



REVIEW OF JUVENILE REMANDEES IN TASMANIA

APRIL 2006

The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children along with examining the policies, practices and services provided for children and any laws affecting their health, welfare, care, protection and development.

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FOREWORD

On 18 January 2005, the then Minister for Health and Human Services, the Honourable David Llewellyn, requested that I undertake an investigation into the apparently high number of youth on remand at Ashley Youth Detention Centre (“Ashley”) including an analysis of the reasons and contributing factors and recommend possible strategies to address this issue.

The Minister’s request arose from concerns I expressed in my 2003-04 Annual Report regarding the high proportion of children and young people in juvenile detention in Tasmania. In particular, Custodial Youth Justice figures indicated that there was a rise in the number of children and young people remanded to Ashley. While there were nine admissions for a period of detention to Ashley in 2001-02, there were 120 admissions on remand in 2001-02. The number of admissions for a period of detention was eight in both 2002-03 and 2003-04, however the number of admission on remand increased to 147 in 2002-03 and 159 in 2003-04. It was also apparent that many children and young people were serving lengthy periods of remand in custody.

Under Part 6 of the *Youth Justice Act 1997*, Ashley is responsible for the safe custody of children and young people (aged 10 – 17 years) that have been remanded in custody or sentenced to detention. In limited circumstances, young adults can also be accommodated at Ashley.

Processes for bail and remand are set out in the *Bail Act 1994*. This Act does not distinguish between children and young people or adult offenders. The remand process for children and young people in Tasmania is set out at pages 10-14 of the *Review of data on juvenile remandees in Tasmania – Final report* produced by the Australian Institute of Criminology (“the Data Review”), which is attached and marked “Appendix A”.

The adverse consequences of incarcerating children and young people are well documented. The social, emotional and psychological outcomes for children and young people who have been placed in detention are poor and the likelihood of future offending is very high. Incarceration for any period of time can influence the criminal trajectory of children and young people into the adult corrections system with the unquestionable adverse consequences for them as well as the community as a whole.

The community suffers as a result of the young offender adopting the values and lifestyle associated with antisocial behaviour which in itself is damaging to the community with increased criminal activity, a lowering of community safety and the high costs associated with police and security services as well the costs of an expensive prison service. Most often these

persons too have a high dependency on government services and have a low participation rate in the workforce.

The Data Review was completed by the Australian Institute of Criminology (AIC) pursuant to an agreement between the AIC and the Commissioner for Children. The AIC was chosen to undertake the data analysis as it has the necessary expertise, skills and reputation for analysis of this area of data at high standards. This expectation was realised.

Much of the data collection, liaison and drafting of this Report was undertaken by Ms Jennifer Muirhead, Research Officer, in my office. Her dedicated and percipient approach was invaluable.

David K. Fanning
Commissioner for Children

CONDUCT OF THE INVESTIGATION

In June 2003, I established a practice with Children and Families in the Department of Health and Human Services whereby my office would be provided with monthly details on each individual child and youth remanded to Ashley. This information included their gender; age; post code; date of remand; who they were remanded by and date of release from Ashley. From October 2004, I also requested and received the nature of the offence for which the child or youth was remanded. Throughout this period, the utmost cooperation and assistance was provided by Children and Families.

Following the request from the Minister in January 2005, I decided to progress the issue by examining data collected for the 2003-04 financial year. Accordingly, in June 2005 the 12 months of data were collated into a database. In June 2004, the AIC was engaged to undertake this task.

Some time was spent planning the approach to be adopted by the AIC. The agreed objectives of the Data Review were to examine:

- the main characteristics of Tasmanian juvenile remandees and remand episodes over a one year period;
- the time served on remand and wherever possible, sentencing outcomes over the one year period; and
- patterns of juvenile remand in Tasmania and other jurisdictions.

In July 2005, Dr Judy Putt (Research Manager, AIC) attended Hobart to discuss the project. Dr Putt, myself and a member of my staff attended Ashley to gain an overview of the issues associated with children and young people on remand, to clarify the data provided to my office and to receive further information on case management practices used by the centre. Following this meeting, limited consultations were held with Youth Justice stakeholders in the North of the state.

During July 2005, my staff also spent time at Ashley resolving issues related to the data provided on the remandees and approached Community Youth Justice for further information on sentencing outcomes.

In August 2005, Dr Julia Tressider (Research Analyst, Crime Reduction and Review Program, AIC) and I conducted two further meetings with Youth Justice stakeholders in the North and South of the state.

The AIC then reviewed the data, incorporating the outcomes of the consultation process.

The final Data Review was finalised in November 2005 and provided to the Commissioner for Children in December 2005.

ISSUES

Proportion of Ashley admissions on remand

Between 92 and 95% of the proportion of youth admitted to Ashley since 2001 were admitted on remand. The AIC states that very few youth are admitted as sentenced detainees without first serving time as remandees. Hence, the vast majority of youth who enter the juvenile detention system do so as remandees.

Time spent on remand

The length of time a youth spends on remand during any given year is influenced by the frequency at which the youth was remanded to custody and the delays experienced in progressing the youth's matter through the Courts. In many cases, these two factors have combined to cause youth to be remanded to Ashley for an inappropriate length of time.

Broadly, the Data Review revealed that many youth are spending a considerable period of time on remand. Nearly two thirds of youth spent more than 30 days on remand at Ashley. Furthermore, a third of remandees spent periods of almost three months or more on remand.

During the collection of the data, it became evident that a number of youth had been remanded more than once over the one year period. The Data Review showed that close to 50% of youth had been remanded more than once during this time.

When examining the frequency of remand, 25 of the total number of youth who completed their remand episodes during the year were remanded twice and 44% of these youth spent a total of 81 days or more on remand. Ten youth who completed their remand episodes during the year were remanded three times or more (completing their remand before June 2005) and seven of these youth spent more than 81 days on remand over the year.

The Data Review highlighted some particularly alarming cases. In one instance, a 13 year old had been placed on remand seven times during the year. In another case, the total amount of time spent on remand during the one year period was 298 days.

A number of explanations as to why youth are remanded in custody rather than granted bail were provided at the stakeholder consultations.

While there is no doubt that some youth are repeat serious offenders, it appears that familiarity with the Youth Justice system also has a role in determining whether a youth is granted bail or remanded in custody. In small communities, it is easy for youth who are recidivist offenders to become well known to those involved in the administration of the law. Stakeholder consultations identified that some youth are far more likely to be remanded in custody due to their offending history. This is so despite the relatively minor new offences for which they have been apprehended. Also, it was said that where a youth sentenced to detention is released from Ashley on a supervised release order and is then found in breach of this supervised release order, the youth is highly likely to be remanded back in custody irrespective of the circumstances.

Consultations also indicated that decisions as to whether to grant bail or remand a youth in custody are heavily influenced by a youth's social circumstances and environmental factors. In particular, whether the youth had adequate accommodation, a stable home environment or mental health concerns are major issues that influence decision makers when determining whether to grant the bail. The perception that Ashley was a 'safe' place to accommodate youth with high needs or care and protection issues was of particular concern to stakeholders and the lack of alternative housing or accommodation options for youth was seen to play a significant role in the number of youth remanded in custody.

Stakeholders highlighted a number of possible reasons as to why youth spend extended periods of time on remand. The reasons provided at the consultations echoed issues previously raised at inter-sectorial workshops on Youth Justice chaired by the Chief Magistrate in late 2003 and remain germane. Of significance were:

Lack of access to appropriate legal representation

It is rare that legal representatives attend Ashley in person. This is due, in part, to Ashley's remote location.

Furthermore, there are no legal practitioners solely dedicated by the Legal Aid Commission (LAC) to represent youth. Representation was perceived by some to be inadequate despite the best efforts of hard pressed Legal Aid lawyers. Legal services also do not have the capacity to prioritise cases involving youth, despite their increased vulnerability due to their age and lack of experience, knowledge and access to services.

Negotiations between defence and prosecution

Issues regarding the negotiations and communication between the defence and prosecution included the further investigation of matters by Tasmania Police and the inclusion of additional charges at short notice.

Access to information from prosecution

Details of the prosecution's case can only be obtained using FOI legislation which takes considerable time.

Preparation of pre-sentence reports by Youth Justice

Although pre-sentence reports offer vital information on which to base sentencing decisions, there is an allowance of 28 days for these reports to be prepared. This means that a youth will continue to be remanded at Ashley for an additional 28 days awaiting sentence following a plea of guilty, solely for the purpose of the provision of the pre-sentence report.

Pre-empting sentences of detention

Where there is a perception that a sentence will be one of detention, the child or young person may choose to serve time on remand knowing that the sentence will be backdated at the time of sentencing. This can serve as a disincentive for the matter being resolved in a timely manner.

Legal Framework

The legislation applicable to the arrest, bail and custody of alleged youth offenders includes the *Youth Justice Act 1997*, *Criminal Law (Detention and Interrogation) Act 1995*, *Justices Act 1959* and the *Bail Act 1994*. This legislation does not distinguish between bail applications from adults or youth.

The above legislation does not contain factors to be considered when determining whether to grant bail to children and young people, nor are there any statutory provisions regarding the maximum initial remand period for youth.

In other jurisdictions a clear distinction is made between the matters to be taken into account when a judicial officer or a person exercising quasi judicial powers decides if a youth is to be bailed or remanded in custody. For example, in Queensland section 48 of the *Juvenile Justice Act 1992* sets out matters to be taken into account by the Court or police officer when deciding whether to grant bail to a child. Furthermore, section 129 of the *Children and Young Persons Act 1989* in Victoria states that a child must be released unconditionally, released on bail, brought before a court or a bail justice within a "reasonable time" of being take into

custody and no later than 24 hours after being brought into custody. The section also requires a bail justice to remand a child to appear in Court the next working day, or within two working days depending upon where the Court is located.

There is a need for legislative reform in Tasmania to ensure that decisions regarding bail take into account the youth's age, development and relevant environmental factors.

Sentence outcomes

Of the total number of remandees whose matters were finalised a significant proportion, almost 40%, did not receive a sentence of detention. All other remandees were released with no order or on a community based order. Importantly, this includes children and young people who had been on remand more than once. This statistic seriously begs the question as to the validity of nearly 40% of the youth being remanded in custody in the first place.

Monitoring of offenders and data collection

The conduct of this investigation exposed a number of problems associated with the collection of data in the Youth Justice system.

Before being able to provide the AIC with sufficient data for meaningful analysis, significant time was spent collating and clarifying data provided to my office by Custodial Youth Justice and Community Youth Justice. This process highlighted the difficulties associated with tracking youth through the Youth Justice system and the need for improvements to data collection and the monitoring of offenders from remand to sentence and any orders imposed upon them, including compliance with those orders. For example, it was not uncommon for the Ashley data to not reveal the specific charges for which the youth had been remanded and Community Youth Justice frequently had problems ascertaining sentence outcomes.

In the Data Review, the AIC suggests that improvements to record keeping could be made to enable further investigation as to why juveniles spend long periods on remand. In my view, enhanced data collection is required to ensure the efficacy of current diversionary procedures as well as identifying the needs of youth who are repeatedly admitted to Ashley.

Health, welfare and protection issues

It was concerning, yet not surprising and referred to in the *Review for the Secretary DHHS of Resident Safety Ashley Youth Detention Centre* (September 2005), to receive feedback from stakeholders that some youth purposefully re-offend in order to return to the secure, structured environment of Ashley. Moreover, that Ashley was seen to by those administering

the Youth Justice system to be an accommodation option that could provide children and young people with a level of support services not available to them in the community. In particular, support services for children and young people with mental health issues, challenging behaviours or substance abuse issues.

The stakeholder consultations highlighted the lack of intensive support services for children and young people outside Ashley. However Ashley is also not able to provide these services. This includes Community Youth Justice services that do not have the capacity to support children and young people in the community due to under-funding and under-resourcing.

In addition, it is my understanding that the majority of children and young people at Ashley are, or have been, clients of Child and Family Services (the agency responsible for child protection in Tasmania), i.e. the youth have had identified care and protection issues prior to their admission to Ashley. This is supported by recent data provided by Children and Families that indicates that a child or young person under a care and protection order is almost 20 times (19.38 to be precise) more likely to be incarcerated in Ashley than a child or youth who does not have the protection of the Secretary of the Department of Health and Human Services.

However the interface between Youth Justice and Child and Family Services does not allow for a coordinated approach to addressing the ongoing needs of children and young people remanded to Ashley. Child and Family Services effectively relinquish their responsibility for children and young people to Youth Justice once they are admitted to Ashley. It appears that adequate arrangements do not exist to facilitate the continued involvement of Child and Family Services with children and young people who exhibit offending behaviour.

The problems associated with co-ordinating arrangements between Youth Justice and Child and Family Services were raised throughout the consultations. For example, as highlighted in the Data Review, stakeholders expressed concern at the operation of section 104 of the *Youth Justice Act 1997* which allows for the adjournment of a Court case to allow the investigation of protection matters by Child and Family Services. Cases referred to Child and Family Services under this section were reportedly unsuccessful and were often not afforded priority.

RECOMMENDATIONS

- 1) That a review be undertaken of the initiatives progressed in late 2003 involving inter-sectorial workshops on youth justice chaired by the Chief Magistrate and their outcomes.

- 2) The development of intra-agency protocols between Youth Justice services and Child and Family Services within Children and Families for monitoring and assisting youth placed on remand at Ashley.
- 3) The development of a comprehensive data collection system for Community Youth Justice and Custodial Youth Justice.
- 4) That relevant legislation be reformed to include processes for remand and bail specific to children and youth. In particular, the considerations to be made when determining whether to grant bail and restrictions as to the length of remand.
- 5) The development of bail options as alternatives to remanding youth in custody.

Appendix A