

# Using the Wellbeing Monitoring Framework to strengthen children and young people's wellbeing

Policy Brief – March 2015

## Youth Justice – Supporting vulnerable children and young people in WA

### A snapshot

- Over 96 per cent of children and young people have little or no contact with the formal youth justice system.
- Arrests of children and young people have decreased over recent years
  - In 2009–10, there were 5,982 arrests of young people in WA, which compared to 4,003 in 2012–13.<sup>1</sup>
- Aboriginal children and young people are significantly over-represented in the youth justice system.

### What is the Wellbeing Monitoring Framework?

The Commissioner for Children and Young People Western Australia developed the Wellbeing Monitoring Framework to monitor and report on the wellbeing of Western Australia's children and young people.

The Framework comprises two reports, the second editions of which were tabled in the Western Australian Parliament on 14 July 2014:

- *The State of Western Australia's Children and Young People* provides a picture of how children and young people in WA are faring according to 40 key measures of wellbeing.
- *Building Blocks* lists and describes best practice and promising programs from around Australia which have been shown to be effective in improving the wellbeing of children and young people.

The information contained in the two reports is a valuable resource for the development of policy and the planning and delivery of services and programs which aim to support children and young people's healthy development.

This policy brief presents information from both reports on key elements of young people's contact with the youth justice system.



## What we know already

**Diversion** – Diversionary initiatives include measures to divert children and young people who are alleged to have committed offences away from the formal, statutory youth justice system, and others to minimise the progression of young people who have offended through the system, limiting their contact with the system. The guiding principles of the *Young Offenders Act* include a direction that consideration should be given to non-judicial measures where appropriate.<sup>2</sup>

In 2011, police used diversionary options on 5,422 occasions for children and young people aged 10 to 17 years; in 2012, on 5,265 occasions; and in 2013 on 2,464 occasions. The decrease in diversion numbers mirrors an overall downward trend in offending rates in WA.<sup>3</sup>

Police use three options to divert children and young people away from the justice system, depending on the severity of the offence – oral cautions, written cautions and referrals to Juvenile Justice Teams. Police are most likely to issue a written caution, ranging from 63.6 per cent of all diversions in 2011, to 61.3 per cent of all diversions in 2013.<sup>4</sup> The remainder is split approximately evenly between oral cautions and Juvenile Justice Team referrals. It should be noted that police do not necessarily record oral cautions and so this figure is indicative rather than definitive.

In 2013 police reported issuing 502 oral cautions, 1,510 written cautions and 452 Juvenile Justice Team referrals. The number of males who were cautioned or referred was much higher than for females (1,705 versus 744). Aboriginal children and young people were considerably over-represented, receiving nearly half of all diversionary options in 2013 (1,031 for Aboriginal and 1,371 for non-Aboriginal).<sup>5</sup>

**Bail** - Bail provides an alternative to holding children and young people in custody prior to their hearings. Subject to some restrictions based on the type of offence, police are required to consider bail for any arrested person, including children and young people.<sup>6</sup> The numbers of children and young people considered for bail by police dropped between 2009–10 and 2012–13 but consistently around 40 per cent of young people who are arrested are refused bail by police.<sup>7</sup>

A child or young person who is refused or cannot be considered for bail by police is able to apply for bail through the court. The statistics for 2007–08 to 2012–13 show that around three-quarters of court-based bail applications were granted at the first court appearance.<sup>8</sup>

In Western Australia, a child or young person can only be bailed into the care of a responsible person,<sup>9</sup> defined as:

*A parent, relative, employer or other person who, in the opinion of the judicial officer or authorised officer, is in a position to both influence the conduct of the child and provide the child with support and direction.*<sup>10</sup>

This means that where no responsible person can be located, a child or young person will be refused bail and remanded into custody. The Metropolitan Youth Bail Service and the Regional Youth Justice Services are able to act as the responsible person where a child or young person is otherwise eligible for bail but a responsible person cannot be located.<sup>11</sup>

## Sentencing options

Under the provisions of the *Young Offenders Act (WA)* there are a number of sentencing options available to the court for a child or young person who is found guilty of an offence. The options relating to a community or custodial sentence (detention) are discussed in this section.

**Community-based supervision** allows a young person to continue school, training or work while meeting supervision requirements and avoiding any negative impacts of detention. Community-based supervision is imposed through a community order. There are four types of community orders that can be placed on children and young people:

- a Community-based Order
- an Intensive Supervision Order either (a) with or (b) without detention
- a Supervised Release Order, which is for young people leaving custody only.

Males are a considerable majority of the children and young people under community-based supervision. In 2012 the daily average number of male children and young people on a community-based order was 647.76, compared to 130.47 females. In 2013 the figures were 617.84 males and 129.92 females.<sup>12</sup> Aboriginal children and young people were over-represented in all years from at least 2006. The rate of over-representation varied from 24.14 in 2011 to 33.81 in 2008.<sup>13</sup>

**Detention** is the most serious sanction that can be placed on a young person. In WA the *Young Offenders Act* states that detention should only be used as a last resort and for as short a period as necessary.<sup>14</sup>

WA has consistently had one of the highest rates of detention for children and young people in Australia, which is considerably higher than the Australian average and second only behind the Northern Territory. In 2013, WA's rate of detention for children and young people was 0.61 per 1,000 compared to the Australian rate of 0.33 per 1,000.<sup>15</sup> WA's average detention population for the June quarter of 2013 was 150, around 20 per cent of the entire Australian youth custodial population of 734,<sup>16</sup> compared to WA's 11 per cent share of the overall youth population of Australia.<sup>17</sup>

Males are more likely to be placed in detention than females. Comparisons of average daily rates for 2012 show males as 7.7 times more likely than females to be

in detention.<sup>18</sup> Aboriginal children and young people are considerably over-represented compared to non-Aboriginal children and young people. In 2012 an Aboriginal child or young person in WA was 40 times more likely, based on proportion of population, to be placed in detention than a non-Aboriginal child or young person.<sup>19</sup>

## Programs that have been evaluated as effective in this area

The Commissioner for Children and Young People Western Australia's *Building Blocks* editions one and two reports showcase 126 programs that have been shown to be effective in improving the wellbeing of children and young people or that demonstrate promise in this regard.

Common themes of programs which have been shown to be successful include meaningful community engagement, local design, reciprocity and strong and engaged leadership.

Three programs from *Building Blocks*, Edition one, have been shown to have positive effects in diverting children and young people from contact with the justice system, or supporting children and young people who are in contact with the system:

- **Aggression Replacement Training** – Edition 1, page 82. Evidence-based, cognitive-behavioural group intervention for aggressive youth, involving sessions on social skills training, anger control and moral reasoning. A pilot study showed significant reductions in self-reported aggressive behaviours and thoughts, criminogenic cognitive distortions and impulsivity, and improved social problem solving abilities.
- **Police and Community Youth Centres** – Edition 1, page 93. This program provides young people with a safe space to express themselves and develop leadership skills. The program places an emphasis on young offenders and their families, aiming to break patterns of re-occurring offending behaviour.
- **Regional Youth Justice Services** – Edition 1, page 93. This program provides a community-oriented service that includes a range of programs and interventions to support young people at risk of entering the justice system and those already in the system. Services are provided in the East Kimberley, Goldfields, Mid-West, Pilbara and West Kimberley.

## Policy implications

For most young people, their offending behaviour is characterised as short-term, transient, attention seeking and opportunistic.<sup>20</sup> In contrast, there is a core of chronic offenders whose offences become more serious over time and persist through adolescence into adulthood. Strategies to address the needs of children and young people who offend should reflect differences in these types of offending behaviours and the way they are influenced by various risk factors.



Research suggests that contact with the youth justice system increases the likelihood of criminality in adulthood and the more intensive and restrictive the justice intervention, the greater the negative impact.<sup>21</sup> Therefore, where a child or young person does have multiple contacts with the justice system, it is important that the actions taken against them are the least onerous, are suitable to the situation and assist the young person in undertaking a law-abiding lifestyle.

Young people who come into repeated contact with the justice system generally do so as part of a chaotic lifestyle. The risk factors for young people include home and community dysfunction, alcohol and drug use, violence, disadvantage and poverty, disengagement from education and social exclusion.<sup>22</sup>

A successful approach to youth justice issues must involve addressing the underlying causes of offending behaviour and provision of diversionary programs, as well as addressing the offending behaviour itself. The approach must also consider culturally appropriate programs and meaningful community engagement so that communities can more effectively own and address the offending and underlying causes.

There are a number of structural and implementation issues that require effort from all agencies involved to address youth justice matters. The underlying causes of the offending cannot be addressed effectively by one agency acting alone. To facilitate this, there needs to be coordination of agency efforts to ensure the most effective outcomes for young people who are in contact with the justice system.<sup>23</sup>

## Improving the evidence base

Significant numbers of young people in contact with the justice system have mental health problems.<sup>24</sup> However, the actual prevalence of mental health problems among young people in contact with the justice system is not known. In addition, there is a lack of provision of appropriate mental health services for these young people. More comprehensive data on the incidence of mental health problems in these young people would assist in better provision of services and the targeting of services to young people in need of them.

Similarly, while intellectual disability and conditions such as Fetal Alcohol Spectrum Disorder are linked to increased contact with the justice system, the actual prevalence of these is not known. Better diagnostic services in the community and in the justice system would assist in providing better support to young people who are subject to these conditions.

Relatively few evidence-based, evaluated programs addressing youth justice issues were identified for inclusion in the *Building Blocks* publications. It is important that programs and interventions are evaluated appropriately to ensure that they are effective and achieving the intended results.



## What more needs to happen

The Commissioner's advocacy framework around youth justice issues has consistently incorporated the following recommendations:

### *Comprehensive strategic framework for youth justice in WA*

- Development of a whole-of-government, collaborative approach to youth justice, incorporating a strategic framework and implementation plan. This approach needs to focus on addressing the underlying causes of offending behaviours; early intervention; and the provision of diversionary programs.

### *Diversionary programs*

- Investment in programs that divert children and young people away from the criminal justice system.<sup>25 26</sup>
- Safe houses in communities across WA where children can go when it is not safe for them to be at home.<sup>27</sup>
- Programs to address the significant over-representation of Aboriginal children and young people in contact with the justice system.<sup>28</sup>
- Investment in effective programs that reduce recidivism.

### *Bail services*

- Provision of a state-wide 24 hour bail service.<sup>29</sup>

### *Management of youth justice in Western Australia*

- The establishment of a Youth Justice Partnership Forum to develop innovative approaches to youth justice issues, improve service delivery and increase cooperation and collaboration across government and non-government agencies.
- Changes to youth detention facilities to ensure the separation of girls and boys and the separation of young people on remand from those who are sentenced.

### *Support to children and young people in contact with the youth justice system*

- Expansion of the mental health service currently being trialled at the Children's Court to ensure that children and young people appearing before any WA court have access to appropriate, comprehensive mental health assessment, referral and treatment services.<sup>30</sup>
- Significant improvement and focus on rehabilitation and therapeutic services in detention facilities. This would include:
  - employment and training programs
  - psychiatric and psychological services
  - drug and alcohol services
  - education programs
  - relationship and family support programs.

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<sup>1</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, pp.285, 288.

<sup>2</sup> *Young Offenders Act 1994*, s. 7 (g)

<sup>3</sup> Australian Bureau of Statistics 2013, *Recorded Crime – Offenders 2012-3*, [website] viewed 25 March 2014,

<[www.abs.gov.au/ausstats/abs@.nsf/Lookup/4519/0main+features52012-13](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4519/0main+features52012-13)>

<sup>4</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.284.

<sup>5</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.284.

<sup>6</sup> *Bail Act 1982*, s. 6.

<sup>7</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.285.

<sup>8</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.288.

<sup>9</sup> *Bail Act 1982*, Schedule 1 Part C clause 2.

<sup>10</sup> *Bail Act 1982*, Schedule 1 Part C clause 1.

<sup>11</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.289.

<sup>12</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.293.

<sup>13</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.292.

<sup>14</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.297.

<sup>15</sup> Australian Institute of Health and Welfare 2013, *Youth Detention Population in Australia 2013*, Cat No. JUV 21, Australian Institute of Health and Welfare.

<sup>16</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.303.

<sup>17</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.26.

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<sup>18</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.298.

<sup>19</sup> Commissioner for Children and Young People 2014, *The State of Western Australia's Children and Young People*, Commissioner for Children and Young People, p.299.

<sup>20</sup> Richards K 2011, *What makes juvenile offenders different from adult offenders?*, Trends and issues in crime and criminal justice, No 409, February 2011, Australian Institute of Criminology, p.3.

<sup>21</sup> Richards K 2011, *What makes juvenile offenders different from adult offenders?*, Trends and issues in crime and criminal justice, No 409, February 2011, Australian Institute of Criminology, p.7.

<sup>22</sup> National Crime Prevention 1999, *Pathways to prevention: Development and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney General's Department.

<sup>23</sup> The Commissioner acknowledges the work of the Department of Corrective Services in restructuring to establish the Youth Justice Services division, which will bring a greater focus on issues of youth justice. The Commissioner also welcomes the establishment of the Youth Justice Board, with its focus on engaging stakeholders, service design and delivery and monitoring of the effectiveness of interventions.

<sup>24</sup> Auditor General for Western Australia 2008, *Performance Examination, the Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*, Perth, p.16.

<sup>25</sup> Commissioner for Children and Young People 2012, *Youth Justice Policy Brief*, March, Commissioner for Children and Young People

<sup>26</sup> Blagg H 2009, *Youth Justice in Western Australia*, Commissioner for Children and Young People WA, p.6

<sup>27</sup> Commissioner for Children and Young People 2010, *Annual Report 2009-2010*, Commissioner for Children and Young People, pp.16 and 44

<sup>28</sup> Letter, Commissioner for Children and Young People to Attorney General, 22 October 2008

<sup>29</sup> Commissioner for Children and Young People 2010, *Submission to the Department of the Attorney General's review of the Bail Act 1982: Issues Paper and Questions*, Commissioner for Children and Young People, pp.30-32

<sup>30</sup> Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People, pp.80-83