

9.4 Youth justice: Diversion

Why this measure is included

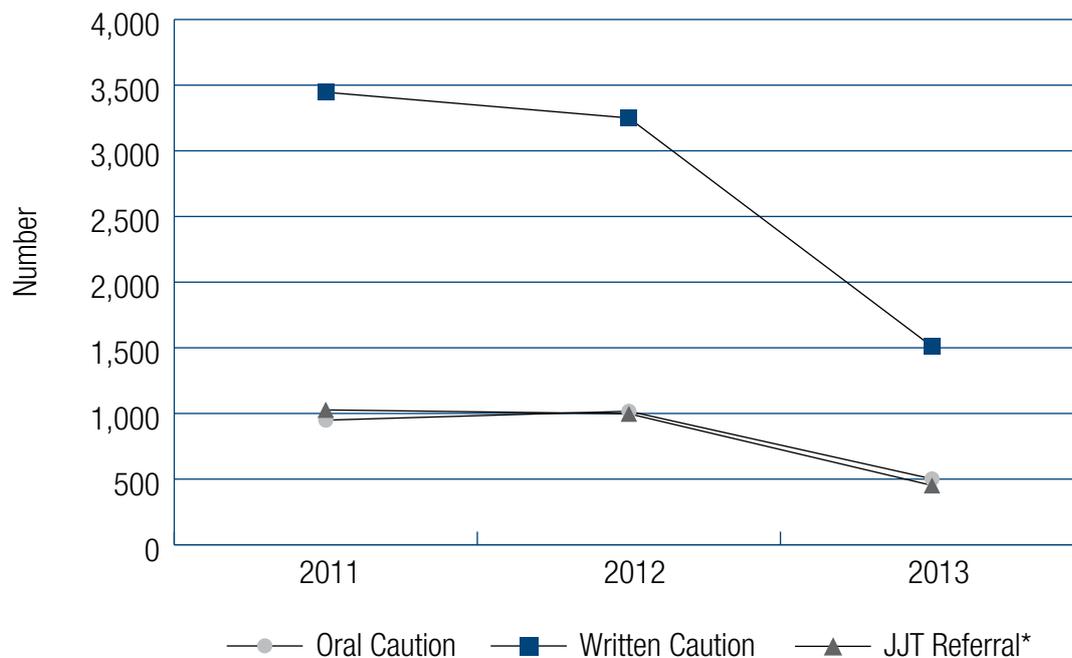
The majority (over 96%) of children and young people in Western Australia (WA) have little or no contact with the justice system.⁵⁰⁷ For those who do, a continuum of responses is available ranging from diversionary initiatives to juvenile justice supervision through community-based sentencing or detention.

Diversion initiatives involve diverting children and young people aged 10 to 17 years who have committed offences away from contact with the formal, statutory youth justice system⁵⁰⁸ wherever possible and appropriate. Diversion options include informal warnings issued by police and referrals to juvenile justice teams.

Bail provides an alternative to holding children and young people in custody prior to their hearings.

Minimising young people's contact with the formal justice system is important because research indicates the more frequently a child or young person is in contact with the youth justice system, and the more serious the level of contact, the more likely he or she is to continue to offend into adulthood.^{509 510}

Figure 9.10: Diversion of children and young people 10 to 17 years by police: number, by type of diversion, Western Australia, 2011 to 2013



Source: Data supplied by WA Police 2014, custom report (unpublished)



Table 9.8: Diversion of children and young people 10 to 17 years by police: number and in per cent, by type of diversion, by gender, Western Australia, 2011 to 2013

		Male		Female		Total (a)	
		Number	Per cent	Number	Per cent	Number	Per cent
2011	Oral caution (b)	669	18.5	272	15.4	949	17.5
	Written caution	2,207	61.2	1,213	68.5	3,446	63.6
	JJT referral (c)	733	20.3	286	16.1	1,027	18.9
	Total	3,609	100.0	1,771	100.0	5,422	100.0
2012	Oral caution (b)	690	19.8	321	18.4	1,017	19.3
	Written caution	2,092	60.0	1,139	65.3	3,250	61.7
	JJT referral (c)	703	20.2	285	16.3	998	19.0
	Total	3,485	100.0	1,745	100.0	5,265	100.0
2013	Oral caution (b)	365	21.4	136	18.3	502	20.4
	Written caution	1,005	58.9	493	66.3	1,510	61.3
	JJT referral (c)	335	19.6	115	15.5	452	18.3
	Total	1,705	100.0	744	100.0	2,464	100.0

Source: Data supplied by WA Police 2014, custom report (unpublished)

(a) Total includes gender unknown.

(b) Oral cautions are not necessarily recorded by police, hence these figures are indicative rather than definitive.

(c) Juvenile Justice Team (JJT) referral.

Table 9.9: Diversion of children and young people 10 to 17 years by police: number and in per cent, by type of diversion, by Aboriginal and non-Aboriginal, Western Australia, 2011 to 2013

		Aboriginal		Non-Aboriginal		Total (a)	
		Number	Per cent	Number	Per cent	Number	Per cent
2011	Oral caution (b)	327	17.2	573	17.5	949	17.5
	Written caution	1,108	58.2	2,183	66.6	3,446	63.6
	JJT referral (c)	468	24.6	523	15.9	1,027	18.9
	Total	1,903	100.0	3,279	100.0	5,422	100.0
2012	Oral caution (b)	379	18.1	580	19.3	1,017	19.3
	Written caution	1,183	56.4	1,980	65.9	3,250	61.7
	JJT referral (c)	535	25.5	444	14.8	998	19.0
	Total	2,097	100.0	3,004	100.0	5,265	100.0
2013	Oral caution (b)	185	17.9	296	21.6	502	20.4
	Written caution	610	59.2	874	63.7	1,510	61.3
	JJT referral (c)	236	22.9	201	14.7	452	18.3
	Total	1,031	100.0	1,371	100.0	2,464	100.0

Source: Data supplied by WA Police 2014, custom report (unpublished)

(a) Total includes Aboriginal status unknown.

(b) Oral cautions are not necessarily recorded by police, hence these figures are indicative rather than definitive.

(c) Juvenile Justice Team (JJT) referral.

Table 9.10: Matters lodged in the Children’s Court as a result of an arrest: number, by police bail status prior to the court hearing, Western Australia, 2007–08 to 2012–13

	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
In custody	2,050	2,226	2,298	1,935	1,579	1,605
On bail	2,476	2,960	3,013	2,347	2,183	2,186
No bail set	183	270	310	252	184	160
Unknown	230	240	361	280	239	52
Total	4,939	5,696	5,982	4,814	4,185	4,003

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

Table 9.11: Matters lodged in the Children’s Court as a result of an arrest: number, by police bail status, by gender and by Aboriginal and non-Aboriginal, Western Australia, 2012–13

		Female	Male	Aboriginal	Non-Aboriginal	Total*
Refused bail	Number	278	1,325	1,051	422	1,605
	Per cent	17.3	82.6	65.5	26.3	100.0
Granted bail	Number	407	1,774	1,404	717	2,186
	Per cent	18.6	81.2	64.2	32.8	100.0

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

* Total includes gender and/or Aboriginal status unknown.

Table 9.12: Matters lodged in the Children’s Court as a result of an arrest: number, by police bail status, by regional development area where the matter was lodged, Western Australia, 2012–13

	Refused bail		Granted bail		Total	
	Number	Per cent	Number	Per cent	Number	Per cent granted bail
Gascoyne	40	2.5	85	3.9	125	68.0
Goldfields-Esperance	124	7.7	162	7.4	286	56.6
Great Southern	24	1.5	40	1.8	64	62.5
Kimberley	157	9.8	354	16.2	511	69.3
Metropolitan area	873	54.4	892	40.8	1,765	50.5
Mid West	112	7.0	193	8.8	305	63.3
Peel	10	0.6	61	2.8	71	85.9
Pilbara	192	12.0	215	9.8	407	52.8
South West	66	4.1	127	5.8	193	65.8
Wheatbelt	7	0.4	57	2.6	64	89.1
Total	1,605	100	2,186	100	3,791	57.7

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

Table 9.13: Matters lodged in the Children’s Court as a result of an arrest: number, by court bail status following the first court hearing, Western Australia, 2007–08 to 2012–13

	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
In custody	883	821	875	860	714	713
On bail	2,797	3,277	3,427	2,734	2,344	2,347
No bail set	1	1	3	0	0	0
Unknown	95	210	196	89	90	94
Total	3,776	4,309	4,501	3,683	3,148	3,154

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

Table 9.14: Matters lodged in the Children’s Court as a result of an arrest: number, by court bail status following the first court hearing, by gender and by Aboriginal and non-Aboriginal, Western Australia, 2012–13

		Female	Male	Aboriginal	Non-Aboriginal	Total*
Refused bail	Number	72	640	479	171	713
	Per cent	10.1	89.8	67.2	24.0	100.0
Granted bail	Number	455	1,889	1,459	741	2,347
	Per cent	19.4	80.5	62.2	31.6	100.0

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

* Total includes gender and/or Aboriginal status unknown.

Table 9.15: Matters lodged in the Children’s Court as a result of an arrest: number, by court bail status following the first court hearing, by regional development area where the matter was lodged, Western Australia, 2012–13

	Court refused bail		Court granted bail		Total	
	Number	Per cent	Number	Per cent	Number	Per cent granted bail
Gascoyne	29	4.1	102	4.3	131	77.9
Goldfields-Esperance	43	6.0	200	8.5	243	82.3
Great Southern	17	2.4	36	1.5	53	67.9
Kimberley	69	9.7	284	12.1	353	80.5
Metropolitan Area	418	58.6	1,097	46.7	1,515	72.4
Mid West	22	3.1	182	7.8	204	89.2
Peel	7	1.0	43	1.8	50	86.0
Pilbara	87	12.2	228	9.7	315	72.4
South West	19	2.7	133	5.7	152	87.5
Wheatbelt	2	0.3	42	1.8	44	95.5
Total	713	100.0	2,347	100.0	3,060	76.7

Source: Data provided by WA Department of the Attorney General 2014, custom report (unpublished)

What is this measure?

This measure examines two sets of data relevant to diversions.

The first dataset (Tables 9.8 and 9.9) presents the number of police-initiated diversions from the formal justice system. WA Police have three main diversionary options – an oral caution, a written caution, and a referral to a Juvenile Justice Team (JJT).

Oral cautions, as the name implies, are relatively informal sanctions involving a warning from a police officer to the young person. It should be noted that not all oral cautions are necessarily recorded, so these figures should be treated as indicative rather than definitive.

Written cautions are a more formal sanction, while referral to a Juvenile Justice Team is the most serious diversion strategy available. Both written cautions and Juvenile Justice Team referrals must be recorded.

It should also be noted that the source data system records offences as offenders. For instance, one offender may be responsible for 20 offences but the source data would record them as 20 offenders. Therefore, the number of offenders in any category is indicative but not definitive.

Data is included from 2011 to 2013. Prior to 2011, assessment of Aboriginality or other ethnicity was based on observation by officers, and so may not be entirely accurate. Since 2011, people are asked how they identify themselves. The classification 'non-Aboriginal' in this table combines two categories from police data – Australian (non-Indigenous) and non-Australian.

Tables 9.10 to 9.15 include data from the Children's Court relating to children and young people obtaining bail from police or courts. These figures are further differentiated based on gender, on Aboriginality and the region where the matter was lodged.

When a child or young person is arrested, they have the opportunity to apply for bail. Police have discretion to grant bail – where police do not grant bail, an arrested person is able to apply to the court for bail. Bail is not strictly a diversion measure, as it does not provide an alternative to contact with the formal justice system. However, it is included in this measure as it offers an alternative to children and young people being remanded in custody.

Commentary

The *WA Young Offenders Act 1994* requires:

- police to caution an offender unless the number and type of previous offences with which the child or young person has been charged make it inappropriate to do so
- that when dealing with children and young people who have committed less serious offences, police and other agencies consider directing children and young people away from court.⁵¹¹

According to the data, the most likely diversion option to be exercised by police is the written caution. In each of the three years reported, written cautions represented more than 60 per cent of the total diversions recorded. There has been a slight increase in the proportion of oral cautions over the period (17.5 per cent in 2011 compared to 20.4 per cent in 2013), with a slight decrease in written cautions (63.6 per cent in 2011 compared to 61.3 in 2013) and in juvenile justice team referrals (18.9 per cent in 2011 compared to 18.3 per cent in 2013) (Figure 9.10 and Table 9.8).

More police-initiated diversionary options are issued to males than females, which reflects the higher incidence of offending by males. Females have in each of the three years reported been more likely than males to receive a written caution, while being less likely to receive an oral caution or Juvenile Justice Team referral (Table 9.8).



Aboriginal people are over-represented in police-initiated diversionary outcomes. For both Aboriginal and non-Aboriginal young people there has been an increase in the use of oral cautions, but this increase is more pronounced for non-Aboriginal young people. For all the years 2011 to 2013, Aboriginal young people have been considerably less likely than non-Aboriginal young people to receive a written caution, and considerably more likely to be referred to a Juvenile Justice Team (JJT) (Table 9.9).⁵¹²

The data on arrests and police bail shows that the number of children and young people arrested was highest in 2009–10, and in subsequent years has decreased considerably. In 2012–13, there were 4,003 arrests, compared to 5,982 in 2009–10 (Table 9.10). This mirrors an overall downwards trend in offending rates in WA between 2008–09 (2,278.8 per 100,000) and 2012–13 (1,400.5 per 100,000),⁵¹³ and also an overall decrease in youth offending rates in Australia between 2008–09 (3,868.8 per 100,000) and 2012–13 (3,220.7 per 100,000).⁵¹⁴

In 2012–13, more than 40 per cent (1,605) of all arrests of a young person resulted in refusal of bail by police. Males represented over 80 per cent of police bail matters and Aboriginal young people represented around 65 per cent of police bail matters (Table 9.11).

While around 58 per cent of all arrests of a young person were granted bail by police, this was not consistent across regions. In the metropolitan area, 50.5 per cent of cases were granted bail; in the Goldfields-Esperance region 56.6 per cent; in the Mid West 63.3 per cent; in the Kimberley 69.3 per cent and in the South West 65.8 per cent (Table 9.12).

If a child or young person is refused bail by police, they are able to apply for bail through the court. Data from the courts for the first court hearing shows that between 2007–08 and 2012–13, the rate at which bail was granted by the court varied between 74.1 per cent and 76.1 per cent (Table 9.13).

In 2012–13, males represented a considerable majority of cases (82.6%) of appearances before court relating to bail. Aboriginal children and young people represented nearly two-thirds (63.3%) of bail cases before the court.

In 2012–13, females were more likely (86.3%) than males (74.7%) to have bail granted by the court at the first appearance. Non-Aboriginal children and young people were more likely (81.3%) than Aboriginal children and young people (75.2%) to be granted bail by the court (Table 9.14).

The granting of bail by courts was not consistent across all areas. In the metropolitan area in 2012–13, 72.4 per cent of applicants were granted bail; in the Kimberley 80.5 per cent; in the Goldfields-Esperance area 82.3 per cent; in the South West 87.5 per cent and in the Wheatbelt 95.5 per cent (Table 9.15).

Want to know more?

Data

Youth justice data and research is available on the Australian Institute of Criminology website www.aic.gov.au

Research, reports and articles

Youth justice data and research is available on the Australian Institute of Criminology website www.aic.gov.au

The Commissioner for Children and Young People WA engaged Dr Harry Blagg in 2009 to produce a report, *Youth Justice in Western Australia*, available at www.ccp.wa.gov.au/files/article/Harry%20Blagg%20report%20-%20Youth%20Justice%20in%20Western%20Australia%20-%20FINAL.pdf

The Commissioner for Children and Young People WA produced *Youth Justice*, Issues Paper 13, May 2013, which is available at www.ccp.wa.gov.au/files/IssuesPapers/Youth%20Justice%20Issues%20Paper%20May%202013.pdf

The *2009 NSW Young People in Custody Health Survey: Full Report* is available on the Juvenile Justice NSW website www.justicehealth.nsw.gov.au/about-us/publications/ypichs-full.pdf

The Auditor General's 2008 report, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994* is available at http://audit.wa.gov.au/wp-content/uploads/2013/05/report2008_04.pdf

The Australian Institute of Criminology has released a number of articles and research papers on youth offending and youth justice outcomes. More information is available at the Institute's website www.aic.gov.au

Other information

Regional Youth Justice Services (RYJS)

RYJS aims to prevent young people from entering the formal youth justice system, or divert them away from the system as early as possible and for as long as possible. This is shown to be the most effective way of preventing criminal behaviour.

RYJS offers a service following up families of young people who receive a Western Australia Police (WAPOL) caution; Juvenile Justice Teams (JJTs) targeting young people in the early stages of offending, diverting them from the formal justice system; an extended hours bail service to locate suitable adults or alternative short term accommodation for young people eligible for bail; education and counselling services; and the management of young people on statutory orders.

The RYJS are aimed at addressing the four priority needs which are: diverting young people who offend away from the criminal justice system; reducing the financial costs of youth crime; improving life opportunities for Aboriginal young people; and reducing the numbers of young people in remote areas being transported to the metropolitan area and separated from their families and communities.

Metropolitan Youth Bail Service (MYBS)

The MYBS aims to prevent the unnecessary detention of metropolitan young people in circumstances where they are eligible for bail but a suitable responsible adult cannot be found. The *Bail Act 1982* authorises Youth Bail Coordinators to act as the 'Responsible Person' in this situation.

The MYBS ensures the young person attends court with an understanding of the court process and why they are there. Participants are also referred to relevant community based services to address their offending behaviour and ensure adequate supervision and monitoring of the young person whilst on bail. MYBS placements may include short and long term accommodation stays, placement in rehabilitative residential services, psychiatric facilities or even with a young person's parents or extended family.

Positive role models can be appointed to provide support for young people who have broken the law or who are at risk of offending through the Youth Support Officers Program. A youth support officer is appointed following a youth justice officer assessment or a request from the Court or the Supervised Release Review Board. The youth support officer can provide practical help with transport, study and emotional issues. They can also organise positive recreation and sporting activities.

Further information on all of these strategies is available from the Department for Corrective Services website at www.correctiveservices.wa.gov.au/youth-justice/default.aspx

Statistics on court proceedings including bail are available from the Department of the Attorney General's website www.department.dotag.wa.gov.au/S/statistics.aspx?uid=0952-8687-1485-3638.

