

SUBMISSION

to the

Australian Senate Committee Inquiry into Youth Justice

Executive Summary

1. Socio-economic disadvantage is a central factor contributing to the involvement of young people in the criminal justice system.
2. Programs responding to socio-economic disadvantage have proven effective in lowering the risk of reoffending.
3. Incarceration of young people does not reduce reoffending; in fact, it exacerbates disadvantage and makes reoffending more likely.
4. We therefore, make three key **recommendations**:
 - **Recommendation 1:** Sentencing legislation must be reformed to increase the use of diversion programs and to ensure incarceration of young people involved in the youth justice system is genuinely used only as a last resort.
 - **Recommendation 2:** The minimum age of criminal responsibility must be increased to at least 12 years old.
 - **Recommendation 3:** Programs responding to socio-economic disadvantage in young offenders must be continued and expanded.

1. What factors contribute to young persons' involvement in the youth justice system?

- 1.1 Australian and international research has shown that socio-economic disadvantage is a major influence on involvement in the youth justice system. Specific types of disadvantage, including poor health, financial difficulties, poor education, and family conflict, make offending more likely. Aboriginal and Torres Strait Islander youth experience higher levels of disadvantage, and have correspondingly higher involvement in the youth justice system. Multiple early life disadvantages increase the likelihood of early offending. Inappropriate responses to such offending by the justice system – with incarceration being the most severe – amplify the likelihood of re-offending, creating a cycle of crime and incarceration.
- 1.2 Young people involved in the youth justice system have measurably higher levels of disadvantage. As researchers with the Australian Centre for Health Law Research, we have particular knowledge of the health problems experienced by this population [1]. Research has shown that young people involved in the youth justice system have higher rates of communicable and non-communicable diseases, mental illness, neurological disabilities, traumatic head injuries, foetal alcohol spectrum disorder, and have more dental problems than the general youth population. Moreover, young people involved in the justice system have difficulties accessing health care, owing to a lack of knowledge of, or access to, health services. As a result, their health care is compromised and fragmented.
- 1.3 The high level of disadvantage experienced by people involved in the youth justice system means reoffending is more likely. This is demonstrated by the data: 41% of Australian young people aged 10–17 who were under youth justice supervision between 2000–01 and 2021–22 returned to sentenced supervision before age 18 [2].

2. Incarceration is a major barrier to change

- 2.1 Incarceration of young people involved in the youth justice system is a massive barrier to positive outcomes and does not reduce reoffending. Rather than addressing disadvantage, incarceration exacerbates disadvantage and amplifies known risk factors for reoffending, adversely affecting health, family relationships, employment and education. Therefore, incarceration of young people makes reoffending more likely.
- 2.2 The rate of youth incarceration in Australia is dramatically higher than comparable countries. For example, the rate of incarceration is 3.4 times higher in Australia than in England and Wales [2]. The rates are even higher for Aboriginal and Torres Strait Islander young people; 63% of young people in detention in Australia are Indigenous [2]. Aboriginal and Torres Strait Islander young people are 27 times as likely to be incarcerated as non-Indigenous young people [2].
- 2.3 Concerningly, many young people in Australia are incarcerated for non-violent property offences. Thirty-one percent (31%) of young people in detention in 2019-20 (most recent available data) in Queensland had only committed property offences [4]. In NSW, 41% of young people in custody their most serious offence was a property offence [5]. This is despite the fact that in all states and territories, sentencing legislation requires that detention for young people should only occur as a last resort [6]. This is a concerning misapplication of current fundamental legislative principles in sentencing legislation, and indicates these provisions are not sufficiently definitive about the circumstances warranting incarceration.

3. What needs to change?

Recommendation 1 - Reform sentencing legislation to ensure incarceration is a last resort

Sentencing legislation must be reformed to increase the use of diversion programs and to ensure incarceration of young people involved in the youth justice system is genuinely used only as a last resort. These changes would be consistent with human rights obligations under the United Nations Convention on the Rights of the Child in Article 37(b) that require detention only as a 'last resort'.

The general high rates of incarceration of young people in Australia and the high proportion of young people incarcerated for property offences indicate that detention for young people is not currently being used as a last resort, despite the obligation present in sentencing legislation. Theoretical, economic, and jurisprudential analyses would conclude that only the most exceptional cases of property offences would justify incarceration of a youth offender.

In order to achieve this, we recommend that all other options must be shown to be insufficient and inappropriate before a young person could be given a custodial sentence.

Feasibility

This change does not represent a radical departure from the existing legislation and literature. Rather, it gives meaningful effect to the current provisions. We believe there is room for expansion of non-custodial sentencing options in Australia.

We note that diversion programs, like restorative justice programs, are effective at reducing reoffending, and avoid the problems associated with incarceration [7]. These programs should be extended and expanded. The economic gains would also be substantial, given the extremely high cost associated with incarceration both in the short-term and the long-term [8].

Recommendation 2 - Raise the criminal age of responsibility to at least 12 years old

Currently, the age of criminal responsibility is 10 years old in all Australian states and territories, bar the Australian Capital Territory. We argue that 12 years old should be the absolute minimum for the age of criminal responsibility in Australia, and consideration should be given to raising it further to 14.



In 2016, the most common minimum age across 90 countries was 14 [9]. The United Nations Committee on the Rights of the Child has recommended the minimum age of criminal responsibility to be 12 years. As a result of this discrepancy, Australia has been subject to significant international criticism for its low age of criminal responsibility [10, 11].



Moreover, evidence on developmental maturity shows that younger children lack the physiological and cognitive capacity to be held responsible for criminal behaviour [12, 13]. This suggests that criminalising children for behaviour they may not fully comprehend, and may grow out of with maturity, is highly inappropriate [11].



Finally, raising the age of criminal responsibility will reduce the risk of reoffending for young people. We have already noted that incarceration for young people increases the risk of reoffending. This effect appears to be more pronounced for younger children, as data shows that those aged 10-12 at their first sentenced supervision have a 90% return rate to sentenced supervision [14].

Recommendation 3 - Programs that address disadvantage

Programs responding to socio-economic disadvantage in young offenders must be continued and expanded. Programs that address the disadvantage of young people involved in the youth justice system can make a difference [15]. Recently, three authors of this submission studied the results of the 'Navigate Your Health' program in Queensland (see paper in 'Improving Health to Reduce Youth Reoffending' [1] in separate attachment). This study was done with Queensland Government partners. Under this program, young people who had non-custodial youth justice orders were provided dedicated nurses who coordinated the young person's healthcare based on their specific needs.

Results showed that involvement with the Navigate Your Health program led to substantial overall improvements in health, from a low base. Importantly, results of our study also showed significant improvements in participants' other areas of disadvantage that are known risk factors for offending: family relationships, connection to community, participation in learning, and engagement in employment. These improvements occurred despite the fact that no assistance was given in these areas.

This research demonstrates that young people involved in the youth justice system are highly disadvantaged. It shows the connected and compounding nature of different dimensions of disadvantage. Finally, it demonstrates that targeted assistance can have real impact on youth wellbeing, which in turn, reduces the risk and ultimately incidence of youth reoffending.

Direct assistance to address disadvantage is an appropriate policy response to youth offending. We recommend the continuation and expansion of programs that address socio-economic disadvantage of young people involved in the justice system.

An optimal multidimensional response to youth justice is to increase the age of criminal responsibility, ensure incarceration is a last resort, and expand programs for health and wellbeing.

Young people involved in the youth justice system typically experience multiple levels of disadvantage. Addressing this disadvantage is key to lowering reoffending. The community interest in ensuring legitimate responses to youth crime can be achieved without worsening the problem. Effective responses can still be provided, and accountability for offending can be secured, without incarceration.

We therefore recommend changes to law that **concretise the legal intent to incarcerate young people as a last resort** and **raise the criminal age of responsibility**, as well as **investment in programs that address disadvantage** that are consistent with scientific literature and reduce economic cost.

References

- [1] Sam Boyle, et al, 'Improving Health to Reduce Risk of Youth Reoffending: Results of a nurse navigator program for people involved in the youth justice system' (under review).
- [2] Australian Institute of Health and Welfare (2024) Youth Justice in Australia 2022–23, (Web Report) Available at <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/youth-justice-in-context>>
- [3] Australian Institute of Health and Welfare (2023) Young people returning to sentenced youth justice supervision 2021–22 (Canberra: AIHW) Available at: <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/summary>>
- [4] Department of Children, Youth Justice and Multicultural Affairs (2020) *Youth Justice annual summary statistics: 2015-216 to 2019-20* (Queensland Government)
- [5] Defined as theft, property damage and unlawful entry/burglary/B&E. Statistics derived from New South Wales Custody Statistics 2024 (Boscar, 2024) Available at: <https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx>
- [6] See e.g., *Youth Offenders Act 1994* (WA) s 7(h); *Youth Justice Act 1992* (Qld) Sch 1 s 18; *Youth Justice Act 1997* (Tas) s 5(1)(g); *Children and Young People Act 2008* (ACT) s 94(1)(f); and *Youth Justice Act 2005* (NT) s 4(c). The remaining states include similar objectives or instructions to the court that require detention for young offenders to be used in restricted or more serious cases only.
- [7] Jennifer S Wong, et al, 'Can At-Risk Youth Be Diverted From Crime?: A Meta-Analysis of Restorative Diversion Programs' (2016) 43(10) *Criminal Justice and Behavior* 1310.
- [8] Bratanova, Alexandra and Jackie Robinson, *Cost Effectiveness Analysis of a 'Justice Reinvestment' Approach to Queensland's Youth Justice Services* (Report, School of Economics and Pro Bono Centre TC Beirne School of Law, \ University of Queensland, November 2014).
- [9] Wendy O'Brien and Kate Fitz-Gibbon, 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform' (2017) 17(2) *Youth Justice* 134.
- [10] Australian Human Rights Commission, 'The Minimum Age of Criminal Responsibility' <chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/https://humanrights.gov.au/sites/default/files/2020-10/australias_minimum_age_of_criminal_responsibility_-_australias_third_upr_2021.pdf>.
- [11] Fiona Patten, Parliamentary Inquiry in Victoria's Criminal Justice System (Inquiry, Parliament of Victoria, 2022) 125.
- [12] Megan Mitchell, Children's Rights Report (Report, Australian Human Rights Commission, 2019) 340, 244 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>>
- [13] Steinberg, Laurence and Grace Icenogle, 'Using Developmental Science to Distinguish Adolescents and Adults Under the Law' (2019) 1(1) *Annual Review of Developmental Psychology* 21.
- [14] Australian Institute of Health and Welfare (2021) Young people returning to sentenced youth justice supervision 2019–20 (Juvenile justice series no. 25. Cat. no. JUV 137. Canberra: AIHW)
- [15] Wilson, Holly A and Robert D Hoge, 'The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review' (2013) 40(5) *Criminal Justice and Behavior* 497

Authors

Dr. Sam Boyle
Professor Ben Matthews
Dr. Sinead Prince

Professor Shih-Ning Then
Assoc/Professor Andrew McGee
Assoc/Professor Bridget Lewis

Dr. Eliana Close
Dr. Julia Duffy
Dr. Katrine Del Villar



For more information:
samuel.boyle@qut.edu.au
b.matthews@qut.edu.au