

PRACTICAL LESSONS, FAIR CONSEQUENCES

IMPROVING DIVERSION FOR
YOUNG PEOPLE IN VICTORIA



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A MESSAGE FROM THE ATTORNEY-GENERAL AND THE MINISTER FOR COMMUNITY SERVICES

The Government is committed to preventing crime and improving community safety. To achieve this we are introducing key measures to send a clear message that violence and anti-social behaviour will not be tolerated. These measures include additional police on our streets, an increase in Protective Service Officers on public transport, a Public Infrastructure Fund, a Community Safety Fund and sentencing and bail reforms.

Responding to youth offending poses a policy and practice challenge. While a substantial proportion of crime is committed by young people, most will grow out of offending and adopt law abiding lifestyles as they mature. Intervening early to provide young people with the opportunity to address the underlying issues contributing to criminal behaviour can divert them from progressing further into the criminal justice system. By helping these young people grow into responsible adults, we can make our community safer.

In Victoria, Magistrates in the Children's Court act under legislation that governs their approach to sentencing of children and young people who come before them. Sentencing in the Children's Court focuses on supporting the young person within the community 'wherever practicable and appropriate'. The emphasis is on rehabilitation with graduated responses proportional to the offence and the use of detention as a last resort. Currently, for young people who come before the Children's Court there are a range of sentencing options available to them. These include undertakings (accountable and unaccountable), good behaviour bonds, fines, probation and youth supervision, attendance, residential and detention orders.

This paper seeks views on possible changes to diversion options at the front end of the system, when young people first encounter the police or are required to appear before a Magistrate in the Children's Court. Effective diversion seeks to change offending behaviours and attitudes, promote pro-social behaviour and assist rehabilitation. It seeks to reduce crime, improve community safety and cut the cost of prolonged involvement with the criminal justice system.

The Government is interested in examining whether there are opportunities to improve diversion within current resourcing. This discussion paper seeks to prompt consideration of the circumstances in which diversion may be the most appropriate response to a young person who has offended and whether there are ways to intervene earlier and more successfully.

Young people have a capacity to be positively influenced and rehabilitated to achieve a successful transition to adulthood. Let's make the most of the opportunities available.

Hon Robert Clark MP
Attorney-General

Hon Mary Wooldridge MP
Minister for Community Services

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Please note: Wherever possible throughout the paper, 2009-10 statistics are used, however statistics from 2008-09 have been used at times when 2009-10 statistics were not available. At the time of drafting, statistics for 2010-11 were not yet available.

The statistics presented in floating boxes throughout the paper were sourced from the following documents:

Juvenile Justice in Australia: Final Report 2008-09 Australian Institute of Health and Welfare April 2011
Youth Parole and Residential Board Annual Report 2010-11, Department of Human Services
Department of Human Service information from the CRIS database
Department of Human Service Annual Report 2009-10
Victoria Police Crime Statistics 2009-10 Official release, 6 September 2010
Victoria Police Children and Youth Strategy 2009-2013
The State of Victoria's Children 2009: Aboriginal Children and Young People in Victoria, Department of Education and Early Childhood Development
Children's Court data accessed February 2010
Children's Court Annual Report 2009-10

HOW TO PROVIDE COMMENTS

This discussion paper seeks your views about diversion responses in Victoria for young people who may have contact with police or appear before the Children's Court.

The discussion paper poses a number of questions. Your response can address as many of the questions as you choose. You may also wish to address other relevant issues.

To comment on the matters raised in the discussion paper, you can make a submission by:

Email: legalpolicysubmissions@justice.vic.gov.au

Mail: Send written or taped submissions to:

Manager, Children and Young People
Strategic Policy and Legislation
Department of Justice
GPO Box 4356
Melbourne 3001

Closing date for submissions is 5 October 2012.

Any questions about making a submission can be directed to:

Email: legalpolicysubmissions@justice.vic.gov.au

Phone: (03) 9032 0835

Please note:

Unless marked 'private and confidential' all correspondence and submissions will be regarded as public documents, and may be made available on the Department of Justice's website, or be viewed by members of the public on request.

Even if a submission is marked 'private and confidential' the submission may still be the subject of a request for access under the *Freedom of Information Act 1982 (Vic)* ("FOI Act"). The FOI Act requires the Department, if practicable, to notify you if a request is made for access to a document containing information relating to your personal affairs and, if a decision is made to release that document, to notify you of rights of appeal under that Act.

INTRODUCTION

For those young people who come to the attention of police and the court, the majority of their crimes are low-level offences and most do not go on to be repeat offenders. Many of those who do have contact with police will do so on just one occasion¹. Evidence shows that two thirds of young people who commit crime do not re-offend after their first offence and a further 15 per cent do not re-offend after their second offence².

For those young people who have contact with the criminal justice system, an effective response can assist in reducing further offending, increase community safety, alleviate pressure on the system and improve outcomes for the young person and the broader community.

At present if a matter proceeds to court, a number of sentencing options are available including undertakings (both accountable and unaccountable), good behaviour bonds, fines, probation and youth supervision, attendance, residential and detention orders.

Evidence suggests that, in appropriate cases, diversion early in the criminal justice process can be a successful and highly cost effective way to deal with crime³. Diversion can refer to programs, interventions and approaches that avoid further progression into the criminal justice system or reduce future offending. Diversion can assist the young person to address the issues underlying their behaviour and can enable input from the victim through restorative practices. The benefits of appropriate diversion can be significant for the individual, their family and the community.

A series of reports have considered responses to young people in the criminal justice system. These include:

- > The Parliament of Victoria's Drugs and Crime Prevention Committee's 2009 report [Inquiry into strategies to prevent high volume offending by young people](#)
- > The Victorian Auditor-General's [Report into Services for Young Offenders](#) (2008) which looked at services provided by the Department of Human Services (DHS) and the Magistrates' Court of Victoria.
- > The 2011 [Doing Time – Time For Doing](#) report of the Commonwealth Parliament Standing Committee on Aboriginal and Torres Strait Islander Affairs report which outlined the findings of its inquiry into the high level of involvement of Indigenous young people in the criminal justice system.

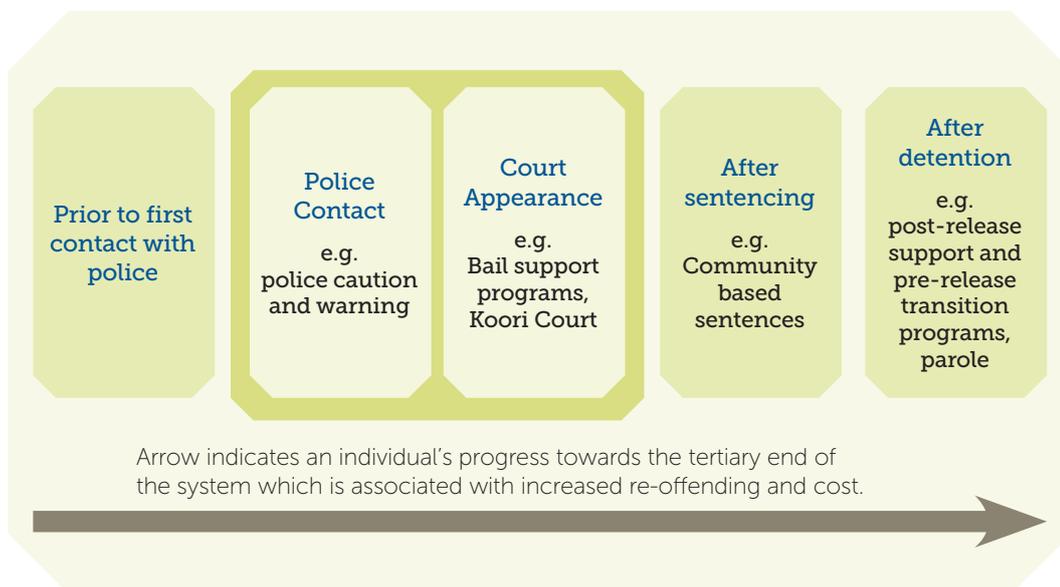
Some of the issues that have been raised include inconsistent legislation, data, eligibility criteria, potential service gaps or duplication because of uncoordinated service delivery and limited diversion options for young people prior to sentencing.

These issues have been highlighted particularly in relation to the youth justice system at the points where young people have contact with police or come before the Children's Court of Victoria.

The purpose of this paper is to seek your views about diversion responses in Victoria for young people who may have contact with police or appear before the Children's Court.

1 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people*, Final Report (July 2009) p.7
2 Australian Institute of Criminology, *What works in reducing young people's involvement in crime?* 2002 p.13
3 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people*, Final Report (July 2009) p.297

Figure 1: Points of diversion



This paper contains two main sections. The first provides information about young people and the criminal justice system, the second looks at diversion and seeks feedback on how to improve it in the youth justice system at police contact and court appearance.

The paper:

- > provides information on young people and crime
- > explains the youth justice system in Victoria
- > outlines the costs and benefits of diversion
- > summarises several diversion programs available through police and court for young people in Victoria
- > provides examples of diversion programs in other jurisdictions
- > invites feedback on a series of questions.

In this paper:

- > the **criminal justice system** means the entire criminal justice system in Victoria for both adults and young people
- > the **youth justice system** means the criminal justice system as it relates to young people who are under the age of 18⁴ when they commit their offence. This includes, but is not limited to, the police, court, Youth Justice and supporting agencies.
- > **Youth Justice** means a service within the DHS that is responsible for the supervision of young offenders.

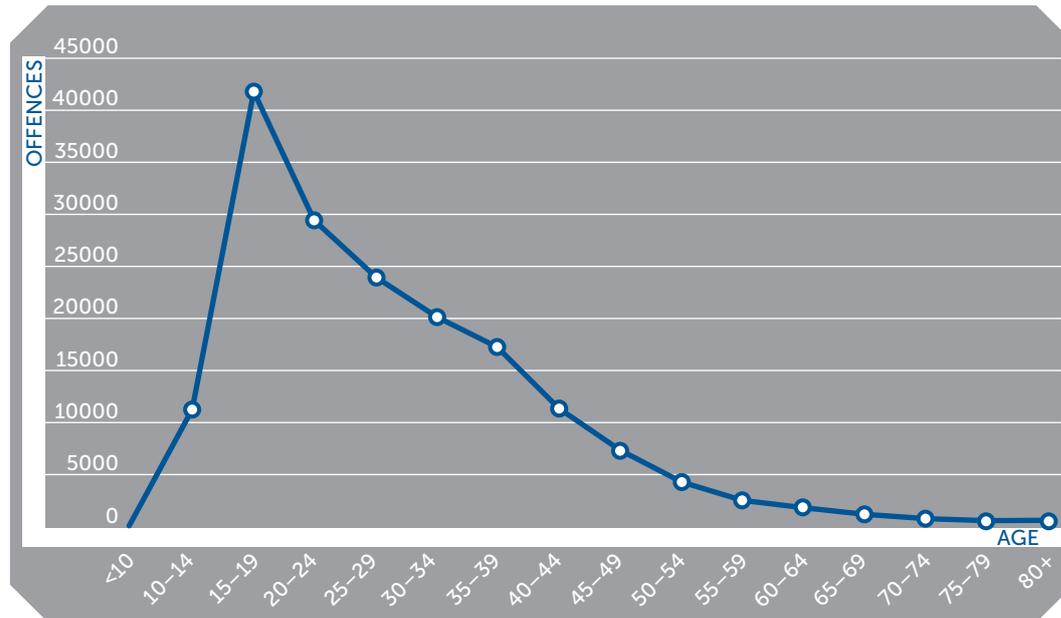
4 See Section 3 (1) Children Youth and Families Act, Part (a) of the definition of child. Child means ‘...a person who at the time of the alleged commission of the offence was under the age of eighteen but of or above the age of ten...’

YOUNG PEOPLE AND CRIMINAL JUSTICE SYSTEM

1. Young people and crime

Criminal behaviour appears to increase during adolescence. A common way of viewing this increase in criminal behaviour is the age crime curve.

Figure 2: Victorian age-crime curve based on alleged offenders⁵



The majority of crimes committed by young people are low-level offences such as theft and property damage. Most research indicates that many young people do not go on to be repeat offenders - the majority of young people who have contact with police will do so on just one occasion⁶.

One recent New South Wales (NSW) study, exploring 15 years of data, suggests that re-offending rates among those who begin offending in adolescence are higher than those who begin in adulthood⁷. It found that re-offending by young people may be much more common than first thought. However, there is no research providing a corresponding understanding of this issue in Victoria and it should be noted that there are significant differences between the NSW and Victorian youth justice systems.

Despite this increase in criminal behaviour in adolescence, compared to the population of young people in Victoria, a relatively small number have contact with the criminal justice system. Most young people will progress through adolescence and into adulthood as law-abiding citizens.

In 2009-10, 21 per cent of alleged offenders in Victoria were aged 18 and under
(Victoria Police)

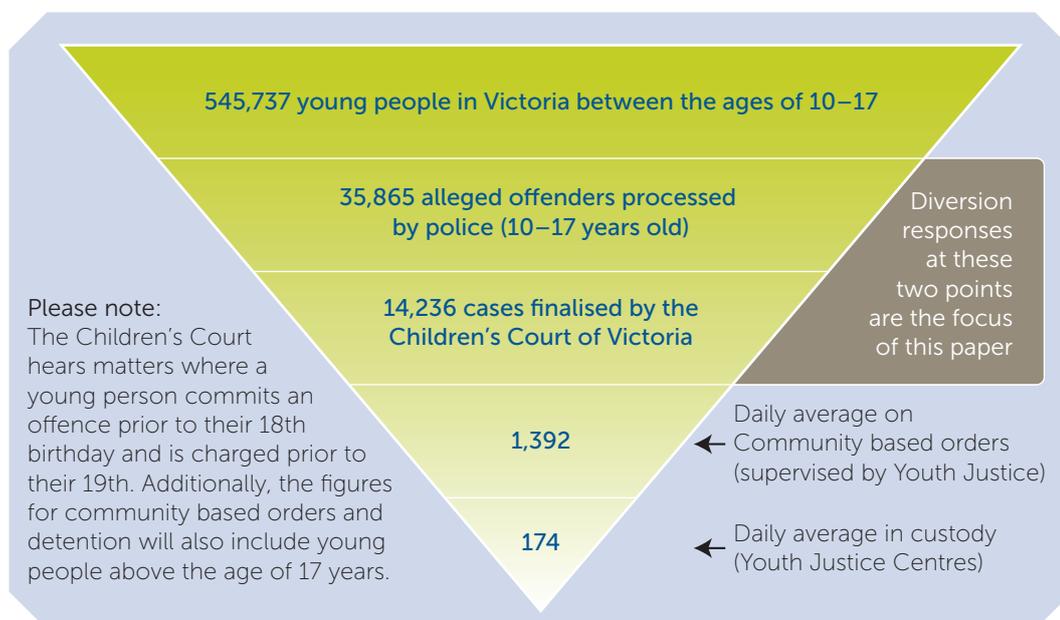
5 Victoria Police Crime Statistics 2009/10 Hhttp://www.vicpolcrimestats.net.au/

6 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people*, Final Report, July 2009 p.7

7 Holmes, J, Re-offending in NSW, NSW Bureau of Crime Statistics and Research, 2011

To demonstrate this point further, the diagram below illustrates the number of alleged offenders processed by police⁸, cases finalised by the Children’s Court⁹ and the number of young people on community based supervisory orders and in detention on an average day¹⁰ relative to the population of young people in Victoria¹¹.

Figure 3: Funnel diagram illustrating involvement of young people in the justice system relative to the general population of young people



1.1 Differences between youth and adult crime

Young people have a different offending profile from adults.

In terms of capacity to understand and engage in the criminal justice process, some research suggests that up to one third of 11 – 13 year olds and one fifth of 14 – 15 year olds have impaired decision-making capacity, the same as a mentally ill adult considered unfit to stand trial¹².

During adolescence, there is also an increased susceptibility to peer influence. Young people’s relationships with their peers become more important as they seek to develop autonomy and independence from their family¹³.

The offending profile of adolescents reflects developmental factors. Young people are more likely to commit crimes such as graffiti, vandalism, shoplifting and fare evasion and are less likely than adults to commit homicide, sex offences or white-collar crime (such as fraud)¹⁴. They are also more likely to commit crime in groups, in public areas or close to where they live¹⁵. Compared with adults, young people often commit public offences that are unplanned and opportunistic¹⁶.

Over 50 per cent of matters coming before the Children’s Court in 2009-10 were either burglary, property damage, shop steal or transit/traffic offences
(Children’s Court)

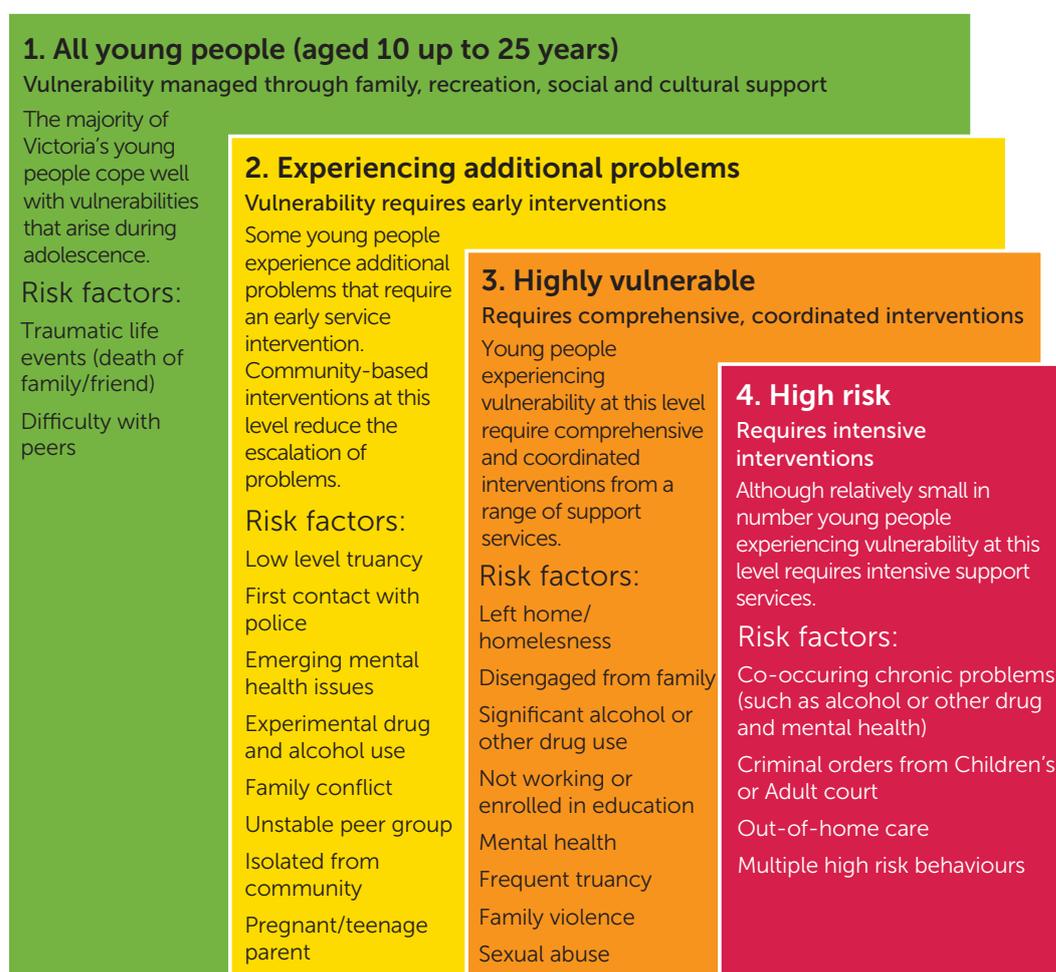
- 8 Victoria Police Crime Statistics 2009-10 Official release, 6 September 2010
Note: Alleged offenders refers to persons who have allegedly committed a criminal offence and have been processed for that offence by either arrest, summons, caution, penalty notice, official warning or warrant of apprehension. Those persons who for legal or other reasons were apprehended but not charged are also included. Persons are counted on each occasion they are processed and for each offence counted in recorded offences.
- 9 Children’s Court of Victoria Annual Report 2009-10
Note: This number indicates all matters that came before the court prior to any consolidation of charges, therefore does not represent distinct offenders. Some young people may be counted multiple times.
- 10 Department of Human Services Annual Report 2009-10
- 11 Department of Planning and Community Development *Victoria in Future*, website of www.dpcd.vic.gov.au
- 12 Ibid, also in Grisso 2003
- 13 Nijhof, K. Scholte, R. Overbeeke, G. and Engels, R. Friends and adolescent delinquency: The moderating role of social status and reciprocity of friendships in *Criminal Justice and Behaviour* March 2010 Vol 37 No 3 p.289-305
- 14 Kelly Richards *What makes Juvenile Offenders Different from Adult Offenders?* Australian Institute of Criminology, February 2011
- 15 Ibid
- 16 Ibid

1.2 Protecting young people from becoming offenders

In Victoria, community agencies and government departments deliver services to support vulnerable and at-risk young people. These services relate to drug and alcohol use, housing, family and peer relationships, victimisation, cultural connection, recreation, education, employment and training, mental health, disability and other parts of social, emotional, physical and psychological well-being. Programs that provide support to young people 'at risk' aim to improve their life outcomes by strengthening the aspects of their lives that protect them from identified risks. Many of these services are delivered prior to first contact with police or early in a young person's contact with the criminal justice system.

The layers of vulnerability diagram is a helpful way of conceptualising the degrees of vulnerability or risk young people may experience.

Figure 4: Layers of vulnerability¹⁷



The presence of several risk factors indicates a possibility that criminal or anti-social behaviour could emerge. The existence of risk factors does not mean a young person will commence offending, rather, they indicate a young person could be more susceptible to becoming involved in crime. In contrast to risk, protective factors support young people to avoid getting involved in crime and anti-social behaviour.

Aboriginal young people experience higher levels of risk and lower levels of protective factors than their non-Aboriginal counterparts¹⁸.

¹⁷ Vulnerable Youth Framework, Department of Human Services, 2008

¹⁸ *Keeping Koori Youth Strong: Tackling the issues for Koori youth at risk of contact with the criminal justice system.* Discussion Paper, Koori Justice Unit, Department of Justice Victoria, 2009

Figure 5: A summary of some risk and protective factors associated with youth offending¹⁹

| | Risk Factors | Protective Factors |
|-----------------|---|---|
| Community | Poverty Low neighbourhood attachment and community disorganisation Availability of drugs | Culture of cooperation Stability and connectedness Good relationships with adults outside family Opportunities for meaningful contribution |
| School | Academic failure Early and persistent antisocial behaviour and bullying Low parental interest in children | A sense of belonging Positive achievements Attendance at preschool |
| Family | History of problematic alcohol and drug use Family conflict Alcohol and drugs interfering with family rituals Harsh/coercive or inconsistent parenting Marital instability or conflict Favourable parental attitudes towards risk taking behaviour | Connectedness to family Feeling loved and respected Proactive problem solving and minimal conflict during infancy Maintenance of family rituals Warm relationship with at least one parent Absence of divorce during adolescence |
| Individual/Peer | Alienation, rebelliousness, hyperactivity, aggression, novelty seeking, Seeing peers taking drugs Friends engaging in problem behaviour Favourable attitude toward problem behaviour | Temperament/activity level, social responsivity, autonomy Development of special talents, hobbies and zest for life Work success during adolescence High intelligence |

Adapted from Parliamentary Inquiry into Strategies to Prevent High Volume Offending.

1.3 Who are the young people in the criminal justice system?

Like all adolescents, young people in contact with the criminal justice system face major developmental changes and challenges associated with this life stage which are physical, cognitive, psychological and social. Research from around the world shows that many young people who come to the attention of the criminal justice system have multiple problems and experience high levels of need across all areas of functioning²⁰. In contrast to most adolescents, these young people often present with complex needs including socioeconomic disadvantage, childhood abuse and neglect, exposure to family criminal behaviour, substance abuse, mental illness, poor school performance, low cognitive functioning, lack of social and family supports and homelessness. Addressing these factors is instrumental in preventing further progression into the criminal justice system.

¹⁹ Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people, Final Report*, July 2009

²⁰ Day, A., Howells, K. and Rickwood, D. *Current Trends in the Rehabilitation of Juvenile Offenders*, Australian Institute of Criminology, October 2004

Aboriginal people

Koori young people aged 10 – 24 make up 36 per cent of the Koori population in Victoria as compared to non-Koori young people who make up 20 per cent of the total non-Koori population. Koori people account for 0.5 per cent of the Victorians.

Across Australia, Aboriginal people are more likely to be incarcerated than their non-Aboriginal counterparts and less likely to receive police cautions²¹. This is consistent with patterns in Victoria where Aboriginal young people are 2.9 times more likely to be processed by police²² and approximately 17 times more likely to be in youth detention²³. In addition to this, the percentage of young Aboriginal people under community supervision with Youth Justice is on the rise.

In 2009-10,
Aboriginal young
people in Victoria were
2.9 times more likely
to be processed by
police than their non-
Aboriginal counterparts

(Victorian Indigenous
Affairs Report)

Victims

Just as adolescence is the peak period for committing crime, it is also a time where young people are more likely to be victims. While young people represent 21 per cent of alleged offenders of crime, in 2009-10 they also represented 18.9 per cent of victims²⁴. Experiences of victimisation are likely to be considerably higher than this as these figures only represent victims who come to the attention of Victoria Police²⁵. The offences for which young people are most commonly victims are physical and sexual assault and theft²⁶. Children and young people who are victimised are at greater risk of later victimising others²⁷. This may be through bullying, crime or child abuse and neglect.

In 2009-10, 18.9 per
cent of victims of
offences against the
person were under
18 years of age

(Victoria Police)

Child protection involvement and abuse

The over representation of young people in the criminal justice system who have been exposed to abuse or neglect, have been clients of child protection or in out of home care is significant.

In 2008-09 in Australia 0.69 per cent of young people had a child protection notification substantiated and 0.67 per cent were in out of home care²⁸. In a Victorian snapshot from September 2010, 35 per cent of young people in youth justice centres were found to have previous involvement with Child Protection and 16 per cent had a current child protection order. In this same study, 55 per cent of young people were found to be victims of abuse, trauma or neglect prior to incarceration²⁹. A recent Western Australian study conducted in the Perth Children's Court found that 20 per cent of young people studied in 2009 had been victims of abuse and a further 20 per cent exposed to domestic violence³⁰. In NSW, 60 per cent of young people in custody reported at least one incident of child abuse or neglect and 27 per cent were in out of home care for a period prior to the age of sixteen³¹.

Children who are victims of abuse are more likely to commit crime in adolescence than those who are not³². Some evidence suggests that if this abuse continues from childhood into adolescence or commences in adolescence it results in a higher risk of criminal behaviour³³.

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- 21 Australian Institute of Criminology, *Police diversion of young offenders and indigenous over representation* Trends and Issues in Crime and Criminal Justice No. 390, March 2010
- 22 *Victorian Indigenous Affairs Report 2009-10* Department of Planning and Community Development p.63
- 23 *Juvenile Justice in Australia 2008-09: Final Report*, Australian Institute of Health and Welfare p.136.
- 24 *Victoria Police Crime Statistics 2009-10, official release*, 6 September 2010
- 25 *Young Australians: their health and well-being 2011*, Australian Institute of Health and Welfare
- 26 Information from the Victoria Police LEAP database corresponding to the 2009-10 financial year
- 27 *Making Progress: The health, development and wellbeing of Australia's Children and Young People*. Australian Institute of Health and Welfare 2008 p.36
- 28 *Child Protection in Australia 2008-09*. Australian Institute of Health and Welfare
- 29 *Youth Parole Board and Youth Residential Board Victoria, Annual Report 2010-11*, Department of Human Services p. 20
- 30 Fleming, Gately and Kraemer (2011) *Uncouth Youth? Building a profile of young offenders in the Perth Children's Court between 1994 and 2009*. Unpublished research
http://www.aic.gov.au/events/aic%20upcoming%20events/2011/~/_/media/conferences/2011-vscn/presentations/fleming.pdf
- 31 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011
- 32 Stewart, A. Livingston, M. and Dennison, A. (2008) Transitions and turning points: examining the links between child maltreatment and juvenile offending. *Child Abuse and neglect: The International Journal* v.32 p51-66
- 33 Ibid

Mental illness

Mental health issues are the leading cause of disability for young Australians aged 15-24, accounting for 50 per cent of the burden of disease for this age group³⁴. The Australian Institute of Health and Welfare indicates that approximately ten per cent of 15-19 year olds report mental health or behavioural problems³⁵.

Young people with mental health issues are over represented in the criminal justice system. In 2010, 34 per cent of young people in youth justice centres presented with mental health issues and 28 per cent had a history of self harm or suicidal ideation³⁶. In NSW, up to 87 per cent of young people in custody have at least one psychological disorder and 73 per cent had two or more. The most common of these were attentional or behavioural disorders and substance use disorders³⁷. In this same population, approximately one in ten young people had attempted suicide³⁸.

Substance use

Most young people in youth justice centres in Victoria report problematic substance use as do many Youth Justice clients in the community³⁹. While it is common for alcohol and substance use to increase in adolescence, these rates are significantly higher than the general Australian population where 17 per cent of young people aged 13 to 19 have used illicit drugs in a 12 month period and approximately one in ten will have long-term health effects from alcohol use⁴⁰. In NSW, nine out of ten young people in custody reported being under the influence of drugs or alcohol at the time of their offence. 97 per cent of these young people reported having used alcohol and 69 per cent have taken illicit drugs⁴¹. According to WA research, 76 per cent of young people in a court-based study reported being substance users in 2009⁴².

A 2009 American study found that offending in adolescence followed a similar trajectory to drug and alcohol use, in that offending and drug and alcohol use both increase during adolescence and begin to decrease when entering young adulthood⁴³. This supports the increasing recognition of the connection between drug and alcohol use and crime.

Family with criminal history

A recent study in Tasmania found that parental criminal histories are often a predictor of a young person's involvement with the law. This predictor is strongest where both parents had prior convictions, although criminal involvement by only the father also had a notable effect⁴⁴. These findings are consistent with those in NSW where approximately 45 per cent of young people in custody reported one or both parents having been incarcerated. This was significantly higher in Aboriginal than non-Aboriginal families⁴⁵. A study in the Western Australia Children's Court in 2009 found that 24 per cent of their sample of young people had at least one parent incarcerated at some point in their life⁴⁶.

34 *Making Progress: The health, development and wellbeing of Australia's Children and Young People*. Australian Institute of Health and Welfare 2008 p.31

35 Ibid

36 *Youth Parole Board and Youth Residential Board Victoria, Annual Report 2010-11*, Department of Human Services p. 20

37 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011

38 Ibid.

39 *Youth Parole Board and Youth Residential Board Victoria, Annual Report 2010-11*, Department of Human Services p. 20
Youth Justice in Victoria: Fact Sheet. Department of Human Services 2011

40 *Making Progress: the health, development and wellbeing of Australia's Children and Young People*. Australian Institute of Health and Welfare 2008

41 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011

42 Fleming, Gately and Kraemer (2011) *Uncouth Youth? Building a profile of young offenders in the Perth Children's Court between 1994 and 2009*. Unpublished research

http://www.aic.gov.au/events/aic%20upcoming%20events/2011/~/_media/conferences/2011-vscn/presentations/fleming.pdf

43 *Substance use and delinquent behaviours*, Office of Juvenile Justice Delinquency Prevention, December 2010

44 *Crime Families: Gender and the intergenerational transfer of criminal tendencies*. Australian Institute of Criminology May 2011

45 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011

46 Fleming, Gately and Kraemer (2011) *Uncouth Youth? Building a profile of young offenders in the Perth Children's Court between 1994 and 2009*. Unpublished research

http://www.aic.gov.au/events/aic%20upcoming%20events/2011/~/_media/conferences/2011-vscn/presentations/fleming.pdf

Intellectual disability

An intellectual disability is described as limitations in intelligence (low IQ) and in skills needed to live and work in the community. It is generally diagnosed before a person turns 18 but may go undetected. It is estimated that in the general population around 1 per cent of people have an intellectual disability⁴⁷.

In Victoria, 27 per cent of young people in youth justice centres presented with issues concerning their intellectual functioning and 14 per cent were registered with Disability Services (though this may not be solely for reasons of intellectual disability)⁴⁸. The Youth Parole Board indicated that in a 2009 snapshot 27 per cent of young people in custody had issues concerning their intellectual functioning⁴⁹. Similarly, in NSW, 14 per cent of young people in custody have low IQ (under 70) and 77 per cent scored in the low average or below average range⁵⁰. A study released in 2008 found that of NSW young people on community based orders, 42 per cent fell in the borderline range or lower for an intellectual disability⁵¹. A recent review of the NSW Juvenile Justice System raised the question of why this issue, which is primarily health related, appears to be addressed through the criminal justice system⁵².

Education and schooling

In Victoria, 66 per cent of young people in youth justice centres had been suspended or expelled from school⁵³. This is compared to the general population in Victoria where 12.7 per cent are not engaged in full time education or training and 79.8 per cent attain year twelve or equivalent⁵⁴. A recent study in Western Australia indicated that the average school attainment for young people before the Children's Court was year eight⁵⁵. In a NSW custody survey two thirds of participants indicated they had left school by year nine⁵⁶.

Socioeconomic disadvantage

Socioeconomic disadvantage refers to economic factors that impact on an individual's status or position in society. Low employment and income can create a significant amount of stress for families and young people and has been linked to offending behaviour.

In a 2011 study of young people cautioned by police, 70 per cent lived in areas where there are above average levels of disadvantage⁵⁷. The Australian Institute of Health and Welfare also recognise the link between socio-economic status and crime. Young people from lower socio-economic status areas are more likely to be under supervision than those from areas of higher socio-economic status⁵⁸.

47 www.betterhealth.vic.gov.au

48 *Youth Parole Board and Youth Residential Board Victoria, Annual Report 2010-11*, Department of Human Services p. 20

49 *Youth Parole and Residential Board Annual Report 2009-10*, Department of Human Services

50 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011

51 Kenny and Nelson *Young Offenders on Community Orders: Health, Welfare and Criminogenic needs*. Sydney University Press, 2008

52 *A Strategic Review of the New South Wales Juvenile Justice system: Report for the Minister for Juvenile Justice*. Noetic Solutions April 2010 p.iv

53 *Youth Parole Board and Youth Residential Board Victoria, Annual Report 2010-11*, Department of Human Services p. 20

54 Australian Bureau of Statistics

55 Fleming, Gately and Kraemer (2011) *Uncouth Youth? Building a profile of young offenders in the Perth Children's Court between 1994 and 2009*. Unpublished research
http://www.aic.gov.au/events/aic%20Upcoming%20events/2011/~/_/media/conferences/2011-vscn/presentations/fleming.pdf

56 *2009 Young People in Custody Health Survey: Full Report*. Justice Health New South Wales, 2011

57 *Lind Screening cautioned young people for further assessment and intervention* NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin, number 149, 2011

58 *Juvenile Justice in Australia 2008-09: Final Report*, Australian Institute of Health and Welfare p.64.

2. The youth justice system in Victoria

Before the nineteenth century, in most if not all countries, children were tried as adults⁵⁹. Since that time, Australia has progressed towards a system where recognition is given to the differing considerations regarding children and young people compared with adults. Between 1890 and 1910, children, youth and juvenile courts emerged in all states of Australia, the first of which was in South Australia. Children under the age of ten cannot be charged with an offence in any state of Australia. In the majority of states, the youth justice system applies to children who commit the offence prior to turning 18. Queensland is the exception where the upper age limit is 17⁶⁰. There are a number of reasons for the different treatment of children and adults. One important reason is that the law recognises that up until a certain age children need to be protected by their families, community and the state. This does not mean that a young person should not take responsibility for their actions. Instead, the youth justice system recognises that responses need to, where appropriate, avoid disrupting their life, help the young person learn and assist them to address the issues that may be leading to the crime.

The United Nations Convention on the Rights of the Child⁶¹ recognises and protects the rights of children. Australia is party to this Convention. This Convention⁶² states that countries should make an effort to ensure their laws encourage legal matters relating to children be dealt with respectfully and in a way that avoids court and prison when this is reasonable. By agreeing to this, Australia has cemented its intention to provide legal responses that address the specific needs of children.

3% of young people coming before the Children's Court in 2009–10 received a period of detention

(Children's Court)

The United Nations also set out the Minimum Set of Rules for Administration of Juvenile Justice⁶³. These emphasise the well-being of young people and encourage responses that are proportionate to the circumstances of the offender and the offence. They also set detention as a last resort. In relation to diversion, these rules state that there should be options to:

- > deal with offenders without resorting to trial
- > dispose of cases without resorting to formal hearings
- > provide diversion with the consent of the offender
- > provide community programs including supervision, guidance, restitution and compensation of victims.

Internationally, there are three commonly agreed models for youth justice systems:

The **Justice Model** holds young people accountable for their actions by imposing criminal sanctions and ensuring that due process is followed. This can be said to be based on the belief that young people's crimes are acts of free will and choice, therefore they should be held responsible for their actions and are deserving of punishment⁶⁴. The United Kingdom has been cited as an example of a jurisdiction which operates on this basis.

The **Welfare Model** involves largely informal proceedings and interventions, which are based on the best interests of the young person. This model can be said to assume that a young person's behaviours stem from factors outside of their control⁶⁵ and the focus is on addressing their needs and the circumstances that may have led to the behaviour. Finland is often given as an example of a Welfare Model.

59 O'Connor, I and Cameron, M. Juvenile Justice in Australia in Graycar, A. and Grabosky, P. *The Cambridge Handbook of Australian Criminology*, 2002 p. 211-221

60 *Juvenile Justice In Australia: Final Report 2008-09*, April 2011, Australian Institute of Health and Welfare p.1

61 United Nations Convention on the Rights of the Child, 1990 Accessed at: <http://www2.ohchr.org/english/law/crc.htm>

62 Article 40.3 of the United Nations Convention on the Rights of the Child (1990) Accessed at: <http://www2.ohchr.org/english/law/crc.htm>

63 Standard Minimum Rules for the Administration of Juvenile justice www.ohchr.org

64 Kelly Richards, *What makes Juvenile Offenders Different from Adult Offenders?*, Australian Institute of Criminology, February 2011

65 Ibid

The **Hybrid Model** is a combination of the justice and welfare models. This model incorporates criminal sanctions such as detention but also provides informal interventions and support, which align more closely to the Welfare Model.

Generally, those countries adopting the welfare model have low detention rates and those adopting a purely justice model have the highest. Australian jurisdictions vary in the manner in which they respond to young offenders. Victoria operates from a hybrid model, with a mix of justice and welfare approaches.

2.1 Legislation

The three main laws relating to the youth justice system are:

The Children, Youth and Families Act 2005

This Act covers the protection of vulnerable children as well as responses to young people who break the law. It outlines processes in both the Family and Criminal Divisions of the Children's Court of Victoria including the sentencing of young people who commit crimes. It also outlines the role of the DHS in both protecting children and young people from harm and in managing young people who are on supervisory orders in the community and in youth detention.

Bail Act 1977

This Act sets out the laws about bail for young people and adults. Bail allows people charged with a crime to remain in the community until their court date. The Act outlines what the court must consider when granting bail, the agencies responsible for it and the bail conditions that can be applied. Young people may be remanded in custody if a magistrate or bail justice is satisfied there is unacceptable risk they will re-offend or endanger the safety of the community. The government made an election commitment to amend the Bail Act. These amendments are designed to increase the effectiveness and appropriate use of bail for people who have been charged with a crime.

In 2009-2010,
49 per cent of young
people in detention
were remandees

(DHS)

Sentencing Act 1991

This Act sets out the laws about sentencing adults found guilty of crimes. It allows young people between the ages of 18 and 20 to serve a custodial sentence in a Youth Justice Centre rather than an adult facility where appropriate⁶⁶. This is known as the 'dual track' system. This system only applies after a young person is found guilty of offences. The Youth Justice Court Advice Service (YJCAS) assesses eligible young people and provides advice to the magistrate regarding their suitability for youth rather than adult detention. Victoria is the only state in Australia with these provisions.

⁶⁶ Section 32 of the *Sentencing Act 1991* legislates that some 18 to 20 year olds can receive a custodial sentence to a Youth Justice Centre instead of an adult prison if the court believes the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

2.2 Pathways through the youth justice system

In the Victorian youth justice system, there are three main points of contact. How far a young person progresses, and who they have contact with, depends on several things including the seriousness of the offence, whether they admit to the crime and their prior history of offending. At any point, there are options that mean, if appropriate, the matter may go no further.

| | |
|--------------------------------------|---|
| The Police | Victoria Police enforce the law in Victoria. If a law is broken, the police are responsible for investigating and bringing charges against the individual who has committed the crime. In some cases, they may provide an alternative response like a caution or warning. |
| The Children's Court | The Criminal Division of the Children's Court of Victoria hears cases and sentences young people who are charged with committing crime. Generally if a young person offends before they are 18 and is charged before they turn 19, their case will be heard in the Children's Court. The Criminal Division of the Children's Court may deal with all charges aside from the most serious such as homicide-related charges, arson causing death and culpable driving causing death. These are referred to the County or Supreme Court for hearing. |
| Youth Justice Department of Human | The DHS Youth Justice Service is responsible for the supervision, care and custody of young offenders. It provides programs that assist young people to develop the knowledge, skills and attitudes to manage their lives effectively without further offending and provides tools, resources and direction to achieve this. Youth Justice is responsible for the supervision of young people on community-based orders and the detention of young people in Youth Justice Centres on custodial sentences or remand. |

14,236 matters were finalised by the Criminal Division of the Victorian Children's Court in 2009-10

(Children's Court)

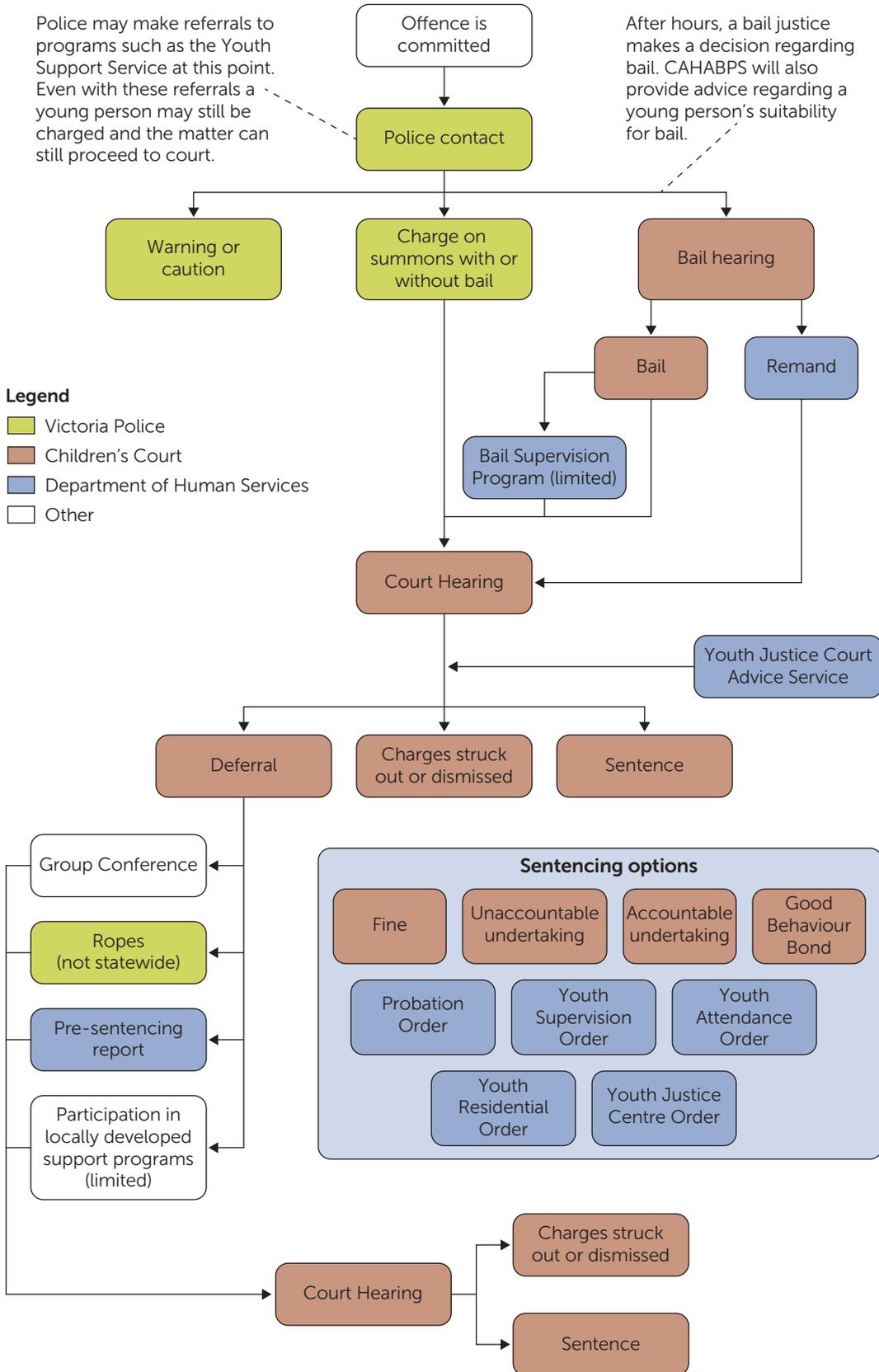
Please note: This does not include the number of matters dealt with through CAYPINS system (9,789). See p.18

In 2009-10, on average, 1392 young people were on community-based orders daily in Victoria

(DHS)

The following flow chart provides a simple representation of the pathways through the youth justice system.

Figure 6: Pathways through the youth justice system



2.3 The Police

When an alleged crime is committed and police arrest an offender they can warn, caution or charge a young person. A number of young people who have contact with police will not go to court. Warnings or cautions are given at police discretion where a young person admits to an offence. The matter is recorded and a caution or warning is given but no further action is taken.

Alternatively, the police may issue a summons or charge the accused person. If the person is charged, bail may be available. It allows the accused person to remain in the community until their court date. Bail can be given with or without conditions. Conditions can include for example, reporting to a police station periodically until the court date or not leaving Victoria.

There is also the option of a person being held in custody (remand) until their court date. If the police decide to remand a person, they must go before the court for a bail hearing or a bail justice if after hours.

Between 5pm and 3am weekdays and 9.30am and 3am on weekends, DHS provides the Central After Hours Assessment and Bail Placement Service (CAHABPS) who assess a young person and advise police and bail justices regarding their suitability for bail.

Police may refer a young person to a diversion program like Ropes or the Youth Support Service (See 5.1). Participation in such programs may not stop the young person being charged and appearing in court.

80 per cent of young people cautioned by police had not re-offended in one year and 65 per cent had not re-offended within three.

(Victoria Police)

In Victoria in 2009-10 there were 526 youth justice centre remand orders for young people 15-17 in custody, compared with 171 in 2004-05

(Youth Parole Board)

2.4 The Children's Court

For young people who do attend court, a number of outcomes are possible. The Children, Youth and Families Act 2005 (CYFA) is the law that states how young people should be sentenced. The sentencing hierarchy outlines a range of options from dismissal to detention, which the Court is required to consider in determining an appropriate penalty. The CYFA states that the Court can only consider a serious sentence (like detention) if it is not appropriate to give a lesser penalty. This means, for example, that a magistrate should only sentence a young person to probation if they do not think it is appropriate to give them a fine, good behaviour bond, undertaking, or to have their charges dismissed (see figure 7).

Figure 7: Possible outcomes in the Children's Court

| | |
|----------------------------|---|
| without conviction | dismiss the charge dismiss the charge and give an undertaking dismiss the charge and give an accountable understanding good behaviour bond |
| with or without conviction | fine probation youth supervision order |
| with conviction | youth attendance order detention in a youth residential centre detention in a youth justice centre |

The CYFA also lists matters that the magistrate must take into account when sentencing. These include:

- > the need to strengthen and preserve family relationships
- > desirability of children/young people to remain at home
- > continuation of training, education or employment

- > minimisation of stigma
- > suitability of the sentence
- > ensuring a young person's awareness of their responsibility for their actions
- > need to protect the community or a person from the child/young person

Before a young person is sentenced, a magistrate may request that sentencing be deferred. This means a sentencing decision is put on hold for up to four months so a young person can participate in activities or treatment that may be taken into consideration by the court. Such activities can include Youth Justice Group Conferencing (YJGC) (available to young people facing probation or a youth supervision order), the preparation of pre-sentence reports, other relevant assessments, engagement with Youth Justice for a brief period of support, or engagement in locally based programs.

The Children's Court also has the Children and Young Person Infringement System (CAYPINS). If a young person has received a fine for offences like failing to produce a valid ticket on public transport or failing to wear a bicycle helmet and has not paid that fine, the matter is referred to CAYPINS. Rather than going before a magistrate, a registrar conducts a hearing to determine how the fine will be paid or an alternative arrangement may be reached.

2.5 Youth Justice, Department of Human Services

Youth Justice in DHS is responsible for the supervision, care and custody of young offenders with the core objectives being:

- > to maximise the appropriate diversion of young people charged with an offence away from the criminal justice system;
- > to address the offending behaviour and reduce the likelihood of re-offending by young people involved with the Youth Justice service
- > to maximise rehabilitation
- > to strengthen community based options for young people involved with the Youth Justice service
- > to engender public support and confidence in the Youth Justice service⁶⁷.

The CYFA requires youth justice officers to give the Court any assistance it requests in relation to a child who has been found guilty of an offence.

At Court, the Youth Justice Court Advice Service (YJCAS) is available at all sittings to provide advice to magistrates. YJCAS is also responsible for assessing a young person's suitability and facilitating their referral for bail supervision or participation in a YJGC.

At the request of the Court, a sentence can be deferred for Youth Justice to provide pre-sentence reports, which may also result in referrals to support services. Pre-sentence reports include information on a young person's circumstances and usually include recommendations regarding sentencing.

Should the Court impose a community based sentence, Youth Justice provide supervision to young people on probation, youth supervision and youth attendance orders. Youth Justice is also responsible for managing the Youth Justice Centres where young people are detained if they are sentenced to a youth residential centre or youth justice centre order.

The Youth Parole Board makes decisions allowing young people to serve part of their custodial sentence in the community as a supervised parole period. Youth Justice supervises youth parolees, assisting them to re-integrate into the community, engage in rehabilitation programs that minimise their risk of re-offending and improve their compliance with parole conditions.

In 2009-10 YJCAS
was provided in 43
Children's Court
locations
across Victoria

(DHS)

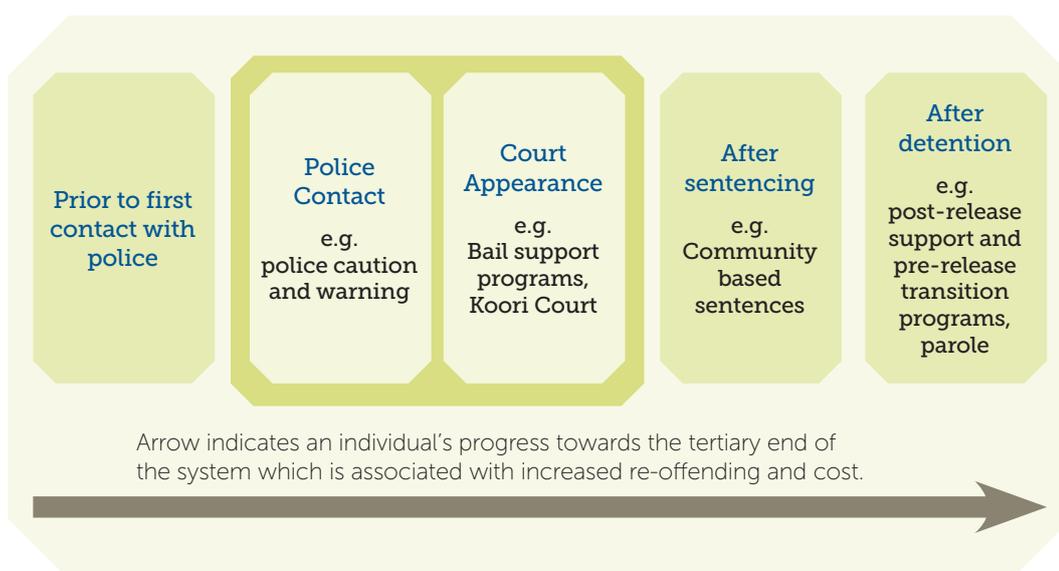
DIVERSION: WHAT IS IT? WHY DO IT?

Diversion aims to prevent a young person's progression further into the criminal justice system. In Victoria some diversion programs are presently available to young people, as are a number of sentencing options ranging from undertakings to a period in detention. Not all crimes or all young people are appropriate for diversion. There are many issues to take into account and the purpose of this section of the paper is to explore best practice models and in what circumstances they are an appropriate response to criminal behaviour.

3. What is diversion?

Diversion can refer to a number of programs, interventions and approaches that avoid further progression into the criminal justice system and the associated consequences. This paper is specifically focusing on diversion in the earlier stages of the criminal justice system – at police contact or court appearance.

Figure 8 Diagram of points of diversion⁶⁸



Many young people will not offend again after their first offence, or will grow out of crime. Diversion can provide greater opportunity to address the issues contributing to offending behaviour⁶⁹. Diversion also includes the possibility of young people avoiding a criminal record for minor offences.

Diversion can create opportunities to increase factors that protect young people and help reduce their likelihood of becoming adult offenders or re-offending in their youth⁷⁰. It recognises that traditional criminal justice approaches can be unsuccessful in reducing re-offending, particularly where socio-economic disadvantage, homelessness, experience of victimisation, substance abuse or cognitive impairment contributes to the offending. The benefits of diversion therefore flow on to the community. However, whilst diversion is a valuable part of the criminal justice system, it is not a suitable response for all offenders.

The result of 63% of Children's Court cases in 2009-10 was a good behaviour bond, fine, undertaking or dismissal/discharge
(Children's Court)

68 *Towards a Diversionary Framework for the ACT, Discussion Paper*, ACT Government, February 2011

69 Gavazzi s, Yarcheck, C., Sullivan, J., Jones, S., & Khurana. *Global Risk Factors and the Prediction of Recidivism rates in the sample of First-Time Misdemeanant Offenders*, International Journal of Offender Therapy and Comparative Criminology, 2008, 52(3)

70 Butts, J., Buck, J. & Coggeshall, M. (2002) *The Impact of Teen Court on Young Offenders*, Justice Policy Center, Urban Institute; Godwin, T. (1996) *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs*. Washington, DC: U.S. Department of Transportation and U.S. Department of Justice; Gavazzi et al; 2008.

Diversionary initiatives, particularly as they are referred to in this paper, may include:

- > pre-proof programs which are delivered prior to a plea of guilty and result in no criminal record for the alleged offender
- > programs that require a plea of guilty but where involvement results in a reduced sentence. A young person will still have a criminal record.
- > programs that provide support for the issues underlying the offending behaviour but have no guaranteed impact on sentencing for the offences in question. These may, however, assist in preventing future offending.

3.1 The reasons for diversion

Arguments in favour of diverting young people from further criminal justice processes in appropriate cases include:

- > diversion has more potential to use restorative approaches.
- > diversion programs reduce further contact with the criminal justice system and its potential criminogenic effects.
- > diversion can avoid unnecessary negative labelling.
- > further interaction with the criminal justice system may disrupt or limit access to educational and employment opportunities, affect "life chances" and engagement with positive peer networks
- > diversion can reduce the delay between police and court which may help increase the understanding of consequences for the behaviour
- > less formal processes can be more easily understood and may increase engagement, thereby improving the likelihood of the process having a positive impact.

Diversion options that encourage accountability and address underlying causes of offending may improve outcomes for young people, reduce the likelihood of re-offending and increase community safety.

3.2 The costs and the benefits

Interventions that avoid detention while succeeding in assisting young offenders to cease offending will have significant benefits for the whole of the Australian community. Diverting young people from the criminal justice system through early opportunities to address their offending can result in significant savings not just through limiting contact with the youth justice system but with the criminal justice system as a whole. The community also significantly benefits through increased safety resulting from a young person becoming a well-adjusted, productive participant in society.

CASE EXAMPLE 1

'ROPES will be a great outcome for me. I did something stupid, I knew it was wrong and I am sorry. I know how important it is to avoid a criminal record'

Jim was charged with criminal damage. He was with some friends who did some graffiti on a wall over a year ago when he was 16. He went back, cleaned up his graffiti, and wrote an apology to the council.

Jim was worried as this was the first time he was in trouble with the police. He had been offered a government sponsored apprenticeship in carpentry, but he was told he could not have a criminal record. Jim did complete the program and is now undertaking his apprenticeship.

In 2008, the AIC released an extensive study on the costs of crime to Australia. This estimated the annual cost of crime to the community at \$35.8 billion⁷¹. This figure includes the personal financial costs of criminal victimisation and the administrative costs of investigating and processing these crimes⁷². The costs related to diversion lie in program development and ongoing program management. The financial benefits mainly relate to decreased costs from the use of police, courts and prisons. Diversion's cost effectiveness is maximised if it avoids more formal interventions, re-offending and repeat contact with the criminal justice system.

In the Auditor-General's report 'Services to Young Offenders' it was noted that the cost per day of a bed in a Youth Justice Centre is between \$409 and \$500. Alternatively, a period of Youth Justice community based supervision can cost between \$14.00 and \$29.00 per day making it a less expensive and potentially more effective option in appropriate cases⁷³.

The recent evaluation of the DHS YJGC program showed that a group conference process was almost half the cost of a six-month community based supervision order⁷⁴ and was effective in reducing re-offending. The evaluation demonstrated significant immediate, short term and long-term savings in those cases due to the rate of diversion and reduced re-offending⁷⁵ with a higher than 100 percent return on investment⁷⁶.

The benefits of YJGC can also be assessed in terms of the effects of reparation for victims. The evaluation found all victims surveyed agreed or strongly agreed that overall they were satisfied with their involvement with YJGC. Half agreed that the conference had helped to repair the damage caused by the offence⁷⁷.

It should be noted that most cost-benefit research on diversion makes comparison to detention. However, young people coming before court for low-level offending are unlikely to be facing a sentence of detention, limiting the relevance of this type of analysis. Where diversion assists a young person to avoid further offending that may lead to more severe dispositions like detention, there are significant financial savings. However, for first time, low-level offenders, the benefits of diversion are commonly understood in terms of the potential for more meaningful and immediate responses than proceeding to court and receiving a disposition, and thus in reduced offending. (The time between the offence and a court hearing can be more than a year in some cases.)

3.3 When is diversion appropriate?

The Australian Institute of Criminology released a literature review specifically addressing the question of what works in reducing crime. It concluded that the most effective programs:

- > address multiple factors
- > operate across multiple aspects of a young person's life
- > alter the way that young people think (enhance problem-solving capacity and decision making ability)
- > are culturally specific
- > are skills based
- > assist young people to remain engaged in school⁷⁸.
- >

71 Rollings, K *Counting the Cost of crime in Australia: a 2005 update*, Australian Institute of Criminology, 2008

72 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people*, Final Report, July 2009

73 Victorian Auditor General *Services to Young Offenders* June 2008

74 Review of the Youth Justice Group Conferencing Program, Final Report, KPMG September 2010

75 Ibid.

76 Ibid.

77 Ibid.

78 *What works in reducing young people's involvement in Crime?* Australian Institute of Criminology, 2002

It should be noted that in identifying what interventions may be effective or ineffective, the focus is on what will result in persons better addressing and ceasing their offending behaviour.

While effective diversion in appropriate cases can encourage accountability and reduce offending behaviour, it may not always be appropriate. Determining appropriate responses to crime also takes into account broader considerations including ensuring that a person is held responsible for their unlawful actions and the need to protect the community.

1. IN WHAT CIRCUMSTANCES DO YOU THINK DIVERSION IS AN APPROPRIATE RESPONSE TO A YOUNG PERSON WHO HAS COMMITTED CRIME?

3.4 Current police and court diversion programs

A number of diversion programs are part of the youth justice system in Victoria, though many are not available statewide. Apart from being geographically specific, some of these programs are only available for certain offences, specific age groups, genders and cultural groups and only take referrals from particular sources.

The **Victoria Police Cautioning Program** is available across the state where a young person has committed an offence, accepts responsibility for it and generally has not offended before. It 'provides police with an option of dealing with an offender alternative to progressing through the courts'⁷⁹. It allows a person to be cautioned instead of charged for the behaviour in question and they do not appear in court. If a caution is given, police make a record of this but it does not result in any further punishment and will not appear on their criminal record.

The **Youth Justice Group Conferencing** program provides an alternative for young people who have appeared in court and pled guilty to their charges, which are considered serious enough for a probation or youth supervision order. If a young person agrees to participate, a group conference is held. Based on the restorative justice model, the conference involves a session with the young offender, their family or support networks, their legal representative, the police and a convenor, together with people affected by their offending. The program aims to address issues that contribute to the young person's offending behaviour whilst also involving those affected by the offence in decision making about the outcomes.

CASE EXAMPLE 2

A large group of young men were involved in affray in Werribee on New Year's Eve. A first group of young offenders came across a second group of young men in the car park of the Werribee Plaza at around midnight. A dispute developed between two young men. In the ensuing affray between the two groups, a guitar case was wielded. Three young offenders were identified and charged. None had prior convictions. The matter was referred to a group conference.

The range of reactions of the victims to the attack was not the same. One of the victims had 'no hard feelings' and accepted an apology without reservation. In contrast, one of the victims was significantly affected and this had a flow on impact on his family.

Both the victims and offenders agreed on an outcome plan.

Upon return to court, the magistrate imposed a good behaviour bond with conditions of compliance attached to the outcome plan, which included volunteer work.

The **Youth Support Service** targets young people aged 10 to 17 years who are at risk of becoming involved in, or are in the early stages of involvement with Youth Justice. This new initiative commenced in 2011 and is designed to intervene early and divert young people away from the criminal justice system by addressing the underlying causes of their offending and risk taking behaviour. Police refer young people to the program. This program is available across metropolitan Melbourne and in five regional centres. This service also includes a behavioural change program.

The **Ropes Program** is a joint venture between Victoria Police, the Children's Court of Victoria and youth workers. The program aims to turn a young person's negative contact with police and courts into a positive outcome. It brings together the young offender and the police in a series of physical challenges requiring trust and co-operation, designed to break down the barriers between them and to help each to see things from the other's perspective. The Ropes program is currently available through the following Children's Courts; Melbourne, Collingwood Justice Centre, Moorabbin, Sunshine, Geelong/Colac, Broadmeadows, Bendigo, Ringwood, Heidelberg, Wonthaggi, Frankston, Dandenong and Sale/Bairnsdale.

At the request of the Children's Court, suitability for **Bail Supervision** can be assessed by the Youth Justice Court Advice Service when a child or young person is at high risk of remand or re-remand.

The **Intensive Bail Supervision Program** provided by Youth Justice is currently operating in the North West and Southern Metropolitan regions. It is available to young people between the ages of 10 – 18 who are at high risk of remand and require a high level of support to stay in the community prior to sentencing.

The **Koori Intensive Bail Support Program** provided by Youth Justice is available to young Aboriginal people aged between 10 and 18 coming before the Criminal Division of the Children's Court in most regions.

CASE EXAMPLE 3

Sam was 17 and had been remanded over night after being arrested for robbery. The charge resulted from an alleged fight with another youth about an iphone, which Sam eventually took. The police stated that during interview, Sam told them that he was going to sell the phone to buy alcohol.

Sam was already on bail for two other incidents. He also had a prior conviction for criminal damage (graffiti). He had received a good behaviour bond for this offence. The police also advised that there was an intent to summons on another charge of theft.

Sam lived at home with his mother however he spent most nights out drinking and 'chroming' with friends. Sam's mother had difficulty controlling him. She reports seeing a gradual deterioration after he left school and started spending time with a new peer group who were regularly in trouble with police. She was concerned for Sam and had tried to access supports particularly regarding his chroming.

The Magistrate refused Sam bail and remanded him in custody. Two days later Sam's lawyer entered a plea of guilty. He was released on a deferral of sentence for three months so he could engage with Youth Justice. Strict bail conditions were set. The Magistrate made it clear that this was a last opportunity to address his issues and stay out of trouble. The Magistrate explained that she expected a positive Youth Justice report and if this was provided he would avoid detention. A Children's Court Clinic psychological report was also requested.

Sam engaged with a Youth Justice worker. Referrals were made to a drug and alcohol service for counselling regarding his substance use and enrolment in a pre-apprenticeship course was organised, from which he obtained a local apprenticeship. Sam was assisted to claim Centrelink benefits and obtain a learner's permit. Sam did not reoffend during the deferral. A positive pre-sentence report was written by Youth Justice and the Children's Court Clinic report indicated no lasting health affects from his substance use.

On his return to court, all his outstanding matters were consolidated. The Magistrate decided to adopt the Youth Justice recommendation of a 12 month Good Behaviour Bond.

Other diversionary programs exist throughout Victoria but are not funded directly by the DHS, DoJ, Victoria Police or Children's Court of Victoria. Many of these may be funded locally, federally or through philanthropic funds. These programs often fulfil a specific need in communities, having emerged in recognition of service gaps or through the initiative of local service providers.

2. ARE YOU AWARE OF OTHER DIVERSION PROGRAMS DESIGNED SPECIFICALLY TO ASSIST YOUNG PEOPLE WHO HAVE CONTACT WITH THE POLICE OR THE COURT (PRE-SENTENCE)? IF YES, PLEASE PROVIDE DETAILS.
3. HOW WELL DO CURRENT DIVERSION PROGRAMS ADDRESS THE CRIMINAL BEHAVIOUR OF YOUNG PEOPLE WITH WHOM YOU HAVE CONTACT?

3.5 Improvements to Victoria's diversion system

As outlined above, a number of diversion programs are operating in Victoria. These seek to reduce young people's contact with the youth justice system, so as to improve the safety of the community and the lives of the young people who come into contact with it. It is important to consider whether there are opportunities to improve current arrangements.

Legislation

As mentioned in previous chapters (2.1), the CYFA is the legislation that outlines the treatment of young offenders. The CYFA is designed to encourage the diversion and rehabilitation of young people who come into contact with the youth justice system.

In Victoria, YJGC is the only diversion program legislated⁸⁰. This is in contrast to the adult jurisdiction where the Criminal Justice Diversion Program (CJDP) is outlined in Section 59 of the *Criminal Procedure Act 2009*. Other Magistrates' Court programs or Divisions that are diversionary in nature and are legislated include the Drug Court (in Dandenong) and Assessment and Referral Court List (Melbourne).

Furthermore, in Victoria, cautions are given at police discretion, but the practice is not underpinned by legislation. All other states in Australia have legislated police cautioning programs. In Victoria, the Victoria Police Operations Manual contains guidelines on how and when to use cautions. Cautions and warnings are an important part of the diversionary process and ensure that young people (and adults) who are committing their first offence have the opportunity to receive a minor penalty, provided they accept responsibility for the offence.

4. DO YOU THINK THERE SHOULD BE CHANGES TO LEGISLATION REGARDING THE DIVERSION OF YOUNG PEOPLE? IF YES, WHAT DO YOU THINK SHOULD BE INCLUDED IN THE LEGISLATION?

Criminal records

Even where a matter in the Children's Court is proven but dismissed (the lowest penalty available under the CYFA 2005), a disclosable finding of guilt is recorded. This means that the offence will still appear on the criminal record of that young person. As stated in the Victoria Police release policy, a criminal records check will list all matters where there is a finding of guilt, which also includes matters which are proven but dismissed and sentences handed down without conviction⁸¹.

This is in contrast to the Magistrates' Court where successful participation in the CJDP means that the person can avoid a criminal record for that offence.

80 Children Youth and Families Act S.415

81 Victoria Police release policy Accessed at: http://www.police.vic.gov.au/content.asp?Document_ID=692

CASE EXAMPLE 4

As a fourteen year old, Josh was playing around on the school bus with a plastic gun shooting plastic projectiles at his fellow students. The school became aware of this and decided to report it to the police. The police then charged Josh with 'possess pistol or imitation without license'. Josh appeared in Court on this charge. The Magistrate gave Josh a six month good behaviour bond without conviction however as he was found guilty it resulted in a criminal record. As he was a juvenile at the time of the offence, it was initially disclosable for five years.

Nine years later Josh was involved in a University protest resulting in charges of 'breach of the peace' and 'refusal to leave private place after warning'. He was found guilty of these offences. Although the initial five years from his earlier charge had elapsed because the new charge occurred when he was an adult, his full criminal history (including the juvenile offending) was made available on his criminal records check. Each time an employer or other organisation requests a criminal records check Josh is required to explain these offences.

A criminal record can have a negative effect on a young person's employability. Employment is itself a protective factor against further criminal or anti-social behaviour. Criminal records, even for minor dishonesty offences, may be stigmatising and negatively effect the rehabilitative prospects for a young person. However, it can also be argued that it is important for accountability and for police and other authorities to have full knowledge of prior offending that a record of criminal offending be kept.

5. DO YOU THINK THERE SHOULD BE CIRCUMSTANCES IN WHICH A YOUNG PERSON CAN AVOID A CRIMINAL RECORD? IF YES, IN WHAT CIRCUMSTANCES SHOULD THIS OCCUR? WHAT OTHER RECORDS, IF ANY, OF THE OFFENDING BEHAVIOUR SHOULD BE KEPT?

Coordination

Concern has been expressed about the lack of coordination of diversionary responses available to young people in the early stages of contact with the criminal justice system.

The *Inquiry into Strategies to Prevent High Volume Offending by Young People* notes that 'researchers have criticised the lack of systemic coordination, stressing the need for multi-agency models where government and other agencies work together to address youth offending and re-offending⁸²'.

Lack of coordination was also highlighted in the 'Doing Time - Time for Doing' a report on an inquiry by the federal government. It states that 'the lack of government coordination – both between commonwealth, state and territory governments – was seen by many to impede the very programs agencies are tasked to implement...poor coordination can result in the duplication of services in some areas and lack of services in other areas'. This same report also discusses professional siloing and the issues between central control and local management⁸³.

Some communities benefit from strong local partnerships where services work closely with the courts, police and DHS to provide suitable and timely involvement. These partnerships are not consistent throughout Victoria.

This is particularly true of links with education, training and employment. The Youth Partnerships initiative will go some way to addressing these issues. This initiative will trial new approaches to bringing existing youth service providers together to identify and respond more effectively to disengaged youth with the aim of improving engagement with education and training and reducing the escalation of problems for individual young people.

82 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people, Final Report*, July 2009 p. 12

83 The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report *Doing Time – Time For Doing: Indigenous Youth in the Criminal Justice System*, 2011 p.286-287

6. WHAT MECHANISMS DO YOU THINK COULD BE IMPLEMENTED TO IMPROVE COORDINATION OF DIVERSION PROGRAMS?
7. CAN YOU PROVIDE EXAMPLES OF COORDINATION EFFORTS THAT HAVE WORKED WELL FOR YOUNG PEOPLE WHO ARE COMING TO THE ATTENTION OF POLICE? WHAT DO YOU THINK MAKES THESE EFFECTIVE?

Data, evaluation and best practice

In comparison to other states, there is limited research in Victoria that assesses the effectiveness of young peoples' contact with the criminal justice system or the effect of certain measures on young peoples' contact with the youth justice system. More coordinated data collection and analysis may assist in understanding the trends relating to young people and crime⁸⁴ and the effectiveness of diversionary responses. The *Inquiry into Strategies to Prevent High Volume Offending by Young People*⁸⁵ and the report *Services to Young Offenders*⁸⁶ both raise the issue of data integrity and collection.

In addition, there are programs developed in response to specific needs in communities. Often there is limited understanding of these programs outside of their local operating environment, which means successful practices are not being rigorously evaluated or shared.

8. WHAT COULD BE DONE TO IMPROVE UNDERSTANDING OF THE FUNCTIONING AND EFFECTIVENESS OF PRE-SENTENCE DIVERSION PROGRAMS IN VICTORIA?
9. WHAT COULD BE DONE TO FACILITATE SHARING OF SUCCESSFUL PRACTICES?

Availability of diversion programs

Apart from Police Cautioning and YJGC, the availability of diversion programs may depend on where a young person lives or have other eligibility criteria such as age, gender or the nature of the offence committed.

Additionally, there are differences in the options available in the adult and children's jurisdiction in Victoria.

The CJDP is a legislated option available at the Magistrates' Court for defendants coming before the court for the first time. On accepting responsibility for the crime, the defendant has the opportunity to avoid a criminal record by undertaking conditions that benefit themselves, the victim and the community as a whole. This might include rehabilitation services, counselling and treatment services, voluntary work, donations and activities that acknowledge the effect of their crime on the victim. A statewide CJDP has operated in the Magistrates' Court since 2000 and was evaluated in 2004. The evaluation report noted that 'qualitative and quantitative analyses suggest that CJDP is successfully preventing the entry of first-time and low risk defendants into the criminal justice system'⁸⁷.

84 This was also noted in the Auditor-General's report *Services to Young Offenders* at Recommendation 7.2, which reads: *DHS in conjunction with other State Government departments and agencies involved in the delivery of youth justice services, should develop a whole-of-government approach to data collection and analysis to support shared planning and service development. This should be complemented by arrangements to support effective information sharing within and across agencies.*

85 Drugs and Crime Prevention Committee, *Inquiry into Strategies to prevent high volume offending and recidivism by young people, Final Report*, July 2009

86 Victorian Auditor General *Services to Young Offenders*, June 2008

87 Court Diversion Program, Process Evaluation and Policy and Legislation Reviews p.51

10. WHAT IS YOUR EXPERIENCE OF THE ACCESSIBILITY OF DIVERSION OPTIONS?

11. WITHIN CURRENT RESOURCE CONSTRAINTS, WHAT MEASURES COULD BE IMPLEMENTED TO IMPROVE AVAILABILITY AND USE OF DIVERSION PROGRAMS?

Targeted interventions

Given the information available about young offenders or groups who are over-represented in the youth justice system, targeted interventions directed to those areas may be appropriate.

Koori young people

The significant over representation of young Aboriginal people (see 3.3) in Victoria's criminal justice system requires consideration of possible culturally appropriate and effective responses. Currently there are limited such programs available to young Aboriginal people to support diversion early in their contact with the criminal justice system.

The Aboriginal Justice Agreement is an agreement between Government and representatives from the Koori community about how they will work together to improve justice outcomes for Kooris. The objectives of the current agreement include crime prevention and early intervention, diversion/strengthening alternatives to imprisonment, reducing re-offending, reducing victimisation, responsive and inclusive services and strengthening community justice responses. This agreement sets out a number of objectives specifically designed to improve diversion for Aboriginal young people including:

- > increase the rate at which Kooris are diverted from more serious contact with the youth justice system
- > increase the proportion of Kooris who are cautioned when processed by police
- > improve Kooris access to mainstream court diversion and support programs and decision making courts
- > enhance and expand the Koori Court Network

Youth Justice provides a number of Aboriginal Justice Agreement initiatives, including the Koori Youth Justice program which targets young people who are on community based orders, custodial orders and those who are at risk of offending. The Children's Court also have a Koori Division in Melbourne and Mildura which sentences young Kooris after a thorough consideration of the young person's circumstances in consultation with Elders. The Regional Aboriginal Justice Advisory Committees manage a number of local initiatives available for young Aboriginal people.

However, the report, *Doing time – Time for doing*⁸⁸, states more could be done earlier in the system to prevent young Aboriginal people from progressing to the tertiary end of the criminal justice system, where they are still overrepresented.

Culturally and linguistically appropriate diversion for young people

Other cultural groups may require special attention in the criminal justice system as there are limited culturally appropriate and effective interventions available. The reasons for their contact may be different to other young people and can include resettlement issues, trauma and differing understandings of the law.

Young women

While young men are still the majority of young offenders, there is growing evidence that young women's contact with the criminal justice system is increasing and their reasons for engaging in criminal behaviour are different to young men's. Programs may need to consider how to specifically address the needs of young women.

On an average day, a young Aboriginal person in Australia is 17 times more likely to be in detention than a non-Aboriginal young person

(AIHW)

Child protection and criminal justice nexus

Evidence suggests that young people who have contact with the child protection system, and those who reside in out of home care are at a greater risk of entering the criminal justice system. Programs may need to prioritise the specific needs of these young people.

Cognitive impairment

Given the high number of young people in contact with the youth justice system with some level of cognitive impairment, programs may need to prioritise the specific needs of this group.

14. ARE THERE ANY OTHER STRENGTHS, LIMITATIONS OR CHANGES THAT HAVE NOT BEEN IDENTIFIED? IF SO, PLEASE DESCRIBE?

15. HOW DO YOU THINK ANY LIMITATIONS MIGHT BE ADDRESSED OR DIVERSION ARRANGEMENTS OTHERWISE IMPROVED?

Other issues

In addition to the specific issues raised in this paper, your experience may have highlighted other strengths and limitations with the current system in Victoria.

12. FOR WHAT GROUPS DO YOU THINK IT IS DESIRABLE TO DEVELOP TARGETED INTERVENTIONS?

13. DO YOU HAVE EXAMPLES OF PARTICULAR DIVERSIONARY INTERVENTIONS THAT HAVE WORKED EFFECTIVELY FOR GROUPS WITH SPECIFIC NEEDS? IF SO, WHAT DO YOU THINK MAKES THESE PROGRAMS EFFECTIVE?

3.6 Examples of other diversionary initiatives

There are many examples of diversion programs that operate in other Victorian courts as well as nationally and internationally with varying levels of success. The following section provides a brief overview of some of these programs.

Conferencing

Conferencing is becoming more common as a response to crime. In Victoria a young person facing a probation or supervision order is eligible for a referral to a Youth Justice Group Conference. Elsewhere in Australia and in New Zealand, various forms of conferencing are available earlier in the justice process, with culturally appropriate adaptations and in some cases without an admission of guilt⁸⁹.

Coordination

A number of jurisdictions have developed multi-agency approaches to increase the coordination of services for young people who commit crime.

In Western Australia, the police or court can refer young people to **Juvenile Justice Teams**⁹⁰. These teams assist young people to develop 'action plans' where a young person identifies the ways they can 'make up' for an offence. If the young person successfully completes the plan they do not receive a criminal record⁹¹.

89 Polk, K. Adler, C. Muller, D. and Rechtman, K. *Early Intervention: Diversion and Youth Conferencing A national profile and review of current approaches to diverting juveniles from the criminal justice system* Australian Government Attorney-General's Department 2003

90 *Review of Effective Practice in Juvenile Justice*. Noetic Solutions 2010 p.19

91 *Towards a Diversionary Framework for the ACT*, Department of Disability, Housing and Community Services. ACT Government. February 2011 p.83

In Tasmania, **Inter-Agency Support Teams** provide a multi-agency case coordinated approach to intervention with young people who are offending, 'at risk' and have complex social needs. Tasmania Police lead this initiative⁹².

In New Zealand, multi-agency, localised **Youth Offending Teams** meet regularly to identify needs and address youth offending in their area. These teams were partly a product of concerns about the lack of coordination at a local level when responding to young people⁹³.

Washington, U.S. is an example of a jurisdiction that is attempting to address the overlap between maltreated children and the juvenile justice system by developing the **King County Systems Integration Initiative**. This focuses on multi system integration and service coordination at individual and case levels to disrupt the path between child maltreatment and delinquency⁹⁴.

Court-based diversion

Some jurisdictions, including the Magistrates' Court in Victoria, have diversion schemes operational in court.

The **Criminal Justice Diversion Program** operates in the Magistrates' Court of Victoria. In this program, mainly first time offenders are given the opportunity to avoid a criminal record by participating in activities that benefit the offender, victim and community⁹⁵. Each headquarter court has a diversion coordinator who manages the program.

Bail Support

Victoria has a limited bail supervision program for young people at high risk of remand. Bail support programs operate in the adult jurisdiction in Victoria and in other Australian states in various forms.

Bail support programs for adults are available in key Magistrates' Court locations across Victoria - Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Moorabbin, Ringwood, Melbourne, Sunshine and the Latrobe Valley Magistrates' Courts. For adults, Bail Support is delivered through two programs, **CREDIT/Bail Support** (eight sites) and the **Court Integrated Services Program** (three sites). These programs provide support to an accused while they wait for their court hearing. This includes regular meetings with a case manager and coordinated support to address the issues underlying their criminal behaviour⁹⁶. The adult courts can request that the **Youth Justice Court Advice Service** provide Bail Supervision for young adults aged 18 – 20 where diversion from a more intensive adult justice outcome is considered appropriate.

The **Conditional Bail Program** in Queensland provides an alternative to remand through the provision of activities which engage young people for the length of their bail period. Queensland also has a **Bail Support Program** that provides support in a young person's current accommodation to meet bail conditions⁹⁷.

Bail hostels are another means to address accommodation issues and their effect on bail eligibility. These involve group accommodation being available to young people at risk of remand in order that they have the opportunity to live in the community rather than be held in custody until their court date⁹⁸.

Targeted interventions

Substance use programs reflect the increasing evidence of the overlap between alcohol, drugs and criminal behaviour.

92 Ibid. p. 81

93 New Zealand Ministry of Justice website <http://www.justice.govt.nz/policy/crime-prevention/youth-justice/e-flashes/E-flash%20%20.pdf>

94 *Review of Effective Practice in Juvenile Justice*. Noetic Solutions 2010 p.10 - 11

95 Magistrates' Court of Victoria website. <http://www.magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Criminal+Diversion+Bail+Program/>

96 Magistrates' Court of Victoria website www.magistratescourt.vic.gov.au.

97 *Towards a Diversionary Framework for the ACT*, Department of Disability, Housing and Community Services. ACT Government. February 2011 p.80

98 *Review of Effective Practice in Juvenile Justice*. Noetic Solutions 2010 p.46

New South Wales operates **Your Choice**, a program for young people who have been found in possession of, or consuming alcohol in, a public space. It offers the young person the opportunity to attend a two-hour education session rather than receiving a fine for their behaviour⁹⁹.

Western Australia has the **Youth Supervised Treatment Intervention Regime (YSTIR)**, which is a pre-sentence diversion program for young people who have less serious offences and substance misuse issues. This program involves ongoing case management and partnership with drug treatment services¹⁰⁰. The Drug Court Regime also operates in Western Australia and involves young people undertaking treatment under the judicial case management of a magistrate¹⁰¹.

The South Australian **Youth Court Assessment and Referral Drug Scheme**¹⁰² voluntarily engages young people referred by magistrates or the family conferencing program to drug related supports. It aims to reduce drug use, increase awareness of community based supports and reduce drug related offending behaviour in young people. It involves a minimum of four sessions with a treatment provider over a three-month period. At completion of the program, a report is provided to the referrer.

The **Court Mandated Diversion Program** is a Tasmanian program where young people can be diverted to drug treatment, after a finding of guilt, in order to address both their substance use and criminogenic needs.

Offence specific programs are also common. **U-turn** is a Tasmanian program which engages young people with a history or at risk of becoming involved in motor vehicle theft in mechanical training whilst also addressing life skills and personal development issues¹⁰³. The **Community Respect Order Program** also operates in Tasmania and is offered to young people who commit offences such as property damage and graffiti. It is based on a restorative approach and involves young people working in the community to address the consequences of their behaviour¹⁰⁴.

Family based interventions

There are also multiple examples of family based programs which address young people at risk of, and those who have engaged in offending.

Family Functional Therapy which has been implemented in some states of America focuses on improving family dynamics in order to assist in addressing behavioural issues of young people. It involves an individual therapist engaging with a family in a short-term intervention¹⁰⁵.

Killara Support Service works closely with families where young people have come to the attention of police to identify family and other issues influencing the offending behaviour of young people¹⁰⁶. This service is similar to the Youth Support Service that recently became operational in Victoria however referrals are accepted from families as well as police. Killara is operational in some capacity from 8.00am to 1.00am.

Norway has implemented **Multi Systemic Therapy** in 19 of its Municipalities as an alternative to residential placements. This therapy has been shown to be one of the most cost efficient and effective therapies in reducing juvenile crime and involves home-based intervention to target factors contributing to anti-social or criminal behaviour¹⁰⁷. Evidence also shows it is effective for Indigenous young people and has been used in New Zealand and Western Australia for these groups¹⁰⁸.

99 New South Wales Police website http://www.police.nsw.gov.au/community_issues/alcohol/your_choice

100 *Towards a diversionary framework for the ACT*, Department of Disability, Housing and Community Services. ACT Government February 2011 p.84

101 *Towards a diversionary framework for the ACT*, Department of Disability, Housing and Community Services. ACT Government February 2011 p.84

102 Office of Crime Statistics and Research South Australia http://www.ocsar.sa.gov.au/docs/evaluation_reports/YouthCARDSFinalEvaluationReport.pdf

103 *Inquiry into the impact of violence on young people*. Tasmanian Government. 2009 p.5

104 *Ibid* p.6

105 *Review of Effective Practice in Juvenile Justice*. Noetic Solutions 2010 p.37

106 *Towards a diversionary framework for the ACT*, Department of Disability, housing and Community Services. ACT Government February 2011 p.84 and http://www.correctiveservices.wa.gov.au/_files/youth-justice/killara-fact-sheet.pdf

107 *Ibid*. p.8 and 36

108 *Promising interventions for reducing Indigenous juvenile offending*. Indigenous Justice Clearinghouse. March 2011

16. DO YOU THINK THERE ARE INITIATIVES FROM OTHER JURISDICTIONS FROM WHICH VICTORIA CAN LEARN, EITHER TO ADOPT SUCCESSES OR AVOID FAILURES?
17. ARE THERE ANY VICTORIAN EXAMPLES OF GOOD DIVERSIONARY PRACTICE THAT HAVE BEEN EVALUATED BUT HAVE NOT BEEN IDENTIFIED IN THIS PAPER?
18. WHAT FACTORS SPECIFIC TO YOUR LOCAL CONTEXT NEED TO BE TAKEN INTO CONSIDERATION WHEN ASSESSING THE TRANSFERABILITY OF DIVERSION PROGRAMS FROM OTHER PLACES?

3.7 Principles for diversion in Victoria

If diversion arrangements for young people in Victoria are to be improved, it is important to consider whether there are particular values or principles underpinning diversionary responses that should be articulated.

19. DO YOU THINK THERE SHOULD BE SPECIFIED PRINCIPLES UNDERPINNING DIVERSION IN VICTORIA? IF SO, WHAT SHOULD THOSE PRINCIPLES BE?
20. HOW COULD THE PRINCIPLES BE USED TO CREATE GREATER CONSISTENCY IN THE DELIVERY OF DIVERSIONARY PROGRAMS?

APPENDIX 1

How to make a submission

To participate in this consultation, please answer one or more of the 20 questions raised in the discussion paper, *Practical Lessons, Fair Consequences: Improving diversion for young people in Victoria*.

You can address as many of the questions as you choose. You may also wish to address other relevant issues. It's best to keep submissions succinct.

A list of the questions below:

1. In what circumstances do you think diversion is an appropriate response to a young person who has committed crime?
2. Are you aware of other diversion programs designed specifically to assist young people who have contact with the police or the court (pre-sentence)? If yes, please provide details.
3. How well do current diversion programs address the criminal behaviour of young people with whom you have contact?
4. Do you think there should be changes to legislation regarding the diversion of young people? If yes, what do you think should be included in the legislation?
5. Do you think there should be circumstances in which a young person can avoid a criminal record? If yes, in what circumstances should this occur? What other records, if any, of the offending behaviour should be kept?
6. What mechanisms do you think could be implemented to improve coordination of diversion programs?
7. Can you provide examples of coordination efforts that have worked well for young people who are coming to the attention of police? What do you think makes these effective?
8. What could be done to improve understanding of the functioning and effectiveness of pre-sentence diversion programs in Victoria?
9. What could be done to facilitate sharing of successful [diversion] practices?
10. What is your experience of the accessibility of diversion options?
11. Within current resource constraints, what measures could be implemented to improve availability and use of diversion programs?
12. For what groups do you think it is desirable to develop targeted interventions?
13. Do you have examples of particular diversionary interventions that have worked effectively for groups with specific needs? If so, what do you think makes these programs effective?
14. Are there any other strengths, limitations or changes that have not been identified? If so, please describe.
15. How do you think any limitations might be addressed or diversion arrangements otherwise improved?
16. Do you think there are initiatives from other jurisdictions from which Victoria can learn, either to adopt successes or avoid failures?
17. Are there any Victorian examples of good diversionary practice that have been evaluated but have not been identified in this paper?
18. What factors specific to your local context need to be taken into consideration when assessing the transferability of diversion programs from other places?
19. Do you think there should be specified principles underpinning diversion in Victoria? If so, what should those principles be?
20. How could the principles be used to create greater consistency in the delivery of diversionary programs?

Submissions will not be published but may be quoted in further Government papers. If you do not want your submission to be quoted and/or attributed to you or your organisation, you must clearly request this in your submission.

Submissions must be received within the consultation period. Submissions received after this date may not be able to be considered. Submissions can be sent by email in Word format and can be posted. Contact details can be found in the paper or on the website.

GLOSSARY

Aboriginal Justice Forum

The Aboriginal Justice Forum (AJF) is the peak coordinating body responsible for overseeing the development, implementation and direction of Koori initiatives under the Victorian Aboriginal Justice Agreement (AJA). The forum meets regularly to review progress and report to the Victorian Government on Koori justice outcomes.

Aggression Replacement Therapy

A structured therapeutic intervention based on cognitive and behavioural theories. It includes components like anger management, development of social skills and moral reasoning.

Alleged Offenders

Alleged offenders is used by Victoria Police data collection system to refer to persons who have allegedly committed a criminal offence and have been processed for that offence by either arrest, summons, caution, penalty notice, official warning or warrant of apprehension. Those persons who for legal or other reasons were apprehended but not charged are also included. Persons are counted on each occasion they are processed and for each offence counted in recorded offences.

Bail

The right to be released from custody granted to a person who has been arrested and charged with a criminal offence on the condition that he or she return to court at some specified time together with any other conditions considered appropriate. May be granted or refused by a court, a bail justice or a police officer.

Caution

Formal caution issued to a young offender by a senior police officer in the presence of a parent or guardian following which no court proceeding is brought.

Children's Koori Court

The Children's Koori Court is a part of the Children's Court, which has the power to sentence young Koori people who have pled guilty or been found guilty of a criminal offence. It is available in Melbourne and Mildura. Elders and Respected Persons assist the Magistrate to conduct the hearing. The magistrate applies general sentencing laws in making a sentencing decision.

Central After Hours Assessment and Bail Placement Service

A state-wide service providing a single point of contact for police in matters where police and/or a bail justice are considering remand of a young person outside business hours. The service may be utilised voluntarily by any young person being considered for remand by police or if bail accommodation is required to avert remand.

Cognitive Behavioural Therapy

A type of counselling therapy that is based around helping people understand, manage and change their thoughts (cognitions) and actions (behaviour).

Custody

In relation to the care of a child, the right to have daily care and control of the child and the right and responsibility to make decisions concerning the daily care and control of the child.

Conviction

This can have a number of different meanings. It principally refers to a form of record of a finding of guilt by a court. However, it is sometimes used to refer to an element of the sentence given at the end of a criminal case, where a sentence can be imposed by a judge or magistrate "with conviction" or "without conviction".

Deferral of Sentencing

At the request of the Court, a sentence can be deferred for up to four months for Youth Justice to provide a Pre-Sentence Report which may also result in referrals to support services. These reports include information on a young person's circumstances and usually include recommendations regarding sentencing.

Fine

A sentencing order requiring a child or young person to pay a sum of money; includes any penalties, forfeitures, sums of money and costs ordered to be paid by the person.

Good Behaviour Bond

A sentencing order in which a charge is adjourned upon a child signing a promise to be of good behaviour and to comply with any special conditions imposed by the Court. Non-compliance with a bond may result in re-sentence.

Koori Youth Justice program

Young Aboriginal people involved with or at risk of entering the youth justice system can access culturally appropriate support and advocacy through Koori Cultural Support workers and Koori Intensive Support practitioners.

Multi-systemic Therapy

An intensive family- and community-based treatment program designed to make positive changes in the various social systems (home, school, community, peer relations) that contribute to serious antisocial behaviours.

Police informant

Police officer who laid charges against a person in a particular case.

Probation

A sentencing order by which for a specified period a child or young person is supervised by a Youth Justice worker, or on occasions, an honorary probation officer and may require the young person to comply with special conditions imposed by the Court.

Regional Aboriginal Justice Advisory Committees

Regionally based committees that are designed to improve government service delivery and accessibility to meet the needs of Victoria's diverse and growing Koori community.

Remand

A person who is arrested and charged with a criminal offence but not released on bail is said to be "remanded in custody". For a young person appearing before the Children's Court, they will be detained in a Youth Justice Centre pending their court hearing.

Restorative Justice

An approach to justice emphasising the reparation of harms and addressing the relationship between victims, offenders and society.

Social Competence Training

A mode of intervention that uses situational, emotional, behavioural, and cognitive components to develop prosocial behaviours in children and youth.

United Nations Convention on the Rights of the Child

Human rights document developed through the United Nations and passed by the UN General assembly in November 1989. It contains 54 separate Articles, of which 39 are state-specific rights and 15 are machinery provisions.

Undertaking

A promise made to the Court. May either be oral or in writing.

Youth Attendance Order

A sentencing order that is an alternative to custody, by which a child or young person aged between 15 and 17 is required for a specified period to attend as directed for a maximum of 10 hours per week (a maximum of three attendances) of which up to four hours may be spent in community service activities.

Youth Justice Court Advice Service

YJCAS provides information to the children's and adult courts on a range of community-based options including diversion, bail, and community support services. YJCAS undertakes suitability assessments for Bail Supervision, Youth Justice Group Conferencing, and Youth Justice Centre orders.

Youth Justice Centre Order

A sentencing order by which a child or young person aged between 15 and 21 is sentenced to be detained in a youth justice centre for a specified period.

Youth Justice Group Conferencing

A court ordered meeting when a Probation or Youth Supervision Order is being considered to raise the young person's understanding of the impact of their offending and to make reparation. Based on restorative justice principles, a YJGC brings together the young person and their family, the victim/s or their representative/s, the police and the young person's legal representative.

Youth Partnerships Initiatives

Youth Partnership is a new initiative that will design and test new ways for services to work together more collaboratively to support vulnerable young people aged 10-18.

Youth Residential Centre Order

A sentencing order by which a child or young person aged between 10 and 14 is sentenced to be detained in a youth residential centre for a specified period.

Youth Supervision Order

A sentencing order by which a child or young person is supervised for a specified period by a Youth Justice worker and may be required to comply with special conditions imposed by the Court. The level of supervision is generally higher than that involved with a probation order for a specified period.

