



**BUREAU OF CRIME STATISTICS AND
RESEARCH SEMINAR**

**FUTURE DIRECTIONS FOR JUVENILE
JUSTICE IN NSW**

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10 MAY 2012

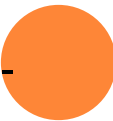
**Jenny Bargaen
Discussant**

OUTLINE

- Looking at the bigger picture - Australia's international commitments to children in trouble with the law and how we're doing
- What do we really know about children in trouble?
- Contemporary responses to young people in trouble
- Brief comments on some implications of recent BCSR research
- Other foci for research that may provide a more rounded picture
- A vision for the future?
- Questions (for Don and me) and discussion



LOOKING AT THE BIGGER PICTURE - AUSTRALIA'S INTERNATIONAL COMMITMENTS TO CHILDREN IN TROUBLE WITH THE LAW AND HOW WE'RE DOING

- Diversion
 - Use of alternatives to criminal justice responses wherever possible and appropriate
 - Children's participation in decision making (Article 12, CROC)
 - Custody (including on remand) as a last resort
 - Victim participation
 - UN's annual criticisms of our criminal justice responses to indigenous young people and lack of progress in reducing 'over-representation'
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WHAT DO WE REALLY KNOW ABOUT CHILDREN IN TROUBLE?

- A little from quantitative research
- More from qualitative and quantitative research
- Health surveys paint an alarming picture of children in custody and on community orders



NATURE OF OFFENDING BY CHILDREN AND YOUNG PEOPLE

Children and young people


- are inexperienced and less skilful than adults
- tend to commit offences in groups (which leads to greater visibility and risk of detection)
- Tend to commit offences in public spaces
- Tend to be gregarious and attention seeking
- Tend to commit offences in ways that are episodic, unplanned, and opportunistic
- Tend to commit offences close to where they live



YOUNG PEOPLE IN TROUBLE?

- Less than 10% of all 10-18 year olds, and
- Around 14% of all Indigenous 10-18 year olds
 - are dealt with by way of fine, infringement notice, warning, caution, youth justice conference or court
- Total number of young people dealt with in all of these ways has steadily declined since 2001, although this decline has been reversed in the last couple of years
- Police commenced court proceedings against only 17% of these 10-18 year olds, but against 50% of these Indigenous 10-18 year olds
- Indigenous young people constitute around 50% of the 400 or so young people in detention every day in NSW (remand and control)
- Almost one quarter of all Aboriginal young people appearing in court between 2007 and 2011 were there for breach of bail conditions (compared with one fifth of all non-Aboriginal young people appearing in court over the same period)

YOUNG PEOPLE IN CUSTODY:
INDIG ET AL, *YOUNG PEOPLE IN CUSTODY
HEALTH SURVEY, JUVENILE JUSTICE AND
JUSTICE HEALTH 2009*

- High levels of mental illness and drug and alcohol abuse.
 - High likelihood of developing chronic diseases.
 - Around one quarter had parents with a history of incarceration, drug and alcohol dependence and low socio-economic status.
 - High rates of mental illness, drug and alcohol abuse
 - High incidence of early school leaving and anti-social behaviour.
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ABORIGINAL CHILDREN IN CUSTODY (INDIG ET AL, 2009)

- Many of these social determinants, health problems and risk behaviours are significantly worse for Aboriginal young people in custody.
- Custody provides an opportunity to assess health needs, provide social and emotional support, and improve life skills and health status for this highly disadvantaged population



ORAL LANGUAGE COMPETENCE

Pamela Snow et al's work (2012 and earlier)

- Oral language competence development in early life often seriously disrupted for children and young people in the juvenile justice 'system'
- Oral language competence plays a significant role as a protective/risk factor in the developmental years
- Good oral language competence is strongly related to the achievement of important interpersonal, academic and vocational goals for children and young people
- Lack of oral competence has serious implications for juvenile justice programs, particularly police cautions and youth justice conferences
- Responsibilities of adults, in early childhood work and in schools and educational institutions to ensure that a risky start in life does not result in social marginalisation and offending



CONTEMPORARY JUVENILE JUSTICE RESPONSES

- policing young criminals, or
- responding to and working with developing children and young people plagued by significant disadvantage?



THE LAWS – A COMPLEX WEB

- International conventions, particularly CROC
- *Bail Act 1979*
- *Fines Act 1996*
- *Young Offenders Act 1997*
- *Children's Court Act 1987*
- *Children (Criminal Proceedings) Act 1987*
- *Children (Criminal Procedures) Amendment (Youth Conduct Orders Act 2008*
- *Criminal Proceedings (Mental Health) Act 1986*
- Evidence, Sentencing, Criminal Procedure and other Acts relevant to legal practice generally
- *Children (Community Service Orders) Act 1987*
- *Children (Detention Centres) Act 1987*

THE DEVELOPMENT OF POLICY

- Not always a linear or logical process
- In the 1980s and 1980s usually followed a path from research recommendations to 'Green Paper' to 'White Paper' setting out policy, and implementation
- In recent years, often a response to well publicised incidents involving children and young people
- Does not always acknowledge or incorporate obligations under international human rights instruments



THE CHANGING LANDSCAPE – COHERENT?

- Major reviews and pilot schemes in 2011-2012:
 - NSW Law Reform Commission review of *Bail Act 1978* (particular emphasis on impact of legislation on children) – report due to be released in late March
 - Formal response of Coalition Government to Noetic Report (2010) not yet available
 - ‘On Track’ - a strategic analysis by Juvenile Justice policy officers of the national and international research-based evidence and best practice on ways to prevent young people from becoming involved in crime
 - an evaluation of youth justice conferencing, being carried out by the Bureau of Crime Statistics and Research
 - Department of Attorney General and Justice review of *Young Offenders Act 1997* and *Children (Criminal Proceedings) Act 1987*
 - Ongoing evaluation of Youth Conduct Orders scheme in pilot areas

CHANGING LANDSCAPE

Major reviews and pilot schemes in 2011-2012:

- NSW Law Reform Commission's reports on
 - young people with cognitive and mental health impairments in the criminal justice system, and
 - the *Bail Act 1978* (particular emphasis on impact of legislation on children) – report due to be released in late March
- Formal response of Coalition Government to Noetic Report (2010) not yet available
- 'On Track' - a strategic analysis by Juvenile Justice policy officers of the national and international research-based evidence and best practice on ways to prevent young people from becoming involved in crime
- 5 studies by Bureau of Crime Statistics and Research
- Department of Attorney General and Justice review of *Young Offenders Act 1997* and *Children (Criminal Proceedings) Act 1987*
- Ongoing evaluation of Youth Conduct Orders scheme in pilot areas

BRIEF COMMENTS ON IMPLICATIONS OF RECENT BCSR RESEARCH AND DON'S PRESENTATION

- Re-offending as the 'key question'?
 - Relevance of age/crime curve?
- Youth justice conferences and re-offending – objectives of scheme?
- Need for qualitative research to 'flesh out' the figures in qualitative research
- Recognise that no system of juvenile justice can be designed to address the fundamental issues – need to think and act outside this square
- Comments on specific studies



1. REOFFENDING GENERALLY

- Appropriateness of combining outcomes from all responses?
- Reframe the results?
 - Nearly half of all the young people who were cautioned, participated in a youth justice conference or appeared in court in 1999 did not re-offend within 10 years
 - Over 90% of these young people did not end up with a custodial penalty
- The results for Aboriginal children are much more worrying, even when presented in this way:
 - Less than 20% did not re-offend within 10 years, but
 - 70% did not end up in custody
- Unpick and explain the offences for which children are re-appearing –
 - Drink driving (13%)
 - Assault (9%)



2. EFFECTIVENESS OF YOUTH JUSTICE CONFERENCES IN REDUCING REOFFENDING COMPARED WITH COURT APPEARANCES

- Objects of YOA and C(CP)A and implications for practice?
- Complexity of referral criteria – not simply admissions, age and seriousness of offence
- Differences in outcomes across locations (courts, YJC/Police LACs) not reported
- Assumption that all YJCs are the same?
 - Participant characteristics
 - Victim participation rates
 - Time to conference
 - Time for conference
- Alternative explanations (p 16)?
 - Conferences less effectively administered than in first few years?
 - Changed profile of young people participating in conferences?
 - Relevance of conference/court experience for future offending (see, eg, Maxwell et al, 1999, NZ)



2. THE FOUR STUDIES FOCUSING ON YOUTH JUSTICE CONFERENCING, AND

3. THE SURVEY ON PUBLIC SUPPORT FOR RESTORATIVE JUSTICE

- The whole picture?
- Limitations of quantitative research in this area
- Understanding of original intentions of framers of YOA?
- Recognition of the complexity of the YOA scheme and its operation in practice?
- YJC the smallest and least resourced but most studied part of the legislative scheme
- Possible implications of these studies



A) COMPLIANCE WITH SANCTION HIERARCHY

B) DO YOUTH JUSTICE CONFERENCES TAKE LONGER TO FINALISE MATTERS THAN COURTS?

- Very few children and young people were cautioned on three or more occasions in 2009-10
 - Repeal the limitation on cautions?
- Is the comparison appropriate?
 - Taussig indicates that police decisions to refer to a conference are often well outside the 14 days stipulated in the YOA.
- No information about possible administrative and legislative reasons why court referred conferences may be taking longer than police referred conferences?
 - Identification of victims much more difficult/time consuming for court than police referred conferences



NOW AND THEN

2012 (Taussig)


Broad aims of study :

Describe the characteristics of

- YJC referrals
- YJC outcome plans
- YJC attendees



1999 (Trimboli)

- (1) whether offenders, their families and victims who participate in conference proceedings are satisfied with:
 - the process; and,
 - the outcomes of the proceedings;
 - (2) whether children who are alleged to have committed an offence are being informed about their right to obtain legal advice and where that advice may be obtained;
 - (3) whether children who are being given this information have obtained legal advice; and, at what point the advice was obtained;
 - (4) whether conference proceedings lead to an acceptance of responsibility by the child;
 - (5) whether the child's family, extended family and the victim attend conference proceedings;
 - (6) whether time-frames specified under the Act for the holding of conferences are being met;
 - (7) whether children who go to conferences have the benefit of a caution first; and,
 - (8) whether the young person's parents/carers were present with the child when the child was cautioned.
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Trimboli (2000)

- Well informed about complexity of YOA scheme
- Used mixed methods (quantitative and qualitative)
- Not just about satisfaction
- Found general although uneven compliance with YOA but room for improvement:
 - High rates of satisfaction for both victims and offenders with preparation, process and outcomes of YJCs
 - Victim participation rate for first 18 months was almost 75%
 - High proportion of parental participation
 - Conference time lines not being met

Taussig (2012)

- Does not appear to be well informed about complexity of YOA scheme or previous research on YOA and conferencing
 - Impossible to properly compare with Trimboli
 - Used quantitative methods only
 - Don's slides give only some of the results
 - Other more worrying results that indicate slide in commitment to YOA:
 - Victim participation rate for 2010 down to 41%
 - Police most common participant
 - Low proportion of parental participation
 - Time lines still not being met
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ORIGINAL RATIONALE FOR DIVERSION AND RESTORATIVE JUSTICE

- Encourage young person to accept responsibility for offending by coming face-to-face with the victim
- Keep less serious offenders out of court and stop them from getting a criminal record
- Increase efficiency of system, enabling courts to spend more time with serious and repeat offenders
- Involve victims and family of young people in process and outcome

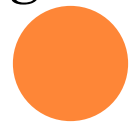


THE YOUTH JUSTICE CONFERENCING SCHEME: ORIGINAL VISION AND CURRENT PRACTICE

- Agency with administrative responsibility for the conferencing scheme must
 - be neutral
 - be independent of specific interest groups,
 - have an established infrastructure across NSW to enable the scheme to be effectively administered.
- Both the NSW Police Service and the NSW Department of Juvenile Justice met the latter criteria.
- NSW Attorney General's Department (1996) argued
 - police are responsible for apprehending and charging young people, and
 - officers of the Department of Juvenile Justice are responsible for advocating the interests of young people,
 - neither is sufficiently independent of the criminal justice process.
- an independent unit was established within the Department of Juvenile Justice to be specifically responsible for administering the conferencing scheme.
- Unit worked directly and collaboratively with police, lawyers (Youth Hotline) and courts to engender Chan's (2005) 'sympathetic interpretive community'
- **This unit was dismantled in 2008**

A VISION FOR THE FUTURE?

- Recognise that no system of juvenile justice can be designed to address the identified underlying issues – poverty, failing families, socio-economic disadvantage
- Think (and act) outside the square
- Acknowledge that colonisation, dispossession and government policies past and present are strongly related to the outrageously high and ever increasing over-representation of Aboriginal children and young people in juvenile justice



A VISION FOR THE FUTURE?

- Seriously consider the adoption of a version of Justice Reinvestment shaped to the NSW context
 - Move funds from JJ to identified communities with high proportions of Aboriginal young people who have long experiences with all parts of the juvenile justice system
 - Provide communities with the power and resources to support Aboriginal young people in particular
 - Tackle challenging circumstances with long term measures tailored to local needs

(Justice Reinvestment Campaign 2012)
- Revisit *Pathways to Prevention: Developmental and early Intervention Approaches to Crime in Australia* (Homel et al, 1999)

