THE REPORT & RECOMMENDATIONS OF THE 2012

YOUTH JUSTICE THINK TANK

BUILDING A MORE EFFECTIVE YOUTH JUSTICE SYSTEM IN WA

FEBRUARY 2013.

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Youth Affairs Council of Western Australia

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Summary of Recommendations

A Change of Approach

Recommendation 1. That the Convention on the Rights of the Child be incorporated as the guiding principles underpinning Western Australia's juvenile justice legal and policy framework.

Recommendation 2. That the Government and community sectors work collegially to promote further education/discussion across both sectors to improve the collective understanding of the principle of the "best interests of the child"— in the context of both service provision and state legislation.

Recommendation 3. That regular reviews be undertaken of the practices of State Government and community sector agencies who work with children to ensure any practices or actions found not to be in keeping with Australia's obligations under the Convention on the Rights of the Child are addressed in a timely manner.

Recommendation 4. That a roundtable meeting of all parties interested in the introduction of justice reinvestment in WA be convened to coordinate advocacy.

Recommendation 5. That individuals and organisations consider preparing a submission to the Senate inquiry into the "Value of a justice reinvestment approach to criminal justice in Australia".

Collaboration

Recommendation 6. Development of protocols or a memorandum of understanding between Government and NGOs that enables the sharing of information between Government and community sector agencies to improve service provision to young people.

Recommendation 7. That the community sector, through Youth Legal Service, seek comprehensive legal advice examining the extent to which (under existing legislation) information is able to be shared both between government agencies, and between government agencies and community sector agencies. Advice should also be sought regarding changes which could be made to information sharing provisions for the purposes of improving service provision to young people at risk.

Recommendation 8. Encourage collaboration between community sector organisations who work with young people at risk, to ensure the most efficient and effective delivery of services (particularly when services overlap).

Recommendation 9. Establishment of a Youth Justice Partnership Forum to build collaborative partnerships, bring about positive outcomes for young people, and improve community safety.

Recommendation 10. That the youth sector more actively engages with local politicians and senior public servants by, for example, providing invitations to visit programs and events which provide insight into the issues affecting young Western Australians and the positive approaches being taken by agencies working to support them.

Recommendation 11. That WACOSS develop and provide training to members in how to coordinate, and make the most out of a visit by a Minister or local Member of Parliament to an agency or event.

Summary of Recommendations

Crime Prevention & Community

Recommendation 12. That a case manager or broker system be developed to coordinate the various services working with individual young people at risk (similar to the Kilbrandon Model operating in Scotland). Such a system will mean less duplication and a better spread of services that attend to each individual's needs. Additionally, this model will increase accountability for service provision.

Recommendation 13. Recognition by Government funding bodies that it takes time to build trust and working relationships (with youth at risk and their families), and that funding models and programs designed to prevent crime must reflect this understanding.

Recommendation 14. Increased alternative education opportunities are needed for young people who struggle to fit into the mainstream education system, given the link between young people who are disengaged from the education system and those with contact with the juvenile justice system.

Recommendation 15. Provision of dedicated funding for youth worker programs in WA schools.

Recommendation 16. Development of a team of youth workers within the Department of Education whose responsibility is to track down students who are "whereabouts unknown". The list of students whose whereabouts is unknown provides a starting point to identify young people who may be at risk or in need of support.

Recommendation 17. The findings of the WA Legislative Assembly's FASD report are welcomed, and the State Government and its agencies are encouraged to take action to implement the recommendations of the report.

Recommendation 18. Introduction of improved research and auditing of rates of mental illness, drug & alcohol problems and undiagnosed disabilities amongst young people in detention (or in contact with the criminal justice system) in WA. Improvements to such data collection and analysis will then be used to determine the provision of service responses for mental illness, drug & alcohol problems and undiagnosed disabilities which result in criminal behaviour.

Recommendation 19. That programs and services be developed for children under 10 years of age who have indicated a propensity to engage in offending behaviour.

Recommendation 20. Increased funding for and access to homelessness services and crisis accommodation for young people.

Recommendation 21. Increase of funding to all refuges and safe houses to allow for the employment of a full time child support worker, as well as funds to run programs and provide resources.

Summary of Recommendations

During Detention and Post-Release

Recommendation 22. That a dedicated forensic mental health unit for children and young people be established.

Recommendation 23. Improve access to mental health services (including psychiatrists) to young people in detention to prevent (where possible) acute need whilst in detention; and to provide ongoing support after leaving detention (see also, Recommendation 24).

Recommendation 24. Increased funding for community organisations to provide personal, through-care support to (more) young people leaving detention.

Recommendation 25. That all relevant services are engaged by a central through-care manager to contribute to a coordinated, individual-centred planning process to be undertaken in consultation with a young person prior to them leaving detention.

Recommendation 26. Increased availability of a range of supported accommodation options for young people who are due to be released from detention or on bail, but who do not have safe, stable and appropriate accommodation to return to.

Background

In April 2012, the Western Australian Council of Social Service (WACOSS) hosted a Sector Consultation titled "Youth at Risk and Juvenile Justice". The forum canvassed a wide range of issues affecting young people, including housing, access to services, government 'silos', the cultural competence of youth services, diversion programs, early intervention, binge drinking, parenting, service funding, the media coverage of youth issues and health.

One of the key themes of the consultation was youth justice. While participants were concerned about the rate young people were coming into contact with the justice system (and the rate at which they were being incarcerated), most were more concerned about what was seen as the critical need to address those *underlying factors* which have been shown to contribute towards the likelihood of offending behaviour. Such factors included (but are not limited to) alcohol and/or drug abuse, mental illness, homelessness and family breakdown.

Following the Youth at Risk and Juvenile Justice Forum in April, the Youth Affairs Council of WA (YACWA), Youth Legal Service and WACOSS came together to develop plans to provide further opportunities for participants and other interested parties to discuss and workshop the issues raised. Subsequently, three half-day "Youth Justice Think Tank" workshops were held, one in each of September, October, and December 2012.

About the Youth Justice Think Tank

Seventy-six people attended at least one of the three Youth Justice Think Tank workshops. Fourteen people attended all three workshops, 14 attended two workshops and 48 attended 1 workshop. A further 30 people were unable to attend any of the workshops, but have expressed an interest in the work of the Youth Justice Think Tank and have asked to be kept informed. As a result, there are currently over 100 people on the Think Tank's mailing list. Of those individuals who participated in at least one of the workshops:

- **29 were from community service providers** (community organisations which provide programs/services to young people including housing, mental health, alcohol and drugs, mentoring, training, and others).
- **28 were from State Government agencies** (including the Mental Health Commission, Department of Education, Department for Communities, Department of Health, Department for Child Protection, Office of Multicultural Interests, WA Police, Department of Corrective Services, and the Drug & Alcohol Office).
- **3 were from local government authorities.**
- **3 were from community legal centres.**
- **14 were either from other organisations** (including peak bodies and universities), or they did not state an association with an organisation.

The strong involvement of people from both the government and community sectors was one of the great strengths of the Youth Justice Think Tank, and as such, we thank all participants for their attendance, their preparedness to share their knowledge, and for their participation in frank and honest discussions.

Workshop 1 *(19 September, 2012)*

In Workshop 1, discussion focused on the concept of the *best interests of the child* — what participants understood this to mean, and how well/poorly they have seen the best interests of the child being protected/not-protected in the context of Western Australia and juvenile justice.

Workshop 2 *(26 October 2012)*

In Workshop 2, participants were encouraged to make an assessment of what services are currently available or unavailable to meet the needs of young people who come into contact with the justice system and/or to prevent that contact occurring. Sam Mesiti, Youth Programs Manager from Outcare gave a presentation on the work of his organisation. Participants considered the provision of such services at 4 stages: crime prevention & diversion; intervention points & support whilst in custody; on exit from the custodial system; and support for families & the wider community.

Workshop 3 *(12 December 2012)*

Workshop 3, built upon the discussions held in Workshop 2 — participants were asked to think critically about the gaps/needs in the current juvenile justice system in WA, and to talk about what they felt needed to change. Specific, reasoned recommendations to both the Government and community sectors emerged out of the discussion. Assoc Prof Ted Wilkes also provided a presentation on the concept of *justice reinvestment* and its implications for the way youth justice issues are (or could be) dealt with.

This document — t*he Report & Recommendations of the 2012 Youth Justice Think Tank* — is the result of the discussions had and analysis developed over the course of the 3 workshops. The report reflects and highlights the range of issues identified by workshop participants and provides a range of recommendations to agencies in both the government and community sectors. These recommendations all relate to improving the effectiveness of the Western Australian approach to addressing youth justice issues.

Through the release of this report, we hope to influence the policy development and funding commitments of all political parties, and are releasing this report as part of the community sector's focus on children, young people and families in the lead-up to the 2013 WA State Election.

Youth Justice: Facts & Figures

As the Commissioner for Children and Young People regularly reminds us, 96% of young people do not come into contact with the police/justice system.[1] Below are some key facts relating to young people and the justice system:

The numbers of juveniles in detention in WA

- At 5 July, 2007 there were 139 young people in detention in WA, of whom 14 (10.1%) were female.
- At 27 December, 2012 there were 179 juveniles in detention in WA, of whom 16 (9.3%) were female.[2]

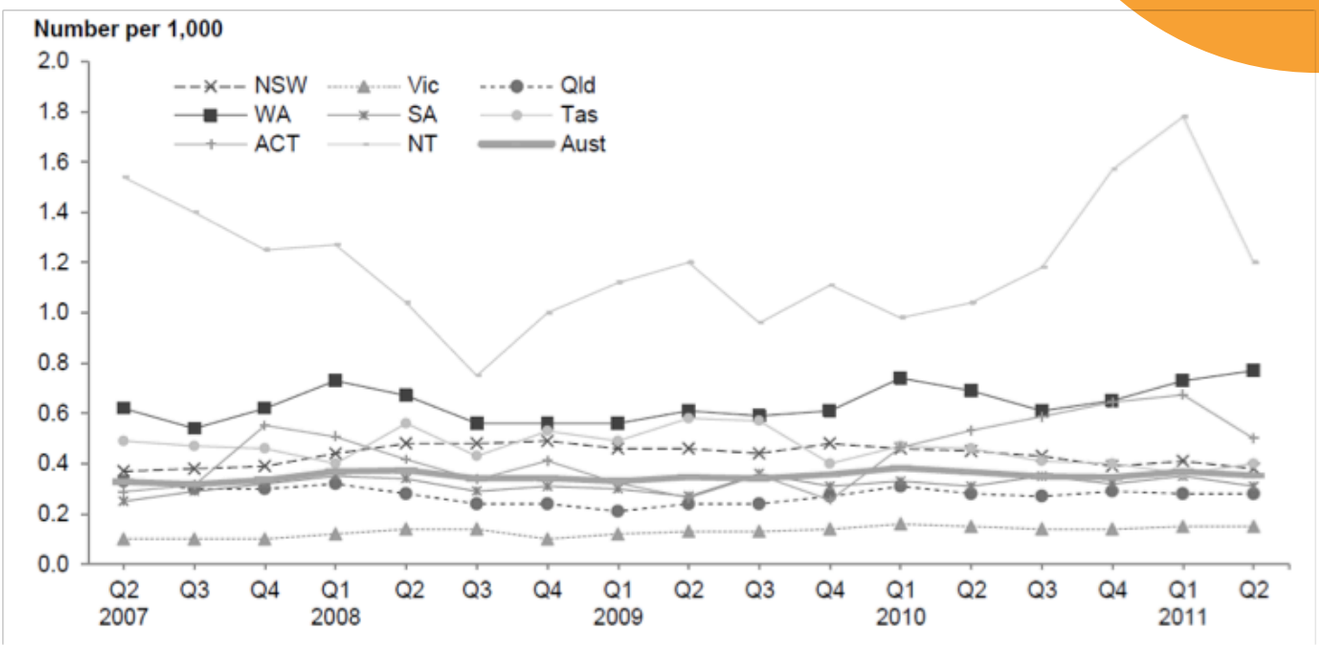
The "General principles of juvenile justice" described in Section 7(h) of the Young Offenders Act 1994 (WA) requires that juveniles only ever be detained as a "last resort":

> *(h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary; and there is no other appropriate way for it to dispose of the matter.* [3]

However, as Figure 1 shows, between 2007 and 2011 Western Australia consistently achieved the second highest rate of detention of young people in Australia. This suggests that the use of detention as a last resort is not being achieved.

[1] Commissioner for Children & Young People WA (2012) Using the Wellbeing Monitoring Framework: Youth Justice, Accessed at: http://www.ccyp.wa.gov.au/files/Policy%20Brief%20-%20Youth%20Justice%20-%20Wellbeing%20Monitoring%20Framework.pdf.
[2] Department of Corrective Services WA (2012) Statistics: Weekly Offender Reports, Accessed at: http://www.correctiveservices.wa.gov.au/about-us/statistics-publications/statistics/default.aspx.
[3] http://www.comlaw.gov.au/Details/C2011Q00038

Figure 1: Young people aged 10-17 in detention on an average night, states and territories, June quarter 2007to June quarter 2011[4]



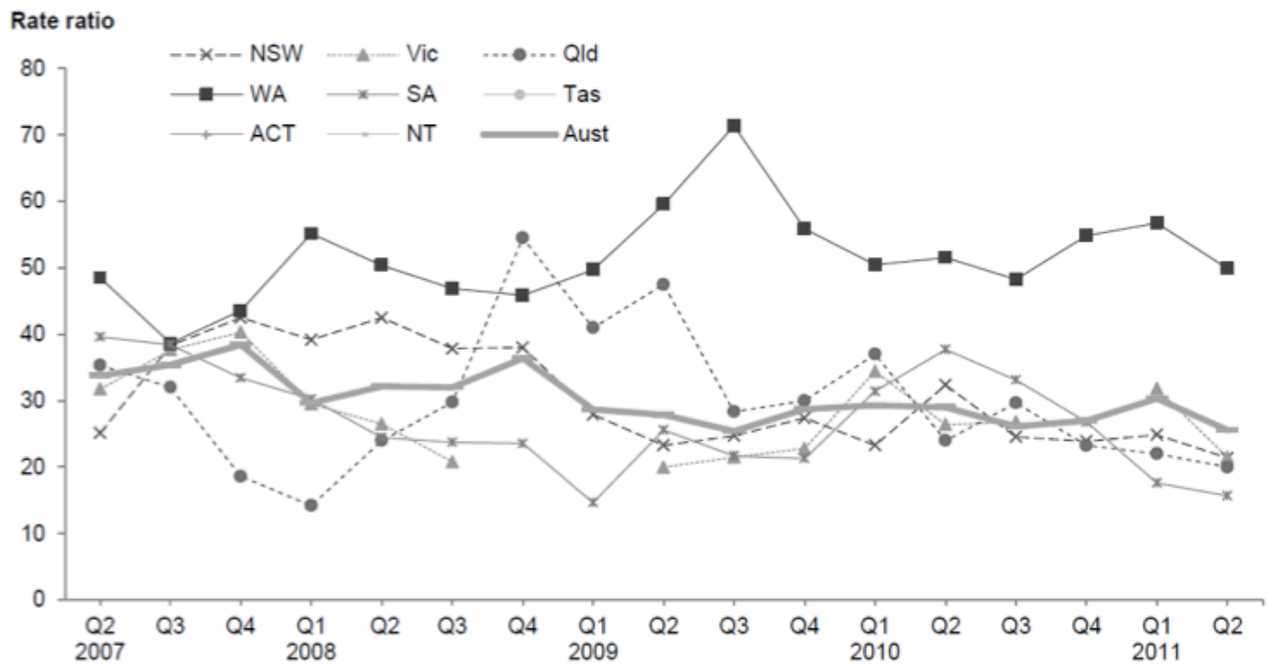
- At 5 July, 2007, 94 (67.6%) of the young people in detention in WA were Aboriginal.
- At 27 December, 2012, 111 (64.5%) of the young people in detention were Aboriginal.

In the 2011 Census, 3.1% of the WA population identified as Aboriginal and Torres Strait Islander peoples.[5] However, as Figure 2 shows, WA consistently has one of the highest rates of over-representation of Aboriginal young people in juvenile detention in Australia.

[4] Australian Institute of Health & Welfare (2012) Juvenile detention population in Australia 2011, Accessed at: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737421149, page 10.
[5] Australian Bureau of Statistics (2012) 2011 Census Counts — Aboriginal and Torres Strait Islander Peoples, http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011.

Youth Justice: Facts & Figures

Figure 2: Level of Indigenous over-representation among young people aged 10-17 in sentenced detention, states and territories, June quarter 2007 to June quarter 2011 (rate ratio) [6]



Notes

1. Rate ratio calculated by dividing the Indigenous rate by the non-Indigenous rate.
2. Rates (and therefore rate ratio) are not published where there were fewer than five young people.

Young people in detention on remand

The number of young people being held in detention on remand is of particular concern given Australia's obligations under Article 37 of the Convention of the Rights of the Child.

- At 5 July, 2007, 62 (44.6%) of the young people in detention had been sentenced, and 77 (55.4%) were on remand (unsentenced).
- At 27 December, 2012, 100 (58.1%) of the young people in detention had been sentenced, and 72 (41.9%) were on remand (unsentenced). [7]

[6] Australian Institute of Health & Welfare (2012) Juvenile detention population in Australia 2011, Accessed at: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737421149, page 24.
[7] Department of Corrective Services WA (2012) Statistics: Weekly Offender Reports, Accessed at: http://www.correctiveservices.wa.gov.au/about-us/statistics-publications/statistics/default.aspx.

The cost of keeping juveniles in detention in WA

Each year, the WA State Budget provides the actual (and estimates of the future) costs of detaining adult and juveniles in detention facilities, and under community supervision:

- **In 2006-07** it was budgeted to cost $248 per day to keep an adult offender in custody ($24 in community supervision). In comparison, it was budgeted to cost $547 to keep a juvenile in detention ($77 in community supervision). [8]

- **In 2011-12** it was budgeted to cost $294 per day to keep an adult offender in custody ($37 in community supervision). In comparison, it was budgeted to cost $645 to keep a juvenile in detention ($116 in community supervision). [9]

That is, it costs almost $250,000 per annum to keep one juvenile offender (and around $100,000 to keep one adult) in custody for one year. Imprisoning people is expensive business!

- Between July 2007 and December 2012, the juvenile detention population grew from 139 to 179. Keeping 40 more juveniles in custody (at the current rate of $645 per day), costs the State Government an additional $25,000 per day, or $9.4 million per annum.

[8] WA Treasury (2006) 2006-07 Budget Paper 2: Volume 3, Accessed at: http://www.treasury.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2006_-_2007/bp2_vol3.pdf?n=5954, page 1037.
[9] WA Treasury (2012) 2012-13 Budget Paper 2: Volume 2, Accessed at: http://www.treasury.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2012_13/2012-13_budgetpaperno2_v2.pdf, page 783.

The Rights of the Child

Juvenile justice approaches focusing on rehabilitation, proportionality and restorative justice aim to reintegrate the child and allow them to assume a constructive role in society. Such approaches seek to ensure that young people are treated in a way that protects their human rights, and promotes their sense of dignity and worth. These approaches are internationally recognized, through international conventions such as the Convention on the Rights of the Child (CROC), rules such as the Beijing Rules (Standard Minimum Rules for the Administration of Juvenile Justice) or the Riyadh Guidelines (UN Guidelines for the Prevention of Juvenile Delinquency).

All countries, except for the US and Somalia, are signatories to Convention on the Rights of the Child — the convention which sets out the basic rights of children and the obligations of governments to fulfil those rights.

The Convention consists of 54 articles, and is guided by four fundamental principles:

- ***Non-discrimination.*** *Children should neither benefit nor suffer because of their race, colour, gender, language, religion, national, social or ethnic origin, or because of any political or other opinion; because of their caste, property or birth status; or because they are disabled.*

- ***The best interests of the child.*** *Laws and actions affecting children should put their best interests first and benefit them in the best possible way.*

- ***Survival, development and protection.*** *The authorities in each country must protect children and help ensure their full development — physically, spiritually, morally and socially.*

- ***Participation.*** *Children have a right to have their say in decisions that affect them and to have their opinions taken into account.* [10]

However, despite Australia being a signatory to many international laws/obligations — including the Convention on the Rights of Child — the reality is that these frameworks have not always been appropriately implemented, in line with Australias CROC commitments.. Seeing the Convention framework implemented within domestic law in Australia is quite different to Australia being a signatory to the Convention.

[10] UNICEF (No Date) Convention on the Rights of the Child, Accessed at: http://www.unicef.org.au/Discover/What-We-Do/Convention-on-the-Rights-of-the-Child.aspx

A Change of Approach

Convention on the Rights of the Child

The Committee on the Rights of the Child has provided some guidance on the subject of children and criminal law. The Committee has written that:

> *Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.* [11]

Article 37 of the Convention makes it clear that arrest, detention and imprisonment should always be a measure of last resort when dealing with children. Article 40 requires measures for dealing with juveniles without resorting to judicial proceedings — in other words, diversionary options. This Article is further explained in General Comment no.10, where it draws a distinction between two types of diversionary interventions — one in order to avoid judicial proceedings, and the other in the context of judicial proceedings. The first relates to options such as cautioning and the use of Juvenile Justice Teams. The second group refers to sentencing outcomes that are more social and educational in nature, as opposed to punitive options (such as juvenile detention).

The Convention on the Rights of the Child makes clear both the basic rights of children, and the obligations those governments who are signatories to the Convention have to ensure those rights are fulfilled.

Recommendation 1. That the Convention on the Rights of the Child be incorporated as the guiding principles underpinning Western Australia's juvenile justice legal and policy framework.

Recommendation 2. That the Government and community sectors work collegially to promote further education/discussion across both sectors to improve the collective understanding of the principle of the "best interests of the child"— in the context of both service provision, and state legislation.

Recommendation 3. That regular reviews be undertaken of the practices of State Government and community sector agencies who work with children to ensure any practices or actions found not to be in keeping with Australia's obligations under the Convention on the Rights of the Child are addressed in a timely manner.

[11] United Nations Committee on the Rights of the Child (2007) GENERAL COMMENT No. 10 (2007) Children's rights in juvenile justice, http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf

A Change of Approach

Getting the investment right

The adoption of a Justice Reinvestment approach to criminal justice in WA would represent a significant shift. Justice Reinvestment is an approach where some of the money which would traditionally have been spent on prisons and incarceration is re-directed to community-based initiatives which seek to address the underlying causes of crime. It is an approach which "promises to cut crime and save money." [12]

Justice Reinvestment uses data to identify disadvantaged communities which contribute disproportionately to rates of criminal behaviour. It uses this data to determine where public funds can be most effectively allocated in order to address disadvantage and reduce offending. Reinvesting prison spending in communities can provide a broad range of programs — including healthcare, drug and alcohol treatment, mental health, housing, education or job training — to be strategically implemented in identified areas to maximise the potential to reduce crime and reoffending. [13]

On 26 November 2012, the Senate referred the following matter to the Legal and Constitutional Affairs Committees for inquiry and report: *the value of a justice reinvestment approach to criminal justice in Australia.*[14] Submissions to the inquiry close 15 March 2013. The reporting date is 16 May 2013.

There is growing interest in the WA community for the introduction of an evidence-based, alternate approach to determining service need (as a means of addressing rates of offending), and re-directing existing funding to meet such need.

Recommendation 4. That a roundtable meeting of all parties interested in the introduction of justice reinvestment in WA be convened to coordinate advocacy.

Recommendation 5. That individuals and organisations consider preparing a submission to the Senate inquiry into the "Value of a justice reinvestment approach to criminal justice in Australia".

[12] Smart Justice Project (2012) Justice reinvestment: investing in communities not prisons http://www.smartjustice.org.au/cb_pages/files/SMART_Reinvestment.pdf
[13] Ibid.
[14] For the inquiry's terms of reference, see: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/justice_reinvestment/info.htm

Collaboration

Sharing information for better results

When a young person is referred to a community sector agency for support, often the referring government agency's interpretation of privacy guidelines means that the community sector agency is provided with incomplete and inadequate information about the young person. This can significantly hinder the community sector agency's ability to assess and address the needs of the young person and related parties (family members etc.) in a timely and effective manner, and may also put service providers at risk (for example, if a client has an undisclosed history of violent behaviour). Sharing of information is also important because requiring a young person to re-tell their (often traumatic) story over and over again due to the inability of agencies to share information can be a frustrating and tedious process for a young person.

As the recent Legislative Review of the *Children & Community Services Act 2004 (WA)* found:

> *Information sharing within and across government and non-government sectors is recognised as a foundation for achieving collaborative service delivery and better outcomes for vulnerable children and families.*[15]

The Department for Child Protection currently has a memorandum of understanding in place with a number of community sector Family and Domestic Violence Case Management and Coordination Services (CMCS) which allows for information to be shared between agencies so as to prevent or respond to domestic or family violence.[16]

In the development of an instrument to allow for improved sharing of relevant information, consideration must to be given to the principle of the best interests of children and young people as outlined in the **Convention on the Rights of the Child.** Consideration must also be given to the role (and rights) of the young person in determining who is able to access information about them.[17]

Recommendation 6. Development of protocols or a memorandum of understanding between Government and NGOs that enables the sharing of information between Government and community sector agencies to improve service provision to young people.

Recommendation 7. That the community sector, through Youth Legal Service, seek comprehensive legal advice examining the extent to which (under existing legislation) information is able to be shared both between government agencies, and between government agencies and community sector agencies. Advice should also be sought regarding changes which could be made to information sharing provisions for the purposes of improving service provision to young people at risk.

[15] Department of Child Protection (2012) Report of the Legislative Review of the Children and Community Services Act 2004, http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3815434c6bc2d5a256705d2248257ac600087161/$file/5434.pdf, page 10.

[16] This Memorandum of Understanding is titled Information sharing between agencies with responsibilities for preventing and responding to family and domestic violence in WA.

[17] In 2009, the NSW Government introduced new information sharing laws within Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998. A similar information sharing framework in the Northern Territory came into effect on 1 July 2012 under Part 5.1A of the Care and Protection of Children Act 2012 (NT). These new provisions provide for the sharing of information between the government and community sectors where there is a reasonable belief that providing the information is related to a child's safety or wellbeing or would assist in making a decision, assessment or plan in relation to the child.

Collaboration

Improved collaboration within the community sector

The community sector also needs to actively seek opportunities to improve the delivery of services to young people in detention by improving cooperation and collaboration between those community service organisations who work with young people in detention facilities.

However, it is noted that some of the factors which hinder collaboration and cooperation between community sector organisations are outside of those organisations' control. For example, the State Government's use of competitive tendering to establish the terms and conditions for the provision of services within detention facilities can reduce collaboration as organisations feel they need to protect knowledge about their organisation's service provision.

Recommendation 8. Encourage collaboration between community sector organisations who work with young people at risk, to ensure the most efficient and effective delivery of services (particularly when services overlap).

A Youth Justice Partnership Forum

While there are a number of examples of government and community sector organisations working collaboratively through programs such as the Juvenile Justice Teams, there is no high-level mechanism to foster and encourage collaboration both between government departments and between the government and community sectors.

The existing Partnership Forum, hosted by the Department of Premier and Cabinet, "brings together leaders from State Government agencies and the not-for-profit community sector to improve outcomes for all Western Australians".[18] However, the Partnership Forum is missing a number of agencies (in particular, the Departments of Education and Corrective Services) with whom collaboration to address youth justice issues will be essential.

A Youth Justice Partnership Forum will seek innovative approaches to youth justice issues, identify opportunities for collaboration, and improve service delivery to young Western Australians. Key government agencies include the Department of Education, Department of Health, Mental Health Commission, WA Police, Department of Child Protection and Department of Corrective Services.

Recommendation 9. Establishment of a Youth Justice Partnership Forum to build collaborative partnerships, bring about positive outcomes for young people, and improve community safety.

The need to engage decision-makers

In order to better influence Government spending on issues relating to youth justice, the community sector needs to improve the way it gathers and shares evidence of the effectiveness of its programs. It is important that decision-makers hear clients' stories, about the challenges they face, about the challenges organisations face in supporting them, and the positive effects programs can have on the lives of young people at risk.

Recommendation 10. That the youth sector more actively engages with local politicians and senior public servants by, for example, providing invitations to visit programs and events which provide insight into the issues affecting young Western Australians and the positive approaches being taken by agencies working to support them.

Recommendation 11. That WACOSS develop and provide training to members in how to coordinate, and make the most out of a visit by a Minister or local Member of Parliament to an agency or event.

[18] Government of Western Australia (2012) Partnership Forum, http://www.partnershipforum.dpc.wa.gov.au/Pages/Default.aspx

Crime Prevention & Community

A "broker system" for working with at risk youth & their families

Research (and the experience of those who participated in the Youth Justice Think Tank) has indicated that young people at risk of offending often have a history of involvement with a range of government and community sector services and interventions.[19]

Programs which bring together multiple government and community sector agencies to work collaboratively to support young people and families at risk, have been run successfully in WA by the Midland District Leadership Council[20], and the Strong Families program. One of the strengths of these programs is that there is a central coordinator for each individual/family.

A problem solving approach to youth justice (similar to the Kilbrandon Model operating in Scotland[21]) would bring together relevant Government and community sector agencies in a formal hearing process to work to solve the young person's welfare and other issues (through the perspective of the best interests of the child).[22] Such an approach would provide an accountability mechanism which is missing in the current system. Providing external coordinated planning and scrutiny of actions to be taken to support a young person at risk is likely to improve the timeliness and suitability of interventions.

Improved coordination of the services provided to individuals by multiple agencies can reduce departmental workloads, reduce service duplication and provide a better spread of services that attend to each individual's needs. Such a model would also provide increased accountability relating to the suitability and effectiveness of the services provided by multiple agencies — however, the importance of having a senior, lead worker to manage the coordination of services cannot be underestimated.

Recommendation 12. That a case manager or broker system be developed to coordinate the various services working with individual young people at risk (similar to the Kilbrandon Model operating in Scotland). Such a system will mean less duplication and a better spread of services that attend to each individual's needs. Additionally, this model will increase accountability for service provision.

Recommendation 13. Recognition by Government funding bodies that it takes time to build trust and working relationships (with youth at risk and their families), and that funding models and programs designed to prevent crime must reflect this understanding.

[19] Australian Institute of Health and Welfare (2012) Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice, http://www.aihw.gov.au/publication-detail/?id=60129542237 .
[20] An example of best practice is the Midland District Leadership Council which brings together staff from the Department for Child Protection, Department of Education, WA Police and MPs from the local area to address local youth issues and adopt a problem solving approach to individual young people and families coming into contact with the various departments.
[21] See: The Scottish Government (1964) The Kilbrandon Report, http://www.scotland.gov.uk/Publications/2003/10/18259/26879; and Action for Children Scotland (2010) Where's Kilbrandon Now? http://www.actionforchildren.org.uk/media/1152872/wheres_kilbrandon_now_march_2010.pdf
[22] Current legislation (and departmental practices) relating to information sharing and privacy, prevent such an approach in WA, except in a few cases where specific arrangements have been made between agencies.

Crime Prevention & Community

Addressing educational disadvantage

The WA Department of Education's policy on attendance acknowledges that:

> *Consistent attendance and participation at school are essential factors in achieving social and academic learning outcomes. Schools that develop a supportive learning environment and an engaging and relevant curriculum create conditions conducive to regular school attendance.*

However, truancy tends to be seen either as a police issue (police taking children off the streets and returning them to school) or a welfare issue (parents denied benefits if their children are not attending school) — rather than as a reflection of the relevance of the schooling system to a young person. Alternative education opportunities are needed for young people who struggle to fit into the mainstream education system given the link between young people who are disengaged from the education system and those with contact with the juvenile justice system. This is because:

> *[s]tudies have also found a relationship between level of education, repeat imprisonment and criminal activity. Research indicates that prisoners with more imprisonments have, on average, lower levels of education (Rawnsley 2003). Similarly, a higher level of schooling is associated with a lower probability of arrest and incarceration (Lochner & Moretti 2004).* [23]

According to a national report titled The Health of Australia's prisoners, published in 2010:

> *Almost two-thirds (63%) of the general population aged 25–34 years had completed Year 12, compared with just 14% of prison entrants in that age group. More than one-third of prison entrants (36–37%) had a highest completed level of schooling of Year 9 or less, compared with around one in twenty (4–8%) of the general population.* [24]

Some schools have responded to the challenge of ensuring students remain engaged in education. For example, Sevenoaks Senior College in Cannington presents a new approach to schooling for year 11 and 12 students which it describes as: "an open, adult relationship between students and between staff and students". [25] Alternative education programs exist but are often under-funded and display significant shortfalls when used as a full substitute for schools.

The existing initiative of employing youth workers as core staff in schools is another approach to working with dis-engaged or difficult to engage students.

Recommendation 14.	Increased alternative education opportunities are needed for young people who struggle to fit into the mainstream education system, given the link between young people who are disengaged from the education system and those with contact with the juvenile justice system.
Recommendation 15.	Provision of dedicated funding for youth worker programs in WA schools.
Recommendation 16.	Development of a team of youth workers within the Department of Education whose responsibility is to track down students who are "whereabouts unknown". The list of students whose whereabouts is unknown provides a starting point to identify young people who may be at risk or in need of support.

[23] Australian Institute of Health & Welfare (2010) The health of Australia's prisoners 2009, http://www.aihw.gov.au/publication-detail/?id=6442468371&tab=2, page 18.
[24] Ibid, page 88.
[25] Sevenoaks Senior College (2010) A Fresh Approach to Senior Schooling, http://www.sevenoaks.wa.edu.au/

Crime Prevention & Community

Addressing unacknowledged needs

Many young people who have ongoing learning, cognitive or behavioural difficulties as a result of past experiences of trauma or diagnoses such as ADHD, Fetal Alcohol Spectrum Disorder or Traumatic Brain Injury — are unable to access support services because they do not neatly fit into either the mental health or disability ambits.

Fetal Alcohol Spectrum Disorder (FASD) is caused by a pregnant woman drinking alcohol at levels which harm her unborn child. The consumption of alcohol during pregnancy has been shown to cause brain damage in the child.[26]

> *FASD's effects on the brain can result in cognitive or behavioral deficits. These deficits may include mental retardation, learning disabilities, hyperactivity, attention deficits, and poor social skills. These and other problems associated with FASD may increase the chance that a person will break the law.*[27]

The WA Legislative Assembly Education and Health Standing Committee's report into FASD identified the significant cost of FASD to the community:

> *FASD is the leading cause of non-genetic, intellectual disability in Australia and the Western World. Data reflects an incidence rate of FASD greater than that of Down's Syndrome. When including a cost to the community of FASD, where there has been some contact with the criminal justice system, it may cost up to $25,000 each year averaged across every year of an affected person's life. Thus, by the time a person with FASD is 40 years of age they will have cost the community up to $1,000,000.*

International research indicates that young people with FASD have a high likelihood of coming into contact with the criminal justice system. In a submission to the Federal Government inquiry into FASD in 2012, the Alcohol and Other Drug Council of Australia (ADCA) cited statistics from the National Organization on Fetal Alcohol Syndrome in the US, which stated that 61 per cent of adolescents with FASD in the US have been in trouble with the law. Unfortunately comparable Australian figures are not currently available.

FASD is not a diagnosed disability, which contributes to the difficulty for people with FASD to obtain access to those support services — the sorts of services which could potentially reduce their likelihood of coming into contact with the justice system. This concern was addressed in the WA Legislative Assembly's report:

> ***Recommendation 8:*** *The Committee recommends that the Government and the Minister for Disability Services support changes to commonwealth and state legislation to better accommodate children and adults with FASD. In particular any reference to disability or intellectual disability to be broadened to include a definition of cognitive impairment as an ongoing impairment in comprehension, reason, judgment, learning or memory, that is the result of any damage to or dysfunction, developmental delay, or deterioration of the brain or mind.*

[26] WA Legislative Assembly Education and Health Standing Committee (2012) Foetal Alcohol Spectrum Disorder: the invisible disability http://www.parliament.wa.gov.au/C8257837002F0BA9/%28Report+Lookup+by+Com+ID%29/1740F63B37A1314A48257A7F000766DD/$file/Final+FASD+Report+with+signature.pdf

[27] US Department of Health and Human Services (2007) Fetal Alcohol Spectrum Disorders and Juvenile Justice: How Professionals Can Make a Difference, http://fasdcenter.samhsa.gov/documents/WYNK_JuvJust_Profs.pdf

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This report makes a range of further recommendations which have specific implications for youth justice, including (but not limited to):

> *Recommendation 11: The Committee recommends that the Attorney General make available additional funding in the 2013 budget for justice and corrective services to enable:*
>
> *a. The identification of people with FAS / FASD or who have a cognitive impairment.*
>
> *b. Additional programs to be developed to assist people with FAS / FASD or a cognitive impairment during their pre-sentence period, incarceration and following discharge to help them function in society.*

Diagnoses such as FASD, traumatic brain injury and other learning or cognitive impairments (such as ADHD) do not appear on Australia's List of Recognised Disabilities , thus limiting access to support services and to payments for carers. However, the prevalence of such diagnoses amongst young people who come into contact with the criminal justice system cannot be ignored.

For example, research has found that history of traumatic brain injury (a blow to the head resulting in a loss of consciousness or blacking out) is high amongst prisoners, with 37% of WA prisoners reporting having suffered from a TBI. People with TBI:

> *… may experience long-term changes in one or more of the following areas—physical and sensory abilities, cognition, behaviour and personality, communication and medical status.*

The high rate of TBI amongst prisoners "…may be attributed to the neuropsychological deficits and aggressive, violent, criminal behaviours that can result from TBI." TBI can be both a result of criminal behaviour, but may also contribute to it — for example, if a child suffers from sustained, serious physical abuse.

In addition, up to 70% of Youth Legal Service clients indicate some impairment of learning or cognitive abilities — the most common being attention deficit hyperactivity disorder (ADHD).

Legislators and government departments need to be more actively seeking opportunities to both prevent people suffering from such conditions, and to find ways to encourage young people with such diagnoses to engage in positive and meaningful ways.

There is also the need to consider the development training (available to both government and community sector workers) which ensures they have the skills to work specifically with young people who have had traumatic experiences — especially those who may have migrated to Australia through humanitarian channels.

More broadly, there is also a need to establish a formal, ongoing audit of the rates of mental illness, drug & alcohol problems and undiagnosed disabilities amongst prisoners in WA. Improved data is needed to accurately evaluate the need for services within prisons; to plan and manage/support prisoners once they are released back into the community; and to develop effective crime-prevention strategies. Prisoners are often people with extremely complex needs who need integrated multi-department/service responses to get the best outcomes for both individuals and their communities.

Recommendation 17. The findings of the WA Legislative Assembly's FASD report are welcomed, and the State Government and its agencies are encouraged to take action to implement the recommendations of the report.

Recommendation 18. Introduction of improved research and auditing of rates of mental illness, drug & alcohol problems and undiagnosed disabilities amongst young people in detention (or in contact with the criminal justice system) in WA. Improvements to such data collection and analysis will then be used to determine the provision of service responses for mental illness, drug & alcohol problems and undiagnosed disabilities which result in criminal behaviour.

[32] Loss of consciousness following an injury to the head is an indication that there has been an effect on the brain.
[33] Australian Institute of Health and Welfare (2011) The health of Australia's prisoners 2010, Accessed at: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737421312&libID=10737421312, page 37.
[34] Ibid, page 37.
[35] Ibid, page 37.
[36] Information provided by Cheryl Cassidy-Vernon, Director, Youth Legal Service WA.

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Children and the justice system

In Western Australia, the age of criminal responsibility is set at 10 years of age. Therefore, if a child under 10 is caught committing an offence, he/she cannot be held criminally responsible for the offence, or face any sanction as a result of his/her criminal behaviour.

It is not being suggested that the age of criminal responsibility should be lowered. However, sound research evidence suggests that a child, who consistently engages in offending behaviour while he/she is young, is more likely to carry on offending through their teenage years, into adulthood. As a result, appropriate early intervention programs are needed to support those children who are indicating the likelihood of becoming a habitual offender.
The provision of flexible programs to address a child's needs is important to ensure the most effective, long-term support is provided to that child and his/her family. For a child in contact with the Police (not justice system as he/she is too young) before the age of 10 years, it is critical to ensure that the child (and his/her behaviour) is considered and addressed within the context of his/her family circumstances.

Recommendation 19. That programs/services be developed for children under 10 years of age who have indicated a propensity to engage in offending behaviour.

Domestic & family violence and homelessness

There is strong evidence that children who suffer abuse or neglect are more likely to engage in criminal activity than those who do not.[37] Similarly,

> *…(y)oung people who are homeless may be more likely to commit crimes such as theft and therefore end up under juvenile justice supervision, and young people who are under [child protection] supervision may be more vulnerable to homelessness in later years.*[38]

Children make up a large proportion of population within domestic and family violence refuges or safe houses. Working with children experiencing domestic and family violence can have a huge impact. Programs and services can help repair disrupted attachment, work to heal trauma and generally increase a child's health and wellbeing. Furthermore working with children can help to break the intergenerational cycle of violence and is seen as a form of violence prevention.

Recommendation 20. Increased funding for and access to homelessness services and crisis accommodation for young people.

Recommendation 21. Increase of funding to all refuges and safe houses to allow for the employment of a full time child support worker, as well as funds to run programs and provide resources.

[37] Australian Institute of Health & Welfare (2012) Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice, Accessed at: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542238.
[38] Ibid, page 10.

During detention and home release

Forensic mental health services

The Inspector of Custodial Services estimates that up to 50 per cent of the children and young people in detention at any time may be experiencing mental health issues that are impacting on their safety or wellbeing.[39] The 2012 Stokes Report in mental health services in WA highlighted concern about the availability of mental health services available to young people in detention:

> *Mental health services at Rangeview are limited to a psychologist assessment and children are rarely able to access psychiatric assessment. The environment is essentially one of incarceration and punishment. Without access to mental health care, the condition of these children can deteriorate rapidly.* [40]

In 2011, the Council of Official Visitors submitted to the Commissioner for Children and Young People's Inquiry into the mental health and wellbeing of children and young people in Western Australia that:

> *The prime focus for psychological services in the juvenile detention centres is the suicide and self-harm risk management of young people in custody. A secondary focus is assessing criminogenic needs and therapeutic intervention for high risk offenders such as sex offenders and other seriously violent offenders. While some therapy is provided to those with acute mental health issues, there is little capacity for sustained treatment of others with chronic mental health needs and little direction on the management or prevention of emerging mental health issues among detainees.* [41]

The Frankland Centre, WA's only forensic secure inpatient mental health facility, is located on the Graylands Hospital campus. In 20 years, the number of beds available at the facility has not increased from the original 30, despite increasing demand, and a regular shortage of beds. WA currently has no dedicated forensic mental health service for young people. As a result, some young people are sent to the Frankland Centre, which is highly inappropriate. Some young people are treated in the 12-bed Bentley Adolescent Unit when they are released on supervised bail [42], but both Prof Stokes and the Commissioner of Children and Young People have agreed that this is highly inappropriate.

It is critical that appropriate mental health services are provided to young people while they are in detention, and to ensure that ongoing support is provided to them once they are released from detention, or once they are released from a forensic secure inpatient mental health facility back into detention.

Recommendation 22. That a dedicated forensic mental health unit for children and young people be established.

Recommendation 23. Improve access to mental health services (including psychiatrists) to young people in detention, to prevent (where possible) acute need whilst in detention; and to provide ongoing support after leaving detention (see also, Recommendation 24).

[39] Submission No. 21 from the Office of the Inspector of Custodial Services, page 2, cited in the Commissioner for Children & Young People's report (see footnote 41).
[40] Stokes, B (2012) Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia, Accessed at: http://www.amawa.com.au/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=1476&PortalId=0&TabId=132, page 115.
[41] Commissioner for Children & Young People (2011) Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia, Accessed at http://www.ccyp.wa.gov.au/files/MentalWellbeingInquiry/CCYP%20Mental%20Health%20Inquiry%20-%20Report%20to%20Parliament.pdf, page 81.
[42] Bentley Adolescent Unit is a 12-bed facility that provides acute psychiatric care for children up to the age of 18. The Bentley Adolescent Unit is not considered to be a "secure unit" from a Corrective Services' standpoint.

During detention and home release

Through-care and planning

Discussions held at the Youth Justice Think Tank workshops highlighted significant gaps in the provision of well-coordinated services and supports to young people. There was much support in the workshops for the use and funding of a holistic, *through-care* model[43] where engagement starts before the young person is released from detention, and this engagement continues post-release.

The value of a through-care model is recognised in the establishment of the Aboriginal Health Community Re-Entry Program — a program run in partnership between the WA Department of Health and Department of Corrective Services. This program engages Aboriginal prisoners pre and post-release from prison and seeks encourage to them to "take a greater interest in their health and to take action about their current acute and chronic health needs, including general healthy lifestyles, upon release".[44] The program aims to link people, once released to health services for conditions ranging from mental health, drug and alcohol use and chronic diseases.

However, while the through-care element is a strength of this program, its singular focus on health, rather than a focus on the holistic health and wellbeing of an individual is where it is lacking. Some of the other agencies which might be relevant to a young person before and after they are released from detention include:

- Department of Corrective Services
- Department of Child Protection
- Department of Health
- Mental Health Commission
- Department of Education
- Centrelink
- Department of Housing, and
- A wide-range of community sector agencies.

It is unrealistic for any young person at risk to a) be in a position to determine their needs and b) to navigate their own way through the maze of available government and community sector programs and services. Knowledgeable through-care managers will be able to help a young person achieve what they need in a way that contributes to the individual's overall wellbeing, and community safety post-release.

Recommendation 24. Increased funding for community organisations to provide personal, through-care support to (more) young people leaving detention.

Recommendation 25. That all relevant services are engaged by a central through-care manager to contribute to a coordinated, individual-centred planning process to be undertaken in consultation with a young person prior to them leaving detention.

[43] Outcare, is one Western Australian organisation which uses a through-care model of support when working with young people in detention. An Outcare case worker engages with a young person well before they are due to leave detention, works with them to make post-release plans and maintains contact with/support to them by once they leave detention.
[44] Unknown (2012) 3rd Annual Correctional Services Healthcare Summit 2012 — Conference Day 1: Agenda, http://www.bulkhandlingawards.com.au/iir/conferences/healthcare/correctional-services-healthcare-summit/agenda

During detention and home release

Availability of accommodation

If a young person is unable to stay with their family (or another responsible adult) upon release, it is not uncommon for them to end up being held in detention beyond the end of their sentence while they wait for Department for Child Protection to determine accommodation for them.

Given Article 37 of the Convention on Child Rights requires that "detention of a child should be as a measure of last resort and for the shortest appropriate period of time" — the prolonged detention of a young person, in particular, should be considered unacceptable. The State Government needs to ensure stable, affordable and supported accommodation is available to a young person leaving detention, and that forward planning is such that a young person does not need to stay in detention any longer than the term of their sentence.

Similarly, a lack of accommodation options also contributes to the high number of young people held on remand in WA. For a young person who has been charged with an offence to be released on bail, police must first identify a "responsible adult" to sign the undertaking that the young person will attend court on a certain day and at a particular time.

If a responsible adult willing/able to help look after and supervise the young person is unable to be identified, the young person must be held on remand. This is a particular issue for young people in regional areas because that young person may be remanded in a juvenile detention facility in Perth, far from their home and family. In regional areas there is also less likely to be access to bail services which provide limited, short-term bail accommodation as a last resort for young people who are granted. However, access to such a bail service is not guaranteed for metropolitan-based young people either — there is always much greater demand for such services, than there is supply.

Recommendation 26. Increased availability of a range of supported accommodation options for young people who are due to be released from detention or on bail, but who do not have safe, stable and appropriate accommodation to return to.

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