

## Opinion

# A Just System? How Punitive Youth Justice Systems Increase the Risk of Crime

Julie Edwards

CEO, Jesuit Social Services, Richmond, Victoria, Australia

For children and young people who offend, contact with the justice system can lead to life-long offending, with evidence showing that the younger a child enters the justice system the more likely he/she is to have sustained contact and go on to reoffend (Australian Institute of Health and Welfare (AIHW), 2017). Local and international youth justice approaches that aim to rehabilitate or resocialise the child or young person often have more success in preventing reoffending (Elwick, Davis, Crehan, & Clay, 2013). So, what is it that makes an effective youth justice system, and how can we ensure that children and young people are diverted from the criminal justice system effectively and that those who offend do not continue into a life of crime?

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### Youth Justice in Australia

Throughout 2016 and 2017, a number of high-profile events across Australia have focused the spotlight on young people and crime. The revelation of horrific conditions at the Don Dale Youth Detention Centre has led to the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017). In Victoria, incidents at the Parkville and Malmsbury Youth Justice Centres prompted the state government to introduce tough measures and legislative changes to youth justice, resulting in the unprecedented situation of young people being sent to an adult correctional facility (Pearl, 2017). The Queensland Attorney-General ordered an independent review into youth justice centres, and the Tasmanian Children's Commissioner called for independent monitoring of youth justice detention centres (Baines, 2016; The State of Queensland, 2016). In New South Wales, reports have come to light of males between the age of 16 and 21 self-harming after being locked up for 23 hours a day (Begley & Maley, 2016).

Media coverage has fuelled an assumption that youth crime is spiralling out of control across Australia. However, the reality is that both the numbers of youth offenders and young people under supervision (community-based or detention) are decreasing. As outlined in Jesuit Social Services' *States of Justice* report, the number of youth offenders (aged

between 10 and 19 years) proceeded against by police in Australia during 2014/2015 decreased by 3% (or 2,223) to a total of 85,442, and by 20% since 2010/2011 (Jesuit Social Services, 2016).

### Characteristics of Young People who Offend

'... the corollaries between child poverty, social and economic inequality, youth crime and processes of criminalisation are undeniable' (Goldson, 2009, p. 519).

Research findings have indicated that offending in younger children is strongly connected to their environment and its impact on their development, as outlined below.

Jesuit Social Services' research has identified a strong correlation between child and youth offending and entrenched disadvantage. For example, in Victoria we found that:

- 78% of children aged 10 to 12 years with youth justice orders in 2010, or those who had experienced remand at this age, were known to child protection (Jesuit Social Services, 2013).

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ADDRESS FOR CORRESPONDENCE: Julie Edwards, Jesuit Social Services, Policy and Advocacy, 326 Church Street, Richmond, Victoria 3121, Australia.  
E-mail: [julie.edwards@jss.org.au](mailto:julie.edwards@jss.org.au)

- 25% of children on youth justice orders in 2010 came from 2.6% of Victorian postcodes (Ericson & Vinson, 2010).
- Children 14 years and under at their first encounter with the justice system are more likely to come from areas with higher rates of developmentally vulnerable children on the Australian Early Development Index (Jesuit Social Services, 2013).

Many children and young people who engage in challenging behaviour have histories of trauma, neglect and contact with child protection. Statistics show that nationally, in 2014/2015, young people in the child protection system were 14 times as likely as the general population to be under youth justice supervision and 41% of young people in youth detention were also involved in child protection (AIHW, 2016). The younger children are at the time of their first youth justice supervision, the more likely they are to be in child protection (AIHW, 2016). Further, statistics in Victoria indicate that involvement in child protection and prior experience of trauma, abuse or neglect are common in children and young people in youth justice settings (Youth Parole Board (YPB), 2016). These statistics found that of all children in detention:

- 45% had been subject to a previous child protection order
- 19% were subject to a current child protection order
- 63% were victims of abuse, trauma or neglect (YPB, 2016).

It is well recognised that early experiences of child abuse and neglect have a detrimental impact on a child's brain development. Research has identified how hardship early in life can inhibit the development of oral language, result in intense and cumulative harm, and have long-term impacts on health and social outcomes (Miller, 2007; Robinson, Silburn, & Arney, 2011; Snow & Powell, 2012). In these settings, a child's ability to develop important emotional, social and cognitive skills is diminished, leading the child to lag behind his or her peers in a broad range of competencies.

These risk factors have a further effect on the health and wellbeing of children. A NSW study looking into the health of young people in custody indicated that 87% had at least one psychological disorder, and nearly three-quarters had two or more (Indig et al., 2011). Victorian Youth Parole Board (2016) data also highlights the prevalence of mental health and disability amongst those in youth detention: 30% presented with mental health problems, 18% had a history of self-harm or suicidal ideation, and 24% presented with issues concerning their intellectual functioning.

There is also a strong connection between school performance, truancy and criminal involvement. A number of studies, including Jesuit Social Services' research, have found that between 60–70% of students skipping school were involved in criminal activity (Arthur, 2012). In Vic-

toria, 62% of young people in youth detention had been previously suspended or expelled from school (YPB, 2016). Attendance and engagement at school is important for children's maturation, including learning values and developing social awareness. Not only are most children who have contact with the justice system developmentally, socially and economically vulnerable, they also tend to be disengaged from the support and education that underpin positive development.

It is also worth noting that Aboriginal Australians are significantly over-represented in the justice system. In 2014/2015, compared with the non-Indigenous population, Aboriginal children were 6–10 times more likely to be proceeded against by police, 14 times more likely to be under community-based supervision and 24 times more likely to be in detention (AIHW, 2016b).

## The Impact of Children Encountering the Justice System

The younger children are when they encounter the justice system, the more likely they are to have sustained contact. This is indicative of the extreme vulnerability and complex needs of this cohort, as well as the failure of the justice system to provide an effective response. Research highlights the link between encountering the justice system at a young age and reoffending later in life:

- In Victoria, 10–12 year olds who are remanded average 5.4 remand admissions, compared with 2.9 for those first remanded after the age of 12 (Jesuit Social Services, 2013).
- There is a small proportion of chronic offenders who commit a large proportion of all crimes. Characteristics of chronic offenders include an earlier onset of offending, a higher frequency of offending, and longer criminal careers (Jesuit Social Services, 2013).
- Children first supervised at 10–14 years old were more likely to experience all types of supervision in their later teens particularly the most serious type, sentenced detention (33% compared to 8% for those first supervised at older ages) (AIHW, 2013).
- Children first supervised at 10–14 years old spent longer periods under supervision at older ages (half returned to supervision and spent 18 months or more there compared with only 15% of those first supervised between 15–17 years) (AIHW, 2013).

## Child and Adolescent Brain Development and Juvenile Offending

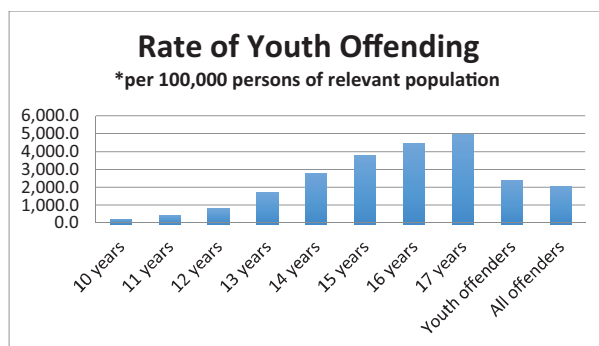
During the middle years (10–15 years) and adolescence (up to 25 years) the brain undergoes significant development and maturation. The prefrontal cortex – the part of the brain responsible for decision-making, planning, controlling impulses and allocating attention – is considered the

last area of the brain to fully mature (Weinberger, Elvevåg, & Geidd, 2005). The increase in dopaminergic activity, alongside a changing cell structure in the brain, has a number of impacts on a young person's behaviour, including:

- The capacity to understand abstract concepts such as laws and codes of social conduct
- Difficulties in impulse and behaviour control
- Increased tendencies to pursue reward and sensation-seeking behaviours
- Susceptibility to peer pressure
- Reduced capacity to appreciate the consequences of his/her actions (Arthur, 2012; Farmer, 2011; Matthews, 2000; Urbas, 2000; Weinberger, Elvevåg, & Geidd, 2005).

As a result of this ongoing brain development in the young person, youth offending differs dramatically from adult offending.

While early offending can lead to sustained contact with the justice system, youth offending generally peaks in late adolescence and declines in early adulthood, with 15–19 year olds being the most likely population group to be engaged in crime than any other age group (Australian Bureau of Statistics (ABS), 2017). Youth offenders typically 'grow out' of their offending, with the vast majority of young people ceasing their criminal activity in early adulthood (Richards, 2011).



Source: ABS 4519.0 Recorded Crime-Offenders, 2015-2016

Compared with adults, children and young people are more likely to commit low level offences such as graffiti, vandalism, shoplifting and fare evasion. In 2015/2016, 15–19 year olds had the highest rates of theft, robbery and extortion, and unlawful entry with intent than any other age group (ABS, 2017).

Compared with adults, offending by children and young people tends to be committed in groups and in public areas close to where they live. It is also episodic, unplanned, opportunistic and attention-seeking (Richards, 2011).

## Key Principles of an Effective Youth Justice System

As a society our goal must be crime prevention – addressing the underlying causes of crime by intervening in the web of

disadvantage that impacts on individuals, families and communities. We must recognise that most young people do not offend. For those young people who do come into contact with the criminal justice system we need to commit to rehabilitation as the primary purpose of the youth justice system.

Jesuit Social Services' vision for the youth justice system is to enable young people who offend (or are at risk of offending) to lead healthy, productive and crime-free lives.

If we imagine the youth justice system as a maze that entraps vulnerable young people – all too easy to enter but so difficult to escape – we propose to redesign the maze so that the pathways in are narrowed and the pathways out are clear. To achieve this, our purpose must be rehabilitation. This means addressing underlying causes of offending and the offending behaviour itself, all with a focus on education and re-socialisation.

In addressing offending behaviour, youth justice systems must recognise the distinct vulnerability of young people, the nature of their offending and the need to support their development.

Punitive responses to youth offending often provide environments that not only fail to support young people's brain development but often further traumatise them, increasing their vulnerability and likelihood of reoffending. Effective responses to youth offending must aim to prevent entrenchment in the justice system by identifying and addressing the underlying factors that contribute to the offending.

With 40 years experience seeking solutions and working with young people intersecting with the justice system, as well as their families and communities, Jesuit Social Services has identified the following key principles of good youth justice systems:

- Relationship-based models
- Focus on early intervention and diversion
- Listening to the voices of young people and their families
- Developmentally appropriate approaches to children and young people
- Recognising the importance of culture and country for Aboriginal and Torres Strait Islander peoples
- Connection to families, communities and culture
- Thorough assessment and planning
- Addressing offending behaviour
- Addressing mental health, substance abuse and other health and wellbeing needs
- Strong framework of support and accountability
- Restorative justice approaches
- Education focus that builds practical and social skills for re-socialisation
- Incarceration as a last resort

In order to deliver on these principles we need a suite of appropriate programs and staff with relevant attributes

and qualifications. We must recognise that deprivation of liberty is the punishment itself – once in custody, we should do everything possible to get the young person’s life on track. If children and young people are incarcerated, we must:

- Adopt a relationship-based model across every aspect of operations
- Offer small community-based settings (prioritising normality, and ongoing engagement with family and community)
- Facilitate connection with family, community and culture
- Prioritise education and skills for life
- Address offending behaviour
- Address mental health, substance abuse and other health and wellbeing needs
- Focus on re-socialisation, transition and re-integration to the community
- Keep remandees separate from sentenced offenders
- Engage and support staff who have appropriate personal attributes, qualifications and experience to build relationships of trust and deliver on the re-socialisation goal

Below are three examples of interventions that operationalise some of the above principles.

**1. Restorative justice approaches: a meaningful way for children and young people to understand the impact of their behaviour**

A restorative justice approach to child and youth offending encourages young people to understand the impact of their behaviour. Research highlights a range of positive outcomes from restorative justice responses including victim satisfaction, offender responsibility and increased compliance with orders (Larsen, 2014).

Restorative justice is a constructive and successful way to respond to antisocial behaviour in children and young people due to the engagement of informal social controls (family, supporters, and the community) and the impact of meeting with a victim face-to-face (Larsen, 2014). Particularly for younger children, restorative justice enables responses to poor behaviour to be adapted to the person’s stage of development.

**Example: Youth Justice Group Conferencing**

Jesuit Social Services’ Youth Justice Group Conferencing enables dialogue between young people who have offended, their victims and the wider community. It is a problem-solving approach to offending that emphasises the young person’s personal accountability, encourages an inclusive decision-making process, and aims to restore the harm caused by the offence.

A 2010 KPMG independent evaluation of young people who completed a Youth Justice Group Conference between 2007 and 2009 found that more than 80% of participants had not reoffended two years later – this is compared with 57% for the comparison group (i.e., young people who had been placed on Probation or on a Youth Supervision Order).

**2. Diversion: addressing the underlying causes of offending**

An effective response to youth offending recognises the need and capacity for young people to be re-socialised, adopting a therapeutic response to address the underlying causes of their behaviour. A therapeutic response recognises that young people involved with the justice system have a range of complex and varied needs and often have experienced various forms of disadvantage. Without addressing the underlying causes of offending, the young person is significantly more likely to re-offend.

**Example: Youth Diversion Pilot Program**

Between June 2015 and December 2016 Jesuit Social Services delivered services to young people participating in the Youth Diversion Pilot Program operating out of the Children’s Court of Victoria.

The key objectives of the program were to:

- enable support and intervention to be provided to young people who may be starting out on a path of offending
- facilitate diversion away from the criminal justice system at that crucial point
- avoid a finding of guilt being recorded (on successful completion of the program)
- assist the young person to address any problems likely to lead to further offending behaviour

Data collected by Jesuit Social Services indicates that the diversion program was successful in supporting young people to understand the impacts of their offending behaviour and to engage in activities to prevent future offending. Over 90% of all finalised diversions resulted in a dismissal of the charges.

Participants were supported to improve family relationships, engage with education, training and employment, and address mental health and substance use issues.

*Case Study*

*Male aged 17 (Theft, Trespass and Obtain Property by Deception charges) – Intellectual disability and severe language delay. His plan was to work more on reading and writing, and have further restorative justice discussions around the offences. He participated well in everything and was assisted in writing a letter of*

apology. The young man is also now receiving one-on-one support with his education two days a week and the school is exploring and trialling different programs with him to improve his literacy. He reported that things have been 'heaps better' with his school.

### 3. Education focus: re-engage in education, training or employment

'He who opens a school door, closes a prison' Victor Hugo

Re-engagement in education, training or employment is arguably the most effective form of reducing reoffending for young people (Elwick, Davis, Crehan, & Clay, 2013) because it opens the door to an alternative pathway away from crime by increasing their life opportunities. People who have low levels of educational attainment are significantly more likely to come from disadvantaged backgrounds and experience high rates of involvement in the justice system (Jesuit Social Services, 2016). Evidence shows that increasing a person's education attainment level is the most effective way to reduce the risk factors associated with criminal behaviour (te Riele & Rosauer, 2015).

#### Example: Navigator

Recognising the importance of school engagement as a protective factor against involvement in the criminal justice system, Jesuit Social Services is delivering casework and support to disadvantaged young learners as part of the Victorian Government's Navigator initiative. Navigator works with disengaged learners aged between 12 and 17 to engage with them and their support networks to return the young person to education or training.

Re-engaging vulnerable young people in educational, learning and employment pathways gives them the foundational skills and opportunities they need to flourish. The Navigator pilot program operates in a number of areas in Victoria that experience significant disadvantage, including higher rates of long-term unemployment and family violence. The program's work includes the development of individualised learning and cultural plans; restorative approaches and therapeutic and practical support are also provided.

#### What Now?

Across Australia we now stand at a precipice, faced with a decision to blindly leap off into the well-trodden path of punitive justice, or to take a step back, collect our breath, look at what works and what doesn't and move forward with a clear vision.

With this in mind, in mid-2017 Jesuit Social Services travelled abroad to look for innovative and sustainable solutions to youth justice issues in Australia. Throughout Europe and the United States we witnessed approaches to youth jus-

tice that were helping young people realise their potential, saving tax-payers' money, and creating safer communities.

Acknowledging that each system we viewed exists within its own unique context – some similar to our own and some vastly different – this was an opportunity to learn and reflect, to consider *elements* of other systems that may translate productively or be adapted effectively into the Australian context.

What is clear after viewing so many varied and successful approaches is that they share common elements, all of which flow from a system that places the rehabilitation of young people at its heart, whilst holding them accountable and addressing their offending behaviours.

We saw that good youth justice systems focus on early intervention and diversion, preventing young people from further contact with the justice system, using child-specific approaches and engaging families and communities. They have thorough assessment and planning processes that are supported by strong social infrastructure and well-resourced community alternatives to locking up young people. When prison is necessary, the focus is on strong education, addressing problem behaviour and underlying needs, and building social and practical skills through programs that prepare young people for reintegration into their community. They use facilities that are small and close to the homes of detainees, with positive cultures and well-qualified staff who are trained to build relationships of trust, rather than punish.

All of this is underlined by a deep commitment to take the time to hear the voices of young people, and the voices of their families, to truly understand what is driving their behaviour and ensure that those issues and needs are addressed.

The people and organisations we met with and learnt from urged us to consider that hasty and uninformed policy can derail a youth justice system, setting it off course for many years.

#### A New Approach

Jesuit Social Services envisions a future for Australia in which all young people are equipped with the tools to realise their full potential.

We are now faced with the challenge of deciding what kind of communities we want to live in. If we build prisons we will fill prisons – this is not only expensive but it is also unsustainable. Instead of building prisons we should be closing them and investing in alternatives. We must set targets to reduce youth offending, incarceration and recidivism, with specific targets regarding Aboriginal and Torres Strait Islander young people. We should not accept a growing youth prison population as a given. We have seen in other parts of the world that a short-sighted and non-evidence-based approach will only see more young people trapped in the maze of the youth justice system, ultimately creating more victims.

Justice policy is complex. For it to succeed it must operate in an environment that can stand firm against political

and populist pressures. We challenge governments to show strong leadership and innovate rather than regress, so that Australia may become a place where people from around the world come seeking solutions from us.

We call on governments to commit now to developing new youth justice strategies based on the evidence of what works, so that we can build a truly just Australia.

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