6 March 2017

The Secretary
Legal and Social Issues Committee
Legislative Council Parliament House
Spring Street
Melbourne VIC 3002

By email: youthjusticevic@parliament.vic.gov.au

Dear Secretary,

**Inquiry into Youth Justice Centres in Victoria**

I appreciate the invitation to contribute to the Inquiry into Youth Justice Centres in Victoria by the Standing Committee on Legal and Social Issues. Considering the Terms of Reference, this submission will address:

- the implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning, in relation to:
  - the likelihood of reoffending;
- additional options for keeping young people out of youth justice centres; and
- any other issues the Committee considers relevant (specifically I will address Government responsibility for Youth Justice).

**Implications of Incarceration for Reoffending**

Many young people who are detained have indeed experienced trauma, have been involved in the child protection system, have a history of drug or alcohol misuse and some have mental health issues or issues with intellectual functioning.\(^1\) While many of these characteristics also apply to incarcerated

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adults, as Maxwell P and Redlich JA note in *Webster v The Queen* [2016] VSCA 66,
[8]:

custody can be particularly criminogenic for a young person, whose brain
is still developing; and, ..., the very process of development and
maturation which is under way is seen as providing a unique opportunity
for rehabilitation and – hence – for minimising the risk of re-offending.

Detention is ineffective as a means of preventing reoffending. It has been
reported that there is 'no evidence that incarceration reduced recidivism when
compared with lower levels of justice supervision such as diversion, probation,
or parole.' Rather, youth detention may expose young people to further trauma,
including violence between or from peers or from staff. Experience or
perception of abuse while in detention can result in an increased likelihood of
reoffending.

**Alternatives to Detention**

Multi-faceted, community-based, therapeutic approaches to youth justice are
more effective than punitive/deterrence focused interventions (such as
detention), particularly when those therapeutic approaches are appropriate.
That is, more intensive measures need to be confined to high-risk offenders and

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interventions need to address criminogenic needs and be responsive in delivery. Effectiveness is reliant though on high quality implementation of programs, or treatment integrity. Programs that involve the young person’s family and ‘take into account community context’ are more likely to have a positive impact. Examples of effective programs that provide alternatives to detention include Multi-Systemic Therapy and Functional Family Therapy. And for those youths for whom there is a necessity to place securely, smaller, treatment-oriented, home-like facilities such as those established in Missouri, that are located closer to the youth’s communities may provide effective alternatives. Important aspects of that program include continuous case management; decentralised residential facilities; small-group, peer-led services; restorative rehabilitation-centred treatment environment; strong organisational leadership; organizational culture change – a shift from providing services under the court and correctional systems to instead using the department of social services as the primary service provider (culture change also includes ensuring that staff are both highly qualified and highly trained); highly effective treatment strategies and approaches and ensuring that the program consistently reflects on, improves on, and discards any ineffective initiatives.

**Government Responsibility for Youth Justice**

As discussed above, to reduce recidivism the therapeutic programs that are delivered need to be implemented effectively. Similarly to much of what is favourable about Missouri’s approach, Manchak and Cullen note four requirements for success:

1. Appropriate staff (strong leadership and staff that are amenable to change);
2. A context conducive to change (sufficient resourcing – including time, money and personnel);
3. Appropriate training (on the theory behind RNR [Risk-Need-Responsivity] and how to put the principles into practice); and

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12 Ibid 27.
4. Ongoing Evaluation.\textsuperscript{13}

It has been reported that responsibility for the Youth Justice System in Victoria 'including all custodial and community based youth justice services' will be moving from the Department of Health and Human Services to the Department of Justice and Regulation as of 3 April 2017 and that Corrections Victoria will be 'assuming responsibility for maintaining the safety and security of youth justice facilities.'\textsuperscript{14} Such an announcement is disheartening in the context of the necessity in youth justice for therapeutic approaches delivered by specially-trained staff. Adult and adult-modelled correctional facilities are ill-suited as a correctional response for 'youths' age and brain development'.\textsuperscript{15} Corrections officers will need to be retrained to provide appropriate supervision in youth detention centres. As Megan Mitchell, the National Children's Commissioner at the Australian Human Rights Commission, has stated:

It's important that staff who have the care of children in these facilities understand their therapeutic needs, understand their backgrounds and understand child development generally... you can't translate activities and management systems that work with adults to children; you really need specific skills. And you also need to recruit people who are motivated to care and support children and to uphold and safeguard their rights.\textsuperscript{16}

Particularly, given the prevalence of the experience of trauma within youth justice populations, staff 'should be trained to understand trauma and post-traumatic reactions so they are best equipped to recognize potential emotional distress and post-traumatic stress reactions.'\textsuperscript{17} Such training and a 'trauma-focused intervention [has been] effective in reducing psychological distress among youth and improving management of youth problem behaviours.'\textsuperscript{18} The Victorian Department of Health and Human Services were aware of the need for training and supervision in this regard and were 'actively working towards increasing the focus on trauma informed, positive practices with young people and subsequently avoiding a reliance on the use of restrictive practices'.\textsuperscript{19} A shift of responsibility away from the Department of Health and Human Services to Corrections Victoria seems backwards, and in opposition to models, such as Missouri, that are seen as favourable. This is not to disregard that the

\textsuperscript{13} Manchak & Cullen (2015) above n 3, 486.
\textsuperscript{16} In the Matter of a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory, Darwin, 11 October 2016, 30, per Megan Mitchell.
\textsuperscript{17} Dierichsising et al (2013) above n 1, 9.
\textsuperscript{18} Ibid.
\textsuperscript{19} Australian Human Rights Commission, Children's Rights Report 2016 (October 2016) 172.
Department of Health and Human Services may have work to do in providing appropriate programs delivered by well-supported highly qualified and highly trained staff. Rather than directing resources towards building a new large youth justice institution and shifting responsibility to Corrections Victoria, careful consideration should be given to investing in smaller, therapeutic models of intervention with young offenders.

To further illustrate the problem with transferring responsibility to Corrections Victoria, the Age reported Corrections Commissioner Jan Shuard as saying that prison officers 'would be authorised to use weapons against rioting youth' and that Premier Andrews said that currently 'youth justice workers ... are only authorised to use shields'.\(^{20}\) Indeed a restriction to shields is appropriate in youth justice facilities, particularly given the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('the Havana Rules') 65, which prohibits the carrying and use of weapons by personnel in a juvenile detention facility.\(^{21}\)

Thank you for the opportunity to contribute. If I can be of any further assistance, please do not hesitate to email [contact information]

Yours faithfully,

Assistant Professor
Jodie O’Leary
