



Submission

Victorian Parliament Legal and Social Issues Committee Inquiry into Youth Justice Centres

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Introduction

Berry Street welcomes the opportunity to comment on specific issues related to the Parkville and Malmsbury Youth Justice Centres. We do not intend to address the full range of questions being considered but rather will focus on Questions 4 (a) and 5 as these relate to key elements of the youth justice system which impact upon vulnerable children and young people with whom we work.

While responding to these questions regarding current concerns in youth justice, Berry Street acknowledges the significant and very positive work done by all parts of the youth justice system over the past decade. In particular this work has ensured the diversion of many children and young people from youth justice centres whenever possible and almost halved of the number of young people sentenced by the Children's Court. Berry Street is concerned that the strong focus on diversion, rehabilitation and reducing offending that Victoria has maintained for more than a decade will be lost should government respond to issues in our youth justice system which preference public appeal over evidence informed public policy.

Berry Street would welcome the opportunity to present to the committee and share our service and practice experience in the interests of sound policy formation and achieving good outcomes for children, young people and the Victorian community.

Response to Terms of Reference

Question 4. [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 related to mental health or intellectual functioning, in relation to-
(a) the likelihood of reoffending

Question 5. Additional options for keeping young people out of youth justice centres.

Three correlated issues define this discussion:

1. The first is that children and young people from communities characterised by socio-economic disadvantage, and families with multiple vulnerabilities, are over-represented in youth offending statistics. For example, in Victoria 25% of young people on Youth Justice Orders, or on remand, are from just 2-3% of postcodes (Jesuit Social Services, 2016). Similarly while a small population, Aboriginal children and young people make up 58% of those in Australian youth detention (AIHW, 2016).
2. The second issue is that rates of reoffending for children and young people remain disproportionately high, particularly in comparison to reoffending rates for adults.
3. The third and arguably most concerning issue, is that rates of reoffending are highest in the youngest age cohorts of children and young people who are sentenced. A statistical review in Victoria by the Sentencing Advisory Council (2015) notes that of those sentenced, the age group 10-14 years has the highest rate of reoffending (81%) of any sentenced cohort, whether children or adults.

As professionals, we know that the results of compounding factors of disadvantage, abuse, neglect and adverse family circumstances are often borne by young children who are especially vulnerable due to age, developmental stage and the profound impact of trauma on their developing brain. This knowledge is already evident in the child protection system where children are coming into out-of-home care at an earlier age (46% are aged under five years) and children under one are the most likely to receive Child Protection services (AIHW, 2016). Children are also staying in out-of-home care for longer and almost one third will move placement 11 times while in care (Natalier et al., 2011).

These factors, not unique to Victoria, point to the impact on children-especially younger children-of abuse, neglect and a range of negative life events at a time of particular vulnerability: childhood. These factors including family of origin concerns and disrupted attachments may also help to explain why the highest rates of reoffending are directly linked to being a younger age when first sentenced.

“...the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and to be sentenced to imprisonment in an adult court before their 22nd birthday... youngest offenders are more likely to have been exposed to violence, abuse, neglect and chaotic dysfunctional lifestyles.” (Reoffending by children and young people in Victoria. Sentencing Advisory Council, 2016).

To a child or young person who has already suffered abuse, neglect, trauma and/or disruption to primary attachment figures, the impact of incarceration is profoundly negative. Incarceration results in disruption to their connection and contact with their community as well as lack of contact with any positive or pro-social influences in their lives. Additionally, reoffending rates suggest that for a small number of persistently serious young offenders, current approaches, including incarceration of often the most vulnerable children in our community, fails to ameliorate their behaviour. Sadly the evidence suggests that incarcerating children, including those who are already struggling with the effects of trauma, disadvantage, intellectual, cognitive or mental health concerns and substance abuse, will likely lead to more problems, not less.

As noted in a recent Harvard study of youth offending:

“...confinement and control often exacerbates youth trauma and inhibits positive growth while failing to address public safety.” (Schaffer, Harvard, 2016).

Reducing incarceration and reoffending

Berry Street believes that the entire child welfare and justice systems must act to integrate the findings from developmental, neurobiological and trauma research into practice with young people who are offending. This will be necessary if we are to stop children and young people’s trajectory into the youth justice system, youth justice facilities and adult jails.

To this end we suggest the following approaches which hold the most promise:

- (a) We know that young children and adolescents are especially vulnerable to the effects of adverse life circumstances and/or have presentations which suggest disrupted attachments and challenging behaviour at an early age. These must be addressed through the provision of high quality early intervention services, for example play groups, parent support services, enhanced maternal health services and accessible alternative educational and vocational programs. For older children and

adolescents remedial secondary services such as targeted mental health and evidence-based interventions which work to repair family relationships and connection to the community are alternatives to incarceration. The use of Intensive Case Management Services (ICMS), the Berry Street School and the Berry Street Education Model are examples from our own experience that have been particularly effective in promoting safety, stability, continuity of adult relationships and educational attainment which are critical to a young person's transition to adulthood. We would be happy to elaborate on this work at a hearing of the Legal and Social Issues Committee.

- (b) It is also important to note the need for community-based approaches to working with children in their own localities. These services, including mentoring, help young people to develop a sense of reciprocity towards their communities. To this end it is essential that a number of excellent current youth justice diversion programs are made available across the state. This would help to address the needs of at risk young people in rural areas which suffer entrenched disadvantage and lack of adequate services.
- (c) As noted above, rates of reoffending are highest in the youngest cohorts of children appearing before the court. However we know that for younger children and adolescents the process of maturation and brain development is not complete and their cognitive and moral reasoning is still evolving. This would imply that many younger children may reoffend not only because the impact of trauma, disadvantage and individual challenges, but because they do not have the cognitive capacity to fully understand or control their behaviour, sometimes because of the impact of these issues. One way to address this paradox of culpability versus capacity with reoffending in the youngest cohorts would be to raise the age of criminal responsibility from 10 to being in line with the median international age of 13.5 (Hazel, 2008). This would include changing the current rebuttable *doli incapax* principle until age 14 or 15. These changes would also address repeated advice from the United Nations Committee on the Convention on the Rights of the Child (UNCROC) (2007, 2012) that:
- "...a minimum age of criminal responsibility below the age of 12 is considered by the Committee not to be internationally acceptable."*
- Raising the age of criminal responsibility and extending *doli incapax* would ensure Australia becomes comparable with a number of European countries reporting better youth justice outcomes.

Minimum age of criminal responsibility, selected countries.

AGE	COUNTRY
10	Australia, England, USA
12	Canada, Greece, Netherlands, Scotland
13	France, Israel
14	Austria, Denmark, Germany, Italy, New Zealand (except murder or manslaughter).
15	Finland, Iceland, Norway, Sweden.
16	Japan, Portugal, Spain.
18	Belgium, Luxembourg.

(Source: Noetic Solutions 2010, Urbas, 2000, in AIHW Fact Sheet No. 36, 2014).

- (d) In line with increasing the age of criminal responsibility in Victoria/Australia and thus decreasing the need for children to be criminally charged in the first place, our growing knowledge of neurobiology would suggest the need to also increase the definition of youth until age 21 or older.
- (e) The above proposed changes would also inform how children and young people's behaviour is viewed, defined and responded to and with what approaches. For example, recent international

research on attachment disorders in a youth justice population (Moran, McDonald, Jackson et al, 2017) noted that *“Studies have identified a strong association between maltreatment and later criminal behaviour.”*

Clearly it would be more cost effective and beneficial to the community and individuals if services were directed at reducing child abuse as well as therapeutically addressing issues such as attachment. This is also true of the most vulnerable incarcerated cohorts in youth justice facilities: those young people with mental health and substance abuse concerns, intellectual and cognitive impairments, and victims of abuse and neglect. Clearly these young people need a differential response if incarcerated, including specialist therapeutic settings which may ameliorate rather than entrench behaviour.

Again, in a discussion of the administration of juvenile justice in Australia, the United Nations Committee (UNCROC, 2012) critically noted that:

“No measures have been taken to ensure that children with mental illnesses and /or intellectual deficiencies who are in conflict with the law are dealt with using appropriate alternative measures without resorting to judicial proceedings...”

- (f) The Sentencing Advisory Council’s (SAC) 2016 longitudinal research on reoffending by young people in Victoria is instructive. It makes a clear link between age and reoffending, noting that reoffending declined the older a child or young person was at their entry to the criminal division of the court. However reoffending across all youth justice age cohorts’ remains of concern.

The SAC study (2016) noted that even for their cohort of 115 young people who had the most severe sanctions of a youth attendance order or incarceration,

“... 83% reoffended within six years. In the same period [2008-09] 75% reoffended with an offence against the person, 79% moved into the adult criminal jurisdiction, and 53% were sentenced to a term of immediate adult imprisonment.”

Other jurisdictions, including NSW youth justice and numerous sites across the USA, have responded to the challenges of offending and reoffending in young people with the use of evidence-based practice interventions, in particular Multi Systemic Therapy (MST) even with the most serious young offenders. MST in particular has proven not only effective with serious offending but as a placement prevention mechanism which is cost effective.

- (g) The Victorian *Children, Youth and Families Act* should be amended to mandate that children and young people must have diversion as a consideration before sentencing. While this may currently be best practice, it should be legislated to ensure consistency and parity with what is offered to adults in the criminal justice system.
- (h) The youth justice system and range of rehabilitative services could only benefit from hearing directly from young people who have experienced detention and their suggestions for service improvement and redesign.

Conclusion

In summary from the above and other information three points emerge to guide planning to reduce reoffending, offer alternatives to youth incarceration and to ensure that the community is better protected.

These are that one, the acknowledgement that youth incarceration, far from protecting the community, appears to be criminogenic in itself. It is also undoubtedly traumatising for the child or young person who is incarcerated many of whom have already been traumatised by abuse or neglect. Given this, detention alternative and evidence-based therapeutic interventions which are used in other jurisdictions to address serious youth offending must be looked at for our children and young people. Locally, there are also a number of learnings from the successful Victorian innovation of Therapeutic Treatment Orders which may be applicable across other offence types.

Second, we cannot continue to know the numbers of children and young people in the youth justice system who have been the victims of abuse and neglect and not try to better understand and work with the effects of the abuse before this legacy further impacts upon the community and the individual. Given that many of these young people have the additional challenges of intellectual disabilities or mental health or substance abuse issues, they require even more specifically-designed support services which meet their needs and ensure community safety in the long-term.

Finally, if we really want a just justice system for children and young people we should develop a range of state-wide suitable services to assist them and their families. However these services must be underpinned by a suite of policy and legislative reforms which reflect our increasing knowledge about children's development, cognitive capacities, neurobiology and the effects of traumatic childhood abuse. They must also reflect that many of those incarcerated each year, or subject to other sanctions, are also the state's most disadvantaged and vulnerable children to whom we owe a demonstrable duty of care.