justice process currently used in both Australia and New Zealand.

Forms of contact between victim and offender include:

- Face-to-face meetings
- Exchange of written or emailed statements between participants
- Exchange of pre-recorded videos between participants
- Teleconferencing and videoconferencing
- Representative speaking on behalf of a victim (family member, friend, community representative).

Further information on restorative justice programs operating in Australia and New Zealand are found below.

**New Zealand**

*Ministry of Justice Overview of Restorative Justice in the Adult Criminal Justice System in New Zealand*


**Northern Territory**

Department of Justice


**Queensland**

Adult Justice Mediation


Youth Justice Conferencing


**Tasmania**

Department of Justice


**Victoria**

Neighbourhood Justice Centre

[restorative-justice](http://www.neighbourhoodjustice.vic.gov.au/site/page.cfm?u=70#restorative)

Department of Human Services

Youth Restorative Justice Conferencing Program


Victorian Youth Justice Group


**OTHER USEFUL LINKS**

Australian Institute of Criminology


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Restorative justice may not work for all young offenders

Youth offenders often suffer long-term abuse or neglect. They frequently fail to achieve academically, and have few, if any marketable employment skills. They face elevated risks of mental health problems and early and problematic substance abuse.

A fair system

It’s often said that the mark of a civilised society is the way in which it looks after its weak and vulnerable. We can take solace from the way young offenders are “managed” in Australia.

In the main, youth justice legislation in our states and territories recognises that young people who fall foul of the law are in many respects victims, as much as they are perpetrators.

In Victoria, we can be particularly proud of the fact that we have a unique (in Australia, and possibly in the world) “dual track” system which enables magistrates, in some circumstances, to sentence 17 to 20 year olds into the youth justice system, in an effort to delay or (preferably) prevent their entry into the adult corrections system.

Restorative justice conferencing

In the last 10 to 15 years in Australia, there has also been a strong shift away from traditional adversarial approaches to justice administration with young offenders, towards (amongst other approaches) the use of Restorative Justice Conferencing (RJC).

RJC allows the young offender to have a conversation with his or her victims in an effort to heal (even in part) the emotional damage done to others and to repair the tear in the social fabric that has been created by their wrongdoing. A trained facilitator will oversee the meeting.

Unfortunately, many interventions look good at face value and seem to make intuitive sense, but in practice can be problematic, and may not deliver as intended.

In order to be offered it as an alternative to a community-based or custodial order, the young person must plead guilty. What could possibly be “wrong” with such a progressive and therapeutically-oriented approach?

Unfortunately, many interventions look good at face value and seem to make intuitive sense, but in practice can be problematic, and may not deliver as intended.
Lack of understanding

Research in the last decade in Australia, the USA and the UK has also shown that young offenders represent a group at high-risk of unidentified oral language impairments.

In other words, they have problems expressing themselves verbally by accessing appropriate vocabulary, formulating meaningful sentences, and adequately understanding the complex language we often use.

To complicate matters further, much of what transpires between us as speakers and listeners in everyday life is not literal in meaning – we use idioms and a range of other linguistic devices such as sarcasm, irony and various kinds of humour.

In the case of young people who have been maltreated and not received the care they need when growing up, one might indeed wonder about what is being restored.

Has this young person ever had empathy displayed towards them when they have been wronged and are distressed? Have they learnt the language of empathy and remorse and how to use this under pressure? If they are unable to access words that express these sentiments, how can they appear genuine in their remorse? How will it be perceived if the young person shrugs his shoulders and gives monosyllabic responses? What does all of this mean for the young offender’s experience of the RJC and for that of their victim(s)?

Like most social scientists, I am well aware of the evidence that shows us that simply punishing young people for their wrong-doing does not lead to reduced recidivism or the adoption of socially acceptable values and behaviour.

But we need to take great care, and apply high standards of critical thinking, when seeking approaches that are a good philosophical fit with our desire to promote better outcomes for young offenders.

One size does not fit all

RJC is no doubt an appropriate and helpful approach for some young offenders and their victims, but may not be so for all.

Further research is needed to elucidate ways of identifying which young people, in which circumstances, will benefit most from this approach.

Above all, however, in the meantime, primum non nocere – “first do no harm”.

Pamela Snow is Association Professor of Psychology at Monash University.

What good is it doing?

In the case of young people who have been maltreated and not received the care they need when growing up, one might indeed wonder about what is being restored.

My own research has indicated that in both community and custodial samples of young male offenders, such problems reach clinical thresholds in about 50 per cent of cases.

This is not to say that RJC shouldn’t be used with young offenders. But evidence on the oral language ability of this group raises important questions about the extent to which such young people can be assumed to have the skills needed to genuinely engage in a highly conversational process that is intended to be restorative in nature – both for the victim(s) and for the young person.
The Bureau compared a sample of 918 young people who were referred to a Youth Justice Conference (YJC) with a matched sample of 918 young people eligible for a YJC who were dealt with by the NSW Children’s Court.

The offenders in the study were carefully matched on age, gender, indigenous status, number of concurrent offences and the number and nature of prior convictions.

One possible explanation is that YJCs do not address the underlying causes of juvenile offending (e.g. drug and alcohol use, parental neglect and abuse, poor school performance, boredom and unemployment).

The matched samples were compared in terms of whether or not they were convicted of a further offence within three years, the number of separate occasions on which they were convicted of a further offence, the time taken to commit new offences and the seriousness of any subsequent offence.

The Bureau found no significant difference between offenders dealt with in a YJC and those dealt with in court in the proportion re-offending. About 64 per cent of the conference group and about 65 per cent of the court group were reconvicted of a further offence in the 24 month follow-up period.

The Bureau also found no difference between the YJC and court groups in the seriousness of their re-offending, the time to the first proven re-offence or the number of proven re-offences.

Because justice procedure offences (e.g. breach bond) can be affected by policing policy, separate analyses were conducted comparing matched samples of young people who were dealt with by a court or who attended a conference and completed their outcome plan. Again, the results were essentially the same.

Commenting on the findings, the Director of the Bureau, Dr Don Weatherburn said that the study indicates that the conference regime established under the NSW Young Offenders Act (1997) is currently no more effective than the NSW Children’s Court in reducing juvenile re-offending among persons eligible for a conference.

“One can only speculate about the reasons for this but one possible explanation is that YJCs do not address the underlying causes of juvenile offending (e.g. drug and alcohol use, parental neglect and abuse, poor school performance, boredom and unemployment).”

“Those who participate in YJCs find the experience very rewarding but we may need to look elsewhere for programs that reduce the risk of juvenile re-offending.”

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Naming and shaming young offenders: reactionary politicians are missing the point

Those young people already well-embedded in the juvenile justice system are unlikely to be swayed by naming and shaming, observes Robyn Lincoln

Last month, Queensland’s Attorney-General Jarrod Bleijie called for the public naming of all youth who appear in court. Echoing practices from the deep south of the USA where t-shirts, signs outside homes and photographs of errant teenagers have been used, Queensland has jumped on the “name and shame” bandwagon ... and not for the first time.

During the 2006 Queensland election campaign the then-Coalition parties wanted to make it mandatory to name juveniles over 13 years who had committed a serious offence.

Again in 2009 there was political stoushing between Anna Bligh and Lawrence Springborg about identifying delinquent youth.

A nation-wide issue

Queensland is not alone in promulgating name and shame policies. This issue has been raised in New South Wales and more recently in Western Australia.

Similar proposals have emanated from Canada, and were put into practice via civil Anti-Social Behaviour Orders in the United Kingdom under its previous government.

But where is the evidence to suggest that the public identification of juveniles who are involved in criminal proceedings will have a positive effect on their subsequent behaviour? Where is the evidence that such naming will be of benefit to communities or even to victims of crime?

The short answer: there is precious little.

‘Good’ shaming versus reactionary rhetoric

Recent research has centred on the more positive forms of shaming, which are believed to be a part of restorative justice practices, such as “youth accountability conferences”. These programs utilise the positive, transformative power of shaming, while avoiding the negative effects of public stigmatisation.

While apparently politically appealing, cries to openly name and shame are ill-informed.

Politicians pushing for the names of juvenile offenders to be in large bold type in newspapers or, worse still, depicted on broadcast news or captured forever on the internet fail to deal with the stigma attached to these kinds of practices.

The name and shame proposals, apart from ignoring fundamental international principles espoused in documents such as the Convention on the Rights of the Child, also fail to consider which young people might be subject to such naming.

These young people are often from backgrounds of multiple disadvantage, and who may be subject to some form of welfare protection. In these cases, welfare acts often contain provisions that prohibit public disclosure of identities.

So while reactionary politicians seek reform to juvenile justice regulations, they may find that efforts to name and shame will be stymied because young people are under the “care” of their own governments.

While apparently politically appealing, cries to openly name and shame are ill-informed.

It is also the case that those calling the loudest to name and shame offer the caveat that they “only wish to name the really rotten ones” (and I am aware of at least one newspaper editor who invoked this refrain, only he used somewhat “bluer” language).

Presumably then, a key aim of the calls to name and shame will be stymied because young people are under the “care” of their own governments.

The reality is that those young people already well-embedded in the juvenile justice system are unlikely to be swayed by naming and shaming.
A self-fulfilling prophecy

There is little evidence to demonstrate that the naming of young people will prevent recidivism.

In fact, recent research conducted by Professor Duncan Chappell and myself in the Northern Territory (the only jurisdiction in Australia where juvenile justice provisions permit the naming of youth brought before the courts) presents anecdotal evidence that naming and shaming can have the opposite effect.

In a few instances, young people were actually emboldened in their offending, convinced they had a sullied reputation to live up to.

This view is supported by Russell Goldflam from the Criminal Lawyers Association of the Northern Territory (CLANT) who says there is potential for a “badge of honour” effect from public identification.

For many others though, being named simply brought greater police attention not only to themselves but to their families and communities as well.

Detrimental outcomes for indigenous youth

Professor Chappell and I have noted elsewhere that there are a number of detrimental outcomes arising from any disclosure of juveniles’ identities. These include a misuse of the concept of shaming (i.e. stigmatising), the potential for vigilante action, a false sense of community protection, and the possibility of disrupting rehabilitative efforts.

Our research found that youth were rarely named in the media often because of welfare provisions, or because most juvenile offending is petty and lacking in salacious news values. However, some individuals were singled out and, in these instances, there was evidence of repeated naming to the detriment of those young people and their families.

The imperative to rehabilitate and educate young offenders is being ignored, if not abandoned in favour of more politically expedient and popular positions.

Of particular concern, were indigenous youth – so grossly over-represented in the juvenile justice system, who were similarly over-represented in those singled out for public identification.

There was evidence too that the naming of these young people meant that sporting scholarships were jeopardised, employment prospects were diminished, and even the capacity for their families to obtain housing was badly affected.

The movement to publicly name juvenile offenders is clearly gathering momentum. We are witnessing the erosion of long-held protections for youthful offenders, and the international conventions that support them. The imperative to rehabilitate and educate young offenders is being ignored, if not abandoned in favour of more politically expedient and popular positions.

Robyn Lincoln is Assistant Professor of Criminology at Bond University.

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EXPLORING ISSUES

ABOUT THIS SECTION
‘Exploring issues’ features a range of ready-to-use worksheets relating to the articles and issues raised in this book.

The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

As the information in this book is gathered from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Does the source have a particular bias or agenda? Are you being presented with facts or opinions? Do you agree with the writer?

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CONTENTS

BRAINSTORM 52
WRITTEN ACTIVITIES 53
DISCUSSION ACTIVITIES 54
MULTIPLE CHOICE 55-56

WORKSHEETS AND ACTIVITIES

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Youth Crime 51
BRAINSTORM

Brainstorm, individually or as a group, to find out what you know about young people and crime.

1. What does *doli incapax* mean?

2. What is the age of criminal responsibility in Australia?

3. What is restorative justice?

4. What is rehabilitation?
How does juvenile offending differ from adult offending? Explain these differences based on the following points. Complete your points on a separate sheet of paper if more space is required.

Proportion of crime perpetrated by juveniles:

Juvenile crime trajectories:

Proportion of juveniles who come into contact with the criminal justice system:

Types of offences perpetrated by juveniles:

Nature of juvenile offending:
DISCUSSION ACTIVITIES

In pairs, or in a group, discuss the issues raised in the following topics. Compile a list of points in the spaces below as the basis of your arguments:

“Jailing children will just make them better criminals.”

Aboriginal and Torres Strait Islander young people are substantially over-represented in the juvenile justice system in Australia. Why?

“Restorative justice may not work for all young offenders.” Why?
Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of the next page.

1. 15-19 year-olds are how many times more likely to commit crimes than anyone else?
   a. twice
   b. three times
   c. five times
   d. seven times

2. Re-arrange the following offences in descending order, from most committed to least committed by juvenile offenders (based on 2010-2011 figures).
   a. Homicide
   b. Acts intended to cause injury (AICI)
   c. Sexual assault
   d. Robbery/extortion
   e. Unlawful Entry With Intent (UEWI)
   f. Theft
   g. Property damage
   h. Public order offences

3. Match the following terms to their correct definitions:
   1. Age-crime curve
   2. Caution or warning
   3. Community service
   4. Conferencing
   5. Criminogenic
   6. Detention
   7. Good behaviour bond
   8. Home detention
   9. Juvenile justice system
   10. Parole or supervised release

   a. Graphic representations which show that rates of offending usually peak in late adolescence and decline in early adulthood.
   b. The young offender remains in the community, as long they do not breach conditions of the order or re-offend within a specified time period. If the order is breached, the young person may be placed in detention.
   c. Supervision by a juvenile justice agency for a specified length of time, in which regular reporting to the agency and involvement in treatment programs are often required.
   d. Formal or informal warning by police or a respected member of the community. May involve an interview with the young offender and their parent/guardian. In some jurisdictions, the offender may be required to agree to undertakings or conditions.
   e. Young offender is required to provide a specified amount of unpaid work in the community.
   f. Robbery, physical assault, threatened assault or sexual assault, in which an individual is considered to be the victim of the crime.
   g. Supervision within the community following a period of detention.
   h. Facilitated meeting referred by police or court to discuss an offence, its impact, and to make a plan for action. May involve a convenor, young offender, victim, family members and guardians, social workers and police.
   i. Reoffending criminal behaviour.
   j. Agreement requiring the young offender not to commit any more offences within a period of time. If breached, the breach is considered by the court.
MULTIPLE CHOICE

11. Personal crime
   k. Producing or tending to produce crime or criminality.

12. Probation and similar
   l. When a young offender is removed from the community and placed in a facility for a specified period of time.

13. Recidivism
   m. Young offender is under conditional supervision in the community, subject to restricted movements and may be monitored electronically.

14. Remand
   n. Young offender is placed in a juvenile detention facility while awaiting the outcome of their court action.

15. Suspended detention
   o. Set of processes and practices for dealing with children and young people who have committed or allegedly committed an offence.

4. Respond to the following statements by circling either ‘True’ or ‘False’:

   a. Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population. True / False

   b. For the past four years (2012 data), the rate of offending has consistently been highest in the 15 to 19 year age group. True / False

   c. Homicide is the only crime where the offending rate is not highest in the 15-19 year age group (2012 data). True / False

   d. Police data indicate that juveniles (10 to 17 year olds) comprise a majority of all offenders who come into contact with the police. True / False

   e. Certain types of offences (such as graffiti, vandalism, shoplifting and fare evasion) are committed disproportionately by young people. True / False

   f. Most people do not ‘grow out’ of offending. True / False

   g. Very serious offences (such as homicide and sexual offences) are rarely perpetrated by juveniles. True / False

   h. On the whole, juveniles are more frequently apprehended by police in relation to offences against property than offences against the person. True / False

MULTIPLE CHOICE ANSWERS

1 = b ; 2 – 1 = f, 2 = b, 3 = h, 4 = e, 5 = g, 6 = d, 7 = c, 8 = a ; 3 – 1 = a, 2 = d, 3 = e, 4 = h, 5 = k, 6 = l, 7 = j, 8 = m, 9 = o, 10 = g, 11 = f, 12 = c, 13 = i, 14 = n, 15 = b ; 4 – a = T, b = T, c = T, d = F , e = T, f = F , g = T, h = T.
In all jurisdictions’ juvenile justice legislation, detention is considered a last resort for juveniles. This reflects the United Nations’ (1989) Convention on the Rights of the Child. (p.11)

Australian jurisdictions have recently arrived at a uniform minimum age for criminal responsibility of 10 years. Doli incapax, or the maximum age of presumption against criminal responsibility, is also uniform at under 14. (p.15)

The age limit for treatment as a young person is 17 years in all states and territories except Queensland, where the age limit is 16 years. (p.18)

In 2010-11, indigenous young people aged 10-14 were around 6 times as likely as non-indigenous young people to be proceeded against by police in New South Wales, Queensland and the Northern Territory and around 10 times as likely in South Australia. (p.20)

On an average day in 2010-2011, the rate of young people aged 10-17 in juvenile detention in England and Wales was similar to the rate in Australia (both around 0.4 per 1,000). Young people in Canada were around 2 times as likely as those in Australia to be in detention (0.7 per 1,000), while young people in the United States were around 5 times as likely (1.9 per 1,000). (p.23)

On an average day in 2011-12, there were almost 7,000 young people aged 10 and older under youth justice supervision in Australia due to their involvement or alleged involvement in crime. Most (85%) were male and the majority (79%) were aged 14-17. Indigenous young people were over-represented – although less than 5% of young Australians are indigenous, 35% of those under supervision were indigenous. (p.24)

Among all those aged 10-17 in Australia, this equates to a rate of 26 young people under supervision on an average day per 10,000 in the population, or 1 in every 385 young Australians. (p.24)

In all Australian jurisdictions, detention is considered a last resort for juvenile offenders. Juvenile justice legislation in each state and territory provides for the diversion of juveniles from the criminal justice system via measures such as police cautioning, restorative justice conferencing, specialty courts (such as youth drug and alcohol courts) and other diversionary programs. (p.27)

There were differences in the trends in the detention population among the states and territories. Over the 4-year period (2008-2012), rates of young people in detention on an average night decreased in New South Wales, Tasmania and Victoria, remained relatively stable in Western Australia and increased in the other states and territories. (p.34)

On an average night in the June quarter 2012, indigenous young people aged 10-17 were 31 times as likely as non-indigenous young people to be in detention, up from 27 times in the June quarter 2008. The level of indigenous over-representation increased in unsentenced detention over the 4-year period (from 24 to 31 times), but decreased slightly in sentenced detention (from 32 to 30 times). (p.34)
**Breach**
A breach occurs when a young person reoffends or fails to comply with the conditions of a community-based order.

**Children’s Court**
The Children’s Court is primarily a Court of Summary Jurisdiction, to hear and determine criminal charges against persons generally aged less than 18 years.

**Diversion**
Refers to various measures to ‘divert’ offenders from the formal criminal justice system. Several diversionary options exist for young offenders in Australia. These measures include verbal and written warnings, formal cautions, victim-offender or family conferencing, and referral to formal or informal community-based programs.

**Doli incapax**
Under the common law there is a presumption that children under 14 years of age are not capable of committing a crime because they do not have the capacity to know that what they do is seriously wrong, unless proven to the contrary. This principle, is known as doli incapax (Latin meaning ‘incapable of wrong’). The maximum age of treatment as a child for criminal responsibility varies – in most jurisdictions it is 17 years, except in Queensland where the maximum age is 16 years.

**Finalised defendant**
A person or organisation for whom all charges relating to the one case have been formally completed so that the defendant ceases to be an item of work to be dealt with by the court.

**Juvenile justice agency**
The state or territory government agency or department responsible for juvenile justice supervision.

**Juvenile justice centre**
A place administered and operated by a juvenile justice agency where young people are detained while under the supervision of the relevant juvenile justice agency.

**Parole or supervised release**
A sentenced community-based supervision order that is issued or enacted following a period of sentenced detention. Release on parole or supervised release is possible in some situations when a young person has served a specified proportion of their detention sentence. A breach of the parole or supervised release order usually results in the young person’s returning to detention to serve the remainder of the sentence.

**Police-referred detention**
Unsentenced detention by a juvenile justice agency that occurs before the young person’s initial court appearance.

**Probation and similar**
A sentenced community-based supervision order that may be issued with additional mandated requirements such as community work or program attendance. The juvenile justice agency may or may not directly supervise any additional mandated requirements, but remains responsible for the overall supervision and case management of the young person. Includes probation, recognisance and community service orders that a juvenile justice agency supervises or case manages.

**Reception**
Event of entering a detention centre to begin an unsentenced or sentenced detention order. Neither a transfer to a new detention facility nor a change in legal status constitutes a reception; however, if a young person is released from detention and then re-enters at a later date, this is a new reception.

**Recidivism**
About 60% of those in custody in Australia have been imprisoned before. Reoffending behaviour or recidivism can be influenced by many factors including poor education and employment histories, mental illness and bad physical health, as well as drug and alcohol misuse.

**Release on bail**
Following a period of remand, a court may order a young person to be released into the community pending the outcome of the trial. Bail may be either unsupervised or supervised.

**Remand**
The act of placing in custody a young person who is accused of an offence to await trial or the continuation of the trial.

**Restorative justice**
The process of restorative justice involves bringing together victims and offenders, and others who may have an interest in a particular offence, to deal collectively with how to resolve the impact of the offence, and to chart a path for the future.

**Supervised or unconditional bail**
The act of allowing a young person who is accused of an offence to await trial or the continuation of the trial in the community under the supervision of a juvenile justice agency.

**Suspended detention**
A sentence that usually involves a period of intensive supervision in the community with the possibility of detention if the young person breaches the community supervision. Includes immediate release orders, suspended detention orders and intensive supervision of young people with detention orders.

**Youth crime**
Most youth crime tends to be relatively minor in nature. Most young people do not offend seriously, and very few young people become serious and persistent offenders. Profiles of young offenders most likely to wind up in detention centres tend to be young men, with low income, low educational achievement, no employment, weak attachment to parents and who move frequently.

**Youth justice conferences**
Also known as ‘group conferencing’. A formal legal process based on the principles of restorative justice. Group conferences bring young people, their families and supporters face to face with victims and their support people. Together, they agree on a suitable outcome that may include an apology, reasonable reparation to victims, and steps to reconnect the young person with their community in order to help them desist from further offending.
Websites with further information on the topic

Attorney-General’s Department (Australian Government)  www.ag.gov.au
Australian Bureau of Statistics  www.abs.gov.au
Australian Clearinghouse for Youth Studies  www.youthfacts.com.au
Australian Human Rights Commission  www.humanrights.gov.au
Australian Institute of Criminology  www.aic.gov.au
Australian Institute of Health and Welfare  www.aihw.gov.au
Lawstuff  www.lawstuff.org.au
National Children’s and Youth Law Centre  www.ncylc.org.au
Youthlaw, Young People’s Legal Rights Centre Inc  http://youthlaw.asn.au

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## Index

### A
- abduction/harassment 1-4, 3, 4
- acts intended to cause injury (AICI) 1-4, 7
- adult offending 3-4, 5-12, 22-23
- age-crime curve 6
- age
  - distribution of recorded crime 1, 13
  - of criminal responsibility 9, 15, 16-17, 18, 25
  - selected countries 23
- alcohol 8
- Australia 28, 29, 44-45

### B
- bail, supervised or conditional 21, 22
- ‘Beijing Rules’ 5, 16, 19

### C
- caution or warning 21, 22
- Children’s Court 7, 25-26, 42
- community-based programs 37-38
- sentences 43
- supervision 21, 22, 26
- community service 21, 22
- crime reduction 36-38
- criminal justice system 18-50
- custodial orders 25, 26
- custody rates 36

### D
- dangerous or negligent acts 7, 26
- delinquency prevention 38
- desistance 8, 9
- detention 21, 22, 42-43
  - duration of, median 24
  - legal status of juveniles in 30
  - rates 23, 27-34
- deterrence 42-43
- discharge without penalty/reprimand 21, 22
- diversionary approaches 11, 18-19, 25-26, 36
- doli incapax 9, 15, 16-17, 18
- drugs 7, 8
- dual track system 11, 18, 46
- duty of care 8-9

### E
- England 16, 17, 23

### F
- fines 21, 22
- formal cautions 22

### G
- gender differences 14
- good behaviour bond 21, 22
- ‘growing out’ of crime 5, 6, 9

### H
- home detention 21, 22
- homicide 1-4, 2, 3, 4, 6, 8, 26

### I
- immaturity 10
- indigenous youth 6, 20-21, 22, 23, 24, 29, 30-31, 32-33, 34, 35, 36, 37, 38, 39
- intellectual disability 8
- international juvenile justice systems, comparisons with 23, 36

### J
- justice models 9, 36
- justice reinvestment 39-40
- juvenile
  - definition of, legal 3, 5, 15, 28
- justice
  - effective practices in 36-38
  - government approaches to 37-38
  - legislation in Australia 11
  - policies 19
  - programs 36-37
  - services and outcomes 21, 22
  - supervision 9-10
  - system 18-50
  - welfare approaches to 9, 36
- offenders
  - complex needs of 8
  - criminogenic needs of 10-11
  - profiles 1-2
- offending
  - nature of 7
  - rates 1-2, 3-4, 5-12, 13-14
  - trajectories 6
- crime, challenges of responding to 8-11
- detention
  - by age 28-29
  - by sex 3, 29, 30
  - trends 27-34

### M
- mental illness 8
- monetary orders 26

### N
- naming of juvenile offenders 9, 49-50
- New Zealand 23, 36, 44-45
- non-custodial orders 26

### O
- obligation without supervision 21, 22

### P
- parole 21, 22
- peer influence/contagion 7-8, 11

### R
- recidivism 8, 36, 38, 41, 47, 48, 49-50
- rehabilitation 43
- remand 21, 22, 30-32
- reoffending see recidivism
- restorative justice 41, 44-45, 46-47, 48, 49
- ‘growing out’ of crime 5, 6, 9
- ‘sexting’ 17
- ‘Beijing Rules’ 5, 16, 19

### S
- Scotland 17, 23
- sentenced, juveniles 30-32
- sentenced supervision 21
- sentence outcomes 26
- sentencing, statutory minimum 42-43
- sex, of offenders
  - females 3, 6, 14, 24, 28, 29, 30, 33
  - males 3, 6, 14, 24, 28, 29, 30, 33
- ‘sexting’ 17
- theft 2, 3, 4
- traffic offences 7, 26

### U
- United Nations Convention on the Rights of the Child 9, 16, 19, 43, 49
- United States (USA) 23, 36
- unlawful entry with intent (UEWI) 2, 3, 4, 7, 26
- unsentenced detention 21, 22
- unsupervised 21

### V
- victimisation rates, youth 8, 13-14
- violent offences 1, 6

### W
- Wales 16, 17, 23
- welfare models 9, 36

### Y
- youth justice supervision 24
- youth offenders 13-14, 18, 19-21, 24

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