

**ALTERNATIVES TO SECURE
YOUTH DETENTION
IN TASMANIA**

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Foreword

Our law recognises that young people who offend are different from adult offenders due to their inexperience and immaturity.¹

The United Nations *Convention on the Rights of the Child* (CROC) recognises the importance of diverting young offenders from the formal processes of the criminal justice system and sets out fundamental principles for the treatment to be accorded children in conflict with the law.²

Tasmania's *Youth Justice Act 1997* (the Act) applies to young people aged 10 or more years old but less than 18 years at the time the offence the person has committed, or is suspected of having committed, occurred.³ The object of the Act is not merely to punish (or sanction) young offenders but also to ensure they receive appropriate treatment and rehabilitation.⁴ Accordingly, the Act provides for a variety of diversionary processes including police cautioning and community conferencing as well as for a range of minimal intervention court orders, such as community-based supervision orders.

The Act provides that a youth should be detained in custody for an offence only as a last resort and for the shortest appropriate period of time.⁵ This provision reflects our obligations under the United Nations *Convention on the Rights of the Child*.⁶

Detention has adverse effects on young people's employment outcomes⁷, brings them into contact with other offenders and removes them from their families, education and communities. Conversely, non-custodial programs have been shown to be very effective in reducing juvenile recidivism.⁸ Detention should therefore be used sparingly and as a last resort.

It is recognised that for a small cohort of young people, detention may be necessary – particularly to ensure the community is afforded protection from illegal behaviour.

The 'last resort' principle can only operate to reduce detention rates where there is an effective package of alternatives to secure detention available to judicial officers.

Background to this Inquiry

In December 2011, Aileen Ashford, the then Commissioner for Children released an Issues Paper entitled *Ashley Youth Detention Centre – The Last Resort*.

In that Issues Paper, Commissioner Ashford drew attention to the disproportionately high percentage of the youth justice budget in Tasmania being spent on the small cohort of young

people being held in custodial youth detention at Ashley Youth Detention Centre as compared to expenditure on those involved with community youth justice.

Commissioner Ashford stated that the budget for youth justice services in Tasmania for 2010-11 was \$14.2 million, of which approximately \$10 million was allocated to running Ashley. However, only 8% of the 354 young people under supervision in Tasmania were in detention on an average day in 2009-2010 with the remaining 92% under supervision in the community.

There has been a steady decline in detention (sentenced or on remand) of young people in Tasmania over the period June 2008 to June 2012.

During 2011-12 Tasmania had one of the highest rates of young people under community-based supervision, and between 2007-08 and 2011-12 the rate of young people aged 10 to 17 under community-based supervision in Tasmania on an average day increased.

The cost effectiveness of custodial detention is further undermined by extensive research showing that not only does it not work to address the causes of offending, but it also tends to exacerbate factors that contribute to a young person's offending and has adverse impacts on their education, employment and other outcomes.

In her Issues Paper, Commissioner Ashford concluded:

What is urgently needed is the development of a comprehensive Tasmanian Youth Justice Strategy which is long-term, evidence-based, appropriately resourced, regularly evaluated and which sets out a strong and sustainable vision for the future.

Youth Justice Continuum of Care Project

Consistent with Commissioner Ashford's call for a review of the youth justice system in Tasmania, the Minister for Children the Hon Michelle O'Byrne MP tasked Children and Youth Services to undertake a major review of the youth justice continuum of care.

In April 2013, the Department of Health and Human Services released a consultation paper entitled *A Continuum of Care to Prevent Youth Offending and Re-Offending*.

It was envisaged that the Commissioner for Children would undertake an inquiry into alternatives to secure detention for youth in Tasmania to assist Children and Youth Services in their review of the Youth Justice Continuum of Care.

The Children and Youth Services review is expected to lead to a comprehensive recommendations paper outlining the full suite of primary, secondary and tertiary services that exists or that could be implemented in Tasmania.

Terms of Reference for this Inquiry

In the initial Terms of Reference, 19 July 2012, the Minister for Children, the Hon. Michelle O'Byrne MP, charged the Commissioner for Children with providing a report addressing the possible closure of Ashley Youth Detention Centre as follows:

The Commissioner for Children inquire generally and report on the role of detention within the continuum of youth justice, through an analysis of the characteristics and pathways into detention of a cohort of AYDC detainees, and an assessment of, and recommendations for diversionary strategies, alternatives to incarceration, and possible closure of Ashley Youth Detention Centre.

The final Terms of Reference, 13 November 2012, for this Inquiry – attached in Appendix F – require the delivery of an evidence-based paper addressing:

- the key characteristics and pathways that contribute to youth offending – which result in youth detention in Tasmania
- the role of detention within the continuum of youth justice
- diversionary strategies, alternatives to incarceration and pre-/post-release support services current in Tasmania
- recommendations that will develop and strengthen diversionary programs and pre/post release support services, including alternatives to incarceration.

The Terms of Reference note that the outcomes of this Inquiry are intended to inform Children and Youth Services' wider review of the youth justice continuum referred to previously.

It is important to note that it would be outside the statutory functions and powers of the Commissioner for Children for this Inquiry to consider and make recommendations about the cost-effectiveness of various models of or alternatives to secure custodial detention at Ashley Youth Detention Centre.

Due to data limitations that became apparent in the earlier stages of this Inquiry, outcomes and recommendations have been finalised primarily on the basis of submissions received from stakeholders.

The reporting date was extended to 31 July 2013 to take account of a six-week hiatus that occurred between Commissioner Ashford's resignation and the appointment of Elizabeth Daly OAM as Acting Commissioner for Children.

Progress and conduct of the Inquiry

High-level reference group

In November 2012, Commissioner Ashford established a high-level reference group, which was then consulted early in 2013, providing valuable insights and suggestions for the conduct of this Inquiry. Reference group members are listed in Appendix A.

Consultations

In December 2012, Commissioner Ashford invited 25 government agencies and non-government organisations to make a submission to the Inquiry.

Commissioner Ashford asked that submissions focus on identifying what contemporary programs, services or strategies are needed to develop and strengthen the youth justice system in Tasmania, taking specific account of:

- a) Diversionary strategies
- b) Alternatives to detention
- c) Pre- and post-release support services for young people sentenced to secure detention.

A list of the organisations and agencies that made a submission to this Inquiry is in Appendix B.

Consultations were held through focus groups with young people under community justice supervision in the South, young people detained at Ashley Youth Detention Centre (Ashley), staff at Ashley and community youth justice workers in the North and in the South of the State.

A summary of the major themes arising from submissions is in Appendix B, and from focus groups in Appendix C.

Because of concerns about identification of individuals, it was decided not to provide full details about matters raised in focus groups. However, the invaluable insights provided and comments made have informed the recommendations made in this Inquiry.

The wider context

This Inquiry is the third major inquiry that has been undertaken into aspects of Tasmania's youth justice system.

In 2005, the then Commissioner for Children David Fanning undertook an investigation into the high number of youth on remand at Ashley Youth Detention Centre, including an analysis of the reasons and contributing factors, and made five recommendations to address the issue.

In his report, Commissioner Fanning noted:⁹

- Almost 40% of remandees at Ashley Youth Detention Centre did not receive a sentence of detention
- That the conduct of the investigation exposed problems associated with the collection of data in the youth justice system
- That some youth purposefully re-offend in order to return to the secure and structured environment of Ashley; Ashley provided accommodation and other support services that were not available in the community.

In 2007 the Legislative Council Select Committee delivered its report *Ashley, Youth Justice and Detention*, which contained 32 Recommendations to Government.

In April 2009 the government released a consultation paper as part of a review of the *Youth Justice Act 1997*. Outcomes from this process are reflected in the Youth Justice (Miscellaneous Amendments) Bill 2012, introduced into Parliament in late 2012 and which will likely pass through Parliament in the near future. Some of the amendments – particularly those that affect the manner in which breaches of bail are to be treated and those which formalise 'deferred sentencing' in the Magistrates Court – result in major changes for young offenders who might otherwise end up in Ashley.

Outcomes of this Inquiry

A major Recommendation arising out of this Inquiry is that government consider the adoption of a Justice Reinvestment Framework for the youth justice system in Tasmania.

Although definitions of 'justice reinvestment' differ in their complexity, a useful one is the following:¹⁰

Justice Reinvestment is now at the heart of debates about criminal justice policy. It describes the process through which resources currently spent on incarcerating offenders in prison can be redirected into community-based alternatives that tackle the causes of crime at source. It

is a form of preventative financing, through which policy makers shift funds away from dealing with problems downstream (policing, prisons) and towards tackling them upstream (family breakdown, poverty, mental illness, drug and alcohol dependence).

A justice reinvestment framework is consistent with a public health model or approach and with the rights-based approach espoused in the United Nations *Convention on the Rights of the Child* and other relevant international instruments.

Other recommendations, which focus on alternatives to secure custodial detention, are to be considered from a justice reinvestment framework perspective. This approach is consistent with recent high-level public inquiries and extensive overseas research.

In order to meet the desired outcomes of lower levels of offending and reductions in the secure detention population, it is essential to first identify and address the causal factors and pathways associated with youth offending in Tasmania. Unfortunately this could not be done because of data limitations.

Furthermore, an assessment of the potential for successful adaptation of innovative alternatives to secure detention can only be undertaken with reference to other aspects of service delivery along – and before – the continuum of youth offending and re-offending. It is understood that these matters will be addressed in the Children and Youth Services Youth Justice Continuum of Care Project, which will include mapping of the service system and recommendations for addressing deficiencies that are identified.

Abbreviations and Glossary

| | |
|---------------|---|
| ABS | Australian Bureau of Statistics |
| AIC | Australian Institute of Criminology |
| AIHW | Australian Institute of Health and Welfare |
| Ashley | Ashley Youth Detention Centre |
| ATDC | Alcohol, Tobacco and other Drugs Council |
| Beijing Rules | United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 |
| CCSS | Collaborative Court Support Service proposal |
| CHART | Changing Habits and Reaching Targets tool |
| CISP | Victorian Court Integrated Services Program |
| CMD | Court Mandated Diversion |
| CROC | United Nations Convention on the Rights of the Child |
| CYS | Children and Youth Services |
| DHHS | Department of Health and Human Services |
| DoE | Department of Education |
| DoJ | Department of Justice |
| DPP | Director of Public Prosecutions |
| DTO | Drug Treatment Order |
| HCLS | Hobart Community Legal Services |
| HEARTS | Health and Wellbeing, Education, Activities, Records, Tracking and Supports Program |
| JDL Rules | United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 |
| ROGS | Report on Government Services |
| SAAP | Supported Accommodation Assistance Program |
| SBB | Social Benefit Bonds |
| SEIFA | Socio-Economic Indexes for Areas |
| SECAPS | Secure Care Psychosocial Screening tool |
| SYP | Supported Youth Program |
| TasCOSS | Tasmanian Council of Social Service |
| TYSS | Targeted Youth Support Service |
| YJCAS | Proposed Youth Justice Court Advice Service |
| YLS-CMI | Youth Level of Service/Case Management Inventory |
| YNOT | Youth Network of Tasmania |

Glossary

Recidivism – generally understood as relapsing into crime, but definitions vary according to different methodological approaches.¹¹

Youth – a person who is 10 or more years old but less than 18 years old at the time when the offence the person has committed, or is suspected of having committed, occurred [*Youth Justice Act 1997* (Tas), section 4].

Recommendations

Data

- 1.1 That government creates or strengthens existing information systems to support a whole-of-government approach as part of an information-sharing framework.
- 1.2 That government identifies and brings together the range of data required for rigorous justice mapping in order to identify the key communities for implementing prevention strategies and programs for addressing juvenile offending, noting that such data is also essential for evaluating the outcomes of any such initiatives.

Youth justice strategy or framework

- 2.1 That government adopts an overarching strategy or framework for the provision of youth justice in Tasmania comprised of a vision, goals and guiding principles.
- 2.2 That government considers the adoption of a Justice Reinvestment Framework for youth justice in Tasmania.
- 2.3 In the event that a Justice Reinvestment Framework is adopted, that government re-evaluates the principles and provisions of the *Youth Justice Act 1997* and the internal policies and procedures that underlie its operation to align with a justice reinvestment approach.

Magistrates Court (Youth Justice Division)

- 3.1 That government facilitates the expansion across the state of deferred sentencing in youth justice matters and provides sufficient resources to the Magistrates Court and to those service providers essential to its success.
- 3.2 That government investigates the feasibility of establishing a state-wide general and multi-disciplinary collaborative court support service to provide a range of clinical, support, referral, supervision and case management services to clients of the Magistrates Court (Youth Justice Division).

Alternative or expanded bail options

- 4.1 That government establishes a state-wide after-hours bail support service for youth that
 - a) provides advice and assistance to police in circumstances where a youth is at risk of being refused police bail
 - b) assists youth to make alternative accommodation and transport arrangements with family, friends or a support service
 - c) assists youth on bail to successfully comply with their bail conditions
 - d) provides information and referrals for assistance in relation to housing, drug and alcohol, mental health and other needs.
- 4.2 That government establishes a state-wide structured bail support program for youth at significant risk of remand that
 - a) assists and engages youth to successfully comply with their bail conditions and avoid offending while on bail
 - b) includes the provision of suitable housing if needed
 - c) incorporates a triage, assessment and case management facility designed to provide diversionary support services, assistance and referrals in relation to housing, drug and alcohol, mental health, vocational and other needs.
- 4.3 That government examines and considers the feasibility of weekend or night detention, perhaps in conjunction with electronic monitoring or provision of placements in the community.

Community-based orders

5. That government ensures that young offenders considered by magistrates to be suitable for community-based supervision are given the necessary supports to facilitate successful completion of the terms of their orders.

Drug, alcohol and mental health issues

6. That government acknowledges that a significant proportion of young offenders have drug, alcohol and associated mental health issues by
 - a) establishing youth drug and alcohol residential rehabilitation services in Tasmania
 - b) considering the establishment of a new model of community supervision for young offenders with drug, alcohol abuse and mental health issues, whereby community sector youth workers would work in collaboration with Youth Justice Services and the Court to support a young person to fulfil their commitments to attend programs as directed

- c) establishing the equivalent of Court Mandated Diversion (CMD) options, focused on and applicable to young offenders with illicit drug and/or alcohol problems.

Alternatives to secure detention at Ashley Youth Detention Centre

- 7.1 That, consistent with the principles expressed in the United Nations Convention on the Rights of the Child and other relevant international instruments, government investigates the feasibility of introducing an alternative to secure custodial detention at Ashley through a continuum of residential facilities that include community-based, moderate care and secure care programs.
- 7.2 That in all youth residential facilities or youth detention centres and regardless of their level of security, an overall emphasis is placed on meeting the individualised psychosocial, educational, vocational and medical needs of young offenders in a dignified, structured, supportive and therapeutic environment.
- 7.3 That in considering Recommendations 7.1 and 7.2, government takes account of the experience gained implementing and developing similar alternatives to secure custodial detention, in, for example, those jurisdictions in the United States of America that have trialled and implemented the so-called Missouri Model (27 states) or Juvenile Detention Alternatives Initiative (39 states).
- 7.4 That government examines and considers the feasibility of weekend or night detention, perhaps in conjunction with electronic monitoring or provision of placements in the community.

Transition from detention

- 8.1 That consistent with United Nations instruments including the JDL Rules and the Beijing Rules, government considers the feasibility of introducing a transitional housing and support option for young people released from detention so that they have the support required to identify and pursue educational, vocational and other goals to facilitate their reintegration into the community.
- 8.2 That government ensures that exit or transition planning occur for all young people who are detained (whether on remand or as a consequence of a detention order) and that planning begin upon their admission to detention.

Workforce

9. That there be a review of youth justice worker skills and competency requirements and training.

Chapter 1: Tasmanian youth justice legislation and policy overview

Background – the legal process

In order to understand the role of secure detention within Tasmania's youth justice continuum, it is necessary to describe the legislative and policy environment in which it operates.

The age of criminal responsibility in Tasmania is 10 years of age. Further, Tasmanian law provides that a child under 14 years of age cannot be guilty of an offence unless it is proved that the child knew that what he or she did was seriously wrong in the criminal sense as opposed to merely naughty – this is a restatement of the common law doctrine of *doli incapax*.

Tasmania's *Youth Justice Act 1997* ('the Act') applies to young people aged 10 or more years old but less than 18 years at the time when the offence the person has committed, or is suspected of having committed, occurred.¹²

The Act commenced on 1 February 2000. Its proclamation changed the focus of dealing with young people who offend from a 'welfare-based' model to a 'restorative justice-based model'.

Restorative justice is described as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.¹³ This approach focuses on repairing the harm caused by the offence by taking into account the needs of the youth offender and of the victim and by encouraging the youth to accept responsibility for his or her behaviour. A hallmark of restorative justice is the use of community conferencing in appropriate cases to arrive at an outcome agreed to by the parties in response to the commission of an offence.

The preceding welfare model, on the other hand, operated on a needs-based approach associated with the positive notion that psycho-social deficits contribute to youth offending and, therefore, that young people who offend are amenable to rehabilitation. The welfare model became the subject of increasing criticism due to, among other things, the lack of procedural safeguards afforded to young people compared with those provided to adult offenders, and the fact that young people could be coercively treated and detained in response to relatively trivial offences, which, had they been committed by adults, would not have led to incarceration.¹⁴

Warner (2002) commented that

The *Youth Justice Act 1997* restricts the sentencing options in relation to 'youth' and lists general principles in relation to youth justice. These principles reflect a departure from

exclusive emphasis on the welfare concerns of the *Child Welfare Act 1960*, and embrace consideration of accountability, community protection and punishment as well as rehabilitation. But the common law principle that rehabilitation is dominant when sentencing children and that youth is a powerful mitigating factor seems to have survived.¹⁵

The object of the Act is to punish (soon to be amended to 'sanction') young offenders but also to ensure that they receive appropriate treatment and rehabilitation.¹⁶ Accordingly, the Act provides for a variety of transparent diversionary processes, including police cautioning and community conferencing, as well as for a range of minimal intervention court orders and community-based supervision orders.

The Act provides that a youth should be detained in custody for an offence only as a last resort and for the shortest appropriate period of time.¹⁷ This provision reflects our obligations under the United Nations *Convention on the Rights of the Child*.¹⁸

The underlying principles of the Act are accountability and restorative justice. The Act encourages young people who offend to take responsibility for their actions and restore the harm done to victims and the community.

The participation of victims, recognition of the role of parents and guardians, and opportunities for diversion and rehabilitation are all strong themes, which underpin the philosophy of enabling young people involved in the youth justice system to reach their full potential as citizens.

The Act was the subject of review between 2008 and 2012, and in October 2012 a Bill was introduced to amend some aspects of the Act. As at the date of this report, the amendments have not yet commenced. Some of the key amendments (which are intended to commence on a date to be proclaimed) include:

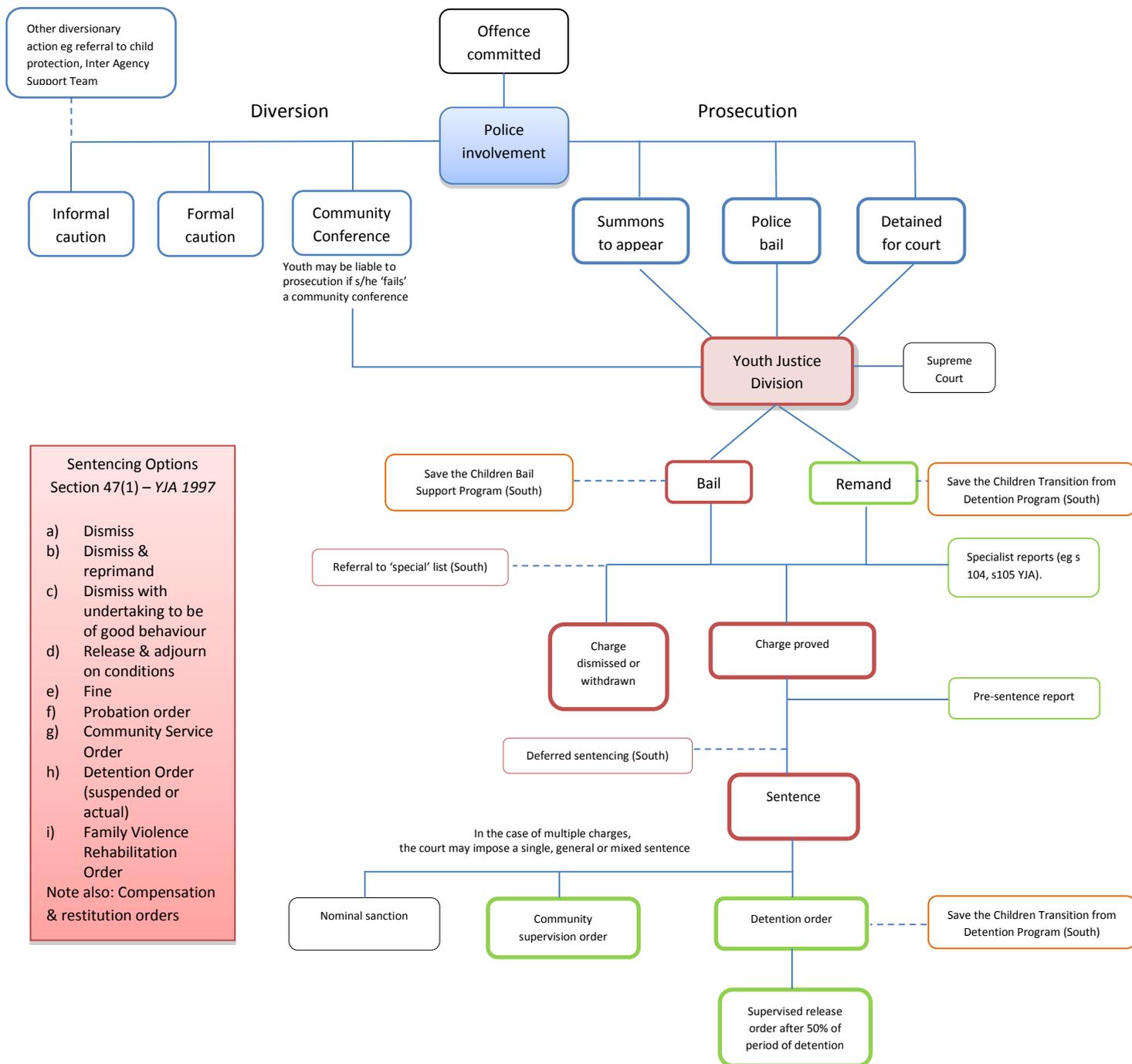
- Substitution of the term 'sanction' for the word 'punishment' throughout the Act to encourage the use of sanction in its reparative form.
- An increased focus on restorative justice.
- A requirement that the court gives more weight to the rehabilitation of a youth over any other individual matter and to consider the impact of orders on a youth's chances of finding or retaining employment.
- Inclusion of a statutory obligation upon police to advise a young person's parent or guardian as soon as practicable of a young person's arrest, as well as advising the young person of their rights, such as communicating with a relative or friend, legal practitioner and not answering questions that are put before them (unless required by statute).
- Clarification of police powers so that a young person may be arrested for a serious offence if it is necessary to prevent the commission of another offence that is serious in nature.
- A new requirement that the principles of the Act be considered when deciding whether to impose any bail conditions on a youth.
- Inclusion of new bail provisions which prevent a young person from being charged for a breach of bail (with the exceptions of a failure to appear before a justice, or

surrender to a court). Breaches can be taken into account when sentencing for the youth's substantive charge, but are not chargeable offences in their own right. Police will retain the ability to arrest a young person for contravention of a bail condition for the purpose of bringing the young person before a justice or court for reconsideration of bail. The youth may be released on police bail if a justice or court is unavailable.

- Statutory authority for the court to defer sentence for a period of up to 12 months after a finding of guilt or plea of guilty. The intent of this amendment is to continue to support a youth's rehabilitation in the community. This may lead to a decreased number of admissions to Ashley Youth Detention Centre. A deferred sentencing trial is planned before the relevant deferred sentencing sections are proclaimed.

The youth justice system in Tasmania includes the police, the courts, Youth Justice Services and non-government and community service providers. This part of the report briefly describes each stage of the youth justice continuum in Tasmania, from initial contact with police through to prosecution, sentencing and sentence supervision (see Diagram 1). Existing diversionary mechanisms are also explored as are services presently available to support young people, some of which have a diversionary focus.

Diagram 1: Map of the youth justice system in Tasmania



Legend

- Blue Tasmania Police
- Red Magistrates Court of Tasmania (Youth Justice Division)
- Green Youth Justice Services/Department of Health and Human Services
- Orange Non-government organisation
- Discretionary, non-statutory pathway

Police contact with a young person

Where it is alleged that a young person has committed an offence, Tasmanian youth justice legislation and policy operate to divert the young person from prosecution and/or custody at a number of stages.

Substantial diversionary activity occurs at the point of initial contact between police and a young person. Part 2 of the Act provides a statutory framework for the police, where appropriate, to divert from the criminal justice system young people who admit to having committed an offence. The Act provides for the following diversionary options at this juncture:

- informally caution the young person against further offending and proceed no further against the young person
- formally caution the young person against further offending
- require the Secretary to convene a Community Conference to deal with the matter.

Other forms of informal (non-statutory) diversionary options include engagement through a Community Respect Order, referral to an Interagency Support Team or referral to generalised support services.

Tasmania Police has an Early Intervention and Youth Action Unit (EIYAU) in each district. Collaboration between the members of the EIYAUs, Public Order Response Teams and the Victim Safety Response Teams provides police with the ability to identify risk factors in young people that come to the attention of police. These areas are then able to work together to consider risk factors in a holistic way, prioritise the needs of young people and their families, and to then implement appropriate intervention and referral to better address needs.¹⁹

At the point of initial contact, police must make judgements about the level of risk a youth poses and around his or her needs in order to decide what type of action to take (e.g. what, if any, intervention, diversion or referral should be made or whether or not police bail is appropriate). Unlike in some other countries, for example in New Zealand, it appears that Tasmania Police does not use a screening tool to assess risk of reoffending or need and that screening within the Youth Justice continuum does not occur until a youth has progressed to the court system (see below). Where judgements are made informally or without a systematic approach it is possible for there to be a risk of inconsistency or bias in the decision-making process. Acknowledgement of this risk has led to widespread recognition that standardised risk and need assessment and/or screening of offenders is best practice in order to improve the response provided to young people.²⁰ Weatherburn et al. have suggested that rather than waiting until a youth is well entrenched within the youth justice system, it may be useful to screen youth offenders for risk of reoffending earlier – for example, after two police warnings, cautions or conferences.²¹

Police cannot divert a youth charged with a 'prescribed offence' from the court's criminal justice system.²² Further, formal diversionary options apply only where a youth admits to the commission of the offence.

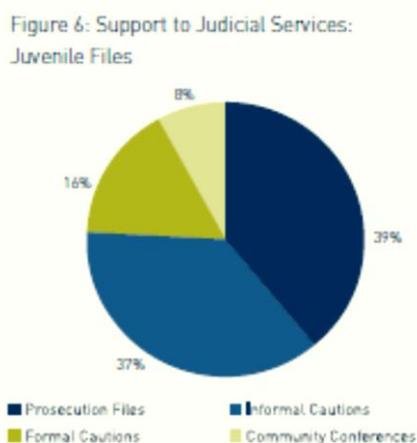
Diversion is clearly used to great effect in Tasmania. In 2011-12, 61% of juvenile police files were diverted to informal and formal cautions or community conference.

Juvenile prosecutions, community conferences and cautions by number 2009–2012

| | Unit of measure | 2009-10 Actual | 2010-11 Actual | 2011-12 Target | 2011-12 Actual |
|-----------------------------------|-----------------|----------------|----------------|----------------|----------------|
| Juvenile prosecutions | number | 2,011 | 1,630 | < prev yr | 1,645 |
| Juvenile conferences and cautions | number | 2,670 | 2,407 | < prev yr | 2,560 |
| TOTAL | | | | | 4,205 |

Source: *Department of Police and Emergency Management Annual Report 2011-12*

The figure below shows the distribution of the 4,205 juvenile police files lodged in 2011-12.



Source: *Department of Police and Emergency Management Annual Report 2011-12*

Community conferencing in Tasmania is conducted by Community Youth Justice (within the Department of Health and Human Services) in conjunction with Tasmania Police's Early Intervention and Youth Action Units.

The court can also refer cases for community conference before a matter is finalised (pursuant to s 37 of the Act).

Initiating a prosecution

It is not the rule that all offences brought to the attention of the authorities must be charged and prosecuted. As is the case with adults, police have discretion whether or not to charge a young person and prosecutors have discretion whether or not to instigate or continue a prosecution. There must be sufficient available evidence to justify the commencement or continuation of a prosecution and it must be in the public interest for a prosecution to be pursued.

Arrest and charge

If a decision is made to commence formal court proceedings, proceedings are commenced by complaint in accordance with section 27 of the *Justices Act 1959*. In essence, police can

- issue a complaint on summons for the young person to appear in Court on a specified date at a specified time²³
- arrest and charge the young person and release them on police bail to appear in court on a later date
- arrest and charge the young person and then detain them in a police watch-house until they can be brought before a magistrate, or if outside normal sitting times, before an after-hours court (usually constituted by a Justice of the Peace).

Section 24 of the Act provides limits on the power of arrest in relation to young people (in addition to those generally applicable to all).

The section provides that:

A police officer may only arrest a youth in relation to an offence if the arresting officer believes the offence is serious enough to warrant an arrest and also believes, on reasonable grounds, that

- a) the arrest is necessary to prevent a continuation or repetition of the offence;²⁴ or
- b) the arrest is necessary to facilitate the making of a police family violence order, within the meaning of the *Family Violence Act 2004*, an application for a family violence order under that Act or an application for a restraint order under Part XA of the *Justices Act 1959*; or
- c) the arrest is necessary to prevent concealment, loss or destruction of evidence relating to the offence; or
- d) the youth is unlikely to appear before the Court in response to a complaint and summons.

All charges against youths are commenced in the Magistrates Court of Tasmania (Youth Justice Division) ('the court'). The court does not have jurisdiction to ultimately hear and determine certain prescribed offences and or charges where a youth aged 15 or more is jointly charged with an adult and both plead not guilty – these charges must be transferred to the Supreme Court of Tasmania for trial and/or sentence.

Bail

Bail is the process by which a person charged with an offence (or found guilty of an offence and awaiting sentence or the outcome of an appeal) is released from custody but is required to appear before a court on a specified date and time.²⁵

In Tasmania, there is a *prima facie* right to or presumption in favour of bail.²⁶

In addition to the Act, the *Bail Act 1994* and the *Justices Act 1959* govern the decision by the court or an authorised police officer to either release or remand a charged young person. Bail may be granted by an authorised police officer or by the court (although in some situations it may only be granted by the court). Where a person has been taken into custody for a simple offence, they must be granted police bail unless there are reasonable grounds for believing that it would not be in the interests of justice to do so.

The matters of relevance to the decision whether or not to grant bail are set out in common law:

The considerations in the bail decision in Tasmania are systematically stated in *R v. Light* [1954] VLR 152, which is adopted by the Tasmanian courts in *R v. Fisher* [1964] Tas SR 318. The considerations thus established are generally similar to those established in the New South Wales legislation. The first of these is the likelihood of the accused's presence for trial. Subsidiary factors in this assessment are the nature of the crime, the probability of conviction or strength of the evidence, the severity of the possible punishment, and the bail history of the defendant. The second consideration is the safety of the public and the security of its property. Subsidiary to this are the character and antecedents of the accused, including any record, particularly any record of offences whilst on bail. If the offence presently charged had been committed whilst on bail the strength of the case becomes a factor in this assessment. The final consideration is any prejudice to the accused's defence if the accused is not free to prepare it, and perhaps not free to earn money legally to pay for it (*R v. Light* at 155-60).²⁷

The initial decision with regard to bail is made by an authorised police officer who decides whether to:

- grant simple bail (i.e. without conditions other than a requirement to appear in court on a specified date at a specified time)
- grant bail subject to conditions
- refuse bail.

A young person who is refused police bail will be presented before the Magistrates Court (Youth Justice Division) in custody, where the same options will arise.

In the event bail is refused by a magistrate, an avenue of appeal (by way of an appeal *de novo*) is available to the Supreme Court. In the event of a substantial change of circumstances, a new application may be made to a magistrate. If an application for bail is refused by a Justice of the Peace sitting in an after-hours court, the youth will be remanded in custody to appear before a magistrate at which point a new application for bail may be made.

Young people appearing before the court in relation to a bail application are generally entitled to free legal assistance and representation through the Legal Aid Commission of Tasmania's duty lawyer service.

Bail with conditions

Bail is conditional upon attendance at court at a specified date and time. Additional conditions of bail can be imposed in order to address any risk associated with an order for bail. The availability of suitable conditions may significantly impact on the decision whether or not to grant bail.

Tasmanian law permits wide discretion in terms of the types of conditions that might be imposed as an alternative to remand. It is proposed to amend the Act to include a requirement that regard must be had to the principles of the Act so far as they may apply to the youth's circumstances in deciding the conditions, if any, that are to be placed on the bail.²⁸

The availability of suitable accommodation with appropriate supervision will usually be important when determining the question of bail for a young person. Tasmanian legislation does not specifically provide for supervised accommodation as an alternative to remand but conditions such as a curfew or a requirement that a young person not leave their residence except in the company of a parent or guardian may be made.

Other conditions of bail that are routinely used in Tasmania include non-association, reporting and surety conditions.

The Magistrates Court of Tasmania is currently trialling a Hobart-based pilot that involves a dedicated magistrate dealing with almost all youth justice matters. Of relevance to the question of bail is the adoption of a 'special list' for eligible young people with complex matters. The special list involves a 'therapeutic, bail-based approach, especially in cases involving misuse of alcohol and drugs, where mental health problems exist, and where there is any other particular issue where the court might appropriately intervene'. An individualised bail support plan is prepared with collaborative input from relevant government and non-government agencies. The plan outlines the types of bail conditions that may be imposed by the court in order to address risk factors and the obligations on certain agencies to provide support and/or services to the young person during the period of bail.²⁹ An evaluation of this pilot is likely to be published in mid-July 2013.

Bail considerations in relation to Family Violence matters

An additional question regarding bail for young people arises in circumstances where a young person is charged with a family violence offence. Tasmania's *Family Violence Act 2004* (FVA) aims to highlight the criminal nature of family violence, to improve the safety of victims of

family violence and to put into place an integrated government response to the growing problem of family violence in our community. The safety, mental wellbeing and interests of people affected by family violence are the most important considerations.

Section 12 of the FVA provides that a person charged with a family violence offence is not to be granted bail unless a judge, court or police officer is satisfied that release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child. The effect of the section is to create a presumption against bail and to place the onus of proof on the applicant.

Further, where a charge alleges a breach of a police family violence order or court family violence order, a police officer does not have authority to grant bail. In such circumstances, the offender must be brought in custody before a magistrate for the question of bail to be determined.

It is unclear the extent to which young people are remanded in custody in Tasmania for family violence offences, but it is important to be aware that the presumption against bail introduced by section 12 of the FVA creates a high threshold for a young person to meet in any application for bail. It should also be noted that:

... s12 has attracted criticism in the Supreme Court of Tasmania judgements – Re: S [2005] TASSC 89, S V White [2005] TASSC 27 and Olsen v Tasmania [2005] TASSC 40. The central tenet of these cases is perhaps best illustrated by Justice Underwood in his submission:

It is one thing to take into account the safety, wellbeing and interests of an affected person or an affected child, it is quite another to refuse liberty unless the defendant discharges the onus of proof cast on him (or her – but it is invariably him) by s 12(1).³⁰

Breach of bail and failure to comply with a police bail notice

Tasmania's bail legislation provides that where a police officer has reasonable grounds to believe that a person has contravened a condition of bail or is about to do so, the police officer may arrest that person and their bail is consequently suspended. Contravention of bail without reasonable cause amounts to a summary offence.

It is unclear the extent to which young people on bail are charged with offences arising from a breach of bail conditions and the extent to which they are remanded in custody as a consequence in Tasmania. Research elsewhere suggests that breaches of bail conditions are a major reason for young people's appearances in court and for remand in custody.³¹

As mentioned above, there is a proposal before Parliament to amend the Act so that certain contraventions of bail by young people are taken into account at sentencing for the substantive charge rather than charged as separate offences. The amendment, if passed, would see police retain the ability to arrest a young person for contravention of a bail condition for the purpose of bringing the young person before a justice or court for reconsideration of bail.³² The extent to which such an approach will impact on arrest and remand rates remains to be seen.

Remand

It is recognised that for a small cohort of young people, remand may be a necessary response to secure a young person's attendance at court or to ensure the safety of the public. The AIC has however identified high remand rates of young people as a concerning trend because:

- extensive use of remand conflicts with the principle of detention as a last resort
- only a small proportion of remand periods result in young people being convicted and sentenced to a custodial order (although this varies by jurisdiction and increases with the age of juveniles)
- remand periods make it difficult to put in place appropriate rehabilitative programs for young offenders because the length of the period in custody is unknown and the ultimate outcome is uncertain
- remand rates place substantial resource demands on juvenile justice departments.³³

Young people who are remanded in custody are generally detained at Ashley Youth Detention Centre.³⁴ Remandees (unsentenced detainees) are not separated from sentenced detainees, a situation which is contrary to the requirement of the JDL Rules.³⁵

An important question in exploring diversionary options for young people in Tasmania is whether a number of young people currently being refused bail by police and ultimately remanded in custody by court order (or sentenced to detention orders) could be diverted from custody through the provision of a broader range of policies and programs.

During 2011-12, 94 young people between the ages of 10 and 17 were placed in detention in Tasmania – 81 were male and 13 were female. On an average day in 2011-12 the number of young people (aged 10 to 17) in detention in Tasmania as at the end of each quarter varied from 19 to 22. Between 10 and 13 of these young people were in unsentenced detention (remand) and four to eight were under sentenced detention. Since 2009-10, the number of young people in unsentenced detention (remand) has reduced by 31%.³⁶

The *Justices Act 1959* provides for a statutory maximum remand period for all persons who are remanded in custody by requiring their reappearance before the court every 28 days. This does not, however, preclude the court from ordering multiple and cumulative periods of remand. Data suggest that many young people spend long periods on remand awaiting court outcomes. Over the year 2011-12, the average length of time spent in unsentenced detention was 54 days – this period was 42% longer than for Australia as a whole (not including Western Australia and the Northern Territory for which data were not available).³⁷

Informing the court about a young person

The powers conferred by the Act are to be directed toward achieving its objectives. To that end, it is necessary for the court to understand a young person's background, family and social circumstances and factors leading to the young person's appearance before the court. Information can be requested from various sources including Youth Justice Services, Child Protection Services, Mental Health Services, Drug and Alcohol Services and other service providers.

Youth Justice Court officer

A youth justice worker will often be present in the courtroom. For young people appearing before the court who are already subject to the supervision of Youth Justice (custody or community), the youth justice worker is briefed by the young person's youth justice case worker with current information on the young person's circumstances to provide to the court should the court request this information. This information may assist the court to decide what action to take in relation to the young person's charge, including any diversionary options available.

Section 105 reports

If the court considers a youth may have a mental illness or disability, it may adjourn the proceedings for up to seven days to enable the youth to be assessed and for a report to be provided to the court as to any existing condition and a recommendation as to the youth's further treatment.

If the court considers that the youth would be granted bail if the adjournment were for some other reason, it may make an order granting the youth bail on the condition that he or she present himself or herself at a place the court considers suitable and allow himself or herself to be observed and assessed. Alternatively if the court considers that the youth would not be granted bail if the adjournment were for some other reason, it may make an order remanding the youth to be placed in an assessment centre, approved hospital, secure mental health unit or other place, as the court considers suitable, for observation and assessment.

Tasmania has no child or adolescent-specific mental health facility.

Section 104 reports

If at any time during the proceedings the court considers a youth is at risk or abused or neglected, or it would be in the interests of the youth for an investigation or proceedings to be taken under the *Children, Young Persons and Their Families Act 1997* (Tasmania's child protection legislation) the court may adjourn the proceedings and refer the matter to the Secretary of the Department of Health and Human Services. The court may remand the young person to be placed in some 'suitable place' in the interim.

It has been suggested that there is a reluctance to ask the court to use these provisions in case a young person is held at Ashley Youth Detention Centre during the period of remand.³⁸

Pre-sentence reports

When a young person has entered a plea of guilty or has been found guilty of an offence (i.e. guilt has been established), proceedings progress to the sentencing stage.

Sentencing may be informed by the preparation of a pre-sentence report prepared by a youth justice worker (s33). In most cases, a pre-sentence report is discretionary but the court cannot

impose a detention order, community service order or probation order without having first obtained one.

Where the court orders a pre-sentence report, the Secretary of the Department of Health and Human Services must cause the report to be prepared and provided expeditiously and, in any case, within 20 days (unless extended by the court). The court can request particular information, assessment and reports relating to the youth, the youth's family or other particular matters be covered in the report.

The report is informed by interviewing the young person (and possibly family members) together with details of the offence, any previous convictions and other relevant information. A formal Youth Level of Service/Case Management Inventory (YLS/CMI) assessment is undertaken to form the basis of all pre-sentence reports and recommendations regarding sentencing.

A young person is entitled to dispute part or all of the pre-sentence report. The Act provides a process by which to do so.

The current situation is that pre-sentence reports must be provided in writing; however, a bill tabled on 23 October 2012 proposes to amend that part of the Act relating to pre-sentence reports to enable reports to be given orally.

Sentencing and sentencing options

Sentencing options under the Act are varied. The Court may do one or more of the following:

- dismiss the charge and impose no further sentence
- dismiss the charge and reprimand the youth
- dismiss the charge and require the youth to enter into an undertaking to be of good behaviour
- release the youth and adjourn the proceedings on conditions;
- impose a fine
- make a probation order
- order that the youth perform community service
- make a detention order
- in the case of a family violence offence, make a rehabilitation program order.

Additionally, the court may make one or more of the following orders:

- a suspended detention order
- a restitution order
- a compensation order
- any other order a court may make under another Act in respect of the offence of which the youth is found guilty
- refer a matter to a community conference instead of proceeding to impose a sentence.

The Act provides limits on the duration of the orders that may be made (e.g. a period of detention must not exceed two years).

Any remand period served for or arising from an offence is counted toward service of a detention order. In practice this often means that the commencement of a detention order is backdated to the date upon which the youth was taken into custody.

Tasmania does not have statutory sentencing options such as home detention or periodic detention.

As discussed above, the Magistrates Court of Tasmania is currently trialling a Hobart-based youth justice pilot that involves a dedicated magistrate dealing with almost all youth justice matters. An important aspect of the pilot is the use of sentence deferral, which enables some young offenders to participate in a bail-based therapeutic program supervised by the court *before* sentence. Deferral of sentence is a flexible tool used in some other states which allows a court to assess a youth's prospects of rehabilitation and to provide him or her with an opportunity to address or begin to address underlying factors which may have contributed to their offending behaviour. The amendment Bill presently before Parliament (discussed earlier in this chapter) proposes to provide statutory authority for the court to defer sentence for a period of up to 12 months after a finding of guilt or plea of guilty, however, a trial is planned before the relevant sections are proclaimed

When deciding on an appropriate sentence, the court must have regard to all the circumstances of the case, including:

- the nature of the offence
- the youth's age and any sentences or sanctions previously imposed on the youth by any court or a community conference
- the impact the sentence will have on the youth's chances of rehabilitation generally or finding or retaining employment.

In addition, no sentence may be imposed on a young person that would be more severe than that imposed on an adult for the same offence. Further, detaining a young person in custody should be used only as a last resort and only for as short a time as is necessary. A recent amendment, once it commences, will also require that the rehabilitation of the youth is given more weight than is given to any other individual matter.

The court *may* record a conviction against a youth where the sentence involves an order for probation, community service, wholly suspended detention or rehabilitation. The court *must* record a conviction where it makes an order for detention but does not make an order suspending all of the period of detention.

In determining whether or not to record a conviction, the court must have regard to:

- the nature of the offence
- the youth's age

- any sentences or sanctions previously imposed on the youth by any court or community conference and any formal cautions previously administered to the youth
- the impact the recording of a conviction will have on the youth's chances of rehabilitation generally or finding or retaining employment.

The Supreme Court may sentence a youth for an offence or a prescribed offence under the Act and/or as an adult under the *Sentencing Act 1997* (s107 – YJA).

Youth Justice Services

Community Youth Justice

A community-based supervision order (e.g. probation, community service, suspended detention or supervised release order) is administered by Community Youth Justice within the Department of Health and Human Services.

In Tasmania every young person under supervision who is assessed as 'high' or 'very high' by the YLS/CMI Risk Assessment tool is supervised using the CHART (Changing Habits and Reaching Targets) Program. CHART is an offending behaviour program developed specifically to address the offending needs of young people on supervised orders. It is not suitable for young people on bail or remand except to the extent that they may have prior sentencing orders (in which case only prior convictions may be discussed).

Custodial Youth Justice

A young person sentenced to detention is taken to be in the custody of the Secretary of the Department of Health and Human Services.³⁹ A youth usually serves a period of detention at Ashley Youth Detention Centre ('Ashley') although this is a matter for the Secretary to determine.⁴⁰

Ashley Youth Detention Centre

Young 'delinquents' in Tasmania were commonly sent to prison until 1869 when a Boys' Training School was established on the site of the old Female Factory in South Hobart. In 1922, the school relocated to Deloraine to 'improve farm training and remove the decadent city taint' and was renamed Ashley Boys' Home.⁴¹

After the proclamation of the *Youth Justice Act* in 2000, the boys' home was transformed into a detention centre for male and female young people (aged between 10 and 18) sentenced to

a period of detention or remanded in custody pending the determination of proceedings for an offence.⁴² The facility was renamed Ashley Youth Detention Centre.

Deloraine is situated in the central north of Tasmania midway between Launceston and Devonport – approximately 50 kilometres from either city, or about 45 minutes driving time.

Section 15 of the Act provides that the Secretary must determine the detention centre at which a youth is to be detained. Ashley is Tasmania's only youth-specific detention centre although adult correctional and remand facilities located at Risdon, Hobart, Hayes and Launceston are also 'detention centres' for the purpose of the Act.⁴³ Ashley is a secure detention centre. Tasmania does not have open detention facilities (i.e. those with no or minimal security measures).

In 2001-02 a perimeter fence was built during a redevelopment following a fire that destroyed much of the secure accommodation existing on site at the time. The fenced area apparently excludes the farm and sports oval adjacent to Ashley.

Ashley currently has capacity for up to 51 'residents' and is made up of four secure accommodation units – Bronte, Huon, Franklin and Liffey. According to the DHHS website:

[the purpose of Ashley] is to provide secure care and custody for young men and women who are detained or remanded by the courts, through the provision of rehabilitative programs in accordance with the principles of the *Youth Justice Act 1997*.

The *Youth Justice Act 1997* places a dual requirement on Youth Custodial Services, which is the part of Children and Youth Services (DHHS) that manages Ashley. First, the rehabilitation of young people in conflict with the law; and second the protection of the community from illegal behaviour.

At the Ashley Youth Detention Centre, these are addressed through:

- Physical environment
- Organisational structure and systems
- Staffing number and quality, and
- The provision of programs and services to enhance the health and wellbeing of young people in detention.

There are 89.7 full-time equivalent staff⁴⁴ working at Ashley.

Young people are to be screened within five days of their admission to Ashley by custodial youth justice staff using the Secure Care Psychosocial Screening tool (SECAPS). This screening tool is intended to assess the level of recidivism risk and the intervention needs of young offenders in secure care.

Health care provision for Ashley residents became the responsibility of Forensic Health Services in 2011 following a recommendation in the White Report for clinical service provision

to Ashley. Young people are to be screened by a nurse using a 'Tier 1' assessment within 24 hours of admission and by a doctor within 72 hours.

Case management planning is to begin at the time of a youth's admission with the collection of information. Where possible, a case planning meeting is to be convened and attended by family/significant others, a Community Youth Justice Worker, the Ashley Youth Detention Centre Case Manager and the young person. From the meeting, a case management plan is developed.

'Programs' are the processes by which youth justice custodial staff interact with young people to achieve case management plan goals. Interventions can include attendance at school, vocational programs and counselling. The nature and extent of the intervention is determined by assessments and the recommended strategies resulting from them.

A school on the AYDC site (known as the Ashley School) is operated and funded by the Department of Education.

As part of its behaviour management approach, Ashley uses a 'colour-based' incentive scheme to encourage young people to understand the relationship between behaviour and consequences. Progression up or down the colour levels is determined by the young person's participation in programs, general attitude and behaviours as well as involvement in incidents. The levels range from 'blue' (which can involve full segregation) to 'green' (where incentives can include the opportunity to participate in external education and work-related activities and have family visits at a neutral venue).

Exit planning occurs for sentenced youth approximately four to six weeks before release. An exit plan details strategies and supports required to maximise the young person's successful return to the community. Exit planning does not occur for youth on remand.

Youth Justice Services does not offer semi-institutional or 'step-down' type facilities (e.g. half-way houses, educational homes or day training centres) to assist young offenders with their reintegration into the community.

Other services to support young people

Tasmania has several government and non-government programs to support and divert young people who are in the criminal justice system or are at risk of entering it and which may be available at different points within the youth justice continuum, ranging from early intervention to being at high risk of offending or having been involved in crime. An overview of selected programs or services is below. Selected services have been provided to illustrate (in general terms) the types of programs and services that exist. This is not intended to be comprehensive and, in any case, as part of its Continuum of Youth of Care Project, Children and Youth Services will map the service system in Tasmania.

Juvenile Fire Lighting Intervention Program (JFLIP)

The Juvenile Fire Lighting Intervention Program (JFLIP) is a family-based early intervention program provided by the Tasmanian Fire Service. It is designed for primary school-aged children who light fires out of curiosity or fascination with fire, or for experimentation. It may be appropriate for children as young as four or as old as 14. JFLIP has provided assistance to over 500 children and their families. Research shows a success rate of over 90%. Most of the children who go through the program stop their unsafe fire behaviour.⁴⁵ JFLIP practitioners participate in community conferences and formal cautions for young people who have committed fire-related offences.⁴⁶

U-turn [presently non-operational due to recent withdrawal of funding]

The U-Turn program is based on the National Motor Vehicle Theft Reduction Council's Best Practice Model and Business Plan for Young Recidivist Car Theft Offender Program. Until recently, it was delivered by Mission Australia under contract to Tasmania Police and was funded by the State Government.⁴⁷ Tasmania Police recently announced it would not continue to fund the program as a result of budgetary constraints.⁴⁸

U-Turn aims to break the cycle of motor vehicle theft by engaging participants in 'hands on' mechanical training while addressing life-skills and personal development issues. Participants engage in a structured ten-week automotive training course in car maintenance and body work, delivered in a workshop environment. The target group for the program is young people aged 15 to 20 years with a history of motor vehicle theft, or who are at risk of becoming involved in motor vehicle theft.

Other aspects of the program include case management and personal development, links to employment and further education, recreational activities, literacy and numeracy education, road safety education and post-course support.⁴⁹ A supported accommodation service was available to enable young people from the North and North West of the state to participate in the program.

Community Respect Order Program

The Community Respect Order Program is an early intervention diversionary option for youth and young adults. The program is based on a restorative justice approach – the offender performs reparation work in the community under the supervision of police. The program focuses on offenders who have committed damage to property offences, such as graffiti, and requires offenders to perform reparation work, including painting over graffiti.⁵⁰

Tasmania Police Early Intervention and Youth Action Unit

The coordination of Community Support Services, which consist of Victim Safety Response Teams, Early Intervention and Youth Action Units, Community Policing and PCYCs in each police district, enables police to identify risk factors in young people that come to their attention. These areas are able to work together to consider risk factors in a holistic way,

prioritise the needs of young people and their families, and to then implement appropriate intervention and referral to better address needs.⁵¹

Illicit Drug Diversion Initiative (IDDI)

This program allows police officers to use their discretion to divert drug offenders caught using or possessing small quantities of illicit drugs to health providers for education, counselling or appropriate treatment. The IDDI operates on three levels: first level caution; second level diversion (conditional on attendance at an intervention session with a health provider); and a third level diversion (conditional on attending a clinical drug assessment and at least one session of any prescribed drug treatment). Non-compliance may lead to prosecution.

Early Intervention Pilot Program (EIPP)

The EIPP is an initiative run by the Tasmania Police in collaboration with the Department of Health and Human Services to address the unlawful and sometimes excessive consumption of alcohol by young people and its consequences on their wellbeing and behaviour and on public health in general. Evaluation of the Program in 2012 found that '[t]he EIPP, in its first year of implementation, seems to have met some of its objectives and to attract strong support by stakeholders and parents alike.'⁵²

Police in Schools Program

The Police in Schools Program involves sworn police officers performing duties and providing a uniformed police presence in colleges throughout the State, as nominated by the Department of Education. The program is aimed at strengthening the relationship between police and young people resulting in outcomes beneficial to the whole community.⁵³

Inter-Agency Support Teams (IASTs)

IASTs are non-statutory committees operating in 22 Tasmanian municipalities. IASTs bring together state government agencies and local councils to work collaboratively to develop practical, multi-agency responses to support children, young people and their families with complex and multiple issues. The Department of Police and Emergency Management is the lead agency. IASTs were evaluated recently; however, as at the time of writing, the results of the evaluation are not available.

Police and Community Youth Club (PCYC)

PCYCs provide low-cost sporting, recreational, social and cultural programs primarily for 'at risk' youth. They aim to reduce crime by providing positive relationships between young people and police.

Save the Children (Tas) – Supporting Young People on Bail Program

Save the Children works in partnership with Youth Justice Services, the Magistrates Court (Youth Justice Division), Tasmania Police Early Intervention Units, the Department of Education and community agencies to support children and young people aged between 10 and 17 years who have been placed on bail in the south of the state. The program provides support to young people who are not under Youth Justice or Child Protection Orders and who have limited family or community supports. Youth workers work with young people to identify their recreational, educational and vocational/employment goals and aspirations. These goals are incorporated into a Bail Support Plan which is presented to the magistrate. Support is then provided for the young person during their bail period to help them meet their goals. The young person's willingness to meet their goals will (hopefully) be reflected in their sentencing outcomes.

Save the Children (Tas) – Transition from Ashley Youth Detention Centre Program

Save the Children assists young people in detention or remand at Ashley to reintegrate back into the community in the southern region of Tasmania. This program was introduced in early 2011. Save the Children works in partnership with Ashley Youth Detention Centre, Ashley School, Youth Justice, Child Protection Services, PCYC, the Department of Education, and community agencies to support young people to identify and meet their recreational, educational and vocational/employment goals and aspirations. Participation is voluntary.

The program works with youth offenders prior to release from Ashley and post-release in the community in southern Tasmania. This is a long-term, intensive, strengths-based, one on one, practical mentoring support program that aims to influence negative patterns of behaviour by modelling positive social behaviour and providing positive alternatives.

The program's youth workers meet face-to-face with each young person for a minimum of four hours each week. An individual program is developed based on the young person's educational, recreational and vocational goals and aspirations.

The Tasmanian Institute of Law Enforcement Studies, University of Tasmania, conducted an external evaluation of the program after 12 months of service delivery.⁵⁴ The evaluation's stakeholder survey revealed overwhelmingly strong support from stakeholders for the Transition from Ashley Youth Detention Centre program; 92% of stakeholders rated the project as running very well; 84% stated that the project had enabled them to work more closely with other organisations and services.

Importantly, the program apparently resulted in a drop in recidivism. Surveying of participants suggested that this was contributed to by the following achievements:

- Youth workers having developed meaningful relationships with young people
- Young people having a greater participation in educational programs post-release
- Broadening of young people's horizons through different activities
- The transitioning of some young people into employment.

Sixty-six per cent of survey respondents reported that there were barriers to the program achieving its objectives. These included:

- No support for detainees released into the north of the state
- Caseload is high and demand outstrips capacity
- Unstable accommodation for young people on release
- Lack of exit planning for drug and alcohol use.

The evaluation report provides evidence of positive outcomes in relation to: motivation and capacity to re-engage with the community; enhanced health and wellbeing; enhanced feelings of self-worth; re-engagement with education; working towards vocational goals; and reduction in reoffending. The report highlights the need for exit planning for all young people leaving detention whether on completion of sentence or upon bail being granted.

Targeted Youth Support Services (TYSS)

TYSS (also known as SYP in the North of the state) is a community-based program funded by Children and Youth Services in collaboration with Housing to provide intensive case management and therapeutic interventions for vulnerable young people and their families. The target group is young people aged between 10 and 17 years. This Program was reviewed recently and funding was secured for a further three years.

Whitelion

Whitelion is a state-wide service which offers young people the opportunity to build positive lives for themselves through role modelling, mentoring and employment. Whitelion supports young people as they transition from out-of-home care and the youth justice system to the general community. Programs focus on developing positive and beneficial relationships and providing access to opportunities for social and skills development to empower young people and support their progress towards life goals.⁵⁵

The Wilderness Program, Sport and Recreation Tasmania (WiP)

The Wilderness Program (WiP) assists people, including young people, who are contemplating change to realise their potential and tap into the benefits flowing from making positive choices. WiP provides a wide range of courses, including those for young people at risk.⁵⁶

Programs for Aboriginal and Torres Strait Islander young people⁵⁷

- **Wilderness Program, Aboriginal Specialist Camps, Sport and Recreation Tasmania**

This program provides participants with opportunities for personal growth in an environment of cultural practices, both historical and contemporary, supported by wilderness therapy activities. One of the key aspects is allowing participants to spend time 'on country' of cultural significance. This has proven to have a powerful impact on individual behaviour and the community building process. There are four specialist camps held per year.

Participants of the Aboriginal Specialist Camps are young people who have been involved within the youth justice system or have been identified as at risk of entering the youth justice system. Sport and Recreation Tasmania has two Aboriginal project officers that work with Aboriginal organisations across the state and act as a conduit for involving Aboriginal youth.

The fusion of benefits derived from wilderness therapy with a program that is tailored to the cultural needs and sensitivities of the Aboriginal community has the potential to deliver positive outcomes for young Aboriginal people either in, or at risk of entering, the justice system.

- **meenah mienne**

meenah mienne is an arts mentoring program for Aboriginal young people operating in Northern Tasmania. The original idea for meenah mienne was developed by Elders and artists from the Aboriginal community in Northern Tasmania. They identified a need to support Aboriginal young people who were at risk of being involved in the youth justice system and believed the arts to be the best way to reconnect them with culture and community. Through four years of community volunteer work and a commitment by Government, meenah mienne built a strong vision and support network. A trial project preceded the development of this program.

Through arts, cultural activities and one-on-one mentoring, meenah mienne aims to improve the emotional health and wellbeing of young people and foster more confident cultural and community connection. Through participating in meenah mienne, young people have opportunities for social and artistic development, as well as support for educational involvement and transitions to the workforce. Aboriginal community mentors provide opportunities to help a young person get to know more about their culture, help participants develop new skills, meet other artists and develop their own skills.

There are several ways in which mentors assist the meenah mienne program: through 'buddying' a young person over a period of time and getting to know them by doing creative things together; through becoming an artist-in-residence at the meenah mienne studio; through leading skills-sharing workshops, meetings, exhibitions or other arts events; and through visiting young people in detention to share culture or creative work.

In May 2009 meenah mienne opened its own premises (incorporating an art studio and art gallery) in the Launceston CBD. The building enables young people to connect with their

mentors, meenah mienne staff and other participants in a safe and supported environment free of potentially negative influences.

- [lungtalanana program \(Clarke Island\) – Tasmanian Aboriginal Centre](#)

The lungtalanana program is run by the Tasmanian Aboriginal Centre, and is based on a remote island (Clarke Island) in the Furneaux Islands off Tasmania. This program concentrates on targeting Aboriginal youth who are entering the justice system and due to be incarcerated at Ashley Youth Detention Centre. Aboriginal youth spend time on lungtalanana undertaking land management and activities that are informative and culturally based, as well as continuing their school education.⁵⁸

[Headspace \(National Youth Mental Health Foundation\)](#)

Headspace is a free, youth-focused health service for young people aged 12 to 25 that specialises in health related issues experienced by young people.⁵⁹

[Sexual Assault Support Service](#)

SASS provides information and support services to people who have been recently sexually assaulted, and counselling services for children and adults of all ages.

Given the importance of early intervention in rehabilitation and the consequent risk reduction of abuse of other children, SASS accepts a limited number of referrals of children aged under 12 years who have been displaying problem sexual behaviour.⁶⁰

SASS submitted a successful proposal to FAHCSIA under the Child Aware program for \$192,870 to run a project from 1 July 2012 to 31 December 2012 to identify key service deliverers and develop a best practice response to children displaying 'problem' or 'abusive sexual behaviour'.⁶¹

[Child and Adolescent Mental Health Services \(CAMHS\)](#)

Child and Adolescent Mental Health Service (CAMHS) provides a free and confidential community-based service for children and adolescents (aged 0 to 18 years). They provide specialist assessment and treatment of children and young people with serious mental health problems. Treatment may involve individual therapy, family therapy and group therapy. Medication may also be recommended.⁶²

[Child Protection Services](#)

Specialist adolescent teams have been set up in each of the regions to work with those young people who are clients of both Child Protection Services and Youth Justice Services.

Drug and alcohol services

The Tasmanian Alcohol and Drug Service offers a range of treatment, information, education and community-based supports for Tasmanians affected by alcohol and drug use. The service aims to ensure that Tasmanians affected by alcohol, tobacco and other drug use have access to appropriate, timely, effective and quality treatment services, supports and interventions that are based on contemporary best practice.

There is no youth-specific drug and alcohol treatment or detoxification facility in Tasmania.

Department of Education

The Department of Education facilitates programs across the state which use diversionary strategies or provide support to young people within the youth justice system.

Learning Services South funds diversionary strategies such as The House, EdZone and EdZone-on-Line. In Northern Tasmania RADAR is a specialist education provision for trauma impacted young people who are not engaging successfully with mainstream schools. Anecdotal evidence suggests it may reduce the likelihood of offending.

Additionally, located within the Ashley Youth Detention Centre, the Ashley School provides educational programs to students aged from 12 to 19 years.

In the South, a Home and School Liaison Officer works in the Magistrates Court to engage students and support families to maintain links with an educational pathway.

Magistrates Court of Tasmania – Youth Justice Specialist Magistrate Pilot

The Magistrates Court's single youth court magistrate pilot has operated in Hobart since January 2011. It aims to improve timeliness of finalisations, develop and apply specialist expertise in youth justice matters, better coordinate youth justice services to the court and increase collaborative approaches between relevant agencies.

The pilot incorporates a specialist youth justice magistrate in Hobart and the use of a 'special list' for at-risk or vulnerable youths (where sentence can be deferred while a young offender participates in a bail-based therapeutic program supervised by the court). The pilot adopts a therapeutic, problem-solving approach to attempt to address the broader social issues underlying youth offending behaviour.

The pilot operates without a distinct budget allocation. An evaluation of the pilot is underway and, subject to the outcomes of the evaluation, the Court may seek to expand the pilot's approach to other regions of the state.

Chapter 2: Profile and risk factors

Introduction

The approach taken in this chapter of the report is largely based on developmental criminology, which has the following characteristics:

The defining feature of developmental criminology is its focus on offending in relation to changes over time in individuals and their life circumstances, with most research being focused in practice on childhood and youth. Developmental criminologists are concerned with questions of continuity and change in behaviour, including the onset of and desistance from offending, and patterns of offending over time.⁶³

Developmental criminology is concerned with three main issues: the development of offending, risk factors at different ages and the effects of life events on the course of development.⁶⁴ Risk factors have dynamic, ongoing cumulative effects on development.⁶⁵ While the vast majority of young people do not come into contact with the youth justice system, where there is convergence of these risk factors the likelihood of interaction with youth justice is much higher.

Suggesting that any particular factor may be 'causal' (and thus having high predictive value) is fraught with problems, particularly as such an approach tends not to address protective factors and individual agency or resilience. A more complex approach is to suggest that the coalescence or convergence of various factors, along with 'precipitating' conditions or factors, helps explain why some individuals become part of a youth justice system while others do not – notwithstanding that the majority of young people desist from repeat offending (the so-called 'desistance paradigm'⁶⁶) and other individuals are 'not caught'.

These factors alone, or even in combination, do not necessarily lead to offending – this only occurs in interaction with the youth justice system. The vast majority of young people either do not offend or, if apprehended for offending, are simply cautioned and do not offend a second time.

Data limitations

It was originally envisaged that it might be possible to undertake a fully integrated, multivariate, causal pathways analysis of the variables ('risk factors') commonly associated with children in the youth justice system using the data available in the KIDS data warehouse. The Commissioner was hoping to engage an external consultant to undertake this analysis. The pathway analysis would not only determine which variables are important and when, but also the strength of the causal relationships.

However, it became apparent after discussions with DHHS that the disaggregated, de-identified data (with linkage keys) could not be made available for interrogation because some of the essential data for understanding such pathways would not be available, even in descriptive form. This data included:

1. School absences, suspensions, expulsions – which could be taken from the Department of Education's Student Support System (SSS), and is currently available to Child Protection workers
2. Police cautions [not sure whether informal cautions are recorded]
3. The nature of offences alleged to have been committed by individual young people in the database
4. Community-based supervision data (for comparison with Ashley residents) – which could be taken from the Youth Justice Information System (YJIS).

What was provided was a series of Excel spread sheets containing a number of variables in the areas of child protection, out-of-home care, community youth justice, custodial youth justice and SEIFA data for Ashley remandees and detainees over a six-year period, 2006-07 to 2011-12, from which eight two-way tables/charts have been extracted (descriptive statistics). There is little more that could be extracted from the data available. The variables covered in these spread sheets included: gender, age groupings (10 to 14, 15 to 17, 18+ years), child protection (care and protection order, notifications and substantiations – before and after age 10), community orders and conferences (failed and successful), detention and remand, and out-of-home care according to number of placements. Over the six-year period the data represents 423 discrete individuals.

Profile and risk factors associated with youth offending

At the end of June 2012, the estimated resident population of young people in Tasmania aged 10 (the age of criminal responsibility) to 17 years was 53,532 (approximately 10.5% of the Tasmanian population).⁶⁷

The majority of these young people (96%) experienced an adolescence characterised by no involvement in juvenile offending – only a small proportion of young people in Tasmania (4%) commit offences.

Only two-thirds of those who do offend will be proceeded against by the police.

Generally, over two-thirds of juveniles offend just once before desisting, and a further 15 per cent desist after committing two offences; most juvenile involvement in crime stops without any need for intervention.⁶⁸

Engaging in some anti-social behaviour during adolescence could be considered normative developmental behaviour – a large proportion (85-90%) of adolescents engage in delinquent or criminally offensive behaviour on at least one occasion, and as such, it is transitory in nature.⁶⁹ In Tasmania, like all other jurisdictions, the peak age for offences is 18 and offending rapidly declines thereafter (see Diagram 2).

Research in other Australian jurisdictions suggests that most of this delinquent or criminal behaviour goes undetected – only a minority of these ‘offenders’ have formal contacts with the police.⁷⁰

What then are the key characteristics of the young people who do go on to offend and re-offend, as distinct from the one-off offender?

There is extensive research that identifies the common demographic and behavioural characteristics (so-called ‘risk factors’) associated with children and young people, who commit offences AND end up in detention. These characteristics include:

- family ‘dysfunction’ and family violence
- socio-economic disadvantage
- parental criminal history
- experience of child abuse and neglect and placement in out-of-home care
- a physical, intellectual or learning disability
- mental health issues (including alcohol and other drug issues)
- sporadic or interrupted participation in formal education
- periods of homelessness.

A word of caution:

Experience of some or all of the above risk factors does not pre-dispose a young person to commit offences, but it may increase the probability of such behaviour.

Only a small minority of young people who experience family 'dysfunction', intellectual disability, poor mental health, etc. will end up in the youth justice system. In other words, these factors are not causal but are symptomatic of a whole range of other issues, including the failure of social welfare and health systems to deal with, in particular, mental health, substance abuse, child maltreatment and educational disengagement.⁷¹

There are also strong critiques of concepts of risk, particularly in terms of the 'risk society' and aversion of risk (Beck) and governments' attempts to monitor and control risk in order to maintain a sense of social care, order and stability through constructions or assessments of risk such that, 'When risk is located in or attached to people, moral values are ascribed to them ... people are deemed to be good or bad on the basis of their risk identities.'⁷²

There is also strong criticism of a developmental approach to risk factors but, as Cox points out, taking principally from Steinberg (2009)⁷³, '... the research about the adolescent brain merely points to a *correlation* between structural and functional brain development and behaviour, not a direct and *causal* link, thus disputing the notion that an adolescent's risky behaviour is "hard wired".' In fact it is quite the reverse; the time of adolescence is a time of high neuroplasticity.

From a policy and practice perspective this means taking a strengths-based approach to policy and practice, such as that taken in the field of positive youth justice, with a focus on young people's moral agency. As pointed out in a directly related context, child protection, Lamont (2013), quoting Goldman et al (2003) points out that '**... while certain risk factors may exist among families where child abuse and neglect occurs, this does not mean that the presence of these factors necessarily leads to child abuse and neglect**' (Lamont's emphasis).⁷⁴

In other words, while certain so-called 'risk factors' are associated with youth offenders (retrospective prediction) this does not mean that having such factors will necessarily lead to youth offending (prospective prediction). The logical fallacy here is made quite often, either explicitly or implicitly, and incorporated in government publications.

The Scottish Crime Commission has claimed that these 'risk factors' are evidence of system failures to address the health, welfare and other needs of such young people and their

families before they enter the justice system. Each of the key 'risk factors' is addressed in turn below; associated prevention strategies will be detailed later in this report.⁷⁵

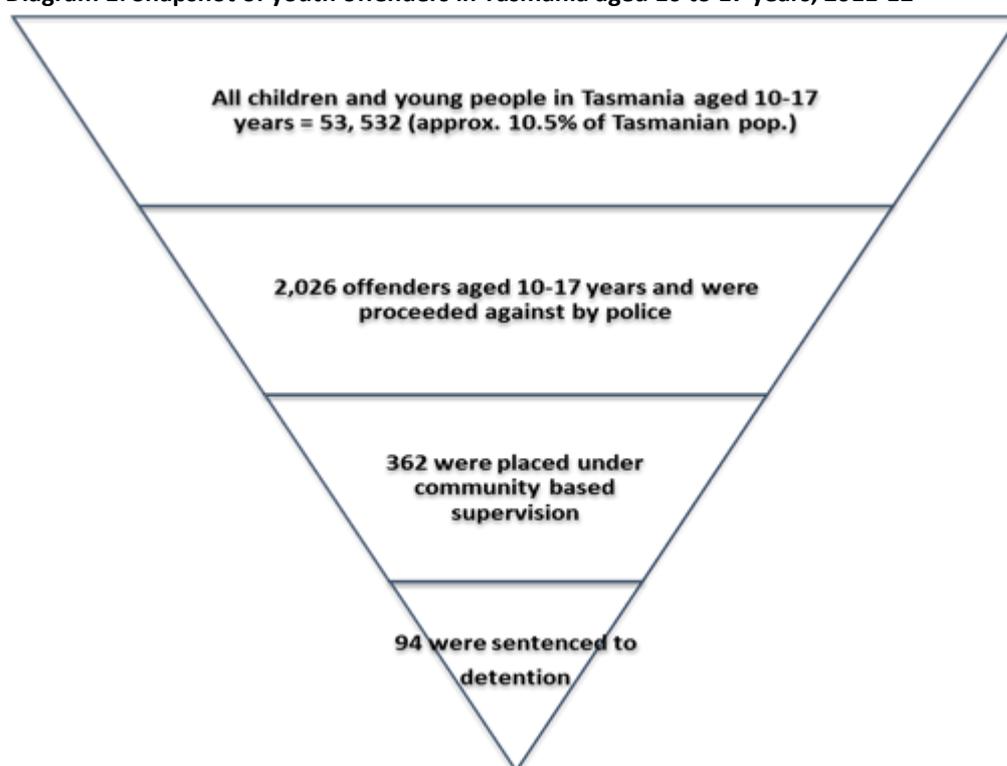
1. The youth justice 'funnel' and trends in Tasmania

The diagram⁷⁶ below provides a schema to understand the number of young people involved in the criminal justice system at different points and with reference to all Tasmanian children and young people aged 10 to 17 years.

National juvenile justice data is published annually by the Australian Institute of Health and Welfare (AIHW) and the Australian Institute of Criminology (AIC). The following snapshot is from the latest available juvenile justice data from the AIHW, the Australian Bureau of Statistics (ABS), and the *Department of Police and Emergency Management Annual Report 2011-12*.

Of an estimated population of 53,532 young people aged 10 to 17 years, 2,026 committed offences and were proceeded against by police; police actions were comprised of prosecutions (39%), informal cautions (37%), formal cautions (16%) and community conferences (8%). From 2,026 offenders, 362 (18%) were placed under community-based supervision, and 94 (5%) were placed in detention.

Diagram 1: Snapshot of youth offenders in Tasmania aged 10 to 17 years, 2011-12



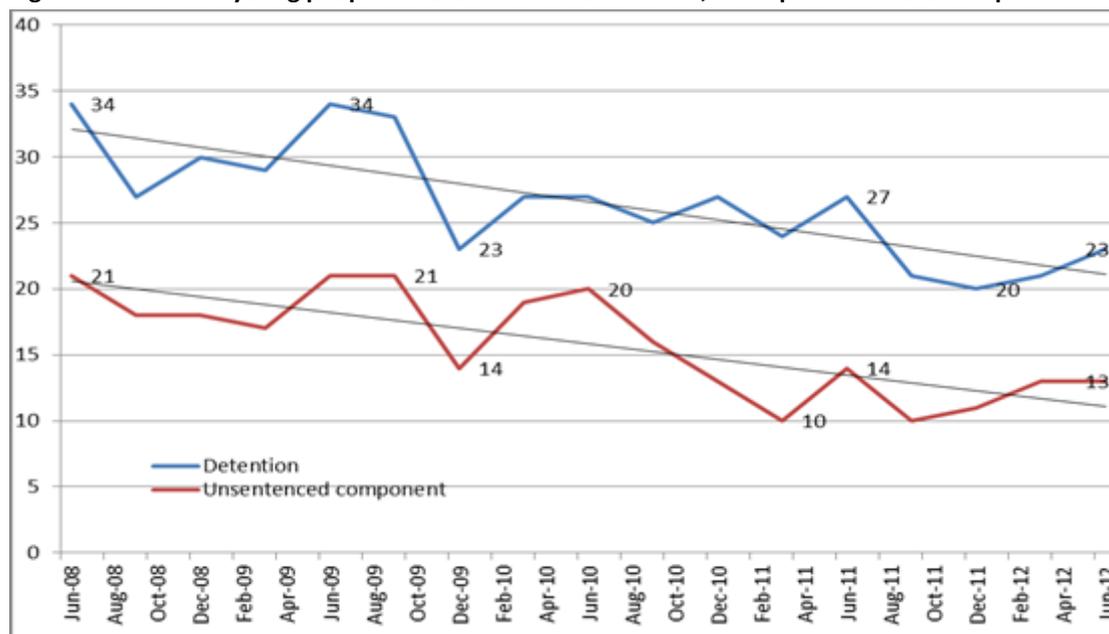
Data sources: ABS Recorded Crime – Offenders 2011-12 Table 9, AIHW Juvenile Justice 2011-12, Tables S48b, S71.

Note: For more detailed information see Table 1. There are several different ways of measuring the numbers of young people under supervision – on an average day or during the year. Also, in AIHW reports there are two measures of supervision – all supervision (including detention) and community-based supervision. One also has to be careful when reading AIHW tables because some tables refer to all ages (10 to 19) within the juvenile justice system and others specify only the 10 to 17 age-group.

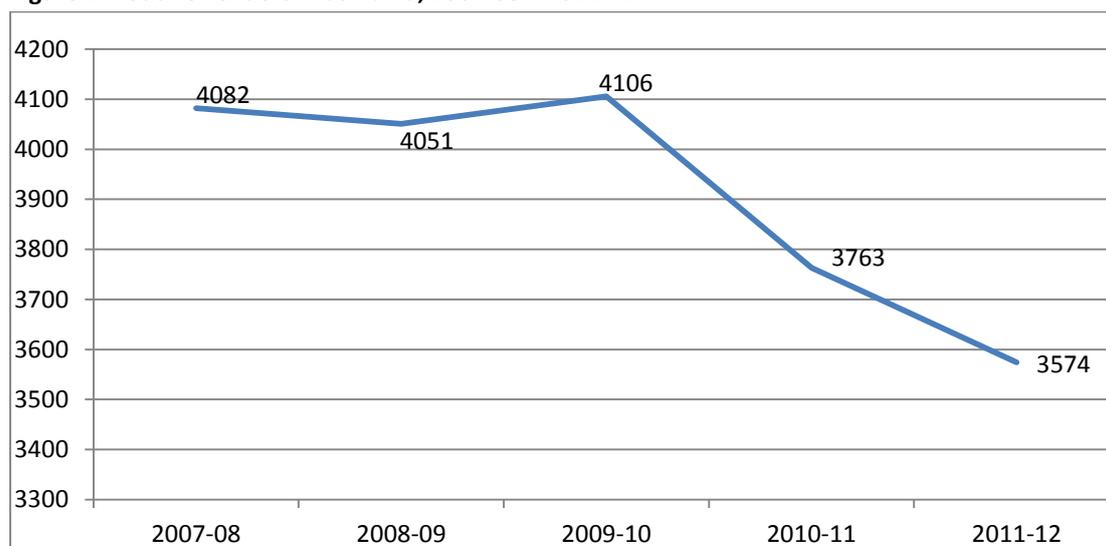
Overall, for the 10 to 19 age-group, Tasmania had the highest youth offender rate in Australia (5,383 per 100,000 people aged 10 to 19 years) in 2011-12. ABS figures showing the rates for the 10 to 17 age-group are not readily available. But this raises another issue – the cut-off point of 18 years (for this report and, in particular, in the area of youth justice) is somewhat artificial as 18 to 19 are the peak years for offending. In terms of the ABS-calculated rates, the 18 to 19 age-group represents 43% of offences in Tasmania – so having a cut-off point at age 18 distorts the adolescent offending profiles and prevalence rates in offending. Adolescence is defined as being 10 to 19 years by WHO, but most researchers and developmental scientists consider 10 to 24 years to be the period of adolescence (and youth to be from 12 to 25 years).

Trends in Tasmanian youth justice data

While it is difficult to draw any strong conclusions on the effectiveness of Tasmania's current diversionary performance, an evaluation of the Youth Justice Court, which is a significant part of this process, will soon be available. However, over the past four years there has been a steady decline in youths in detention, including youths on remand (unsentenced) – see Figure 1. Also, there has been a sharp decline in the number of youth offenders over the past two years – see Figure 2. Overall, between 2008-09 and 2011-12 there has been an 11.7% decrease in the numbers of young offenders. While most ages have seen a decrease, this has been particularly the case for 14-year-olds – with a 31% decrease – see Table 2.

Figure 1. Tasmania: young people in detention and on remand, June quarter 2008–June quarter 2012

Source: AIHW, *Juvenile detention population in Australia 2012*

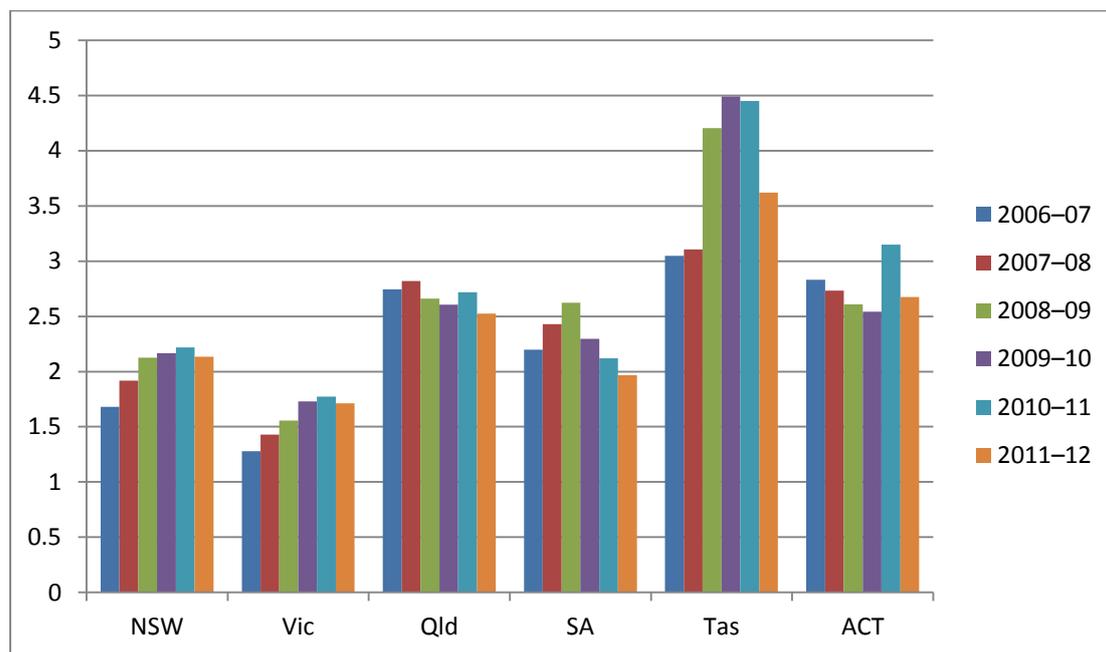
Figure 2. Youth offenders: Tasmania, 2007-08 – 2011-12

Source: ABS, *Recorded Crime – Offenders, 2011-12*

At a national level, comparisons of performance information across jurisdictions are severely constrained. To date, only four of the 15 national output indicators for juvenile justice services have complete data in the latest Report on Government Services.⁷⁷ However, it is anticipated that ‘cost per offender’ and ‘offender-to-staff ratio’ data will be included in the 2014 Report.

The *Report on Government Services 2013* states that ‘comparable and extensive national data are not yet available to illustrate the nature or level of diversion undertaken by Australian jurisdictions.’⁷⁸ However, over the past three years at least, Tasmania has had the highest rates of juveniles on community-based supervision in Australia (see Figure 3).

Figure 3. Community-based supervision rates on an average day (per thousand 10-17-years-old juveniles), 2006-07 to 2011-12



Source: AIHW, Youth Justice in Australia 2011-12: an Overview, Bulletin No. 15, Table S50A

The supplementary tables from the latest report by AIHW *Youth Justice in Australia 2011-12: an Overview, Bulletin No. 15* show:

Community-based supervision: since 2006-07 in Tasmania the rate of young people aged 10-17 on community-based supervision has increased from 3.05 per thousand to 3.6 per thousand, which is 59% higher than the rate for Australia as a whole.

Given that detention rates in Tasmania (on an average day) have decreased from 0.53 in 2006-07 to 0.39 per thousand in 2011-12, it would appear that Tasmania prefers to use community-based support to detention (data not shown here, but see AIHW Table S80a).

Table 1. Community-based supervision and Detention: Numbers of young people aged 10 to 17 years (a) on an average day and (b) during the year, plus rates per 10,000 young people (a) on an average day and (b) during the year (2011-12).

| | NSW | Vic | Qld | WA | SA | Tas | ACT | NT | Aust incl WA & NT |
|---|-------|-------|-------|------|-------|-------|-------|------|-------------------|
| Community-based supervision | | | | | | | | | |
| No. on average day | 1,532 | 919 | 1,200 | n.a. | 314 | 192 | 92 | n.a. | 5,100 |
| No. during the year | 3,081 | 1,843 | 2,246 | n.a. | 701 | 362 | 184 | n.a. | 10,370 |
| Rate (a) | 21.35 | 17.11 | 25.26 | n.a. | 19.68 | 36.19 | 26.74 | n.a. | 22.72 |
| Rate (b) | 42.95 | 34.32 | 47.27 | n.a. | 43.88 | 68.11 | 53.38 | n.a. | 46.19 |
| Detention | | | | | | | | | |
| No. on average day | 299 | 77 | 137 | n.a. | 60 | 21 | 20 | n.a. | 815 |
| No. during the year | 2,035 | 467 | 763 | n.a. | 463 | 94 | 123 | n.a. | 5,080 |
| Rate (a) | 4.17 | 1.43 | 2.87 | n.a. | 3.74 | 3.90 | 5.82 | n.a. | 3.63 |
| Rate (b) | 28.37 | 8.70 | 16.06 | n.a. | 28.98 | 17.69 | 35.69 | n.a. | 22.63 |
| % under supervision in detention on average day | 16.3% | 7.7% | 10.2% | | 16.0% | 9.9% | 17.9% | | 13.8% |

Source: AIHW, Youth Justice in Australia 2011-12: an Overview, Bulletin No. 15, Tables S48a, S48b, S47a, S47b, S71a, S71b, S72a, S72b, S105a.

Nationally, half of all young people in detention on an average day during 2011-12 were un-sentenced (remanded). This proportion has been fairly stable over the past four years.

Victoria had the lowest proportion of juveniles under all supervision in detention on the average day – 7.7%, with Tasmania not far behind with 9.9%. Victoria also had the lowest rates in detention on an average day – 1.43 per 10,000, while Tasmania had the highest – 3.90 per 10,000. Victoria, again, also had the lowest rates under community-based supervision on the average day and during the year – 17.11 and 34.32 respectively. Conversely, Tasmania had the highest – 36.19 and 68.11 respectively (see Table 1).

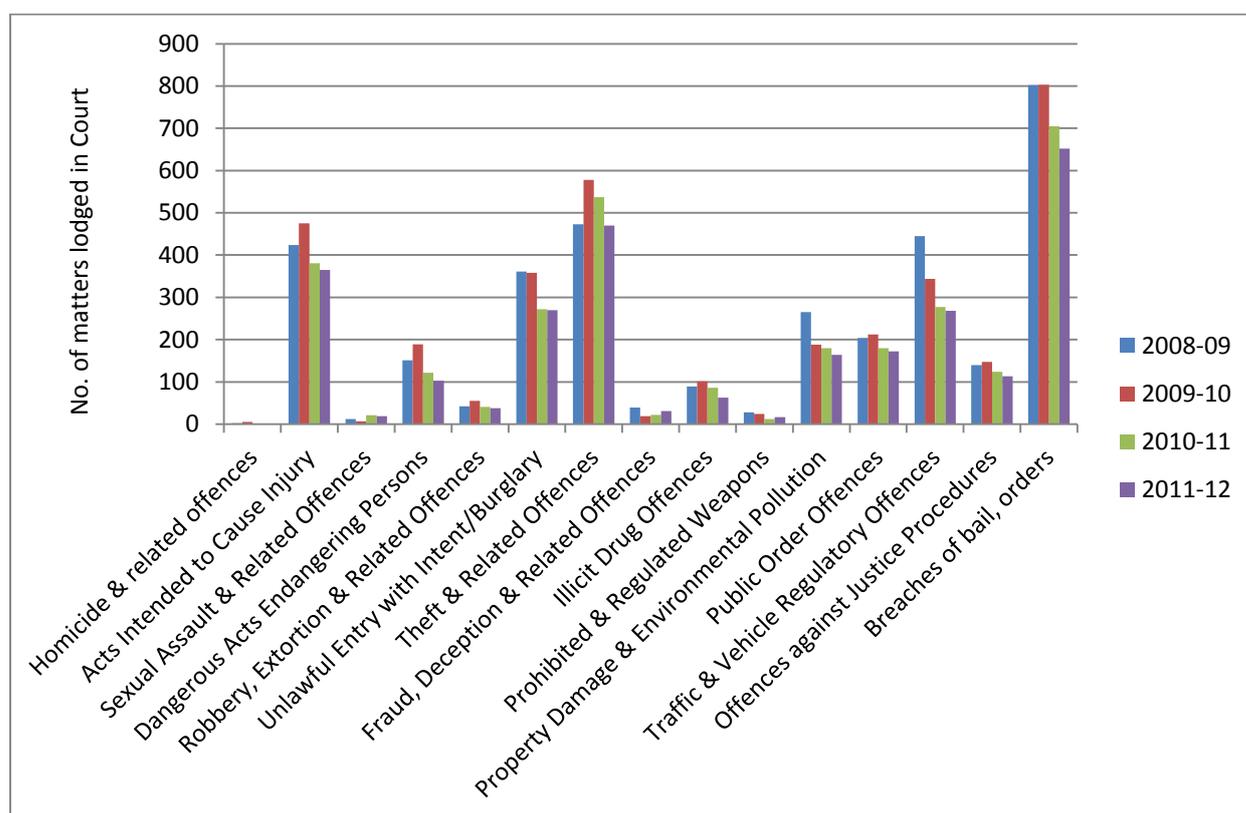
However, those on un-sentenced detention (remand) in Tasmania spent on average 54 days there, which is a period 42% longer than the average for Australia (not including WA or the NT) and almost double that of the length of time in Victoria for those on remand.⁷⁹

2. Types of offences

There has been an overall decline of 22% in criminal matters brought before the Tasmanian Magistrate's Court, Youth Justice Division, from 2008-09 to 2011-12. The highest proportion of offences in order is as follows (percentages are for 2011-12):

- 1) Breaches of bail, suspended sentences, community service orders, probation – 23%
- 2) Theft and related offences – 17%
- 3) Acts intended to cause injury – 13%
- 4) Unlawful entry with intent/burglary, break and enter – 10%
- 5) Traffic and vehicle regulatory offences – 10%
- 6) Public order offences – 6%
- 7) Property damage and environmental pollution – 6%.

Figure 4. Criminal matters lodged with Magistrate's Court, Youth Justice Division, 2008-09 to 2011-12



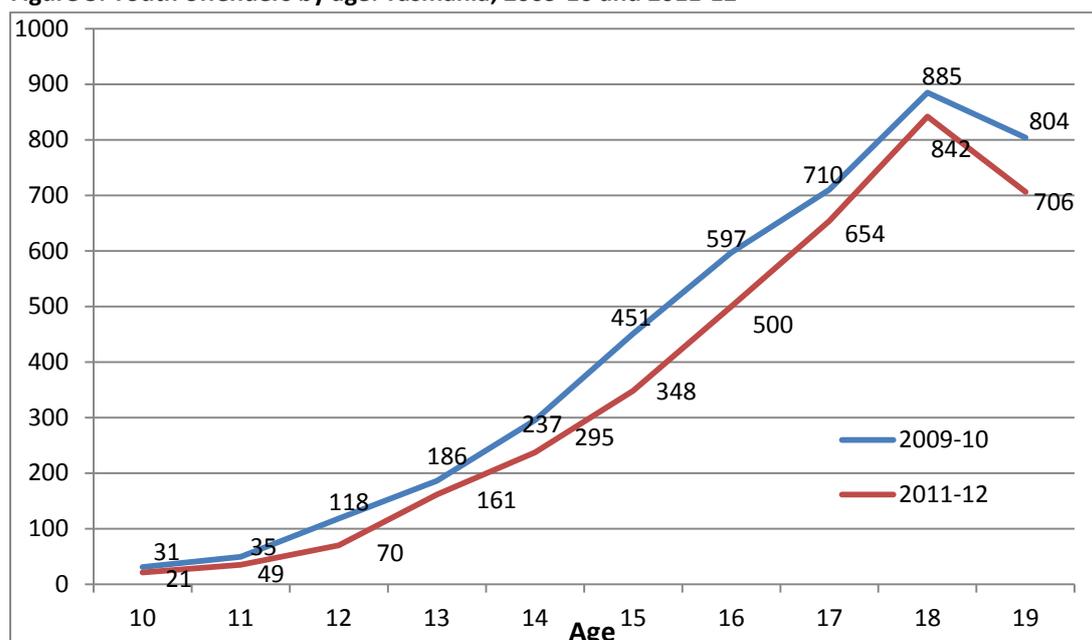
Source: Magistrates Court Annual Report 2011-12

3. Age distribution

In Tasmania, youth offending peaks at age 18, and then falls away quite dramatically for the rest of the life period (data on continuing decline for Tasmania not shown here). This is

consistent over time and across jurisdictions. Data show that for Australia (and internationally) this distribution, as shown in Figure 5 is very typical. The two years of data shown illustrate the relative stability of the age distribution across juvenile offending. This 'age-crime curve' has been detected since at least 1831 (with offending typically peaking at about 18 years of age).⁸⁰

Figure 5. Youth offenders by age: Tasmania, 2009-10 and 2011-12



Source: ABS, Recorded Crime – Offenders, 2010-11. Table 1 Youth offenders, by age–Tasmania–2008-09 to 2010-11 & Recorded Crime – Offenders, 2010-12, Table 7.

There may be a variety of reasons as to why offending peaks at about age 18, but it is hardly explored in the literature. As shown in Diagram 2, only about 4% of young people aged 10 to 17 are caught committing offences in any one year in Tasmania (interstate and overseas percentages are similar). The decline in offending with increasing age is assumed to represent some kind of maturation process,⁸¹ but other social factors may be at work here. Associated with this liminal status period is social and economic marginality (as compared with older offenders).⁸²

The steady decline in actual numbers of offenders for each year of age and for each period, from 2008-09 to 2011-12, is shown below in Table 2. It also shows, however, that numbers of offenders in ages 17 to 19 have been steady, and these are the peak years for offending.

Table 2. Numbers of youth offenders by age, 2008-09 to 2011-12

| AGE | 2008-09 | 2009-10 | 2010-11 | 2011-12 | % change |
|---------------|---------|---------|---------|---------|----------|
| 10 | 29 | 29 | 18 | 21 | -28% |
| 11 | 62 | 51 | 54 | 35 | -44% |
| 12 | 104 | 119 | 85 | 70 | -33% |
| 13 | 180 | 186 | 169 | 161 | -11% |
| 14 | 343 | 292 | 285 | 237 | -31% |
| 15 | 434 | 457 | 369 | 348 | -20% |
| 16 | 621 | 603 | 562 | 500 | -19% |
| 17 | 686 | 702 | 624 | 654 | -5% |
| 18 | 875 | 868 | 860 | 842 | -4% |
| 19 | 713 | 796 | 726 | 706 | -1% |
| All offenders | 4,047 | 4,103 | 3,752 | 3,574 | -12% |

Source: ABS Recorder Crime – Offender 2011-12

Detention in Tasmania

Numbers of young people in detention over the year 2011-12 were: four young people aged 13; 19 young people aged 14; 18 aged 15; 28 aged 16; and 25 aged 17, for a total of 94 over the year.⁸³

4. Gender

Over the four years 2008-09 to 2011-12, 68-70% of juvenile offenders in Tasmania were male, which was slightly lower than for Australia as a whole (74%).⁸⁴

Community-based supervision

Across Australia young men are 4.0 times as likely to be under community-based supervision as young women. However, in Tasmania the ratio is much smaller – the ratio of young men to young women under community-based supervision is only 2.7 times over the year.

Tasmania has the highest rates of females aged 10 to 17 years under community-based supervision – the highest rate in Australia and more than double the national rate for the average day (20.89 versus 9.15 per ten thousand) or over the year (38.23 versus 18.70).

The rate for males under community-based supervision is also higher than the rate for Australia as a whole (50.45 versus 35.43 on the average day) or over the year (95.95 versus 71.82).

Over the past three years the number of young women under community-based supervision during the year has remained very stable – between 100 and 104 from 2009-10 to 2011-12. (Meanwhile, over the same period the number of young men under community-based supervision over the year has steadily decreased, from 349 to 272.)⁸⁵

The rate of females under community-based supervision in Tasmania is double that of Australia as a whole. The number of young women in detention in Tasmania is too low for comparisons to be made. On an average day in Tasmania, 92% of young women in the youth justice system were under community-based supervision in 2011-12 (see Table 3).

Detention

The numbers of young men and women in detention in Tasmania are too low for meaningful rates to be compared across Australia. On an average day there were 21 young people aged 10 to 17 years in detention in Tasmania, or 94 over the year (see Table 3).

At the end of each quarter for the past four years in Tasmania (June quarter 2008 – June quarter 2012) there has been an average of two young women in detention on an average night (aged 10 to 17).⁸⁶

Table 3. Numbers and rates (per 10,000) of young people aged 10 to 17 in juvenile justice systems during the year by sex, Tasmania and Australia, 2011-12.

| | Detention | | Community-based supervision | |
|-------------------|-----------|-----------|-----------------------------|-----------|
| | Tasmania | Australia | Tasmania | Australia |
| On an average day | | | | |
| No. of males | 20 | 920 | 139 | 4,080 |
| No. of females | 1 | 85 | 54 | 1,000 |
| TOTAL | 21 | 1,005 | 193 | 5,080 |
| Rate (male) | 7.25 | 6.38 | 50.45 | 35.43 |
| Rate (female) | - | 0.69 | 20.89 | 9.15 |
| During the year | | | | |
| No. of males | 81 | 4,740 | 264 | 8,270 |
| No. of females | 13 | 845 | 98 | 2,045 |
| TOTAL | 94 | 5,585 | 362 | 10,315 |
| Rate (male) | 29.44 | 36.34 | 95.95 | 71.82 |
| Rate (female) | 5.07 | 7.73 | 38.23 | 18.70 |

Source: AIHW, Tables 38a, 38b, 39a, 39b, S70a, S70b, S71a, S71b, S72a, S72b

Offender rates

Offender rates for females in Tasmania are approximately double that of national figures, and that rate has remained relatively stable over the past five years (2008-09 to 2011-12), with decreases among 14- and 15-year-olds, and fluctuations among 18-year-olds, who have the highest offender rate (7,060 per 100,000).⁸⁷

Overall, however, across Australia and across the world a growing number of young women have been entering the youth justice system, with some evidence that there have been increases in young women charged with violent offences.⁸⁸ Recent data on offences of young offenders is not available for Tasmania.

Risk factors by gender

Research in Australia and overseas suggests that, although young men consistently form the majority of those involved in crime, the rates of young women in the juvenile justice system has been increasing over recent decades. Although the risk factors for both young men and young women are broadly similar, the following factors tend to be particularly important among young women:

- a history of childhood abuse or neglect
- psychological or mental health issues such as mood and anxiety disorders
- a history of out-of-home care
- chronic illness or disability
- socioeconomic disadvantage
- difficulties with school.⁸⁹

There has also been a steady increase in young women coming under community-based supervision in Tasmania, with the rate increasing from 25.9/10,000 in 2007-08 to 38.23 in 2011-12.⁹⁰

Most young people in Ashley are male, the proportion varying between 84% and 90% over the six-year period, 2006-07 to 2011-12. The number of females reached a high of 23 in 2009-10 and a low of 16 in 2011-12, with an average of 10 individuals over the six-year period (most individuals of both genders appeared twice on average in Ashley over this period). Overall, the actual percentage of young women has been 15% over the six-year period (Figure 6). However on any one day it is not unusual for there to be one young woman or none at all.

Figure 6. Young people by gender, 2006-07 to 2011-12

| Year | 2006-07 | | 2007-08 | | 2008-09 | | 2009-10 | | 2010-11 | | 2011-12 | | All Years | |
|--------|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|
| | Young People | % |
| Female | 14 | | 14 | | 14 | | 23 | | 12 | | 16 | | 63 | 15 |
| Male | 96 | 87 | 120 | 90 | 131 | 90 | 123 | 84 | 97 | 89 | 88 | 85 | 360 | 85 |
| Total | 110 | | 134 | | 145 | | 146 | | 109 | | 104 | | 423 | |

Source: DHHS, unpublished data from KIDS Warehouse, 2013

5. Socio-economic status and family background

With 45.5% of the population living in areas of high socio-economic disadvantage (bottom three deciles of the Preliminary Index of Relative Socio-Economic Disadvantage), Tasmania has the highest percentage of all states and territories of people living in relative poverty. This is well above the national average of 28.5%. As pointed out by the Department of

Premier and Cabinet, 'Without early intervention there is a high likelihood that many of these young Tasmanians will enter either the child protection or youth justice system'.⁹¹

Low socio-economic status is one of the key components of social exclusion, with such communities experiencing multiple disadvantages, often having increased levels of depression and other mental health issues, higher levels of domestic violence and other criminal and antisocial behaviour, lower education and employment, inadequate income that results in diminished access to affordable and appropriate housing and transport, and increased geographic and/or social isolation.⁹²

Table 4. Young people aged 10 to 17 under supervision during the year by socio-economic status of usual residence, all states except WA, 2011-12 (rate per thousand)

| Rate of young people during the year | | | | | | |
|--------------------------------------|------|------|------|------|------|-------------------|
| Level of SES | NSW | Vic | Qld | SA | Tas | Aust excl WA & NT |
| 1 (lowest) | 8.00 | 6.06 | 8.78 | 8.44 | 8.35 | 7.80 |
| 2 | 5.34 | 3.61 | 6.48 | 4.33 | 6.86 | 5.11 |
| 3 | 4.35 | 2.24 | 4.95 | 1.68 | 3.02 | 3.74 |
| 4 | 3.26 | 1.56 | 2.28 | 1.31 | 3.71 | 2.37 |
| 5 (highest) | 1.75 | 0.99 | 0.86 | 0.82 | .. | 1.62 |

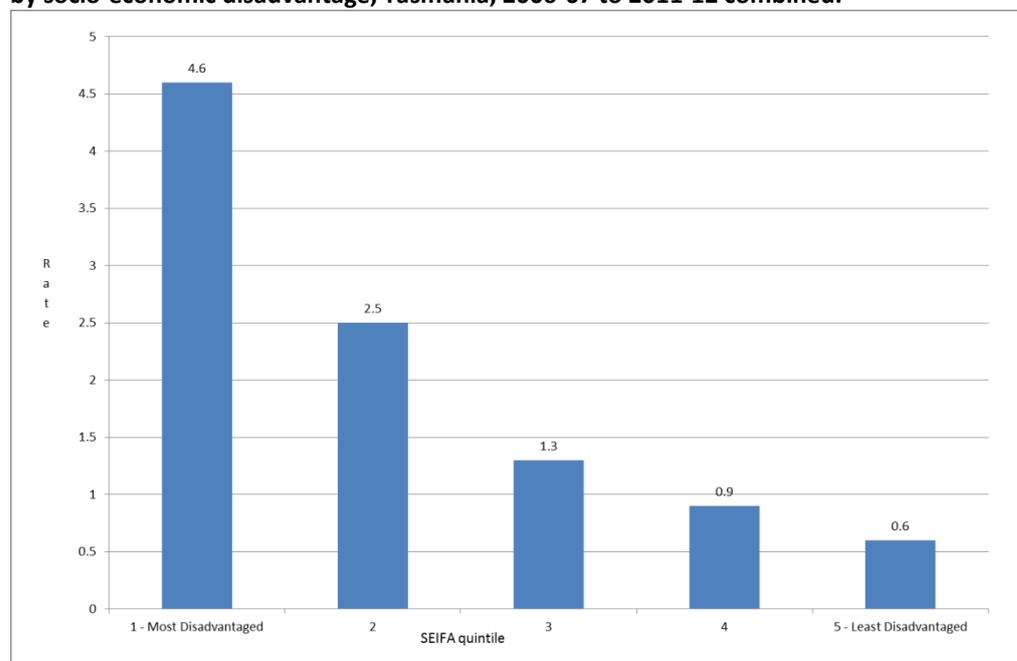
Source: AIHW, Bulletin no. 115. Supplementary Tables, Table S24d

The rate of youth offending appears to be inversely related to socio-economic status, except for Tasmania where the rate of offending is higher for the fourth quintile than the third quintile (see Table 4). The reason for this 'anomaly' with respect to Tasmania is not clear, nor, for that matter, is the exact nature of the relationship between socio-economic status and youth offending. It may simply be that lower socio-economic conditions are mediating or facilitating factors. Over 2011-12, 72% of young people in detention in Tasmania came from the lowest quintile.

Figures 7 and 8 below, based on unpublished DHHS data, showing rates of young people detained and remanded in Tasmania, need to be read with Figure 9 in mind. Figure 9 shows the actual population distribution of 10- to 17-year-olds in Tasmania according to socio-economic disadvantage – with the majority in the highest quintile (most advantaged). As shown in Figures 7 and 8, by far the highest rate of young people in the youth justice system in Tasmania are those have the highest level of socio-economic disadvantage.

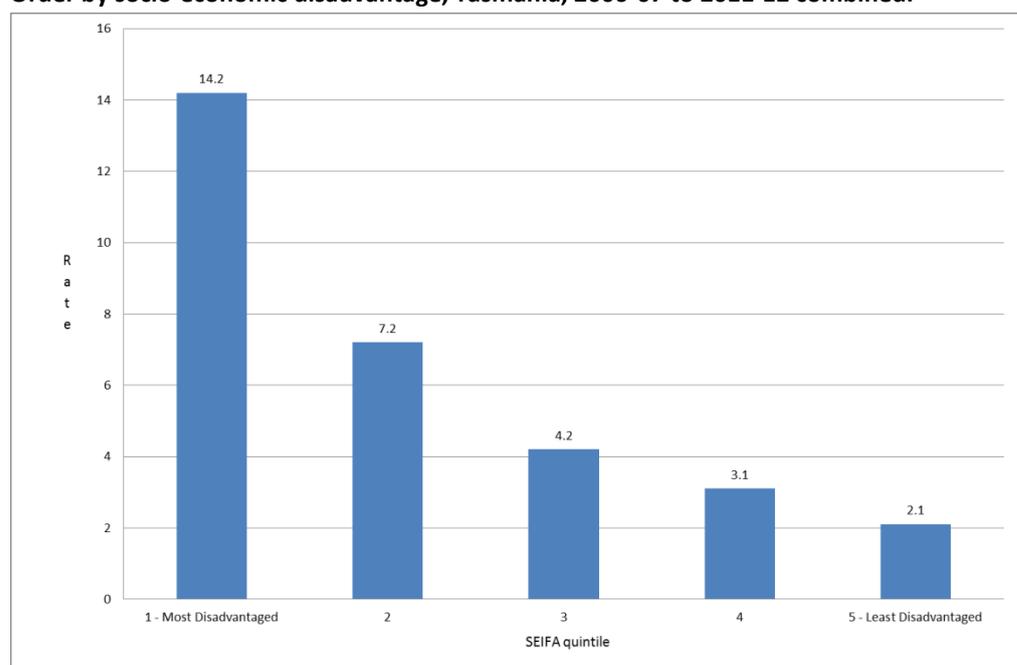
The rate of young people in a Youth Justice facility from the lowest SEIFA quintile is 7.7 times that of young people from the highest quintile. In the case of young people on a Community Youth Justice Order, this ratio is 6.8 times. Overall, there is an inverse relationship between socio-economic status and involvement in the youth justice system (Tables 7 and 8).

Figure 7: Rate of young people (per thousand) detained in a Youth Justice facility by socio-economic disadvantage, Tasmania, 2006-07 to 2011-12 combined.



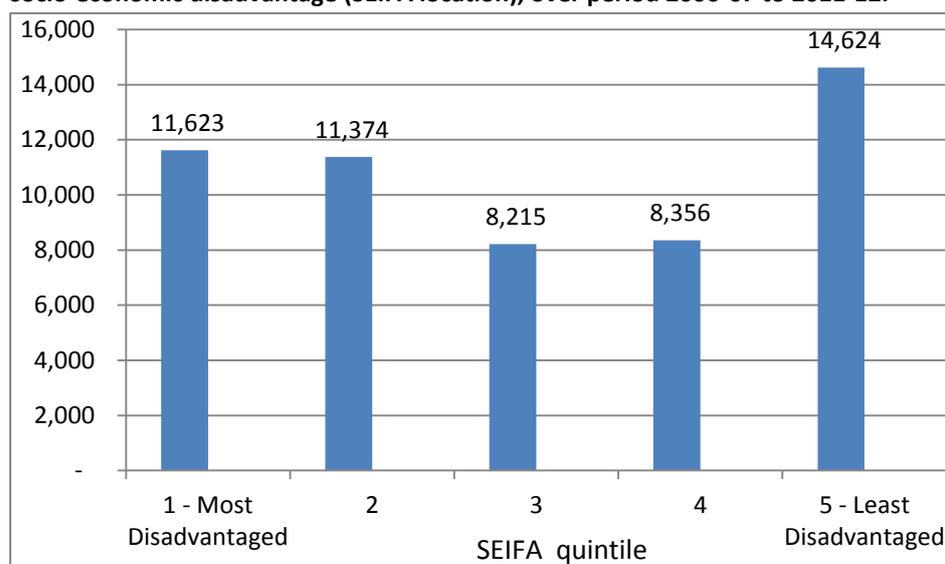
Source: DHHS, unpublished data from KIDS Warehouse, 2013

Figure 8: Rate of young people (per thousand) on a Community Youth Justice Order by socio-economic disadvantage, Tasmania, 2006-07 to 2011-12 combined.



Source: DHHS, unpublished data from KIDS Warehouse, 2013

Figure 9: Population distribution of all young people aged 10 to 17 in Tasmania by socio-economic disadvantage (SEIFA location), over period 2006-07 to 2011-12.



Source: DHHS, unpublished data from KIDS Warehouse, 2013

Parental prison history

One of the strongest factors associated with being in the juvenile justice system is having a parent who has a prison history. The lack of a parent creates difficult circumstances for a child, with disruption of their home environment generating a higher chance of the child offending in the future. Such children also tend to experience trauma, often witnessing their parent's crime and arrest, and the difficulties associated with visiting their parent within the prison. Children with parents in prison are also more at risk of abusing drugs and alcohol, dropping out of school and exhibiting aggressive and/or antisocial behaviours.⁹³

Data on parental prison history is only available for NSW but appears to be stable – across two surveys having one or both parents with a prison history was 43% in 2003 and 45% in 2009. The high proportion of offenders with an out-of-home care history is another issue, which is discussed later.⁹⁴

Table 5. Family background of juvenile offenders in NSW.

| | Community orders 2003-05 (%) | In Custody 2009 (%) |
|-------------------------------------|---------------------------------|------------------------|
| Parent with prison history | 27 | 43 |
| Out-of-home care history | 24 | 28 |
| Young person is parent of child/ren | 6 | 10 |

Source: 2009 NSW Young People in Custody Health Survey: Full Report

6. Indigenous status

Indigenous youth are highly over-represented in all juvenile justice systems in Australia, but the over-representation is to a much lesser extent in Tasmania. The rate of Indigenous young people aged 10 to 17 years in detention in Tasmania in 2010-12 was 3.53 per thousand, which compared with the national average of 22.26.

The rate of Indigenous young people aged 10 to 17 years under community-based supervision in Tasmania in 2010-12 was 11.66 per thousand, which compares with the national average of 38.70.

In Table 7 the disproportionate ratios of Indigenous to non-Indigenous young people in youth justice systems in Tasmania and Australia is significant – in the case of community-based supervision Indigenous young people are 1.85 times over-represented in Tasmania (14.39 for Australia); in the case of detention they are 2.15 times over-represented in Tasmania (18.25 for Australia). Overall, the ratio of Indigenous to non-Indigenous young people in Australia as a whole is about eight times greater than that of Tasmania.

Table 7. Rates of young people aged 10 to 17 in juvenile justice systems during the year according to Indigenous/non-Indigenous status, Tasmania and Australia, 2011-12.

| | Community-based supervision (Tasmania) | Community-based supervision (Australia) | In detention (Tasmania) | In detention (Australia) |
|-----------------------|--|---|-------------------------|--------------------------|
| Indigenous | 11.66 | 38.70 | 3.53 | 22.26 |
| Non-Indigenous | 6.29 | 2.69 | 1.64 | 1.22 |
| Rate ratio | 1.85 | 14.39 | 2.15 | 18.25 |
| Total | 6.81 | 4.62 | 1.77 | 2.26 |

Source: AIHW: Youth Justice in Australia: and overview, Bulletin No. 115, 2013. Tables S39b, S80b.

A recent report by a House of Representative's Inquiry concluded that the over-representation of Indigenous young people in the youth justice system is a symptom of chronic social and economic disadvantage, and loss of cultural values and norms. In particular the Inquiry identified a range of issues related to these, including family and community violence, child abuse and neglect, alcohol and drug abuse, inadequate housing, poor health, low educational and training achievement and unemployment.⁹⁵

The proportion of Aboriginal young people in Ashley has been fairly static at 25-28% over the years 2006-07 to 2011-12, with an average of 16 individuals over the six year period (most individuals appeared twice on average in Ashley over this period, except for 2011-12 when they may have appeared only once).

Table 8. Young Aboriginal people in Ashley Youth Detention Centre, 2006-07 to 2011-12

| Year | 2006-07 | | 2007-08 | | 2008-09 | | 2009-10 | | 2010-11 | | 2011-12 | | All Years | |
|----------------|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|--------------|----|
| | Young People | % |
| Aboriginal | 30 | 27 | 36 | 27 | 40 | 28 | 39 | 27 | 27 | 25 | 15 | 14 | 95 | 22 |
| Non-aboriginal | 80 | | 98 | | 105 | | 107 | | 82 | | 89 | | 328 | |
| Total | 110 | | 134 | | 145 | | 146 | | 109 | | 104 | | 423 | |

7. Cognitive and mental health conditions⁹⁶

The recent report by the Children's Commissioner for England highlights the high numbers of young people in custody who may have undiagnosed neurodisabilities, which contribute to behaviour that leads to offending:

Children who have complex conditions highlighted in this report may show few or even no overt signs of brain damage, loss of cognitive ability, or difficulties in managing their feelings of anger, frustration, confusion or distress. Given the conditions explored often entail language delay or difficulties, they may not have the language to understand, still less describe, their feelings, symptoms, or the difficulties they face in dealing with both. Their feelings, all too often, then spill out into difficult behaviour, which, unless it is changed by concerted professional intervention, can become ever more problematic as the child grows up. Though these children may know the difference between right and wrong, they may not understand the consequences of their violent or disruptive actions, the processes they then go through in courts of in custody, or the means to address their behaviours so they can avoid offending again in the future.⁹⁷

The difficulty of disentangling mental health/emotional problems, intellectual disabilities, etc. was illustrated recently by the NSW Law Reform Commission's series of reports on people with cognitive and mental health impairments in the criminal justice system in NSW, including a 2010 paper focusing on young people. As pointed out in the Commission's introductory overview of the issues in Consultation Paper Number 5:

Historically, people with a mental illness or intellectual impairment were largely ignored or institutionalised. Little was known about psychiatric conditions. Mental illness and intellectual disability were often conflated, and viewed with fear and prejudice. Much of the burden fell on relatives to accommodate and care for the mentally ill and impaired, either at home, or, for those wealthy enough to afford it, in private 'madhouses'. For those less well off, vagrancy was a common result.⁹⁸

The NSW Law Reform Commission goes on to say that ‘[I]ssues regarding mental illness and intellectual and other cognitive disabilities are among the most difficult concerns for law and policy makers to address.’⁹⁹ And not much has advanced since mediaeval times – ‘in many respects, the law has remained amazingly similar for hundreds of years’.¹⁰⁰

The principal problem of differentiating mental health, behavioural and emotional disorders is that for most of them, symptoms (as determined by professionals) are difficult to clearly diagnose, and diagnostic criteria that are used are being constantly updated as social norms become less clear, broader or ambiguous.

It has also been suggested that de-institutionalisation of people with intellectual and mental health issues has led, in part, to the courts having to fill the vacuum, thus resulting in high numbers of people with intellectual and mental health issues in prisons (including young people).

As the NSW Law Reform Commission acknowledges:

Concepts such as ‘mental illness’ and ‘cognitive impairment’ are multi-faceted, and encompass medical, scientific and social criteria. The most commonly accepted tools for diagnosing and categorising mental illness worldwide are the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (or ‘the DSM-IV’) and the International Classification of Diseases, (endorsed by the World Health Organisation).¹⁰¹

The DSM-IV recognises ‘that each disorder does not exist in isolation, but is affected by other disorders, or other aspects of a person’s life, including “psychosocial stressors” such as the death of a loved one ... (and) that no definition can adequately specify precise boundaries for the different types of mental illness, and it is common for people to experience more than one condition. Nor can it be assumed that everyone with the same disorder will manifest the same symptoms or behave in the same way.’¹⁰²

A broad range of co-occurring mental health issues are consistently identified among juvenile detainees, including a high prevalence of attention-deficit, anxiety and behavioural disorders. But such identification arises from survey research, such as that conducted occasionally in NSW (2003 and 2009), not through routine medical and psychological screening. NSW is the only jurisdiction in Australia that conducts comprehensive surveys on juvenile offenders.

These mental health issues are present prior to entering youth justice systems but are rarely diagnosed or treated. The 2009 NSW Health Survey identified an average of 3.3 past and/or current psychological disorders for each participant; 87% of participants in this survey were found to have at least one psychological disorder and nearly three-quarters had two or more disorders present. The most common types of disorder were attention and behavioural (70%) and substance use disorders (64%).

The NSW Young People in Custody Health Surveys (2003, 2009) provide very comprehensive data on the characteristics of young people who are in custody, but there is much less data available on young people on community orders. However, in 2003-05 there was a parallel survey conducted in NSW called the *Young Offenders on Community Orders Health Survey*. The evidence from these surveys suggests that young people in custody and young people on community orders share very similar, if not the same, demographic and individual characteristics.

The authors of the 2003-05 report undertook further detailed analyses of the data produced from the 2003 and 2006 surveys, using data from the NSW Juvenile Justice Information Management System and NSW population data, thus providing a comprehensive picture of all juvenile offenders. Some of the findings from these three surveys are reproduced in the following tables.

Table 9. IQ of juvenile offenders in NSW.

| | Sample - juvenile offenders on community orders 2003-05 (%) | Sample - juvenile offenders in detention 2003 (%) | NSW population aged 15-24 years (%) |
|----------|---|---|-------------------------------------|
| IQ <70 | 15.2 | 17.5 | 2 |
| IQ 70-84 | 39.3 | 39.9 | 13 |
| IQ 85+ | 45.5 | 42.5 | 85 |

Source: D. T. Kenny & P. T. Nelson, *Young offenders on community orders: health, welfare and criminogenic needs*, 2008

Table 10. Distribution of IQ of juvenile offenders in NSW compared with NSW general population.

| FSIQ classification range | Sample - juvenile offenders in custody 2003 (%) | Sample - juvenile offenders in custody 2009 (%) | Norms (%) |
|---------------------------|---|---|-----------|
| Extremely low (<70) | 17.4 | 13.6 | 2.2 |
| Borderline (70-79) | 27.4 | 32.2 | 6.7 |
| Low average (80-89) | 30.4 | 31.5 | 16.1 |
| Average (90-109) | 23.5 | 21.4 | 50 |
| High average (110-119) | 0.4 | 1.00 | 16.1 |
| Superior (120-129) | 0.9 | 0.3 | 6.7 |
| Very superior (130+) | 0 | 0 | 2.2 |

Source: 2009 NSW Young People in Custody Health Survey: Full Report

Tables 9 and 10 show that, as compared with the general population norms, juvenile offenders in custody have low to extremely low IQ scores. There was a similar distribution of scores across the two health surveys (2003 and 2009). Between one in six and one in seven offenders in custody scored in the extremely low range, indicating the possible presence of an intellectual disability; between one in three and one in four offenders had a borderline intellectual disability. The majority of young people (75-77%) score below average IQ scores – whereas only 25% of the general population would be expected to score in this range. In other words, the distribution of scores is strongly skewed, with a mean in 2009 of 81.4, which falls (just) within the low average range of ability.¹⁰³

Similar results have been found in Tasmania. Data collated from 359 Standard Progressive Matrices (SPM) assessments used in Secure Care Psychosocial Screening (SECAPS) in Ashley between 2006 and 2010 shows that 48.4% of detainees had IQs below 80 – similar results to the NSW surveys. Correspondingly, only 19% at Ashley had completed year 10 or more in schooling and 58% had completed year 8 or less. In more detailed terms, 78% had a reading age of 11 years or less.¹⁰⁴

While determination of intellectual disability is not based on IQ scores alone, they do indicate the possibility of such a disability where the score is less than 70. As pointed out by Colmar et al., even though IQ testing is flawed, it remains the main diagnostic tool.^{105 106} Despite flaws, the use of IQ testing in assessments is acknowledged by the major intellectual disability organisations in Australia (see reference below), and internationally:

Intellectual disability is conventionally defined as consisting of three elements: an IQ below 70, deficits in adaptive functioning, and acquirement of the disability before age 18. In the context of offenders, there is a strong argument for including people with borderline intellectual disability, that is, an IQ of up to 80.¹⁰⁷

For assessment of intellectual disability, adaptive functioning, which includes communication skills, also needs to be taken into account. Communication skills are important, particularly in the youth justice context as Snow has found that over 50% of young male offenders have significant deficits on measures of figurative/abstract language (story telling) skills, and these difficulties cannot be accounted for on the basis of low nonverbal IQ.¹⁰⁸ Also, a survey conducted in 2009 found that 18% of young people in custody had mild to moderate hearing loss in one or both ears, and a further 32% had at least one ear with a degree of hearing loss.¹⁰⁹

It has been recognised at least since 1985 in Australia that young people with intellectual disabilities do not get the services that they need to help them keep out of justice systems¹¹⁰ and there has been much discussion on whether people with intellectual disabilities should be dealt with by the criminal justice system at all. It has been argued that they should be

diverted from the criminal justice system, using non-custodial and diversionary alternatives.¹¹¹

However, as recognised by the Coalition on Intellectual Disability and Criminal Justice a high proportion of people (including young people) with intellectual disability are still not finding the services they need in order to avoid involvement with criminal justice systems. There is also inadequate identification and diversion of such young people away from the justice system.

There are two key issues with respect to this grouping:

- a) over-representation in justice systems
- b) high rates of recidivism.

As the Tasmanian Forensic Tribunal acknowledges, recidivism rates amongst this grouping are between 40% and 70%.¹¹² This is in line with Australian figures, using IQ as the key measure of intellectual disability, that suggest reoffending rates averaging about 70% over the past 20 years in NSW.¹¹³ However, some other studies suggest that re-offending is very low for people with an intellectual disability, perhaps because such offending is labelled 'challenging behaviour'.¹¹⁴

In NSW, the health survey referred to previously suggests that 11% of young people on community orders may have an intellectual disability¹¹⁵ and up to 17.5% of young people who are in detention. This compares with just 2% of the NSW population aged 15 to 24 years having an intellectual disability.¹¹⁶

There are many possible explanations for the over-representation of young people with intellectual disability in the juvenile justice system, including the following (from a 1996 NSW Law Reform Commission Report):

- Susceptibility hypothesis – this suggests that people with an intellectual disability are more likely to engage in delinquent behaviour because of their impaired mental abilities.
- Different treatment hypothesis – this suggests that they are not more delinquent but more likely to be found to be so by the courts owing to their vulnerability in criminal justice processes.
- Psychological and socio-economic disadvantage – this covers a variety of theories about psychological and socio-economic disadvantage leading to over-representation, for example the fact that people with an intellectual disability are more likely to be living in community environments where they can become involved in, or are suspected of, committing crimes.¹¹⁷

8. Education

Research suggests that there are high levels of school suspensions and exclusions among juvenile offenders. For example, in the NSW Health surveys mentioned earlier 90% of juvenile offenders in custody had been suspended from school, 60% on community orders 'skipped school regularly' and 56% on community orders had left school in year 9 or earlier. For those in detention, 88% had been suspended at least once, and 66% had been suspended three or more times; close to half (47%) had been expelled at least once; 58% had missed classes without permission at least five times in the previous six months.¹¹⁸ In fact, prior contact with the youth justice system along with having been suspended or expelled from school is the key marker of recidivism, with other variables adding little additional assistance to identifying re-offending.¹¹⁹

As pointed out by the Wood Report (Special Commission of Inquiry into Child Protection Services in NSW), while nationally and locally early education and care strategies are being implemented for 0- to 5-year-olds, investment in the crucial middle years (ages 9 to 14) is absent. This is also the view expressed by Departmental Executives consulted for the Winkworth and White report on Bimberi in the Australian Capital Territory.¹²⁰ It is within this period that repeat offenders tend to begin first offending.¹²¹

This is consistent with the findings of the Australian Temperament Project, which shows that: the persistent antisocial group had higher levels of acting out, aggressive and hyperactive behaviour problems, and were more inclined to display volatility and to experience difficulties in maintaining attention than the low/non antisocial group. In late childhood, the persistent antisocial group continued to display problematic behaviour, and in addition were less cooperative, had poorer self-control, had poorer relationships with parents, and were more likely to have friends who engaged in antisocial behaviour.¹²²

9. Homelessness

Young people experiencing homelessness are one of the most marginalised and at-risk groups in the community. Their 'unsettled' or 'no fixed abode' status is often associated with having been in child protection and out-of-home care systems and having a history of child maltreatment. From the 2003 and 2009 NSW Health Surveys of young people in custody, 8% and 6% of young people had been in 'unsettled' or 'no fixed abode' categories.¹²³ AIHW reports that in Victoria and Tasmania 15% of young people under juvenile justice supervision had received SAAP support in the year before their most recent supervision.¹²⁴

A high rate of homelessness also follows them subsequent to discharge from custody – AIHW research shows that in Victoria and Tasmania, 7% of young men and 16% of young women received homelessness support within one year of completing juvenile justice supervision.¹²⁵ The proportion of young women who were homeless increased from 11% to 18% between the 2003 and 2009 surveys, which was much higher than for young men, 8% and 4% in the respective years.¹²⁶

10. Family violence

As acknowledged by the Department of Justice in Tasmania, family violence is a risk factor for juvenile offending.¹²⁷

While often asserted, and implied by association with child maltreatment, there appears to be little data directly connecting family violence to juvenile offending. However, 71%¹²⁸ of juveniles in custody in NSW reported that their parents were not living together – and in the case of Ashley Youth Detention Centre, 77%¹²⁹ of parents were not living together. There are also high rates of children and young people in the youth justice system who have been living in out-of-home care or are simply homeless.

Family violence, child protection and juvenile offending overlap. Family violence not only increases the likelihood of children and young people being included in the child protection and youth justice systems but also reduces the support that an offender is likely to receive from family upon leaving the detention system. A key difficulty for such young offenders is the instability or unavailability of parental/caregiver support, home accommodation and other family support.

11. Child protection and out-of-home care

As identified by research in Australia and overseas, most young people in the youth justice system have a prior history within the child protection and out-of-home care systems. In Victoria, one study found that 88% of children sentenced to imprisonment by the Children's Court had been subject to an average of 4.6 notifications, and 86% had been in out-of-home care.¹³⁰

In Tasmania in 2009, 63% of young people known to youth justice had been subject to notifications in the child protection system; and 96% of detainees at Ashley Youth Detention Centre had been in the child protection system.¹³¹

From an analysis of all young people who had entered Ashley between February 2000 and February 2005 (n=343), 56% were found to be known to the child protection system (however, 'lapsed' records had been deleted, so this is a minimum percentage). The majority of young people known to both systems (81%) had had multiple notifications with a mean of three previous notifications, and 2% with 10 notifications.¹³²

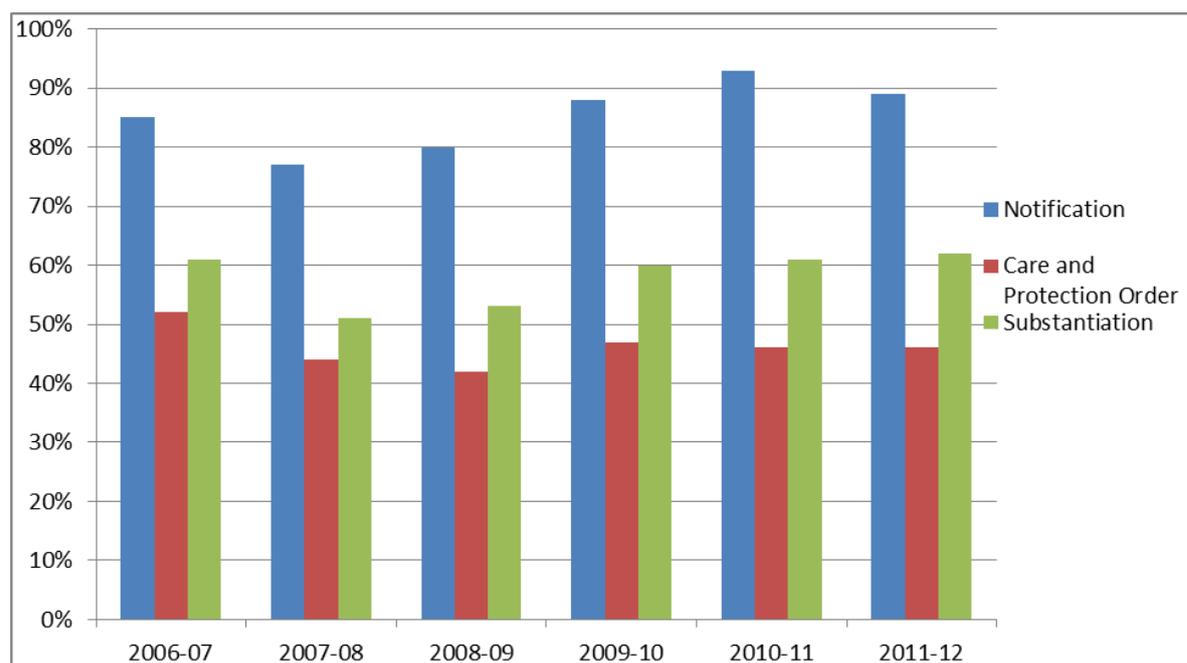
The proportion of young people in Ashley Youth Detention Centre who have been subject to a notification in the child protection system varied in any one year over the period 2006-07 to 2011-12 from 77% to 93%, with an overall average of 81%. Young people with substantiated records of child abuse or neglect over the same six-year period varied in any one year from 51% to 62%, with an overall average of 50%. Being within the child protection

system is a very good *retrospective* predictor of young people being in the youth justice system (Figure 10).

However, this does not mean that children with notifications or substantiations are likely to become involved with Ashley youth Detention Centre. Even though 90% of young people in Ashley over the past three years have had at least one notification in child protection (and about two-thirds have had a substantiation), less than 10% of all young people who have notifications are likely to become part of the youth justice system¹³³ and only a small number of these end up in custody. Hence, being in the child protection system is a poor *prospective* predictor of young people being in the youth justice system.

Rather than single factors, what the research shows is that it is the accumulation, interaction and sequence of risk factors that significantly increase the probability of becoming a persistent offender, almost independently of which particular risk factors are included.¹³⁴

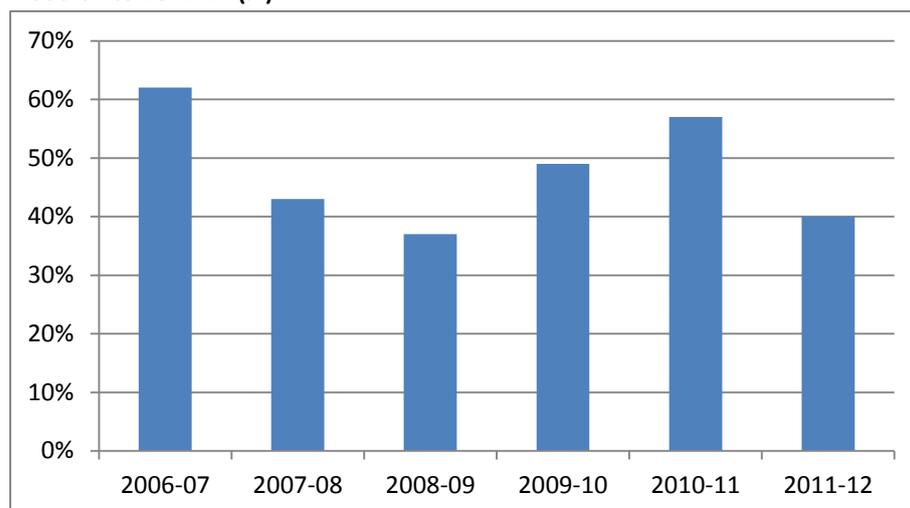
Figure 10. Child protection history of young people in Ashley, 2006-07 to 2011-12 (%)



Source: DHHS, unpublished data from KIDS Warehouse, 2013

Placement instability is often associated with involvement in the youth justice system. In the case of Ashley, the proportion of young people who had experienced multiple placements, in this case more than three placements, varied from 37% to 62% in any one year over the six-year period being considered here (Figure 11).

Figure 11. Three or more out-of-home care placements for young people in Ashley, 2006-07 to 2011-12 (%)



Source: DHHS, unpublished data from KIDS Warehouse, 2013

Some young people were admitted to Ashley directly from out-of-home care – between 13% and 23% of all young people in Ashley over the six-year period.¹³⁵

12. Alcohol and drug misuse

As pointed out in the 2009 NSW Young People in Custody Health Survey Report, young people often experiment with alcohol and drugs, and for most teenagers this does not adversely affect their lives; however, binge drinking is a growing problem for young people.¹³⁶ In the case of juvenile offending, research conducted in 2005¹³⁷ and 2009¹³⁸ is consistent in showing that 70% of young people in custody were under the influence of alcohol and/or drugs at the time of the offence (in most cases both alcohol and drugs).

Importantly, in the 2009 survey, 66% reported young people being drunk at least weekly in the year before coming into custody – with no differences by gender or Aboriginality; and almost the same percentage (63%) used cannabis at least weekly in the year prior to custody – with higher use among Aboriginal (73%) as compared with non-Aboriginal youth (55%). Further, 65% had committed offences in order to obtain alcohol or drugs. Despite the high rate of alcohol or drug use, only a minority of young people in custody (23%) reported ever having received treatment for such problems.¹³⁹

As pointed out by Prichard and Payne, '[W]hile the precise link between substance abuse and criminal offending is not known, the available evidence suggest that substance use exacerbates criminal offending.'¹⁴⁰ It could be argued that alcohol or drug misuse is not causally related to crime, but could be thought of as a 'facilitative' (in that such use is disinhibiting) or intermediate variable. Alcohol and drug misuse can be the result of other factors associated with juvenile offending, such as child maltreatment, 'dysfunctional' family

background, and educational and social marginalisation factors. Another hypothesis is that juvenile crime is designed to pay for the drugs/alcohol (as 65% have indicated above).

13. Adolescent development

*Adolescents are responsible for their behaviour but not as responsible as adults.*¹⁴¹

It has been argued that one of the drivers in adolescent antisocial and criminal behaviour is the mismatch between biological and psycho-social transitions – exacerbated in recent times with the earlier onset of puberty, with a corresponding mismatch between the development of limbic regions and prefrontal cortex of the adolescent brain.¹⁴² Psycho-social and cognitive development does not occur at the same rate, with cognition or intellectual development maturing earlier than psycho-social or socio-emotional development. Deficiencies in the latter mean that young people tend to be present-focused, sensation-seeking, more impulsive and underestimate the future consequences¹⁴³ of present behaviours. Young people are also much more susceptible to peer influence than when they are older. In sum their decision-making processes can be flawed.¹⁴⁴

Although the majority of adolescents do not engage in criminal behaviour, even among those who do most of them are ‘adolescent-limited offenders’ (the other, much smaller group Moffitt calls ‘life-course-persistent offenders’).¹⁴⁵ As Prichard and Payne remark, ‘Typically, youths who commit crimes do so with little forethought; spontaneity and risk taking are characteristics of juvenile crime’.¹⁴⁶

Persistent antisocial youth exhibit a clear profile:

Prichard and Payne report that, ‘Individuals who went on to engage in *persistent* antisocial behaviour during adolescence were consistently reported to be more aggressive, more disinhibited, and more temperamentally reactive from mid-childhood onwards than individuals who later engaged in little or no antisocial behaviour. Furthermore, from late childhood, this group exhibited lower social competence, and associated more frequently with antisocial peers. Given the consistency of these findings, it may be possible to identify children who are at risk of developing *persistent* antisocial behaviour at quite a young age, for whom targeted interventions may be beneficial.’¹⁴⁷

Experimental or low/non-antisocial antisocial behaviour profile:

Prichard and Payne go on to say, ‘Individuals who engaged in transitory antisocial behaviour during mid-adolescence had shown clear signs of dysfunction from the early adolescent years, following the transition to secondary school. While they showed no signs of adjustment difficulties and were similar to the *low/non antisocial* group during childhood, in

the early adolescent years they became more “difficult” temperamentally, more aggressive, began to experience difficulties at home and at school, and were likely to have formed friendships with youth who also engaged in antisocial behaviour. Due to the wide range of difficulties exhibited by individuals displaying *experimental* antisocial behaviour, interventions aimed at preventing this type of behaviour should be multi-faceted and targeted at the early secondary school years.¹⁴⁸

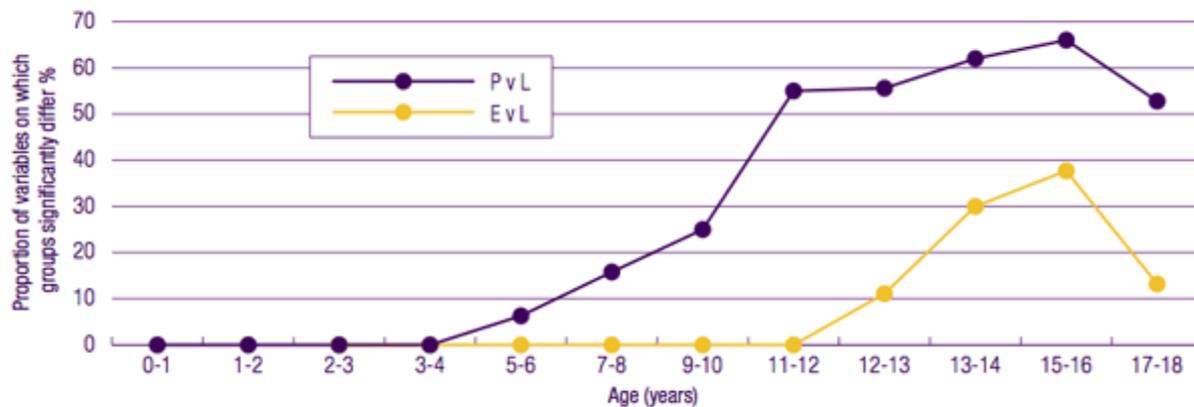
The early signs in the development of antisocial behaviour:

However, the signs of antisocial behaviour begin well before adolescence. There is evidence that young children who become persistently antisocial have poor verbal and executive functions. The verbal deficits affect learning, listening, reading, problem solving and expressive speech and writing. The executive functions produce what is sometimes referred to as ‘comportmental learning disability’, which includes symptoms such as attention disorder and impulsivity. These neuropsychological deficits are clear from ages three to five years, if not earlier – so detection (and therapeutic intervention) is a key implication.¹⁴⁹

Another key finding of research is that an infant’s neurological health status is related to risk for maltreatment.¹⁵⁰ In a New Zealand study, Moffitt et al. found that childhood-onset delinquents (as distinct from adolescent-onset antisocial behaviour) have the highest rates of psychopathic personality traits.¹⁵¹ This has also been demonstrated in Australia. The longitudinal, multiple wave Australian Temperament Project undertaken in Victoria over the past 20 years, which began with an initial sample cohort of 2,443 infants (aged 4 to 8 months), has found that early onset antisocial behaviour tends to be persistent and is associated with family and social risk factors whereas late onset antisocial behaviour tends to be temporary – ‘once a child reaches the age of 7 or 8 years with a history of consistent and serious adjustment difficulties then it is quite difficult to make substantial changes to entrenched problem behaviours.’¹⁵²

Figure 12 below illustrates the difference between childhood-onset and adolescence onset behaviours (reproduced below from the Australian Temperament Project) and how the difference in behaviours between the *persistent antisocial* and *low/non-antisocial* groups increases over time.¹⁵³ This graph also illustrates that the middle years is where the behavioural problems will really come to fore – and, as mentioned earlier and pointed out by Justice Wood, it is these middle years that are receiving only scant attention.

Figure 12. Group differences over time of persistent antisocial and low/antisocial groups (Australian Temperament Project).



Note: P = Persistent group, L= Low/non antisocial group, E = Experimental group

Chapter 3: Discussion and recommendations

According to Article 37 of the United Nations *Convention on the Rights of the Child* (CROC) ‘the arrest, detention or imprisonment of a child (aged up to 18 years) must be in conformity with the law and used only as a measure of last resort and the shortest appropriate period of time’. The general principles underlying the *Youth Justice Act 1997* (Tas) mirror this aim, by providing that ‘detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary’.¹⁵⁴

The United Nations Committee on the Rights of the Child in its General Comment on children’s rights in juvenile justice says:¹⁵⁵

In all decisions taken within the context of the administration of juvenile justice, the best interest of the child should be a primary consideration. 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. This can be done in concert with attention to effective public safety.

Although there is no doubt that detention is required for some offenders and offences, there is a clear and overwhelming consensus in the international and Australian literature and research about youth offending that incarceration – or detention – does not work.

On the one hand, detention in and of itself is criminogenic – that is, it fosters further criminality.

As Richards explains:¹⁵⁶

It is accepted, for example, that prisons are ‘universities of crime’ that enable offenders to learn more and better offending strategies and skills, and to create and maintain criminal networks. This may be particularly the case for juveniles, who, due to their immaturity, are especially susceptible to being influenced by their peers. As Gatti, Tremblay and Vitaro (2009: 991) argue, peer influence plays a fundamental role in orienting juveniles’ behaviour and ‘deviant behavior is no exception’. Separate juvenile and adult criminal justice systems were established, in part, because of the need to prevent juveniles being influenced by adult offenders

On the other hand, 'punishment and deterrence do not address factors that put young people at risk of offending, or teach them new skills to succeed in conventional life'¹⁵⁷ thereby contributing to poorer long term outcomes for the individual concerned and for the community as a whole.

According to the ACT Human Rights Commission in its 2011 Report on Bimberi Youth Justice Centre:

Spending time in custody has a proven negative effect on young people. Research has shown incarceration leads to social isolation and disconnection, institutionalism increases the likelihood of reoffending. More specifically, recidivism is correlated highly with future juvenile offending, and adult offending. The most significant reasons for this were found to be: stigmatization of young people, formation of criminal associations and networks, placing vulnerable young people at risk, and reduction of opportunities for positive rehabilitation. Remand has been shown to have negative impacts on a young person's family, relationships, education and work. Remanding a young person in custody also comes at significant economic costs to the community.¹⁵⁸

This is particularly the case if it is acknowledged that the common demographic and behavioural characteristics (so-called 'risk factors') associated with children and young people, who commit offences AND end up in detention include:

- family 'dysfunction' and family violence
- socio-economic disadvantage
- parental criminal history
- experience of child abuse and neglect and involvement in out-of-home care
- a physical, intellectual or learning disability (and which may manifest as an oral language disorder that impacts detrimentally on language, literacy and interpersonal skills¹⁵⁹)
- mental health issues (including alcohol and other drug issues)
- sporadic or interrupted participation in formal education
- periods of homelessness.

Offenders are also overwhelmingly male.

Only two-thirds of those who do offend will be proceeded against by the police.

Generally, over two-thirds of juveniles offend just once before desisting, and a further 15% desist after committing two offences; most juvenile involvement in crime stops without any need for intervention.

Examples of relevant research and data are described in more detail in Chapter 2 of this report.

The ACT Human Rights Commission has described the relevance of these so-called 'risk factors' as follows:¹⁶⁰

A large body of evidence has been developed to understand the risks that can threaten the development of children and young people. Risk factors can be defined as those events, characteristics or conditions that make a negative outcome more likely. Risk factors can be found within (individual attributes) and outside of (environment contexts) the individual.

The specific risks that can endanger the development of children and young people may take a variety of forms, including family dysfunction and disempowerment, school and community disorganisation, and exposure to pervasive violence and substance abuse within family, school and community contexts. There is also evidence that the number of risk factors that a person has been exposed to is a predictor of behaviour, whether that is drug use or criminal behaviour, regardless of what the particular risk factors are. The more risk factors there are, the greater the likelihood of a child or young person experiencing negative outcomes, most notably escalated involvement in problem behaviours and experiencing adjustment difficulties in adulthood.

The factors that protect children and young people from being influenced by risks are called protective factors. It has been recognised that these are not merely an absence of risks, but factors that actively influence the effects of risks. Protective factors may work in one or more of four ways: directly decreasing dysfunction; interacting with risk factors to buffer their effects; disrupting the chain by which risk leads to disorder; or preventing the initial occurrence of risk factors.

The concept of resilience is also important and related to the influence of risk. Resilience is often described as the ability to cope with stress or adversity. For example, a resilient young person is one who is able to maintain a normal or high level of functioning when confronted with developmental challenges or time-limited stressors. A hallmark of resilience is when a young person achieves high quality developmental outcomes in the presence of ongoing risk.

The situation in Tasmania

Detention facilities

Ashley Youth Detention Centre, also known as Ashley, is Tasmania's only secure youth detention centre. Ashley is located at Deloraine, in the North of the State and is managed by Children and Youth Services, an operational unit of the Tasmanian Department of Health and Human Services.

Clearly, Ashley's location causes difficulties for those young offenders and their families who live elsewhere in Tasmania and creates obstacles to reintegration into the community upon release.

Ashley houses youth offenders of both sexes aged 10 to 18 years, is staffed 24 hours a day and can accommodate up to 51 young people in four accommodation units. Young people detained on remand are not kept separate from those serving a period of sentenced detention.

The maximum sentence available under the *Youth Justice Act 1997* is two years, and a child or youth sentenced to a period of detention is required to be released on the 'earliest release date', i.e. the day immediately following the completion of 50% of the period of detention or three months, whichever is the longest. Upon their earliest release date, a supervised release order takes effect for the duration of the period of detention.

The Ashley School is operated by the Department of Education.

In early 2011 Save the Children established a Transition from Remand and Detention program at Ashley. This program works with juvenile offenders prior to release from Ashley and post release in the community. Participation is voluntary. The program focuses on education, recreation and vocation/employment.

As stated by Commissioner Ashford in her December 2011 Issues Paper:

There are on average 25 young people detained at Ashley Youth Detention Centre on any one day. Approximately 66% of the young people at Ashley were on remand in 2009-2010. It costs the Tasmanian community approximately \$10 million per year to run Ashley. It has been said, 'it actually costs \$330,000 per bed'.

It is still the case that Ashley uses a disproportionately high percentage of the Youth Justice budget in Tasmania, despite the lack of evidence to suggest it is effective in deterring young offenders or that it promotes and facilitates reintegration into the community upon release.

Who is detained?

According to the most recent Australian Institute of Health and Welfare report on youth justice in Australia, there has been a steady decline in the detention (sentenced and unsentenced) of young people in Tasmania over the period June 2008 to June 2012.

Of the 94 young people placed in detention over the year 2011-12, whose ages ranged from 13 to 17 years, 81 were male and 13 were female and 13 of these young people were Indigenous.

On an average day in 2011-12 the number of young people in detention in Tasmania as at the end of each quarter varied from 18 to 22. Between 10 and 13 of these young people were in unsentenced detention (remand) and between four and eight were under sentenced detention.

Since 2009-10 the number of young people in unsentenced detention (remand) has dropped by 31%. However, those on un-sentenced detention in Tasmania spent on average 54 days

there, which is a period 42% longer than the average for Australia (not including WA or the NT) and almost double that of the length of time in Victoria for those on remand.

Since 2006-07 in Tasmania the rate of young people aged 10 to 17 on community-based supervision has increased from 3.05 per thousand to 3.6 per thousand, which is 59% higher than the rate for Australia as a whole.

Given that detention rates in Tasmania (on an average day) have decreased from 0.53 in 2006-07 to 0.39 per thousand in 2011-12, it would appear that Tasmania prefers to use community-based support to detention.

However, it is difficult to get a comprehensive picture of the pathways to youth offending, particularly those that lead to detention in Tasmania. This, in turn, makes it difficult to predict whether specific changes to the continuum of care for young people in or at risk of entering the youth justice system would make a difference to their offending and detention in Ashley Youth Detention Centre.

There is publicly available data on:

- rates of young people under supervision within the youth justice system
- numbers in detention 'on an average day'
- numbers of those on remand
- gender, age and indigenous status of detainees
- average length of time in detention (remanded or sentenced)
- numbers serving community based orders
- the sorts of offences alleged to have been committed
- a breakdown of cautions/informal cautions.

However, data that would enable identification of pathways for individual offenders and potential points of intervention to prevent offending leading to detention, is simply not available in Tasmania or could not, for various reasons, be provided for the purposes of this Inquiry.

Therefore, it is not possible to obtain, for example, comprehensive and reliable data on the offending history, educational engagement, child protection, health status, prior diversionary history and prior engagement with support services for each individual offender in a particular year cohort.

Nor is it possible to easily access comprehensive data on the reasons young people are detained on remand, which offences committed resulted in a custodial sentence, and whether any of those who spent periods remanded in custody went on to receive a custodial sentence for the offences committed.

No one agency is responsible for collecting the sort of data needed to map pathways and identify intervention points in common for those young offenders whose offending results in extensive contact with the youth justice system.

The Chief Magistrate posits that:

[i]f more certain, robust and regular statistical and information snapshots of the entire youth justice system were available, more effective dialogue between key agencies in the system could occur and better collaborative solutions to the endemic problems would be possible.

There is almost no contemporary published research on youth offending that is Tasmania-specific, and, as at the date of this report, the evaluation of the Specialist Youth Justice Pilot Court in the Hobart Registry of the Magistrates Court is pending.

A number of other submissions to this inquiry identified the lack of current and readily available data about the performance of the youth justice system in Tasmania and its impact on young people and their families.

The ATDC, for example, identifies a lack of information about tangible results as a potential barrier to diversion for drug-related offences. It cites an Australian Institute of Criminology report in which it was identified that one of the

major barriers to police uptake of diversion and cautioning appears to be a perceived lack of feedback about the intervention. ... In addition they [police] generally do not know if diversion interventions are considered effective and what the likely or anticipated outcomes are for offenders. The lack of feedback on diversion outcomes and effectiveness is likely to contribute to police perceptions of diversion being a 'soft option'.

What focus group participants said about data:

During the focus group with Ashley staff, two comments were made relating to data:

'We have a 60-65% recidivism rate.'

'We have SECAPS data on over 400 young people over eight years going back to 2004-05 ... They (the characteristics of young people) haven't changed over time.'

These assertions cannot be independently verified, as relevant data is not available for the purpose of this report.

Note: Youth Justice Worker participants advised they now have access to the Child Protection database (CPIS) and, conversely, Child Protection workers have access to the Youth Justice database (YJIS). This access appears to have commenced within the past six months.

The Commissioner of Police also identifies a lack of formal evaluation of some programs so that informal or anecdotal opinion alone is relied on to support their continued operation.

Recommendations: Data

- 1.1 That government creates or strengthens existing information systems to support a whole-of-government approach as part of an information-sharing framework.
- 1.2 That government identifies and brings together the range of data required for rigorous justice mapping in order to identify the key communities for implementing prevention strategies and programs for addressing juvenile offending, noting that such data is also essential for evaluating the outcomes of any such initiatives.

The focus of this report

Because of the data limitations referred to above and the scarcity of Tasmania-specific research on youth offending, this Inquiry relies upon the outcomes of consultations with stakeholders in the government and non-government sectors with experience and expertise in working with young offenders or young people at risk of offending in Tasmania. This Inquiry also relies upon publicly available data and extensive reading of the research literature from both Australia and overseas.

The views and opinions of Community Youth Justice Workers, Custodial Youth Justice Workers, young people detained at Ashley and young people on community-based orders were also sought.

Additionally, this report was intended to inform the current review of the continuum of care to prevent youth offending and reoffending being undertaken by Children and Youth Services within the Department of Health and Human Services.

The 'last resort' principle can only operate to reduce detention rates where there is an effective package of alternatives to detention available to judicial officers, and those alternatives are grounded in, and integrated with, other primary, secondary and tertiary programs and/or services across the continuum.

Therefore, an assessment of the potential for successful adaptation of innovative alternatives to detention implemented overseas or in other Australian jurisdictions, can only be undertaken in the context of a consideration of other aspects of service delivery along the continuum of youth offending and re-offending.

It is not surprising that a common and overarching theme of the submissions is that detention cannot be seen in isolation. It is imperative that 'alternatives to secure detention' are seen as part of a *continuum* of services, programs, interventions and strategies.

As Anglicare says in its submission:

From research evidence and service delivery experience, Anglicare holds the view that consideration of youth justice issues, including the aim of reducing the number of young people in detention, must be undertaken alongside consideration of child protection issues, homelessness and mental health issues. We agree that assessments of and subsequent interventions prescribed for young offenders should take into account all aspects of a young person, including social, cultural, educational, familial, peers, personality, behaviour, attitudes and health aspects (New South Wales Department of Juvenile Justice 2003), and that multiple causal factors should be considered in conjunction in the prescription of legal and youth justice consequences for criminal acts by young people (Lober & Farrington 1998, cited in Sallybanks 2002).

What do the submissions say about alternatives to detention?

Appendixes B and C summarise the main themes coming out of submissions and consultations with young people and workers involved with the youth justice system in Tasmania.

The remainder of this chapter highlights common themes and proposals for reducing the reliance on secure custodial detention at Ashley Youth Detention Centre.

What is clear is there is an overwhelming degree of consensus about what is needed in Tasmania to make the youth justice system more effective in terms of positive outcomes for both the young offenders who become involved in it and for the wider community.

A Justice Reinvestment Framework for Tasmania

While the submissions cover a variety of detail and are service-focused, what they suggest together, either implicitly or explicitly, is the need for a shift toward the principles and goals, or more broadly the strategies, which underlie Justice Reinvestment, the Justice Detention Alternatives Initiative or the Missouri Model.

These concepts, or models, are summarised in Appendix D.

Justice reinvestment involves advancing ‘fiscally sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditure and make communities safer’.¹⁶¹

Most of the submitters advocated directly or indirectly for a justice reinvestment approach or focused on strategies consistent with a justice reinvestment approach, such as addressing the underlying causes of criminal behaviour.

From the recommendations in these submissions, together with the issues identified in the focus groups and in the research data, a vision, a set of goals and principles are suggested, which together make up an example of what a Justice Reinvestment Framework for Tasmania might look like. This example of a Framework for Tasmania is also based on the work of the ACT Bimberi report, and the three models mentioned above.

The report of the recent Senate Inquiry into the *Value of a justice reinvestment approach to criminal justice in Australia*, refers to this definition of justice reinvestment from the U.S. Bureau of Justice Assistance:

a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighbourhoods. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.¹⁶²

A Justice Reinvestment Framework for Tasmania could provide the structure for the redevelopment of the youth justice system, including provision of alternatives to secure detention in Ashley Youth Detention Centre, and reducing youth offending and re-offending by addressing some of the underlying causes of such behaviour, particularly among vulnerable groups or communities.

This Framework would ideally be comprised of three components: vision, goals and guiding principles.

Vision

To enable youth to fulfil their potential in a socially responsible manner with respect for the responsibilities of the family and the protection of the community through a balanced approach to youth justice.

Goals

1. Reduction in youth offending and re-offending.
2. Reduction in over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system.
3. Diversion of children and young people away from the formal youth justice system.
4. Identify and address the developmental needs of particularly vulnerable groups, such as children and young people with mental, health or learning impairments.
5. Reduction in detention rates, including on remand.
6. Planning and supports for the successful reintegration into the community of children and young people leaving detention.
7. Development of cross-agency database systems to enhance integrated service delivery, and publicly available, regular performance reporting.

Guiding Principles

1. Early identification, intervention and prevention are the most effective way of reducing youth offending.
2. Children and young people will be diverted away from the youth justice system wherever possible with custody being used only as a last resort and for the shortest possible time.
3. The developmental needs and risk factors associated with youth offending will be identified and matched with appropriate programs and services.
4. Children and young people will be heard and their views taken into account in all matters that affect them.
5. Families will be supported and engaged to help them meet the developmental needs of children and young people.
6. Community safety will be enhanced by an effective youth justice system that results in better outcomes for vulnerable or at-risk children and young people.
7. Programs and services will be evidence-based and regularly evaluated to ensure effectiveness and efficacy.

Examples of the findings from the submissions, focus groups and research data are contextualised below according to the Goals in the Justice Reinvestment Framework. Only a few key findings are presented here as illustrations of how this framework could apply in Tasmania.

Goals

1. Reduction in youth offending and re-offending

There is a need to focus more attention on the needs of vulnerable groups with a view to reducing youth offending – this focus was suggested in many submissions, including those of Anglicare, Mission Australia and Baptcare. The risk factors for young people entering the youth justice system were identified in these submissions.

Data analysed elsewhere in this report illustrate the risk factors associated with youth offenders in Tasmania.

As pointed out by Weatherburn, attempts to prevent offending and reoffending should begin immediately after first offences and may involve programs that target at-risk preschool and primary school children.¹⁶³

As demonstrated in the Australian Temperament Project, children who are at high risk of increasingly frequent anti-social behaviour can be identified at four to five years of age (see elsewhere in this report). This requires applying the Guiding Principle of early identification. The education system can play a vital role in identifying and taking remedial action and supporting parents (for example, through child and family centres).

In order to reduce re-offending (recidivism), educational or vocational support needs should be enhanced, as provided, for example, by programs such as Save the Children's Transition from Ashley program.

As identified in the focus groups with custodial youth justice workers and community youth justice workers, there is also a need for accommodation options between Ashley and the community, such as 'step-down accommodation'; perhaps also a semi-secure facility that enables young offenders to engage in educational and vocational programs in the community.

As pointed out by the former Chair of the UK Youth Justice Board, Rod Morgan (2007),

It may be too much to say that if we reformed our schools, we would have no need for prisons. But if we better engaged our children and young people in education we would almost certainly have less need for prisons. Effective crime prevention has arguably more to do with education than sentencing policy.

2. Reduction in over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system

While no submissions were received focusing on Aboriginal and Torres Strait Islander children and young people in the youth justice system, AIHW reports show that Tasmania has much lower over-representation of Indigenous youths within the youth justice system when compared with the rest of Australia. However, any over-representation is cause for serious concern. The underlying drivers of over-representation can be addressed through community development strategies.

As pointed out by Ross Homel,

... mobilising social resources to support children, families and their communities before problems emerge is more effective and cheaper than intervening when problems become entrenched.¹⁶⁴

3. Diversion of children and young people away from the formal youth justice system

Deterring children and young people from the formal youth justice system is shown to be very effective, especially for one-off offenders.

Research suggests that police dealing with young offenders who commit minor offences by issuing warnings/cautions results in significantly less re-offending.¹⁶⁵ Conversely, custodial sentencing is associated with an increased likelihood of re-offending.¹⁶⁶

Anglicare suggested that there should be 'an innovative suite of alternatives to detention'.

As Chen et al. have demonstrated, intervention and supports need to be put in place at the time of the first offence, not after second and subsequent offending, and especially if the young offender is less than 15 years of age at time of first offence.¹⁶⁷

The majority of offenders have a child protection history, which raises the issue of how child care and protection issues are to be recognised and addressed instead of criminalising what is essentially a welfare issue.¹⁶⁸

4. Identify and address the developmental needs of particularly vulnerable groups, such as children and young people with mental, health or learning impairments

While differentiating between ‘adolescent limited’ offenders and ‘life-course’ offenders is not always straight-forward, the latter group tends to be characterised by multiple disadvantages, including severe behavioural problems, cognitive impairments and adverse family influences. The life-course offender makes up only 10-20% of all young offenders.¹⁶⁹

The most vulnerable groups include children and young people with:

- Child protection / out-of-home care background
- Cognitive or communication impairments¹⁷⁰
- Mental health issues
- Alcohol and drug abuse
- Disengagement with education, as indicated by suspensions from school
- Low self-control, impulsivity, low levels of empathy and limited conceptions of future consequences
- At least one parent with a prison history
- Low family income
- Socially isolated or associate with other young people with anti-social behaviour.

CREATE advocates that health and other related issues could be identified by early health screening, such as that provided by the HEARTS program. For children and young people entering the out-of-home care system, health and related issues should be identified through comprehensive clinical assessments, as detailed under the *National Clinical Assessment Framework for Children and Young People in Out-of-home Care*.

The ATDC suggests that with the courts, youth justice and alcohol and drug community sectors working collaboratively, better results can be achieved for young offenders.

Baptcare recommends adopting the Victorian Court Integrated Services Program (CISP) for identifying mental health, acquired brain injury, alcohol and drug issues and providing support for accommodation, employment and social support services (see Box A, Appendix B).

The education system again provides an opportunity for preventative action – mental health and cognitive impairment issues are most likely to be first identified in the school. Also, any school suspension should be considered a potential alert for other issues and addressed as a student wellbeing issue rather than simply a disciplinary matter.

5. Reduction in detention rates, including on remand

Detention rates have been declining in Tasmania over the past four years (see Figure 1, Chapter 2) and youth offending has also declined over the past three years across all ages

(see Figure 4, Chapter 2). However, further declines in detention and reductions in recidivism could be enhanced by the adoption of some of the suggestions made in the submissions.

In their submission the Hobart Community Legal Service (HCLS) states that it ‘believes that imprisoning young offenders in Ashley is ineffective and inappropriate’, particularly because of its location and associated accessibility issues for families, which has the effect of (further) isolating young people (because of its unhomely environment). HCLS further suggests that Ashley should be replaced by a number of smaller regional detention facilities, thus facilitating greater re-integration into the community through maintaining links with local employers and services, not to mention families.

TasCOSS, Anglicare, the HCLS and YNOT also support the concept of smaller, residential or regional facilities plus weekend or night detention (as in New Zealand).¹⁷¹

Such a proposal is similar to the Missouri Model, which both Whitelion and JLD Restorative Practices endorse.

The research evidence (and annual reports by the Missouri Department of Social Services¹⁷²) suggests that such a model can be very effective in reducing recidivism or re-offending. The Missouri Model has been adopted by 27 states across the United States.

There was also a range of enhanced diversionary strategies suggested in the submissions, including alternative and expanded bail options and supported accommodation (Department of Justice, Anglicare, Save the Children, YNOT and the ATDC), which would also have the potential to reduce the numbers of young people who are remanded in Ashley because there are no alternatives.

6. Planning and supports for the successful reintegration into the community of children and young people leaving detention

As pointed out by the Chief Magistrate, ‘the transition from detention to the community is a particularly problematic time for young people and presents many challenges to them, their families and their communities’. This sentiment was also echoed in the Department of Justice submission.

Save the Children and WhiteLion have operated a range of support services for young people exiting custody, with the aim of providing a ‘seamless transition to the community’.

Accordingly, there were many submissions advocating for the expansion of planning and supports for reintegration of detainees into the community.

Reintegration should begin with the development of exit plans for all detainees, and not just those serving a period of sentenced detention when the young offender enters Ashley (Anglicare and Save the Children), not four to six weeks before exiting as it is now.

Where identified, mental health and drug and alcohol issues should be addressed by the provision of suitable services, instead of using custodial detention as an 'institutional alternative'. Support programs should continue for at least six months post-release from Ashley, as is undertaken with the Missouri Model.

It is vital that children and young people should be heard and their views taken into account in all matters that affect them, as advocated by Create (Guiding Principle 4).

7. Development of cross-agency database systems to enhance integrated service delivery and publicly available, regular performance reporting

One of the fundamental requirements of a justice reinvestment strategy is the establishment of comprehensive, integrated data systems for undertaking demographic/justice mapping and for the evaluation of any programs that are subsequently implemented. Successive government enquiries both in Australia and the UK have found limitations in the availability of, and access to, data to be a profound problem.¹⁷³

Justice mapping facilitates the 'identification of place-based communities and identification of existing services and gaps in services required to reduce crime' (Recommendation 8 of the Senate Inquiry). Justice mapping provides the means to identify where offenders are coming from (and returning to) by the collection, analysis and mapping of data about crimes, convictions, imprisonment and parole.

In Tasmania a great deal of this data is already collated by DHHS from its own services and by the Department of Education and the Department of Justice sources.

As noted in the Senate Inquiry (and the House of Commons Justice Committee¹⁷⁴), there also 'needs to be expertise and capacity to undertake justice mapping and interpret the analysis as well as expertise to interpret results at the evaluation stage.'¹⁷⁵

Compilation of data, with evaluation data built into all service/support programs, is essential for assessing the effectiveness of such programs and services.

In undertaking this report the Commissioner for Children found data accessibility an enormous restriction, which severely limited what could have been achieved by mapping pathways into the youth justice system in Tasmania.

The recent Senate Inquiry also recommends that ‘the Commonwealth provide funding for the trial of justice reinvestment in Australia’ (Recommendation 7).

As concluded in the NSW Noetic Solutions report,

The overwhelming evidence ... is that prevention and early intervention programs are the most effective means of reducing entry into the juvenile justice system and reducing re-offending. Consequently, an approach that seeks to reduce the causes of offending (in particular through targeting disadvantage), diverts young people from entering the juvenile justice system and reduces re-offending will provide the best outcome for the community. This approach is best summarised by the thinking that underpins *Justice Reinvestment*.

One of the greatest risks to successful implementation of Justice Reinvestment is that insufficient funds will be diverted to the necessary programs. Insufficient funding of reinvestment programs will increase the long-term costs to the community.

Recommendations: Youth Justice Strategy or Framework

2.1 That government adopts an overarching strategy or framework for the provision of youth justice in Tasmania, comprised of a vision, goals and guiding principles.

2.2 That government considers the adoption of a Justice Reinvestment Framework for youth justice in Tasmania.

2.3 In the event that a Justice Reinvestment Framework is adopted, that government re-evaluates the principles and provisions of the *Youth Justice Act 1997* and the internal policies and procedures that underlie its operation to align with a justice reinvestment approach.

Other issues and associated recommendations

1. Detention cannot be seen in isolation

A common and overarching theme is the need to consider ‘alternatives to detention’ as part of a continuum of services, programs, interventions and strategies.

As Anglicare says in its submission:

From research evidence and service delivery experience, Anglicare holds the view that consideration of youth justice issues, including the aim of reducing the number of young people in detention, must be undertaken alongside consideration of child protection issues, homelessness and mental health issues. We agree that assessments of and subsequent interventions prescribed for young offenders should take into account all aspects of a young person, including social, cultural, educational, familial, peers, personality, behaviour, attitudes and health aspects (New South Wales Department of Juvenile Justice 2003), and that multiple causal factors should be considered in conjunction in the prescription of legal

and youth justice consequences for criminal acts by young people (Lober & Farrington 1998, cited in Sallybanks 2002).

2. Detention does not work and can be counterproductive

The majority of submissions acknowledge – expressly or by implication – that secure detention occupies a necessary position within the youth justice system in Tasmania. However, there is strong evidence that detention is costly, does not act as a deterrent, leads to poorer outcomes both for the individual and the community and that in some respects detention at Ashley is not ‘a last resort’, particularly for young people detained there on remand.

Concern is also expressed about Ashley’s location – it is largely inaccessible via transport other than a motor vehicle; its location makes it difficult for young offenders to maintain contact with family, friends and the community. Save the Children argues that Ashley’s geographical location is such that it does not facilitate ‘through care’.

3. Submissions call for a range of alternatives to secure custodial detention at Ashley

Generally speaking, alternatives focus on:

- (1) Provision of deferred sentencing
- (2) Providing a wider range of options to facilitate bail and thereby reduce the numbers remanded in Ashley
- (3) Greater use of effective community-based sentencing options
- (4) Access to diversionary programs (specifically for drug and alcohol abuse) that would include availability of therapeutic residential care
- (5) Adoption of alternative models of detention
- (6) Provision of supportive transitional planning to facilitate reintegration into the community.

Each of the above is considered in detail below.

(1) Deferred sentencing

According to the Chief Magistrate, Bail Support Programs and Deferred Sentencing Orders are commonly used in other jurisdictions as alternatives to secure detention. The Hobart Specialist Youth Justice Pilot already utilises a form of deferred sentencing relying on provisions in bail legislation.

Amendments to the *Youth Justice Act 1997* contained in the Youth Justice (Miscellaneous Amendments) Bill 2012 would formalise deferred sentencing by giving the Court the statutory authority to defer sentence for a period of up to 12 months after a finding or plea of guilty.

According to the Fact Sheet accompanying the Bill into Parliament, the intent of this amendment 'is to continue to support rehabilitation in the community. This may lead to a decrease in the number of admissions to Ashley Youth Detention Centre'.

The government proposes a trial of this amendment across Tasmania with a proclamation planned for a later date.

Recommendations: Magistrates Court (Youth Justice Division)

- 3.1 That government facilitates the expansion across the state of deferred sentencing in youth justice matters and provides sufficient resources to the Magistrates Court and to those service providers essential to its success.
- 3.2 That government investigates the feasibility of establishing a state-wide general and multi-disciplinary collaborative court support service to provide a range of clinical, support, referral, supervision and case management services to clients of the Magistrates Court (Youth Justice Division).

(2) Options to facilitate bail

Many of the submissions emphasise the need for alternative or expanded bail options, particularly in light of the relatively high numbers of young people who enter Ashley on remand. The Department of Justice (DoJ) says that subject to consultation and support from the magistrates, alternative forms of bail may reduce the remand population and enable bailees to maintain schooling, involvement with their families and allow intervention to begin as early as possible in the justice process.

Bail assistance lines

The Department of Justice submission points out that 'a number of other states provide bail assistance lines where police who are considering granting bail to a young person can seek advice and support in relation to parents/guardians, transport, suitable accommodation' and that 'a young person can also be provided with support to meet their bail conditions, including referral to non-government organisations to address drug and alcohol issues, mental health issues or vocational needs'.

Bail support programs and supported accommodation

According to primary research carried out by Anglicare and discussed in their submission to this Inquiry, many young people detained at Ashley are there as a consequence of a lack of alternative placement options and support (along with other issues).

In Anglicare's opinion, this reality illustrates the dire lack of alternative placements and support for young people in need of out-of-home care in Tasmania:

Alternatives to detention are lacking in Tasmania, along with safe places that offer a healing environment for young people who have experienced family breakdown, abuse, neglect, homelessness and trauma.

Ashley currently fills a service gap that may be better and more cost-effectively met by the establishment of a broader suite of placement options for young Tasmanians in need of out-of-home care.

Anglicare demonstrates the gaps in provision of placement options in the table below.

Table 2. Spectrum of out-of-home care options, including detention (adapted from Stuart & Saunders 2008)

| Less intensive | International range of out-of-home care support options provided to children and young people | Tasmanian out-of-home care options currently provided (% of total children on care and protection orders placed in each option in Tasmania, June 2011) |
|----------------|--|---|
| | Independent living, with support | In Tasmania this includes support in public or community housing, or private rental (2.7%) |
| | Receiving homes – home-based care provided by families | Emergency foster care placements are provided |
| | Kinship care – home-based care provided by adults with kinship bonds | Short-term kinship care placements with extended family members are provided (27.4%) |
| | Conventional foster care – home-based care provided by unrelated non-kin adults | Foster care placements are provided where possible (42.3%) |
| | Treatment foster care (specialized or therapeutic foster care) – foster care provided by adults trained in therapeutic trauma-informed care | None exist - therapeutic foster care exists only in so much as the level of training foster carers receive (general, advanced or complex) |
| | Family group care – foster care provided by trained adults, either in a home environment or facility, supported by staff working shifts | Family group homes exist but are predominantly for sibling groups, and are not necessarily staffed by adults trained in therapeutic trauma-informed care (2.1%) |
| | Congregate care (staffed group care or residential care) – workers provide direct care on a rostered or shift-work basis | Congregate care exists but are not supported by multidisciplinary teams and do not necessarily provide a therapeutic or treatment aspect by design (Residential Care) |
| | Therapeutic residential care –intensive care placement for young people in statutory care within a residential setting, aims to address complex issues | TRC exist in all three Tasmanian regions, some of which employ trauma-informed approaches (1.6%) |
| | Residential treatment care – a fully staffed group home under a common clinical supervisory structure, which may include treatment programs | None exist in Tasmania |
| | Psychiatric hospital (secure treatment unit care) – similar to residential treatment care only with the additional capacity to medicate or certify/secure a young person | None exist in Tasmania |
| | Therapeutic secure care/community setting - therapeutic residential care or residential treatment care provided in a community setting with capacity for containment | None exist in Tasmania |
| More intensive | Secure care/correctional facility – locked facilities to which young people are sent by court order, which do not generally provide therapeutic input | Ashley Youth Detention Centre is Tasmania's only secure facility, and the only placement option after TRCs available to young people in need of intensive support |

The Department of Justice says that alternative forms of bail for young people, such as supervised bail or bail on the condition of attendance at a mandated activity (e.g. akin to the previous Court Mandated Diversion bail orders but specifically for young people), could be developed.

The Department of Justice suggests that

flexible accommodation options or structured and supported bail programs to assist with compliance with bail conditions for young people appearing before the courts may assist in diverting some who may otherwise be held on remand. The Department recommends that the issue of supported accommodation be further explored.

Whitelion recommends the investigation and piloting of alternative secure accommodation options outside Ashley, with a priority on alternatives to remand detention within Ashley particularly as it appears to be used as an accommodation option given the lack of alternative housing options in Tasmania.

As an alternative to detention, Save the Children recommends

the establishment of an intensive supported bail program that includes accommodation options and therapeutic programs such as CHART, drug and alcohol, mental health, life skills etc. delivered in a practical way in a community setting.

Save the Children presently provides a pilot bail support Program in Tasmania's South with a focus on young people who are not subject to Child Protection or Youth Justice orders. It has been suggested that Save the Children's focus is on 'low risk' offenders and that medium to high-risk offenders have no access to bail support and may consequently be remanded in custody due to lack of accommodation options (Children and Youth Services-CYS).

The Youth Network of Tasmania (YNOT) believes that the majority of young people could be diverted from pre-trial detention through an appropriate supported bail option.

In its submission, Children and Youth Services also draws attention to:

- a) the present lack of supported bail programs for medium to high risk offenders, noting that Save the Children's pilot Bail Support program is only available in the South and has a focus on 'low risk offenders' that have had limited contact with the Youth Justice system; and
- b) the potential to use curfews in conjunction with electronic monitoring and the use of programs to address underlying problems associated with young offenders.

Home detention and electronic monitoring

The Alcohol, Tobacco and Other Drugs Council of Tasmania (ATDC) expresses support for 'investigating other alternative detention models such as bail hostels, home detention and

electronic monitoring, both for sentenced young people and those on remand', while the Chief Magistrate notes that 'structured Bail Support Programs and deferred Sentencing Orders are commonly used in other jurisdictions as alternatives to secure detention'.

The possibility of electronic monitoring as a bail option or as an alternative to secure detention is considered in a number of the submissions.

The Department of Justice is supportive of trialling electronic monitoring equipment for accused persons – including young people – on bail and has worked with Tasmania Police to develop a proposal to trial electronic monitoring equipment, which was seen as a step towards the possible introduction of home detention. This project has been 'put on hold' due to financial constraints.

The Deputy Secretary Children advises that the use of electronic monitoring in combination with a curfew condition and programs tailored to address underlying problems 'does seem to demonstrate better results if managed properly'.

The ADTC also recommends the investigation of electronic monitoring.

The Hobart Community Legal Service advocates for restrictions on electronic monitoring, in the event it is implemented, so as to avoid over-policing, stigmatisation and alienation.

Recommendations: Alternative or expanded bail options

- 4.1 That government establishes a state-wide after- hours bail support service for youth that:
- provides advice and assistance to police in circumstances where a youth is at risk of being refused police bail;
 - assists youth to make alternative accommodation and transport arrangements with family, friends or a support service;
 - assists youth on bail to successfully comply with their bail conditions; and
 - provides information and referrals for assistance in relation to housing, drug and alcohol, mental health and other needs.
- 4.2 That government establishes a state-wide structured bail support program for youth at significant risk of remand that:
- assists and engages youth to successfully comply with their bail conditions and avoid offending while on bail;
 - includes the provision of suitable housing if needed; and
 - incorporates a triage, assessment and case management facility designed to provide diversionary support services, assistance and referrals in relation to housing, drug and alcohol, mental health, vocational and other needs.

4.3 That government examines and considers the feasibility of weekend or night detention, perhaps in conjunction with electronic monitoring or provision of placements in the community.

(3) Effective and alternative community-based sentencing

The Department of Justice (DoJ) supports community sentencing options dependent on the type of crime involved, benefits of which include the potential for developing the individual's potential with the 'objective of enhancing his or her education or employment prospects or even keeping the offender in school or employment and within the community'.

In his submission the Chief Magistrate considers probation and community service orders to be critical alternatives to detention, but expresses concern that inadequate resourcing undermines their efficacy.

He explains that while positive results have been seen with persons subject to these orders,

the breadth and intensity of community-based supervision is a concern for the Court. Community-based supervision orders for young offenders should enable Youth Justice Services and other relevant agencies to focus on the needs of young offenders and respond accordingly to substance abuse issues, homelessness, education or literacy issues, etc. If there was greater confidence amongst magistrates that more young offenders could be adequately and appropriately supervised in the community for the full duration of the order, they would be more inclined to view probation and community services as preferred alternatives to detention.

Alternative community-based programs

Anglicare recommends that consideration be given to the various models of outdoor and adventure therapy as alternatives to detention – for example, an integrated use of remote therapeutic wilderness expeditions in the context of longer-term community-based rehabilitation.

Recommendations: Community-based orders

5. That government ensures that young offenders considered by magistrates to be suitable for community-based supervision are given the necessary supports to facilitate successful completion of the terms of their orders.

(4) Diversionary programs to address substance abuse and other such issues

ATDC describes the Children's Drug Court in WA, which provides a sentencing option in acknowledgment of the fact that many offences are committed by people with substance abuse issues. To take part, the young person must:

1. Admit they have an illicit substance use problem
2. Enter a plea of guilty to all charges
3. Be willing to undergo appropriate and agreed treatment in the community or in residential rehabilitation
4. Be willing to be supervised by the Children's Drug Court and Court Assessment and Treatment Service.

The process of supervision by the Assessment and Treatment Service takes between six and 12 months, and this staged approach means the Children's Drug Court is not seen as a 'soft option' by police or judicial officers, or by the young people involved.

This alternative is not available to young offenders in Tasmania.

Interestingly, the Chief Magistrate notes the Court Mandated Diversion (CMD) for Drug Offenders program, which started in 2007, although originally available to both adult and juvenile offenders, was subsequently made unavailable to young offenders because CMD was

... primarily to be focused on the Drug Treatment Order (DTO) disposition available to adults only under the *Sentencing Act 1997*. As far as I am aware no supervised or mandated bail measures were put in place to continue bail-based drug diversion in a manner similar to that provided by CMD.

The Chief Magistrate's submission examines existing CMD options available in drug-related cases involving adult offenders. The DTO is a sentencing option available to the courts when sentencing. The Chief Magistrate says:

The DTO in other words is a pure alternative to secure detention for adult offenders with illicit drug problems. An anomaly is that two young people with similar offending histories and trajectories, who may be a couple of months apart by birth date, will have differential access to supervised drug treatment. The older adult offender may receive a DTO while the younger juvenile offender has no access to an 'integrated, supervised and reviewable treatment regime' that facilitate(s) the offender's rehabilitation and reintegration into the community'. In the case of the adult offender, the Court has the option of making a DTO, but in the case of the juvenile offender no such option exists for the Court. Something similar to the DTO that reconciles that state of affairs and that is aimed at and applicable to young

offenders with illicit drug and/or alcohol problems ought to be explored and considered.

The Department of Justice explains that the current CMD model was determined to be inappropriate for young people on the basis that it is considered inappropriate to bring young offenders into contact with hardened adult offenders but suggests a similar type of program focused on young people could be developed.

The ATDC addresses the issue from the perspective of those young offenders who have drug and alcohol issues, noting there is a need for an increase in youth drug and alcohol residential rehabilitation services in Tasmania.

ATDC goes on to propose a new model of community supervision for such young offenders, whereby community sector youth workers would work in collaboration with Youth Justice and the Court to support a young person to fulfil their commitments to attend programs as directed by the Court. The supported youth worker would coordinate access to other services and supports such as housing, mental health services, access to education, vocational and educational support, etc.

ATDC says:

With the right training and support from Youth Justice, this model of case management for young offenders could also be used as a pre-sentence option where magistrates could require young people under the supervision of a community sector youth worker, to participate in education or other programs. Approaching a young person's needs in this way would deliver a more holistic approach and has the potential to deliver more tangible improvements in recidivism and steering people away from the drug/crime cycle.

Mission Australia gives as an example of a successful program, Triple Care Farm, based in NSW. Although TCF was developed to assist youth addressing mental health and substance abuse issues, Mission states that

it is worthy of consideration in relation to effectively dealing with young people who offend ... Substance abuse is a strong predictor of recidivism and young people in detention have higher rates of mental illness than their counterparts in the community.

What focus group participants said about drug diversion:

'There is nothing for kids detoxing.'

'There is no mental health assessment for those who use drugs.'

'Many young people don't want to go to these types of services.' [mental health services]

'Therapeutic intervention needs to be flexible around duration.'

'Clare House is almost closed to conduct disorder kids, which is most of our kids.'

'Needs to be non-clinical.'

'There is no drug and alcohol unit for youth.'

'All kids I work with have a drug or alcohol problem but there is nowhere for them to go here before the problems escalate into serious criminal behaviour.'

'There are lots of drug and alcohol services but none of them are working from a model that my young people seem to be responding to on a longer term basis.'

Recommendations: Drug, alcohol and mental health issues

6. That Government acknowledges that a significant proportion of young offenders have drug, alcohol and associated mental health issues by:

- establishing youth drug and alcohol residential rehabilitation services in Tasmania
- considering the establishment of a new model of community supervision for young offenders with drug, alcohol abuse and mental health issues, whereby community sector youth workers would work in collaboration with Youth Justice Services and the court to support a young person to fulfil their commitments to attend programs as directed
- establishing the equivalent of Court Mandated Diversion (CMD) options, focused on and applicable to young offenders with illicit drug and/or alcohol problems.

(5) Alternative models to secure custodial detention

The majority of the submissions acknowledge – explicitly or explicitly – that secure detention occupies a necessary position within the youth justice system in Tasmania but emphasise that it must only be used as a measure of last resort.

The Director of Public Prosecutions explains that 'there will be a place for detention in any reasonable range of youth justice strategies' because youths will continue to commit serious crimes or fail to respond to alternative disciplinary methods. He says,

[f]or those cases, which will be rare, detention will be required in order that the courts' functions of deterrence, retribution and (where applicable) community protection can operate'. The Director of Public Prosecutions nevertheless supports the enhancement of judicial discretion by providing a wider range of sentencing options to the courts when sentencing including alternative forms of detention.

Mission Australia states:

We do acknowledge that detention is required for some offenders and offences, but are concerned that it is over-utilised, costly, does not act as a deterrent, and leads to poorer long-

term outcomes both for the individual and the community. Young people who are incarcerated are likely to lose links with their families, suffer violence at the hands of other inmates, and experience unstable living conditions upon release. Detention also has a significant negative effect on future employment prospects of young people.¹⁷⁶ Given the substantial implications for the young person and the broader community that arise as a result we consider it to be a matter of priority to provide meaningful alternatives to detention.

The HCLS 'believes that imprisoning young offenders at Ashley is ineffective and inappropriate', noting that:

- its location makes it difficult for young offenders to maintain contact with family and friends
- Ashley is largely inaccessible via transport other than a motor vehicle
- Ashley's size means it is not a substitute for a home environment. This has the effect of isolating young people from 'normal' home environments at a time when they need them most.

HCLS would prefer that Ashley be replaced with a number of smaller regional detention facilities resulting in the following benefits and says:

- These facilities would better imitate home environments, thereby promoting a healthier culture.
- Each detainee would be closer to family and friends than he or she would otherwise be ...
- Detainees would be better able to maintain links with local employers and education providers, thereby improving post-release outcomes and re-integration. A young offender could, for example, gain work experience with a nearby employer with a view to moving to full time employment upon release. The obligation of youth detention facilities to promote reintegration post-release is manifested in article 40 of the United Nations Convention on the Rights of the Child ('CROC').

The Department of Justice raises the issue of combining all custodial services within the one agency regardless of the age of the offender and goes on to say:

Separate facilities were suggested for offenders aged 13 to 18, 18 to 25 and 25 to adult. Consideration could be given to the development of such facilities during future capital investment decisions or the ongoing redevelopment of the Risdon Prison site. Offenders within the age group of 18 to 25 are still maturing and can be very impressionable. The Tasmania Prison Service believes it may be preferable not to have these young adults housed with older offenders. Such a system may also enable a more seamless transition for young people in detention and the continuity of services to offenders to support planned outcomes.

The Department recommends that any infrastructure planning is undertaken following clarification of the direction, vision, aims, structures and sentencing options for Youth Justice. A holistic approach which addresses education, social, health needs etc. should also be taken into account during infrastructure planning (p.3).

YNOT expresses a strong view that

[A]n institutional detention centre is not an appropriate place for young people on remand and, in fact, the use of the AYDC facility for this purpose directly works against the ultimate goal of reducing crime in Tasmania.

Rather, YNOT notes options such as in-home detention, electronic monitoring systems, a specific youth remand centre or a farm-based system could be considered.

As for alternative models to Ashley, YNOT refers to the use of 'weekend (Spain) or night detention (Italy)' and notes that smaller, residential homes have been employed in America 'with very high reductions in recidivism'.

TasCOSS supports YNOT's call for alternative models to institutional detention such as smaller, residential homes and weekend or night detention.

Referring to the success of alternate juvenile detention programs, particularly in Missouri (system of small, child-centred residential facilities generally within 75 miles of a youth's home), Whitelion notes:

Whitelion and Tasmanian organisation JLD Restorative Practices have commenced building an operating model for a secure residential facility in Tasmania with a focus on social rehabilitation through land management education and practice. Whitelion's proven community partnership model and experienced youth workers and mentoring volunteers would be leveraged to increase the young person's social connectedness, whilst qualified staff work with young people to eliminate the causes of their risk-taking and anti-social behaviours; resulting in a reduction in re-offending.

Acknowledging that secure detention generally (and specifically at Ashley) is not effective in reducing recidivism and making lasting positive differences in the lives of young people caught up in the youth justice system, Anglicare proposes an alternative located within the community:

Anglicare recognises there are times when confinement is needed, both for the safety of the young person and the community, but isolation from the young persons' community should only happen on rare occasions; our view is that ongoing healthy connections with community are an integral aspect of healing and an essential aspect of rehabilitation that seeks to strengthen a young person's involvement in the social and economic life of their community. In other jurisdictions, state and territory Governments fund a broader range of community housing options that allow young people to receive intensive support, therapy and rehabilitation whilst also continuing their education and the development of positive relationships outside of the residence (for example in Hurstbridge Farm in Victoria, plus examples in New South Wales, the Northern Territory and Western Australia) (McLean et al. 2011).

Recommendations: Alternatives to secure detention at Ashley Youth Detention Centre

- 7.1 That, consistent with the principles expressed in the United Nations Convention on the Rights of the Child and other relevant international instruments, Government investigates the feasibility of introducing an alternative to secure custodial detention at Ashley through a continuum of residential facilities that include community-based, moderate care and secure care programs.
- 7.2 That in all youth residential facilities or youth detention centres and regardless of their level of security, an overall emphasis is placed on meeting the individualised psychosocial, educational, vocational and medical needs of young offenders in a dignified, structured, supportive and therapeutic environment.
- 7.3 That in considering Recommendations 7.1 and 7.2, Government takes account of the experience gained implementing and developing similar alternatives to secure custodial detention in, for example, those jurisdictions in the United States of America that have trialled and implemented the so-called Missouri Model (27 states) or Juvenile Detention Alternatives Initiative (39 states).
- 7.4 That Government examines and considers the feasibility of weekend or night detention, perhaps in conjunction with electronic monitoring or provision of placements in the community.

(6) Transition from detention

The Chief Magistrate recognises that ‘the transition from detention to the community is a particularly problematic time for young people and presents many challenges to them, their families and their communities’. This sentiment is expressed in many of the submissions received. For example, the Department of Justice notes that:

Transition from detention to the community is a particularly difficult process and presents many challenges, particularly regarding accommodation, schooling or employment, and reconnecting with family and support networks. Not surprisingly given the difficulties involved, it is also a high-risk time for re-offending.

CREATE suggests the introduction of a transitional housing option for young people released from Ashley Youth Detention Centre. This would enable staff to continue routines and introduce possible support services/personnel to young people.

Children and Youth Services notes that there are no Tasmanian programs that provide around-the-clock support to young people who have exited secure detention.

Both Save the Children and Whitelion have operated a range of support services for young people in custody with the objective of re-engaging them with education, vocational training, employment opportunities and recreational programs that will enhance resilience, wellbeing and reduce the risk of re-offending. In conjunction with the Department of Education, Save the Children has focused on building relationships with these young people to promote a 'seamless transition to the community'.

Save the Children identifies that post-release support programs need to begin prior to release, must include aftercare services and support, including outreach services, and should support young people to maintain relationships on the outside while incarcerated. It currently delivers two programs in the southern region of Tasmania: the Transition from Ashley Youth Detention Centre and Supporting Young People on Bail programs aim to reduce the number of young people held in remand and detention in Tasmania and to support young people to re-engage with educational, vocational and positive recreational /community opportunities. The objectives of the programs are to:

- Provide young people with unique learning opportunities that will creatively challenge and motivate them, allow them to develop skills and enhance their self-worth and confidence.
- Assist participants in developing long-term vocational goals, which include attending school, accredited further education and finding employment.
- Build positive relationships between young people, their family, school and community.

Whitelion advises it has been providing pre- and post-release support services to young people in detention for over 13 years and understands the value of engaging with young people *during* a custodial sentence so that a relationship can be carried through post-release when youth are at their most vulnerable. Whitelion provides mentoring and employment services to positively influence a young person's experience of custody and help them choose a better future post-release.

Whitelion was recently funded by the state government to provide leaving care mentoring services for vulnerable young people exiting statutory care. Whitelion proposes that the Tasmanian Government also funds the provision of youth or social workers at Ashley to work with young people during their custodial sentence and continue this engagement post-release. This model of engagement provides the best chance of the young person engaging with positive change at the end of their custodial sentence. This is a model that has previously operated at Ashley and had encouraging impact on recidivism. Partnering with the community sector to deliver these services would provide a cost-effective funding model for Tasmania.

What focus group participants said about transition from Ashley:

From the focus groups with Youth Justice workers:

‘We used to have an Ashley school staff member intensively support young people on release two to three years ago. They set up plans and worked with us. It probably stopped due to resourcing. We don’t have that anymore. Sarah Mott was the person. She’s just teaching now.’

‘They need some type of accommodation in between Ashley and the community.’

‘Accommodation services won’t commit to providing services.’

‘We need more bail alternatives and step-down type accommodation.’

‘There is a culture shock on release. There are orders requiring them to do certain things but there is a lack of resources and services.’

‘[Need] A semi-secure facility that enables them to still engage in programs in the community (e.g. D&A, educational, U-Turn etc.).’

‘Step down type accommodation would be very sensible.’

Recommendations: Transition from detention

- 8.1 That consistent with United Nations instruments, including the JDL Rules and the Beijing Rules, government considers the feasibility of introducing a transitional housing and support option for young people released from detention so that they have the support required to identify and pursue educational, vocational and other goals to facilitate their reintegration into the community.
- 8.2 That government ensures that exit or transition planning occur for all young people who are detained (whether on remand or as a consequence of a detention order) and that that planning begin upon their admission to detention.

Appendix A: Reference group participants

The Inquiry was guided in its initial stages through the active involvement of the following Reference Group members:

| | |
|--------------------------|--|
| Professor Eileen Baldry | School of Social Sciences, University of N.S.W. |
| Professor Judith Bessant | School of Justice, Queensland University of Technology |
| Dr Jeremy Prichard | Faculty of Law, University of Tasmania |
| Ms Heather Sculthorpe | Tasmanian Aboriginal Centre |
| Dr Adam Tomison | Australian Institute of Criminology |
| Mr Matthew Willis | Australian Institute of Criminology |

Appendix B: Targeted submissions and focus groups summary

Introduction

In November 2012 the Commissioner for Children invited targeted submissions from 26 key stakeholders with expertise in matters relevant to the operation of the youth justice system in Tasmania. Feedback was sought in response to the following question:

To develop and strengthen the youth justice system in Tasmania, what contemporary programs, services or strategies could be considered in relation to

- d) Diversionary strategies*
- e) Alternatives to detention*
- f) Pre- and post-release support services for young people sentenced to secure detention.*

The Commissioner received responses from the following:

- Alcohol, Tobacco and other Drugs Council Tas, Inc. (ATDC)
- Anglicare Tasmania
- Ms Marita Scott, General Manager, Baptcare Family and Community Services (Baptcare)
- Ms Tenielle Moore, State Coordinator, Create Foundation, Tasmania (CREATE)
- Hobart Community Legal Service Inc (HCLS)
- Mission Australia
- Save the Children Australia
- Mr Tony Reidy, Chief Executive Officer, Tasmanian Council of Social Service Inc (TasCOSS)
- Mr Mark Watt, Chief Executive Officer, Whitelion
- Youth Network of Tasmania (YNOT)
- Ms Ginna Webster, Acting Deputy Secretary, Department of Justice, Tasmania (DoJ)
- Mr TJ Ellis SC, Director of Public Prosecutions, Tasmania (DPP)
- Mr Michael Hill, Chief Magistrate, Magistrates Court of Tasmania (Chief Magistrate)
- Mr DL Hine, Commissioner of Police, Tasmania Police (Commissioner of Police)
- Mr Des Graham, Deputy Secretary Children, Children and Youth Services, Department of Health and Human Services, Tasmania (CYS)
- Mr Colin Pettit, Secretary, Department of Education, Tasmania (DoE)

Focus groups were held in March 2013 with staff members and residents at the Ashley Youth Detention Centre (Ashley), Community Youth Justice Workers in the North and South, and with a group of young people under youth justice supervision in the community in the south.

The following focus groups were held in March 2013:

- **Young People at Ashley Youth Detention Centre**
Tuesday 12 March 2013, 10.30-11.30am
12 young people (1 female, 11 males) participated. Approximate age range of 15 to 18 years.¹⁷⁷
- **Custodial Youth Justice**
Tuesday 12 March 2013, 2.00 – 3.30pm
20 staff members participated (5 female, 15 male).
- **Community Youth Justice – North**
Wednesday 13 March 2013, 10.15-11.30am
6 staff participated (including a manager and team leader, community development, youth justice workers).
- **Community Youth Justice – South**
Wednesday 28 March 2013, 9.00-10.20am
8 staff participated (including manager, co-located child protection worker and youth justice workers).
- **Young People under Community Youth Justice Supervision**
Wednesday 27 March 2013, 1.00-2.20pm
5 young people (1 female, 4 males) - age range 16-18 years¹⁷⁸.

The remainder of Appendix B outlines the key themes and recommendations found in the submissions and issues raised by focus groups participants.

Identification of health and wellbeing needs and access to specialist services

The submissions identify numerous health and wellbeing needs of young people involved in the youth justice system and a need for expanded or additional programs and services in order to address those needs.

Baptcare recommends the adoption of the Victorian Court Integrated Services Program (CISP), as offering a comprehensive assessment and plan which identifies key concerns such as: mental health, acquired brain injury (ABI), alcohol and drug treatment programs, and accommodation, employment and social support services. The CISP program provides a coordinated, team-based approach to the assessment and treatment of defendants. The program links defendants to support services such as drug and alcohol treatment, crisis accommodation, disability services and mental health services. Participants must have a 'history of offending or current indicating a likelihood of further offending', and have physical disabilities or mental illness, drug or alcohol dependency and misuse issues, or have inadequate family and economic support which contributes to the frequency or severity of offending. Addressing mental health and related problems that are linked to offending is more likely to reduce recidivism than usual criminal justice sanctions. Further information about CISP can be found in Box A below.

CREATE recommends prioritising the intake of young offenders into initiatives such as the HEARTS¹⁷⁹ program or other health screening programs – on the basis that this may assist young people with regulating sleeping patterns, drug and alcohol problems etc.

The ATDC submits that the health implications faced by people who use alcohol, tobacco and other drugs are always compounded by other social determinants in their lives. It says people who are most severely affected by the harmful use of alcohol, tobacco and other drugs are also those who are most likely to concurrently experience other severe forms of social disadvantage. It says that it is often this cohort who has ongoing contact with the criminal justice system. The ATDC proposes that by working collaboratively and allocating resources appropriately, the court, youth justice and the alcohol and drug community sectors can achieve better results for young offenders thereby improving community health and safety. It suggests that this approach will also have a significant impact on offending and reoffending within the youth cohort, reducing the overall cost of providing ongoing justice based outcomes.

The ATDC also says that in the overwhelming majority of cases of offending, there are underlying social reasons which contribute to the offending behaviour. These can include things such as issues with substance misuse, mental health, family breakdown, post-traumatic stress disorder, childhood abuse and lack of social and community supports. It suggests that it is when these social factors are addressed that cycles of crime and recidivism can truly be broken down.

CYS identifies a paucity of mental health and substance abuse support and rehabilitation programs in Tasmania and notes that existing services are reactive (i.e. wait for young people to present) rather than proactive. CYS says the experience of Youth Justice in Tasmania is that alcohol and other drug services are reluctant to accept young people who have been mandated through Court Orders. CYS refers to a presentation by the Victorian Youth Support and Advocacy Services (YSAS) during which Deputy Chief Magistrate M Daly commented that he believes that almost 100% of the young people he deals with have either a drug or alcohol problem.

In its submission, the DoJ advises that during consultations for *Breaking the Cycle*,¹⁸⁰ many stakeholders identified the need to expand the services offered to incarcerated offenders to support their reintegration needs and reduce the risk to the community. These issues are no doubt also relevant to the youth justice sector. DoJ suggests that the following strategies may assist in achieving improved reintegration results:

- provision of programs and services to remandees
- expansion of the provision of mental health services to offenders
- increased programs and services for offenders with disabilities.

Co-ordinated and collaborative case management and integrated support services

The need for a co-ordinated and collaborative approach to case management is highlighted in many of the submissions, as is the opinion that support services should be integrated.

The Chief Magistrate's submission discusses a proposal for a collaborative court support service based on a Victorian model known as Court Integrated Services Program (CISP) (see Box A).

The submission from CYS cites the United Kingdom Youth Offender Teams as 'an example of a more coordinated case management approach to service provision'.

Box A

Collaborative Court Support Service Business Case

In 2011, the Magistrates Court, together with the Departments of Justice and Health and Human Services, developed a business case for a *Collaborative Court Support Service (CCSS)* with support from the Departments of Police and Emergency Services and Premier and Cabinet.

The CCSS Business Case was designed to establish a general and multi-disciplinary court support service that would provide a range of clinical, support, referral, supervision and case management services to Magistrates Court clients including for young people.

The CCSS is loosely based on a Victorian model called Court Integrated Services Program (CISP) which is available to all defendants subject to their consent to be involved. The CISP aims to:

- provide short term assistance with health and social needs before sentencing
- work on the causes of offending through individualised case management
- provide priority access to treatment and community support services
- reduce the likelihood of re-offending.

It was proposed, as part of the CCSS model to introduce a state-wide Youth Justice Court Advice Service (YJCAS), which would incorporate a triage, assessment and case management facility designed to provide diversionary support services and assistance to young people in relation to accommodation, drug and alcohol, mental health and vocational needs, etc. The YJCAS was conceived as providing these services and supports to young people on bail subject to a supervision order and in circumstances where sentence is deferred.

The CCSS project, including the YJCAS, has been put on hold due to financial constraints.

Source: Chief Magistrate's submission.

Data collection and co-ordination: The importance of an evidence base

A lack of current and readily available data about the performance of the current system and its impact on young people and their families is identified in many of the submissions.

The Chief Magistrate posits that:

[i]f more certain, robust and regular statistical and information snapshots of the entire youth justice system were available, more effective dialogue between key agencies in the system could occur and better collaborative solutions to the endemic problems would be possible.

The ATDC identifies a lack of information about tangible results as a potential barrier to diversion for drug-related offences. It cites an Australian Institute of Criminology report in which it was identified that one of the 'major barriers to police uptake of diversion and cautioning appears to be a perceived lack of feedback about the intervention. ... In addition they [police] generally do not know if diversion interventions are considered effective and what the likely or anticipated outcomes are for offenders. The lack of feedback on diversion outcomes and effectiveness is likely to contribute to police perceptions of diversion being a 'soft option'.¹⁸¹

The Commissioner of Police identifies a lack of formal evaluation of some programs so that informal or anecdotal opinion alone is relied on to support their continued operation.

What focus group participants said about data:

During the focus group with Ashley staff, two comments were made relating to data:

'We have a 60-65% recidivism rate.'

'We have SECAPS data on over 400 young people over eight years going back to 2004-05 ... They (the characteristics of young people) haven't changed over time.'

These assertions cannot be independently verified as relevant data is not available for the purpose of this report.

Note: Youth Justice Worker participants advised they now have access to the Child Protection database (CPIS) and, conversely, Child Protection workers have access to the Youth Justice database (YJIS). This access appears to have commenced within the past six months.

Adequate and planned resourcing for programs and services

Diminishing resources

The Commissioner of Police advises that financial and resourcing constraints are placing youth-focused diversionary programs at risk and are curtailing the development or implementation of new programs. It appears the 'risk' is turning to reality, with Tasmania Police recently announcing that funding for U-turn, one of youth-focused diversionary programs referred to in the Commissioner's submission, will cease at the end of the current funding agreement in September 2013. The police media release emphasised the impact of diminishing resources and noted that 'during these restrictive budgetary times everything is being reviewed'.¹⁸²

The Chief Magistrate also notes resourcing constraints as an impediment to the development of new initiatives in his submission (see for example Box A above).

Whitelion explains it has experience with social benefit bonds (SBB) to improve outcomes for young people in the youth justice system in New South Wales. It says

The New South Wales Treasury recently commenced a SBB trial – the first in Australia and only the second in the world. A SBB is a financial instrument that pays a return based on the achievement of an agreed social outcome. Under a SBB, investors fund the delivery of services targeted at improving a particular social outcome. Achievements of this outcome should reduce the need for, and therefore government spending on, acute services. Part of the resultant public sector savings are then used to repay investors' principal and make additional reward payments (the return on investment), the level of which is dependent on the degree of outcome improvement achieved.

Whitelion has a relationship with Social Ventures Australia – part of a consortium successfully appointed by the NSW government to deliver a SBB trial – and would be pleased to bring this relationship to Tasmania to share the experience of SBBs in NSW.

Training and workforce development

A trauma-informed approach?

Anglicare recommends that 'the Tasmanian Government embed trauma-informed approaches in all Child Protection and Youth Justice services (including Ashley), and consider establishing an organisational culture like the Sanctuary model within all youth-related government services' (p. 7). According to Anglicare:

Links between childhood abuse, neglect and trauma, and pathways towards involvement in youth offending behaviours are well established. Research in neurobiology has found that severe abuse and neglect impacts on the development of children's brains (van der Kolk 2005). When safety and care (bonding) are absent, the development of children's core neural networks are affected in ways that can lead to difficulties in controlling emotions, focusing, thinking logically, and taking on new information. Because the brain regulates so many aspects of a person's life, the impacts of trauma in early life can be devastating and lifelong. Understanding the impact of extreme stress and trauma on children and young people's brains helps us understand what young people need, and how to support their healing. Evidence arising from Trauma Theory, Neurosequential Model of Therapeutics, Poly Vagal Theory and Attachment Theory suggest that a Youth Justice system that fails to take account of and treat the trauma histories of young people will likely neglect to address key causal factors and fail to change the offending behaviours of young people.

Consequently, Anglicare concludes that 'a trauma-informed approach needs to be embedded in the provision of services and supports for all young people involved in the Child Protection and Youth Justice services (including Ashley)' and that consideration should be given to 'establishing an organisational culture like the Sanctuary model within all youth-related government services '[Recommendation 2].

A trauma-informed approach requires that all staff working with young people at risk of or displaying offending behaviours understand the physiological and neurological effects of trauma, and the importance of emotional and physical safety, positive secure relationships, and prevention of re-traumatisation.

From Anglicare's perspective,

training in trauma-informed care for Ashley staff and Children's Court staff would greatly assist the legal and rehabilitative pathways of young people, including more effective cautioning and diversions from detention.

In a similar vein, Bapcare points to the need to focus on 'building trust and a connection to break down the attachment issues that many young people who come into the courts have' (p. 3) and to their view that 'the behaviours that lead to offending are related to trauma and attachment disorders'.

CREATE calls for increased stability of youth justice workers in order to increase relationship building between the worker and young person and emphasises the need for young people to be clearly informed of their rights and responsibilities within the youth justice system, including court process and possible consequences of continued offending.

In its submission, the DoJ expressed support for the provision of specialised training for magistrates and judges dealing with Youth Justice cases and acknowledged the critical importance of training for detention centre staff stating:

It is recommended that such staff undertake a comprehensive 10- to 12-week custodial training course, together with 3-4 weeks specialised training in working with children. All staff should also be required to pass wide-ranging security screening to work with vulnerable children and psychological evaluations.

The Tasmania Prison Service and Community Corrections both have models for the recruitment of correctional, offender management and probation and parole staff and would be happy to provide additional details if you wish.

All staff should be able to provide direction and mentoring to young people and it is considered important that child psychology experts are also on staff or readily available.

The DoJ also recommended the appointment of Family Liaison Officers and noted the existence of specialist staff in the adult justice system, such as introduction of Justice Literacy Coordinators to the Tasmania Prison Service and Community Corrections as part of the Adult Literacy Plan for Tasmania and the recruitment of volunteer literacy tutors to work with offenders within Risdon Prison.

Save the Children notes that the 'relationship and rapport that the Youth Worker develops with the young person is a key component' that contributes to the success of Save the Children's youth justice programs in Tasmania. Save the Children recommends adoption of a number of best practice principles across the breadth of the system, including the provision of programs that actively build the social and emotional resilience of the young person through the support of positive role models and mentors who provide practical and therapeutic interventions'.

Whitelion proposes that the government fund the provision of youth or social workers placed in Ashley to work with young people during their custodial sentences and continue this engagement post-release.

YNOT and TasCOSS propose the establishment of Youth Justice Court Liaison Officers within a Specialist Youth Justice Court within each region. These officers would provide coordination and case management for individuals, particularly those who are unrepresented, within the court and would manage relationships with community organisations acting as partners in the Specialist Youth Justice Court and provide assistance to the young person throughout the court process.

Alternative accommodation options

A major theme expressed in a number of submissions is the urgent need for there to be a varied suite of accommodation options available for young people at risk of entering or already in, the youth justice system, including during the period of their sentence and post release if detained in secure detention.

In its submission, Anglicare notes that all young people interviewed recently at Ashley had experienced homelessness and child protection intervention, and most had out-of-home care experiences. Anglicare states that:

Broader findings demonstrate that causes of youth homelessness intersect with involvement in youth justice in the following areas: family violence and arguments, neglect, absent parents (including an incarcerated parent), parent and family problems (e.g. parental drug or alcohol misuse), teenager problems (such as a need for autonomy and independence), changing parent-teen relationships, family breakdown, pressures of single-parent, and stepparent households, inadequate child protection and lack of appropriate housing options.

Anglicare recommends that the government:

- Investigate the establishment of a collaborative continuum of support for young people experiencing difficulties relating to family breakdown, homelessness and anti-social offending behaviours
- Develop and resource services that support young people to better meet bail conditions, including the provision of suitable housing and support if needed, based on trauma informed approaches
- Develop and resource a wider range of intensive therapeutic residential care facilities for young people in need of out-of-home care, with an emphasis on ensuring young people can maintain positive links with community, including vocational pathways and relationships with positive adult role models
- Require that Ashley staff work with youth justice workers and community service staff to ensure that each young person entering Ashley develops an 'exit plan' that includes provision of suitable housing.

Anglicare provides a table (see below) which describes the extent to which there is such a suite of alternative out-of-home care options.

Table 2. Spectrum of out-of-home care options, including detention (adapted from Stuart & Saunders 2008)

| Less intensive | International range of out-of-home care support options provided to children and young people | Tasmanian out-of-home care options currently provided (% of total children on care and protection orders placed in each option in Tasmania, June 2011) |
|--|--|---|
|  | Independent living, with support | In Tasmania this includes support in public or community housing, or private rental (2.7%) |
| | Receiving homes – home-based care provided by families | Emergency foster care placements are provided |
| | Kinship care – home-based care provided by adults with kinship bonds | Short-term kinship care placements with extended family members are provided (27.4%) |
| | Conventional foster care – home-based care provided by unrelated non-kin adults | Foster care placements are provided where possible (42.3%) |
| | Treatment foster care (specialized or therapeutic foster care) – foster care provided by adults trained in therapeutic trauma-informed care | None exist - therapeutic foster care exists only in so much as the level of training foster carers receive (general, advanced or complex) |
| | Family group care – foster care provided by trained adults, either in a home environment or facility, supported by staff working shifts | Family group homes exist but are predominantly for sibling groups, and are not necessarily staffed by adults trained in therapeutic trauma-informed care (2.1%) |
| | Congregate care (staffed group care or residential care) – workers provide direct care on a rostered or shift-work basis | Congregate care exists but are not supported by multidisciplinary teams and do not necessarily provide a therapeutic or treatment aspect by design (Residential Care) |
| | Therapeutic residential care –intensive care placement for young people in statutory care within a residential setting, aims to address complex issues | TRC exist in all three Tasmanian regions, some of which employ trauma-informed approaches (1.6%) |
| | Residential treatment care – a fully staffed group home under a common clinical supervisory structure, which may include treatment programs | None exist in Tasmania |
| | Psychiatric hospital (secure treatment unit care) – similar to residential treatment care only with the additional capacity to medicate or certify/secure a young person | None exist in Tasmania |
| | Therapeutic secure care/community setting - therapeutic residential care or residential treatment care provided in a community setting with capacity for containment | None exist in Tasmania |
| | Secure care/correctional facility – locked facilities to which young people are sent by court order, which do not generally provide therapeutic input | Ashley Youth Detention Centre is Tasmania's only secure facility, and the only placement option after TRCs available to young people in need of intensive support |
| | More intensive | |

Prevention, early intervention strategies and justice reinvestment

The importance of prevention and early intervention consistent with a 'justice reinvestment' approach are key themes of many of the submissions received.

The Chief Magistrate stresses the importance of prevention and early intervention programs for children and young people at risk. He says in his submission,

Programs and resources that target vulnerable young people and young or inexperienced offenders from disadvantaged backgrounds can have dramatic effects on steering people away from futures that may involve crime and detention. Resources spent assisting children and young people at risk have long-term pay-offs in both reducing crime and reducing the levels of young people in custody.

The Commissioner for Police emphasises that, consistent with the principles of the *Youth Justice Act 1997*, his department has delivered a strong message of support for youth-focused diversionary and early intervention programs aimed at reducing or preventing recidivism during the past 10 years. He mentions youth-focused strategies supported by police such as the Early Intervention Action Units, schools-based programs, the Police in Schools program and Police and Community Youth Clubs. As discussed above however, resource limitations in the current economic climate place these police-funded Programs at risk and inhibit development of new strategies.

The ATDC states that ‘early intervention in both drug and alcohol use and offending has the potential to have a greater effect than efforts later in life’.

According to the Department of Justice submission, early intervention with ‘at risk’ children and young people was a strong theme during consultations for the Breaking the Cycle – Tasmanian Corrections Plan (2010-2020). It suggests that ‘effort spent assisting children and young people at risk may have a long-term effect of reducing crime’.

Mission Australia gives emphasis to the efficacy of early intervention and prevention approaches and in particular recommends a justice reinvestment approach. In Mission Australia’s view

there is an opportunity to provide more meaningful and effective intervention within current resource constraints – the principle of justice reinvestment provides that opportunity. This approach involves the redirection of human and financial resources to disadvantaged communities and vulnerable people to address the underlying causes of crime will produce better value for money¹⁸³ as well as long-term economic benefits. This is partly because diversion is more effective in reducing recidivism, which, in turn, reduces the cost to the community through reduced incarceration costs, reduced damage to property, reduced health care costs, and hopefully increased taxes as these young people move into the workforce.

Mission Australia indicates it has previously had discussions with a number of governments about its view of appropriate youth justice models. The key elements of programs it has discussed share the following traits:

- the ability to provide supported accommodation, training and employment pathways
- provide three to six months of case management
- are based on early intervention
- are often located where young people are (at least those services that make initial assessment or referral to other services)

- provide alternative activities to divert young people from poor or risky choices that may lead to contact with authority and the youth justice system.

TasCOSS and YNOT also highlight the importance of prevention and early intervention to avoid the prospect of detention while CYS notes that there are no out-of-hours support services in Tasmania for 'at risk' young people, including those who are at risk of offending.

Education

Baptcare points out in its submission that the risk factors for young people entering the youth justice system include: truancy, school suspensions, bullying, undiagnosed and unsupported learning difficulties. Conversely, the protective factors include: regular school attendance, participation and academic achievement, access to learning support when required and positive relationships with teachers and peers.

To address these factors, the DoJ suggests that better co-ordination and co-operation is required between and within government agencies and between government and non-government agencies, especially in terms of positive early interventions outcomes. It says:

Working more closely with the Department of Education, for example, may enable early identification of children showing signs of delinquency in the early years of school, or working with teachers and principals may assist in linking families and juveniles into appropriate services.

Some children do not engage well with the mainstream educational model and respond better in alternative forms of education. As detailed in the Anglicare submission, an area in need of development and resourcing is the provision of alternative education and training for young people at risk of, or involved in, youth justice. Anglicare says:

Young people who have experienced trauma need safe and therapeutic school and training environments. As well as allowing healing to occur, young people need structure, one-on-one support, and tailored activities that enable successful management of stress and hyper-arousal ...

From service delivery experience, Anglicare believes the best way of enhancing diversionary measures in the Tasmanian context would be to establish a continuum of supports state-wide for young people from primary school, through high school and into young adulthood. From our experience, collaboration, continuity and integration are missing when it comes to providing supports for young people at risk of family breakdown, homelessness, mental ill health, drug and alcohol misuse, and involvement in youth justice. A successful continuum of support would enable the Department of Education, Police, Youth Justice, and other services to meet regularly and share information to ensure that no young person became disconnected from essential support.

Both Save the Children and Whitelion have operated a range of support services for young people in custody with the objective of re-engaging them with education, vocational training, employment opportunities and recreational programs aimed to enhance resilience, wellbeing and reduce the risk of re-offending. In conjunction with the Department of Education, Save the Children has focused on building relationships with these young people to promote a 'seamless transition to the community'.

The Department of Education says:

Promoting pro-social relationships and developing positive educational pathways are critical outcomes to the Learning Service South and Save the Children educational partnership. In the South a Home and School Liaison officer works in the Magistrates Court to engage students and support families to maintain links with an educational pathway. Learning Services South also funds diversionary strategies such as The House at Rosny, EdZone and a fully online service, Ed Zone-on-Line (previously Not School). In Northern Tasmania the RADAR program is a specialist educational provision for trauma impacted young people who are not engaging successfully with mainstream schools.

What focus group participants said about education:

Significantly, only two of the twelve young people who participated in the focus group at Ashley were attending school at the time of their admission to Ashley, and most had been suspended or expelled from school. And, as one Ashley resident succinctly stated, 'What's the use in suspending (students)?'

Many of the young people spoke positively about the Ashley School. The key aspects that they appreciated about the school included small classes, fewer choices and less competition for acceptance from others and feeling 'out-casted' (as one Ashley staff member put it).

'I'd go to a school down here if it was like the one up at Ashley.'

'There are smaller classes at the Ashley School.'

'I was good there so they were alright to me.'

It was clear from the focus groups with youth justice workers that many young people they have contact with need alternative forms of schooling.

'There need to be alternative programs because traditional schools don't always meet their needs.'

'Traumatised kids don't do well in traditional school settings.'

'Problems at school are a flow-on from home damage.'

'Education for some of these young people needs to be on an outreach basis – for example, a social worker who teaches a limited set of skills to street kids.'

'Who has responsibility for them when they are (supposed to be) at school?'

Child protection

Despite the research evidence showing the strong relationship between child protection and youth justice pathways, the submissions made almost no mention of the nexus between the two systems.

Anglicare's submission acknowledges child protection issues and made the following relevant recommendations:

- Embed trauma-informed approaches in all Child Protection and Youth Justice Services (including Ashley), and consider establishing an organisational culture like the Sanctuary model within all youth-related Government services.
- Establish a collaborative integrated continuum of care for children and young people under care and protection orders based on trauma-informed approaches, to ensure their basic needs are met until age 25.

According to its submission, Anglicare's 'Children, Families and Community' stream provides direct support for young people and families experiencing difficulties in relation to legal and criminal issues, to through delivery of the Supported Youth Program (SYP) and Therapeutic Residential Care (TRC):

The SYP offers intensive case management and therapeutic intervention to young people aged 10 to 18 with multiple risks and who without intensive support would have increased interactions with both child protection and youth justice.

TRC provides a group home and supports within a therapeutic milieu (which is trauma and attachment informed) to young people aged 12 to 18 who are clients of the statutory Child Protection system and who are displaying antisocial behaviour, are disengaged with education, and may already be involved in the Youth Justice system.

Anglicare's Social Action and Research Centre (SARC) team recently visited Ashley to interview young people about their experiences of homelessness. All those interviewed had experienced homelessness, all had involvement in the Child Protection system, and most had out-of-home care experiences. All interviewees stated that family breakdown (including domestic violence and lack of a secure home environment) were causal factors for both their homelessness and involvement in youth crime.

What focus group participants said about child protection:

During the focus group with Ashley residents, one young person said he had experienced 10 different child protection workers. Another had had five or six different workers, while two had had two or three different workers.

An Ashley staff member commented that:

'We believe the lion's share should be done earlier – at the front end. Early childhood, hospital admissions, child protection orders etc. They are many flags and lights flashing for many years

before they come here. A lot of damage has already been done. It's very challenging to try to resolve those issues in the short time they are here. Enormous progress has been made.'

Finally, as one young person in Ashley succinctly put it, 'When I was a 12-year-old, where was the support then?'

Community Youth justice workers were also aware of the iatrogenic effects of young people being in the system:

'A lot of these kids come into the "system" as victims but end up perpetrators. Need to acknowledge under resourcing of child protection.'

'Who is responsible for youth? Child protection is not responsible for youth.'

The importance of diversion

Consistent with the principles of the *Youth Justice Act*, the importance of diversion away from the youth justice system is a key theme in the submissions.

The Commissioner of Police outlines a number of diversionary programs supported by police including U-turn, the Illicit Drug Diversion Initiative, Community Respect Orders and Inter-Agency Support Team Program as well as the Early Intervention Pilot Program to address underage drinking.

The Secretary of Justice supports diversionary initiatives that look to guide young people away from a path leading to conviction and sentence and the subsequent negative effects of being in custody.

Mission Australia expresses the view that 'effective diversionary strategies can reduce the seriousness of offending, the rates at which young people offend and also have a preventative effect against offending into adulthood'. It accordingly considers diversion to be an appropriate response in the majority of youth offending cases.

The ATDC advises that current diversionary strategies in Tasmania are enjoying limited success. It recognises the significant amount of work and goodwill that goes into existing police-funded programs such as the Illicit Drug Diversion Initiative, the Tasmanian Early Intervention Pilot Program and community conferencing as well as via informal arrangements, but notes that more can be done.

The Chief Magistrate emphasises the court's role as a leading proponent of court-based diversionary strategies and related problem-solving approach to justice. He provides detailed information in his submission regarding the court's Hobart Specialist Youth Justice Pilot as evidence of this role and notes the introduction of 'Special List' as 'a response to a clear lack of diversionary options for sentencing magistrates'.

Alternative or expanded options for bail

Many of the submissions emphasise the need for alternative or expanded bail options, particularly in light of the relatively high numbers of young people who enter Ashley on remand. The DoJ says that subject to consultation and support from the magistrates, alternative forms of bail may reduce the remand population and enable bailees to maintain schooling, involvement with their families and allow intervention to begin as early as possible in the justice process.

Bail assistance lines

The DoJ submission points out that ‘a number of other states provide bail assistance lines where police who are considering granting bail to a young person can seek advice and support in relation to parents/guardians, transport, suitable accommodation’ and that ‘a young person can also be provided with support to meet their bail conditions, including referral to non-government organisations to address drug and alcohol issues, mental health issues or vocational needs’.

Bail support programs and supported accommodation

The DoJ says that alternative forms of bail for young people such as supervised bail or bail on the condition of attendance at a mandated activity (e.g. akin to the previous court mandated diversion bail orders but specifically for young people) could be developed.

The DoJ suggests that

flexible accommodation options or structured and supported bail programs to assist with compliance with bail conditions for young people appearing before the courts may assist in diverting some who may otherwise be held on remand. The Department recommends that the issue of supported accommodation be further explored.

Anglicare identifies that many young people detained at Ashley are there as a consequence of a lack of alternative placement options and support (along with other issues). In its view, this reality illustrates the dire lack of alternative placements and support for young people in need of out-of-home care in Tasmania. In Anglicare’s view:

Alternatives to detention are lacking in Tasmania, along with safe places that offer a healing environment for young people who have experienced family breakdown, abuse, neglect, homelessness and trauma.

Ashley currently fills a service gap that may be better and more cost-effectively met by the establishment of a broader suite of placement options for young Tasmanians in need of out-of-home care

As an alternative to detention, Save the Children recommends

the establishment of an intensive supported bail program that includes accommodation options and therapeutic programs such as CHART, drug and alcohol, mental health, life skills etc. delivered in a practical way in a community setting.

Save the Children presently provides a pilot bail support program in Tasmania's south with a focus on young people who are not subject to Child Protection or Youth Justice orders. It has been suggested that Save the Children's focus is on low risk offenders and that medium to high risk offenders have no access to bail support and may consequently be remanded in custody due to lack of accommodation options (CYS).

YNOT believes that the majority of young people could be diverted from pre-trial detention through an appropriate supported bail option.

In its submission, CYS also draws attention to:

- c) the present lack of supported bail programs for medium to high risk offenders, noting that Save the Children's pilot Bail Support program is only available in the South and has a focus on 'low risk offenders' that have had limited contact with the Youth Justice system; and
- d) the potential to use curfews in conjunction with electronic monitoring and the use of programs to address underlying problems associated with young offenders.

The ATDC expresses support for 'investigating other alternative detention models such as bail hostels, home detention and electronic monitoring, both for sentenced young people and those on remand', while the Chief Magistrate notes that 'structured Bail Support Programs and deferred Sentencing Orders are commonly used in other jurisdictions as alternatives to secure detention'.

Home detention and electronic monitoring

The possibility of electronic monitoring as an alternative to secure detention is considered in a number of the submissions.

The Department of Justice is supportive of trialling electronic monitoring equipment for accused persons – including young people – on bail and has worked with Tasmania Police to develop a proposal to trial electronic monitoring equipment, which was seen as a step towards the possible introduction of home detention. This project has been 'put on hold' due to financial constraints.

The Deputy Secretary Children advises that the use of electronic monitoring in combination with a curfew condition and programs tailored to address underlying problems 'does seem to demonstrate better results if managed properly'.

The ADTC recommends the investigation of electronic monitoring, and YNOT mentions it as an option.

The Hobart Community Legal Service advocates for restrictions on electronic monitoring, in the event it is implemented, so as to avoid over-policing, stigmatisation and alienation.

Enhanced options for community-based supervision orders

Pursuant to the *Youth Justice Act 1997*, a number of community-based sentencing orders are available which may be used as alternatives or as an adjunct to an order for actual detention (e.g. probation, community service and suspended detention orders). A common concern expressed throughout the majority of submissions is that because of the lack of alternative options, secure detention is not truly the last resort. Anglicare calls for ‘an innovative suite of alternatives to detention’ to be developed. It says,

Alternatives to detention that emphasise rehabilitative and restorative principles over punitive sanctions for young people do not exist in Tasmania, meaning that punishment, deterrence and community safety are afforded at the expense of the wellbeing and rehabilitation of children and young people in our Youth Justice system.

DoJ supports community sentencing options, dependent on the type of crime involved, benefits of which include the potential for developing the individual’s potential with the ‘objective of enhancing his or her education or employment prospects or even keeping the offender in school or employment and within the community’.

While the Director of Public Prosecutions warns against legislatively over-circumscribing the occasions where detention will be appropriate, he supports the enhancement of judicial discretion by providing a wider range of sentencing options (including alternative forms of detention – see below).

Quality of community-based supervision

The CYS submission cites Australian Institute of Health and Welfare data to support the contention that sentencing magistrates in Tasmania appear to favour community-based supervision orders over custodial sentences.¹⁸⁴

The Chief Magistrate considers probation and community service orders to be critical alternatives to detention, but expresses concern that inadequate resourcing undermines their efficacy. He explains that while positive results have been seen with persons subject to these orders,

the breadth and intensity of community-based supervision is a concern for the Court. Community-based supervision orders for young offenders should enable Youth Justice Services and other relevant agencies to focus on the needs of young offenders and respond accordingly to substance abuse issues, homelessness, education on or literacy issues, etc. If there was greater confidence amongst magistrates that more young offenders could be adequately and appropriately supervised in the community for the full duration of the order, they would be more inclined to view probation and community services as preferred alternatives to detention.

Drug diversion

ATDC describes the Children's Drug Court in WA, which provides a sentencing option in acknowledgment of the fact that many offences are committed by people with substance abuse issues. The court helps to break the cycle of substance abuse and offending. To take part, the young person must:

1. Admit they have an illicit substance use problem
2. Enter a plea of guilty to all charges
3. Be willing to undergo appropriate and agreed treatment in the community or in residential rehabilitation
4. Be willing to be supervised by the Children's Drug Court and Court Assessment and Treatment Service (p. 8).

The process of supervision by the Assessment and Treatment Service takes between six and twelve months and this staged approach means the Children's Drug Court is not seen as a 'soft option' by police or judicial officers, or by the young people involved.

This alternative is not available to young offenders in Tasmania.

Interestingly, the Chief Magistrate notes the Court Mandated Diversion (CMD) for Drug Offenders program, which started in 2007, Although originally available to both adult and juvenile offenders, was subsequently made unavailable to young offenders because CMD was

... primarily to be focused on the Drug Treatment order (DTO) disposition available to adults only under the *Sentencing Act 1997*. As far as I am aware no supervised or mandated bail measures were put in place to continue bail-based drug diversion in a manner similar to that provided by CMD.

The Chief Magistrate's submission examines existing Court Mandated Diversion (CMD) options available in drug-related cases involving adult offenders. The Drug Treatment Order (DTO) is a sentencing option available to the courts when sentencing. The Chief Magistrates says,

The DTO in other words is a pure alternative to secure detention for adult offenders with illicit drug problems. An anomaly is that two young people with similar offending histories and trajectories, who may be a couple of months apart by birth date, will have differential access to supervised drug treatment. The older adult offender may receive a DTO while the younger juvenile offender has no access to an 'integrated, supervised and reviewable treatment regime' that 'facilitates(s) the offender's rehabilitation and reintegration into the community'. In the case of the adult offender, the Court has the option of making a DTO, but in the case of the juvenile offender no such option exists for the Court. Something similar to the DTO that reconciles the state of affairs and that is aimed at and applicable to young offenders with illicit drug and/or alcohol problems ought to be explored and considered.

The DoJ explains that the current CMD model was determined to be inappropriate for young people on the basis that it is considered inappropriate to bring young offenders into contact with hardened adult offender but suggests a similar type of program focused on young people could be developed.

The ATDC addresses the issue from the perspective of those young offenders who have drug and alcohol issues, noting there is a need for an increase in youth drug and alcohol residential rehabilitation services in Tasmania. ATDC goes on to propose a new model of community supervision for such young offenders, whereby community sector youth workers would work in collaboration with Youth Justice and the Court to support a young person to fulfil their commitments to attend programs as directed by the Court. The supported youth worker would coordinate access to other services and supports such as housing, mental health services, access to education, vocational and educational support, etc. ATDC says:

With the right training and support from Youth Justice, this model of case management for young offenders could also be used as a pre-sentence option where magistrates could require young people under the supervision of a community sector youth worker, to participate in education or other programs. Approaching a young person's needs in this way would deliver a more holistic approach and has the potential to deliver more tangible improvements in recidivism and steering people away from the drug/crime cycle.

Mission gives as an example of a successful program Triple Care Farm, based in NSW. Although Triple Care Farm was developed to assist youth addressing mental health and substance abuse issues, Mission states that 'it is worthy of consideration in relation to effectively dealing with young people who offend ... Substance abuse is a strong predictor of recidivism and young people in detention have higher rates of mental illness than their counterparts in the community'.

What focus group participants said about drug diversion:

'There is nothing for kids detoxing.'

'There is no mental health assessment for those who use drugs.'

'Many young people don't want to go to these types of services.' [mental health services]

'Therapeutic intervention needs to be flexible around duration.'

'Clare House is almost closed to conduct disorder kids, which is most of our kids.'

'Needs to be non-clinical.'

'There is no drug and alcohol unit for youth.'

'All kids I work with have a drug or alcohol problem but there is nowhere for them to go here before the problems escalate into serious criminal behaviour.'

'There are lots of drug and alcohol services but none of them are working from a model that my young people seem to be responding to on a longer term basis.'

Deferred sentencing and the 'Special List'

According to the Chief Magistrate, Bail Support Programs and Deferred Sentencing Orders are commonly used in other jurisdictions as alternatives to secure detention.

Alternative community-based programs

Anglicare recommends that consideration be given to the various models of outdoor and adventure therapy as alternatives to detention – for example, an integrated use of remote therapeutic wilderness expeditions in the context of longer-term community-based rehabilitation.

Secure detention

The majority of the submissions acknowledge – explicitly or implicitly – that secure detention occupies a necessary position within the youth justice system in Tasmania but emphasise that it must only be used as a measure of last resort.

The Director of Public Prosecutions (DPP) explains that 'there will be a place for detention in any reasonable range of youth justice strategies' because youths will continue to commit serious crimes or fail to respond to alternative disciplinary methods. He says, '[f]or those cases, which will be rare, detention will be required in order that the courts' functions of deterrence, retribution and (where applicable) community protection can operate'. The DPP nevertheless supports the enhancement of judicial discretion by providing a wider range of sentencing options to the courts when sentencing, including alternative forms of detention.

Mission Australia states:

We do acknowledge that detention is required for some offenders and offences, but are concerned that it is over-utilised, costly, does not act as a deterrent, and leads to poorer long term outcomes both for the individual and the community.¹⁸⁵ Young people who are incarcerated are likely to lose links with their families, suffer violence at the hands of other inmates, and experience unstable living conditions upon release.¹⁸⁶ Detention also has a significant negative effect on future employment prospects of young people.¹⁸⁷ Given the substantial implications for the young person and the broader community that arise as a result we consider it to be a matter of priority to provide meaningful alternatives to detention.

Alternative forms of detention

The HCLS 'believes that imprisoning young offenders at Ashley is ineffective and inappropriate', noting that:

- its location makes it difficult for young offenders to maintain contact with family and friends
- Ashley is largely inaccessible via transport other than a motor vehicle

- Ashley's size means it is not a substitute for a home environment. This has the effect of isolating young people from 'normal' home environments at a time when they need them most'.

HCLS would prefer that Ashley be replaced with a number of smaller regional detention facilities resulting in the following benefits and says:

- These facilities would better imitate home environments, thereby promoting a healthier culture.
- Each detainee would be closer to family and friends than he or she would otherwise be ...
- Detainees would be better able to maintain links with local employers and education providers, thereby improving post-release outcomes and re-integration. A young offender could, for example, gain work experience with a nearby employer with a view to moving to full time employment upon release. The obligation of youth detention facilities to promote reintegration post-release is manifested in article 40 of the United Nations Convention on the Rights of the Child ('CROC').

DoJ raises the issue of combining all custodial services within the one agency regardless of the age of the offender and goes on to say:

Separate facilities were suggested for offenders aged 13 to 18, 18 to 25 and 25 to adult. Consideration could be given to the development of such facilities during future capital investment decisions or the ongoing redevelopment of the Risdon Prison site. Offenders within the age group of 18 to 25 are still maturing and can be very impressionable. The Tasmania Prison Service believes it may be preferable not to have these young adults housed with older offenders. Such a system may also enable a more seamless transition for young people in detention and the continuity of services to offenders to support planned outcomes.

The Department recommends that any infrastructure planning is undertaken following clarification of the direction, vision, aims, structures and sentencing options for Youth Justice. A holistic approach which addresses education, social, health needs etc should also be taken into account during infrastructure planning.

YNOT expresses a strong view that 'an institutional detention centre is not an appropriate place for young people on remand and, in fact, the use of the AYDC facility for this purpose directly works against the ultimate goal of reducing crime in Tasmania'. Rather, YNOT points to other options such as in-home detention, electronic monitoring systems, a specific youth remand centre or a farm-based system.

As for alternative models to Ashley, YNOT refers to the use of 'weekend (Spain) or night detention (Italy)' and notes that smaller, residential homes have been employed in America 'with very high reductions in recidivism'.

TasCOSS supports YNOT's call for alternative models to institutional detention such as smaller, residential homes and weekend or night detention.

Whitelion recommends the investigation and piloting of alternative secure accommodation options outside Ashley, with a priority on alternatives to remand detention within Ashley, particularly as it

appears to be used as an accommodation option given the lack of alternative housing options in Tasmania.

Referring to the success of alternate juvenile detention programs, particularly in Missouri (a system of small, child-centred residential facilities generally within 75 miles of a youth's home), Whitelion notes:

Whitelion and Tasmanian organisation JLD Restorative Practices have commenced building an operating model for a secure residential facility in Tasmania with a focus on social rehabilitation through land management education and practice. Whitelion's proven community partnership model and experienced youth workers and mentoring volunteers would be leveraged to increase the young person's social connectedness, whilst qualified staff work with young people to eliminate the causes of their risk-taking and anti-social behaviours; resulting in a reduction in re-offending.

Acknowledging that secure detention generally (and specifically at Ashley) is not effective in reducing recidivism and making lasting positive differences in the lives of young people caught up in the youth justice system, Anglicare proposes an alternative located within the community:

Anglicare recognises there are times when confinement is needed, both for the safety of the young person and the community, but isolation from the young persons' community should only happen on rare occasions; our view is that ongoing healthy connections with community are an integral aspect of healing and an essential aspect of rehabilitation that seeks to strengthen a young person's involvement in the social and economic life of their community. In other jurisdictions, state and territory Governments fund a broader range of community housing options that allow young people to receive intensive support, therapy and rehabilitation whilst also continuing their education and the development of positive relationships outside of the residence (for example in Hurstbridge Farm in Victoria, plus examples in New South Wales, the Northern territory and Western Australia) (McLean et al. 2011).

Pre- and post-release services

The Chief Magistrate recognises that 'the transition from detention to the community is a particularly problematic time for young people and presents many challenges to them, their families and their communities'. This sentiment is expressed in many of the submissions received. For example, the DoJ notes that:

Transition from detention to the community is a particularly difficult process and presents many challenges, particularly regarding accommodation, schooling or employment, and reconnecting with family and support networks. Not surprisingly given the difficulties involved, it is also a high-risk time for re-offending.

CREATE suggests the introduction of a transitional housing option for young people released from Ashley Youth Detention Centre. This would enable staff to continue routines and introduce possible support services/personnel to young people.

CYS notes that there are no Tasmanian programs that provide around-the-clock support to young people who have exited secure detention.

Both Save the Children and Whitelion have operated a range of support services for young people in custody with the objective of re-engaging them with education, vocational training, employment opportunities and recreational programs that will enhance resilience, wellbeing and reduce the risk of re-offending. In conjunction with the Department of Education, Save the Children has focused on building relationships with these young people to promote a 'seamless transition to the community'.

Save the Children identifies that post-release support programs need to begin prior to release, must include aftercare services and support, including outreach services and should support young people to maintain relationships on the outside while incarcerated. It currently delivers two programs in the southern region of Tasmania. The two programs, Transition from Ashley Youth Detention Centre and Supporting Young People on Bail, aim to reduce the number of young people held in remand and detention in Tasmania and to support young people to re-engage with educational, vocational and positive recreational /community opportunities.

The objectives of the programs are to:

- Provide young people with unique learning opportunities that will creatively challenge and motivate them, allow them to develop skills and enhance their self-worth and confidence
- Assist participants in developing long-term vocational goals, which include attending school, accredited further education and finding employment
- Build positive relationships between young people, their family, school and community.

Save the Children identifies the key attributes of both programs as including:

1. The importance of the relationship between the youth worker and the young person

The relationship and rapport that the youth worker develops with the young person is a key component that contributes to the success of the programs. The importance of the development of a positive, long-term, consistent, relationship with an adult is particularly vital for young people with a history of trauma and abuse.

Positive role modelling/mentoring is an intervention that has proven to be effective when working with high risk and disadvantaged young people (Dubois et al., 2002).¹⁸⁸ Positive role modelling can be implemented both within the custodial setting and in the community to shape behaviour, creating 'gangs' of positive mentors to enable young people to experience an alternative way of 'being'.

2. The importance of collaborative working relationships with program partners

Collaborative working relationships with program partners are vital to secure positive outcomes for young people. Collaborative relationships in Save the Children's youth justice programs is demonstrated by: regular partner program review meetings, combined agencies

training, cross-agency involvement in worker recruitment, individual client case management meetings, and cross-agency supported funding applications.

The Transition from Ashley Youth Detention Centre program was introduced in Tasmania in early 2011. Save the Children in collaboration with Ashley Youth Detention Centre and Ashley School, identified a critical gap in service delivery in supporting high-risk young people. The program works with youth offenders before their release from Ashley and post-release in the community in southern Tasmania. The participation of young people in the program, both pre- and post-release, is voluntary. This is a long-term, intensive, strengths-based, one on one, practical mentoring support program that aims to influence negative patterns of behaviour by modelling positive social behaviour and providing positive alternatives.

The program's youth workers meet face-to-face with each young person for a minimum of four hours each week. An individual program is developed based on the young person's educational, recreational and vocational goals and aspirations. The program works collaboratively with key community stakeholders including: Ashley Youth Detention Centre, Ashley School, Child Protection, Youth Justice, Department of Education and a range of community agencies.

The Tasmanian Institute of Law Enforcement Studies, University of Tasmania, conducted an external evaluation of the program after 12 months of service delivery¹⁸⁹ which provides evidence of positive outcomes in relation to: motivation and capacity to re-engage with the community, enhanced health and wellbeing, enhanced feelings of self-worth, re-engagement with education, working towards vocational goals, and reduction in reoffending. The report highlights the need for exit planning for *all* young people leaving detention. Currently, young people on remand do not receive any exit planning for their transition back into the community. Save the Children identifies the lack of exit planning as an issue that impacts on the outcomes for young people and is currently working in partnership with the Department of Education and Youth Justice on a project within the Office of Children to identify and address the systemic blockages to exit planning for remandees.

Save the Children recommends that 'through care' be provided for all young people sentenced to secure detention, beginning when the young person enters secure detention and continuing post-release. It suggests that in recognition of the importance of developing key long-term adult relationships with young people, the same workers from the community should work with young people in detention and that any secure detention facility be geographically located to enable through care.

Save the Children also recommends that transitional exit planning is provided for all young people leaving secure detention. It says it is widely recognised that the immediate post-release period for detainees is high risk. It is therefore vital that an exit plan is developed for all young people held in detention and remand to ensure that their needs are met on release, using a collaborative approach with key agencies including: Ashley Youth Detention Centre, Ashley School, Learning Services South, Youth Justice and a range of non-government organisations. Save the Children also calls for an increase in the supported accommodation options available for young people upon release.

Additionally, Save the Children recommends an increase in programs that provide support for young people to access supported work experience and employment programs upon release, and support for prospective employers and staff to cater for the needs of young people leaving secure detention and taking on work experience/vocational training/employment.

Whitelion advises it has been providing pre- and post-release support services to young people in detention for over 13 years and understands the value of engaging with young people *during* a custodial sentence so that a relationship can be carried through post-release when youth are at their most vulnerable. Whitelion provides mentoring and employment services to positively influence a young person's experience of custody and help them choose a better future post-release.

Whitelion's juvenile justice-based employment program in New South Wales was recently evaluated by Bain & Company who found that Whitelion works predominantly with medium to high-risk offenders and that their participation in their employment program has resulted in a decrease in re-offending of about 20%. Most importantly, the program delivers a positive return on investment of between \$1.20 and \$1.97 for every dollar invested. These figures are based on the most conservative scenarios.

Whitelion was recently funded by the state government to provide leaving care mentoring services for vulnerable young people exiting statutory care. Whitelion proposes that the Tasmanian government also funds the provision of youth or social workers at Ashley to work with young people during their custodial sentence and continue this engagement post-release. This model of engagement provides the best chance of the young person engaging with positive change at the end of their custodial sentence. This is a model that has previously operated at Ashley and had encouraging impact on recidivism. Partnering with the community sector to deliver these services would provide a cost-effective funding model for Tasmania.

In late 2012 Whitelion commenced exploration of 'social enterprise' as a way of supporting vulnerable young people who had experienced the youth justice system to gain employment-readiness skills they would typically be excluded from in mainstream work environments, due to their offending backgrounds or due to the low literacy, numeracy and social skills typical of this target group. Whitelion recommends that the Tasmanian Government considers supporting the establishment of social enterprise models as an innovative method of supporting young people post-release.

Appendix C: Key themes from focus groups

1. Focus group with young people in Ashley

Twelve young people attended the focus group (one female, 11 males), approximate ages ranging from 15 to 18 years. All had been in Ashley on several previous occasions, even up to 16 times. Age at first admission to Ashley varied from 12 to 15.

Theme 1: Disrupted lives and instability

- a) **Schooling:** Significantly, only two of the 12 present were going to school at time of entry to Ashley, and most had been suspended or expelled from school.
- b) **Child protection:** One young person said he has had 10 different child protection workers. Another has had five or six different workers. Two have had two or three different workers.
'When I was a 12-year-old, where was the support then?' (from Child Protection)
- c) **Out-of-home care placement instability:** Three had lived in foster care; between four and seven had lived in rostered care, and five had lived in Salvation Army Therapeutic Residential Care.
'With Care – they don't actually "care" for you.'
- d) **Family support:** About half of the young people indicated having some occasional family support (including extended family), but this appeared to be very limited. Few had lived with their family recently. Five of the young people had immediate or extended family in prison (which is about the same proportion as the research suggests).

Theme 2: Ashley School

There was a lot of positive feedback concerning the Ashley School. Key aspects were small classes, fewer choices and less competing for acceptance from others and feeling 'out-casted' as one Ashley staff member put it.

Theme 3: How to change (for the better)

"Here – you have to want to change. It's the ones who want to change that can get as much as they want out of it (e.g. sport, gym, school, etc.)"

Theme 4: Exit planning

Only one of the young people had an exit plan. Exit planning only begins four to six weeks before leaving Ashley (and does not apply to young people on remand).

'Exit plans are stupid. You can't say what you want for yourself. People think they know what is best for me. They are wrong. People on the outside like my boss don't want to be involved in exit planning because there are too many people involved who sit behind desks. You need people with some real life experience.'

Theme 5: The future

When considering the future, some of the young people thought they would be in jail by the time they are 30 but most wanted to have a job and to be parents.

2. Focus group with young people on Community Based Orders

Five young people attended the focus group (one female, four males); ages ranged from 16 to 18 years.

Theme 1: How to change (for the better)

'You need to change who you hang out with.'

Theme 2: Ashley School

'I'd go to a school down here if it was like the one up at Ashley.'

'There are smaller classes at the Ashley School.'

'School is the most entertainment you get at Ashley.'

'I liked the teachers at Ashley.'

'I was good there so they were alright to me.'

Theme 3: School suspensions (consequences)

'There's nothing else to do.'

'You just get into more trouble.'

'What's the use in suspending?'

Theme 4: Bail

'I wasn't allowed out except with my dad. That was ridiculous. I just breached it and went in.'

'Curfews are bloody shit. Some people don't like it. They keep breaking it. Causing more trouble than it's worth.'

Theme 5: Family support

There was general agreement that visiting and contact arrangements should be improved.

Theme 6: Detention as deterrence?

'They showed me how to steal cars.'
'I know more about crime now than I did before I went in.'
'I met some friends there.' (and ongoing contact after Ashley)
'You are more scared before you go there.'
'When I got there I was like, this is bullshit. It's like a day care centre.'
'Some kids like it there. It's certain. It's healthy. You've got a bed. Somewhere to stay. Some don't care about going back.'

Theme 7: Benefits of Ashley

'Ashley made me grow up a bit.'
'After you go there a few times you learn to change.'
'I had to learn to deal with anger there.'
'I did grade 10.'

3. Focus group with Custodial Youth Justice workers

Twenty workers (five female, 15 male)

Theme 1: Competing paradigms – 'justice' vs 'welfare'

The 'justice' side of the argument was not really presented, but there was definitely a tension in the room when one or the other 'side' spoke. The 'welfare' side also relates to the public health approach of prevention and acknowledgement of failure of other systems, that is, those that precede involvement in youth justice.

The 'welfare' side:

'If people make an effort, then the centre supports kids in that regard. We need to be consistent and shift thinking patterns. We can't make that generous offer to all – they have to demonstrate they can be trusted. The role of the centre is to get kids to make a shift in their thinking.'

'We believe the lion's share should be done earlier – at the front end. Early childhood, hospital admissions, child protection orders, etc. They are many flags and lights flashing for many years before they come here. A lot of damage has already been done. It's very challenging to try to resolve those issues in the short time they are here. Enormous progress has been made.'

'If the community saw it as a rehabilitative thing, then there would be more support. Should be a policy from top down rather than giving the workers the fall.'

'A lot of these kids come into the "system" as victims but end up perpetrators. Need to acknowledge under-resourcing of child protection.'

'AYDC used to be more reactive in the past. It's more proactive here now. [Young people] are treated more with a therapeutic model. There is an expectation of behaviour – not a reinforcement of behaviour.'

The 'justice' side:

'Magistrates are acting like welfare workers. Not sure what is going to happen.'

'That was tried before through Education. Problem was it became a welfare type approach. Could be compromising, e.g. having to go into the home.'

'They can do well here but then when they leave they go back into their old neighbourhood, family – chaos. There is structure and boundaries here.'

'There is demonisation of the kids as "perpetrators" but then there are "welfare concerns" once they are in!'

Theme 2: What other services etc are needed?

'More follow up services are needed for when they leave here.'

'We need somewhere like a halfway house. A building where they are involved with services– that can provide accommodation.' [This theme was repeated by other youth justice workers]

'A gradual return to community should be part of their release.'

Could we have outreach workers from here to work with them on release? We already have a relationship and connection with them. We talk with kids about things they won't talk to others about.'

'Why can't we start more in here? Can we do things in the community with them while they are in here? This used to happen more.'

'Under the old Child Welfare Act there was a pre-detention centre. Like a secure unit.'

'More needs to be done for ages 7 to 12 years and their families.'

'There should be some kind of Government/ Community Plan with community intervention – maybe a five-year plan and a 10-year plan.'

‘We strive for those who were disengaged. There need to be alternative programs to meet their needs on release. Satellite programs exist. Need them to believe they need to engage. Enduring support? Mandated as part of their release order?’

Theme 3: General

‘The objective should be that Ashley closes because there are no clients. What interventions can you put in place to bring it to an end beforehand so it doesn’t result in a remand?’

‘The answers are in the community – either to stop them coming in or stop them coming back.’

4. Focus group with Community Youth Justice Workers

There were six staff in the North (all female), eight in the South (five female, three male)

Theme 1: Role of youth justice workers

There was a clear perception of at least dual, sometimes conflicting roles.

‘It is not really appropriate for youth justice workers to provide the services – we are trying to move them out of the system so it’s inappropriate to be the main player in their lives.’

‘There is a conflict in the role. Helper role versus supervisory role.’

‘It can be like being a pseudo parent. Disciplinarian and prosecutor.’

‘We need to build a good working relationship with them but we also need to be honest with the court. In the end I am going to say goodbye.’

‘Youth Justice focus is more on needs and strengths – would rather not know about their behaviour’ (i.e. potentially criminal behaviour).

Theme 2: Programs (general)

‘There is a lack of community based programs to support young people. This in turn places undue pressure on Youth Justice workers.’

‘We need criminogenic programs. Anger management programs.’

'It is an impost on staff to run programs here.'

'There are no specific programs for young women in North.' [20% are young women]

'There are gaps. We identify the young person's issues and then there is nothing in community for them.'

'Some of the programs that are there are inaccessible for our clients. Some services don't like mandated clients. Aspects of the programs can mean early starts and they can have high expectations which aren't achievable for our young people.'

'It is not really appropriate for youth justice workers to provide the services.'

'Community hubs are a great idea, e.g. HCLS has an office at Bridgewater. Youth Justice could be out there too and could be more accessible with other services. Foyer/front yard type model etc.'

'We tend to meet the young people where they are. Can use space from other services to meet it.'

Theme 3: Programs (post-release)

'We used to have an Ashley School staff member intensively support young people on release two to three years ago. They set up plans and worked with us. It probably stopped due to resourcing. We don't have that anymore. Sarah Mott was the person. She's just teaching now.'

'They need some type of accommodation in between Ashley and the community.'

'Accommodation services won't commit to providing services.'

'We need more bail alternatives and step down type accommodation.'

'There is a culture shock on release. There are orders requiring them to do certain things but there is a lack of resources and services.'

'[Need] a semi-secure facility that enables them to still engage in programs in the community (e.g. drug and alcohol, educational, U-Turn etc).

'Step-down type accommodation would be very sensible.'

Theme 4: Bail support

'Housing becomes an issue for bail. If Youth Justice can't find accommodation then the young person can be remanded.'

'Bail support plans – aim is to get them out. What are we putting in place for them?'

'After hours, a justice of the peace has only one option where there are no accommodation options. Often, if they had accommodation, they probably would have received bail.'

'Youth Care is one option but if there are kids already living there who don't get along with them, then it can be inappropriate for them to go there.'

'They have Streetworks in Melbourne. It might be good in Hobart and Launceston. They provide court representatives and accommodation.'

Theme 5: Other services

'There is nothing for kids detoxing.'

'There is no mental health assessment for those who use drugs.'

'If the young person doesn't want to engage, then nothing can be done. We get pressure from the court but we can't make them go.'

[re Centrelink]

'We have great relationship with the social workers there. But the system is so difficult to manage.'

'Clients can't cope with the system. Many of them have anxiety.'

'It's an aggressive environment. So traumatic. Security guard. Long waits. Staff don't deal well with our clients.'

'Many young people don't want to go to these types of services.' [Mental health services]

'Therapeutic intervention needs to be flexible around duration.'

'Clare House is almost closed to conduct disorder kids, which is most of our kids.'

'Needs to be non-clinical.'

‘There is no drug and alcohol unit for youth.’

‘All kids I work with have a drug or alcohol problem but there is nowhere for them to go here before the problems escalate into serious criminal behaviour.’

‘There are lots of drug and alcohol services but none of them are working from a model that my young people seem to be responding to on a longer term basis.’

Theme 6: Education – need for alternative schooling

‘A lot of our clients have not even completed primary school – it’s a bit late to try to get them back into school as youth on supported bail.’

‘Who has responsibility for them when they are (supposed to be) at school?’

‘There need to be alternative programs because traditional schools don’t always meet their needs.’

‘Traumatised kids don’t do well in traditional school setting.’

‘Problems at school are a flow-on from home damage.’

‘Some schools can be really involved, e.g. conferencing – but others aren’t. There appears to be no education policy around this.’

‘Youth Justice get these kids a long way along the continuum. A lot has already happened – family, education etc.’

‘Education for some of these young people needs to be on an outreach basis, e.g. a social worker who teaches a limited set of skills to street kids.’

‘There is no DoE policy. It is driven by the principal. Some will suspend at the drop of the hat.’

‘An area move for young people in out-of-home care can mean they are not able to re-enrol at previous school (i.e. they are unwanted).’

Theme 7: Legal representation/court

‘Having different legal aid lawyers on different days can be difficult.’

‘Sometimes young people don’t understand what is happening at court or know who will be representing them or whether there will even be someone there.’

‘Having a room at the courts can be good for young people to be able to report to a Youth Justice Worker immediately on leaving court.’

‘Delays at court are frustrating. Bail reviews can be stressful where a young person is required to attend at 10.00 a.m. but isn’t seen until much later in the day. They can be very agitated being at court and it heightens their agitation to know that will be required to come back weekly or fortnightly.’

Theme 8: Lack of youth policy

‘Who is responsible for youth? Child protection is not responsible for youth.’

‘There is no policy around youth generally. It’s worse for youth justice clients.’

‘There is no youth policy – there is a disconnected service system.’

‘Youth are marginalised in a lot of jurisdictions.’

Appendix D: Brief synopses of three youth justice models

The Missouri Model

A youth justice model developed by Missouri's Division of Youth Services (DYS) has gained extensive interest and accolades in recent times. The Missouri Model, as it is commonly known, has been described as a 'balanced approach to juvenile justice', which emphasises both community safety and individual rehabilitation.¹⁹⁰ Several submissions to this project advance aspects of Missouri's approach as worthy of consideration for the Tasmanian setting.

The following is a summary of the Missouri Model highlighting its key features, underlying philosophies and provides a brief overview of its outcome indicators. More detailed information regarding the Missouri Model can be found in source material, including the Missouri DYS annual reports¹⁹¹ and a paper produced for the Annie E. Casey Foundation by Richard Mendel (2010).¹⁹²

The Missouri Model continuum

Missouri's Division of Youth Services' mission is to enable youth to fulfil their needs in a socially responsible manner within the context of, and with respect for, the needs of the family and the community. It has been said that it operates,

under a defined set of goals that stress the importance of positive youth development, through the provision of treatment services that maximize youth and community safety. This type of therapeutic treatment model, centered on coordinated services, restorative integration, and specialized counseling, is consistently found to be associated with reduction in recidivism (Lipsey 2009)...¹⁹³

Perhaps the best-known feature of the Missouri Model is its small, regionalised residential facilities for the small proportion of young people who are serious offenders and who require incarceration. These secure facilities are small (generally no more than 30-bed capacity), located near youths' families and communities and operate in a noticeably non-correctional manner. They operate in stark contrast to the correctional youth detention facilities previously used in that state.

It must be emphasised, however, that the secure care programs represent just one part of the continuum of services provided by Missouri DYS across its five regions. In each region, it provides a varied suite of community- and family-based interventions, day treatment programs, community-based residential facilities, moderate secure facilities as well as secure care programs. Additionally, DYS provides funding for community based diversionary programs.

DYS works with young people either on the basis of a custody referral (also known as a commitment) or a non-custody referral. Non-custody referrals may be provided services in the community but cannot be placed in residential care.

Each youth is comprehensively assessed to determine an individual treatment plan and his or her appropriate placement within the continuum.

The Missouri Model continuum is made up of the following services:

1. Prevention programs

DYS provides annual funding grants to local courts to implement early intervention and prevention Programs such as alternative schooling, intensive supervision or educational tutoring within their own communities. The programs allow courts to divert increasing numbers of young people away from 'commitment' to DYS.

2. Community-based services

- Case management
- Intensive case monitoring
- Jobs program
- Alternative living services (e.g. 'proctor care', foster care and transitional independent living service)
- Day treatment programs (which provide educational services for a minimum of six hours per day as well as in-house treatment services such as counselling, group and family therapy, mentoring and so on).
- Multi-systemic therapy and family therapy.

3. Residential services

- Group homes: These are the least restrictive of the Missouri residential facilities. They are 10- to 12-bed facilities with 24-hour supervision, which allow for treatment and educational services within the facility and community interaction through employment and community projects.
- Moderate care: These facilities are used for youth who have typically convicted of property offences but who do not pose a serious threat to the community. They provide continuous supervision and are staffed with full-time teachers who provide educational services and life skills programs. These facilities operate on an open dorm basis with no perimeter fence.
- Secure care: These facilities are for a small number of youth who have committed serious offences including offences against the person. They are enclosed and operate within a secure perimeter fence. Youths receive educational services, counselling and vocational assistance.
- Special needs and short-term care: These can be provided on a needs basis.
- Aftercare: All youth receive intensive aftercare support and supervision on release.

Key features of the Missouri Model

Several key features of the Missouri Model appear attractive. These include:

- A suite of small, regional residential facilities that are designed and furnished in a relatively homely manner. At every security level, facilities are carpeted and decorated with residents' art and writing. Youths are treated like students rather than detainees. The majority are accommodated in dorms rather than individual cells.
- Treatment at all levels of the continuum is provided to youth within small groups of no more than 10 to 12, but emphasis is placed on meeting the individualised needs of the youth (psychosocial, educational, vocational and medical). Treatment is provided in what is described as a dignified, structured, supportive and therapeutic environment.
- There is strong involvement of family throughout the continuum, whether or not the youth is in custody. Treatment staff visit families to keep them informed of the youth's treatment and to plan for the youth's eventual return home. Assistance is provided for families to visit their children where there are barriers to transport. About a quarter of youth participate in family therapy (particularly pre-release).
- A single case manager is allocated to a youth regardless of where the youth is placed or treated within the youth justice continuum. Case managers have low caseloads (i.e. no more than 15 to 20 young people at a time).
- Intensive support and planning is provided to young people in preparation for their release. Youth develop a self-care plan. In the post-release or aftercare period, youth are closely monitored and mentored and may be returned to residential confinement in certain circumstances. Community-based mentors (often university students) assist case managers. They can act as a role model and support person for a young person and provide valuable feedback to the case manager about the young person's progress within the community.
- All staff are highly motivated and highly trained. All staff are considered 'treatment staff' regardless of their position. According to the DYS website, each residential group (10 to 12 youth) in each residential facility works with one youth group leader and 1.5 teachers. Additionally, each group is staffed with a number of youth specialists on a 24-hour rotational shift. Secure care sites employ 10 youth specialists per group, moderately secure sites employ eight youth specialists per group and community-based programs employ seven youth specialists per group. Youth specialists are generally required to have a bachelor degree in a relevant field.
- Community involvement is fostered through community membership of an advisory board, community liaison councils and through youth participation in community-based groups and activities.

Outcome indicators of the Missouri Model

The outcome indicators of the Missouri Model summarised by Mendel in his report for the Annie E. Casey Foundation¹⁹⁴ and reported in the DYS annual reports¹⁹⁵ are enviable. They tend to suggest positive outcomes for youth offenders (e.g. meeting health needs,

enhanced educational engagement, improved family connections) and for their families and communities generally. These include:

- Increased safety for incarcerated young people
 - Self-reports by facility staff members suggest fewer assaults against youth and staff and significantly lower use of mechanical restraints and isolation in Missouri youth justice facilities when compared against 97 facilities participating in the US Council of Juvenile Correctional Administrators' Performance-Based Standards project.
- Educational achievements
 - Youth committed to DYS demonstrate increasingly significant gains in educational achievement. For example, in 2012 at least a quarter of youth exiting a DYS facility after their 16th birthday had completed their secondary education. Three quarters of all youth advance at least as fast as a typical student in a public school.
- Positive transition back to community
 - Of all youth discharged by DYS in 2012, 79.3% were assessed as being 'productively involved' in the community (in employment or enrolled in an educational/pre-vocational program).
- Reduced recidivism rates
 - Total combined recidivism after 36 months from release is 33.0% with recidivism to adult prison at 3.8%.¹⁹⁶
- Relatively low cost
 - Youth corrections spending in Missouri is lower than or comparable to spending in other American states.
 - DYS has kept capital costs associated with its residential facilities down by refurbishing existing premises such as abandoned school buildings and large residential homes.

Box 1. Missouri Model - Underlying beliefs and values

- Every young person wants to succeed – and can succeed.
- Public safety is best served not by punishing young people or shaming them for their crimes, but by offering a therapeutic intervention to help them make lasting changes in their attitudes, beliefs and behaviours.
- These lasting changes cannot be imposed on young people. Youth can't be scared straight, reformed, or deterred from crime by fear of punishment. Rather lasting changes can only result from internal choices made by the young people themselves.
- Like all people, troubled youth tend to resist and fear change. Positive relationships with staff and other youth are critical to overcoming resistance and fostering positive change.
- Every young person requires individual attention. Each DYS youth has chosen to engage in delinquent behaviours based upon his or her own circumstances, and each will make the decisions to change and grow— or not – for his or her own personal reasons.

- Some youth lapse into serious and chronic delinquency as a coping mechanism in response to earlier abuse, neglect, or trauma. For other youth, delinquency has less deep-seated roots.
- Regardless of the roots of their behaviour problems, delinquent youth typically suffer from a lack of emotional maturity – an absence of insight into their own behaviour patterns, an inability to distinguish between feelings and facts, and an underdeveloped capacity to communicate their emotions or express disagreement or anger responsibly.
- All behaviour, no matter how destructive, has an underlying emotional purpose. Therefore, rather than punishing or isolating young people when they act out, the best response is to ask probing questions that help the youth understand the roots of the problem and identify more constructive responses.
- Most youth entering custody have very low confidence in their ability to succeed as students – or eventually as workers in the mainstream economy. And most have had limited exposure to mentors and positive role models.
- While the DYS staff and treatment process are important, parents and other family members remain the most crucial people in youths’ lives—and the keys to their long-term success.

Potential weaknesses of the Missouri Model

Indeterminate detention

It must be noted that the Missouri Model permits commitment for an indeterminate period, the effect of which is to enable DYS to move a youth back and forth between residential and community care and to re-confine a youth who struggles in an aftercare period or exhibits risks for reoffending. This aspect of the model warrants close scrutiny and caution particularly given the legislative principle in our *Youth Justice Act 1997* that a youth is not to be treated more severely than an adult would be. It appears that the Missouri Model permits detention for rehabilitative rather than non-criminal behaviour. Indeterminate sentencing is one of the bases upon which the historical welfare approach to youth justice used in this state was criticised.

Lack of independent evaluation

While the Missouri model has been adopted by several American states, it has been criticised on the basis that it has not been objectively and independently evaluated. Further, it has been asserted that the recidivism data mentioned above are descriptive and correlational in nature, and that Mendel’s assessment of the model – which compares Missouri’s recidivism rates to those of other states – was methodologically flawed.¹⁹⁷ However, the *Missouri Department of Social Services, Division of Youth Services Annual Report 2012* has impressive outcome indicators, including 67% law-abiding behaviour among youth three years following their release from custody and (p. 19).

The case for the approach taken in Missouri would nevertheless be strengthened if the model and its elements were ‘systematically and rigorously evaluated’, however, even in the event of a rigorous evaluation, the extent to which the model could be adapted to and could work in the Tasmanian environment would remain unclear.

Juvenile Detention Alternatives Initiative

Over the past two decades there have been major shifts in strategic thinking about juvenile detention. There have various names to these strategies, including the Juvenile Detention Alternatives Initiative (JDAI), which was initiated in 1998 by the Annie E. Casey Foundation with the objective of eliminating unnecessary and inappropriate uses of secure detention for juveniles in the United States. The JDAI operates across 39 states and the District of Columbia as of April 2013. In aggregate, the implementation of JDAI strategies has reduced the number of youth detained on an average day by 43% and has reduced annual admissions by 39% as compared with pre-JDAI admissions. Also, the overall level of offending has been reduced by 36%, indicating that detention can be reduced without compromising public safety.¹⁹⁸

JDAI is made up of eight core strategies (and there is extensive, carefully researched documentation for each of these):¹⁹⁹

- **Collaboration** between the major juvenile justice agencies and community organisations.
- **Use of accurate data**, both to diagnose the system's problems but also to assess the impact of various reforms. Without hard facts, myths and anecdotes and 'organisational inertia'²⁰⁰ by vested internal interests will rule the system.
- **Objective admissions criteria and instruments** must be developed to replace subjective decision-making at all points where choices to place youth in secure custody are made.
- **New or enhanced non-secure alternatives to detention** must be implemented in order to increase the options available for arrested youth.
- **Case processing reforms** must be introduced to expedite the flow of cases through the system, including reducing lengths of stay in custody (especially for those on remand).
- **Special detention cases** – youth in custody as a result of probation violations, writs and warrants, must be re-examined and new practices implemented to minimise their presence in a secure facility.
- **Reducing racial disparities** requires specific strategies (in addition to the listed above) aimed at eliminating bias and ensuring level playing field for all youth.
- **Improving conditions of confinement** is most likely to occur when facilities are routinely inspected by knowledgeable individuals applying rigorous protocols and ambitious standards.

For further information and extensive documentation, see the Annie E. Casey website: <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>.

Justice Reinvestment

The report from the recent Senate Inquiry into the *Value of a justice reinvestment approach to criminal justice in Australia*, refers to this definition of justice reinvestment from the US Bureau of Justice Assistance:

a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and strengthen neighbourhoods. The purpose of justice reinvestment is to manage allocated criminal justice populations more cost-effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.²⁰¹

Justice Reinvestment involves advancing ‘fiscally sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditure and make communities safer’.²⁰²

Justice Reinvestment is made up of eight core strategies:²⁰³

- **Systems analysis** – Holistic analysis of the criminal justice system is a key feature of the justice reinvestment methodology, including analysis of policing, judicial systems, probation and parole, prevention programs, community supervision and diversion options.
- **Justice mapping and integrated data systems** – Use of accurate, integrated data to enable Justice Mapping is essential for policy-makers to be able to target the locations where offenders come from. Justice mapping includes cross-referencing against indicators of disadvantage and gaps in available services to help identify the underlying causes of crime in these communities. Mapping software, such as MAPINFO, is very useful for such an exercise.²⁰⁴
- **Shift in investment to place-based initiatives** – Based on evidence that a significant proportion of offenders come from, and return to, a small number of communities, funding is provided to community-based programs and services designed to strengthen families and communities, and address the causes of crime.
- **Collaborative partnership** between government agencies and communities is required for such initiatives to function effectively.
- **Community control and local governance structures** – Control is placed back in communities to enable them to address offending behaviour, changing the narrative from punishment to community safety.
- **Evaluation** of any initiatives, programs or services through accurate, integrated data systems. Under the justice reinvestment approach rigorous, ongoing evaluation is essential for measuring the impact of reinvestment and to ensure that projected results and benefits are being achieved.²⁰⁵
- **Long-term strategies** – Sufficient time and resources are allocated over the long-term
- **Policy-makers must be willing** to adopt the policies and programs identified through the systems analysis, the justice mapping and community participation.

The UK House of Commons identifies four stages/key requisites for justice reinvestment:

1. Justice mapping (as outlined above)
2. Devising options for policy-makers
3. Quantify savings and reinvest in select high-stakes communities
4. Measuring the impact of justice reinvestment approaches.

Justice mapping could be done with very little additional expense. As one of the contributors to the House of Commons Inquiry, Professor Jonathan Shepherd CBE pointed out, 'more imaginative use could be made of existing local data without extra cost, if it is collated by the partner agency electronically, anonymised and passed on to someone with the capacity to analyse it.'²⁰⁶ The database for such an exercise already exists in Tasmania – the DHHS KIDS Data Warehouse.

A caveat should be made concerning the data orientation of a justice reinvestment approach. As pointed out by the Australian Justice Reinvestment Project and Justice Reinvest NSW in their submissions to the Senate Inquiry into Justice Reinvestment, this is not purely data-driven, citing the Just Reinvest submission, 'the experiences, perceived needs and capacities expressed by the community are instrumental in developing tailored programs to address offending'.²⁰⁷

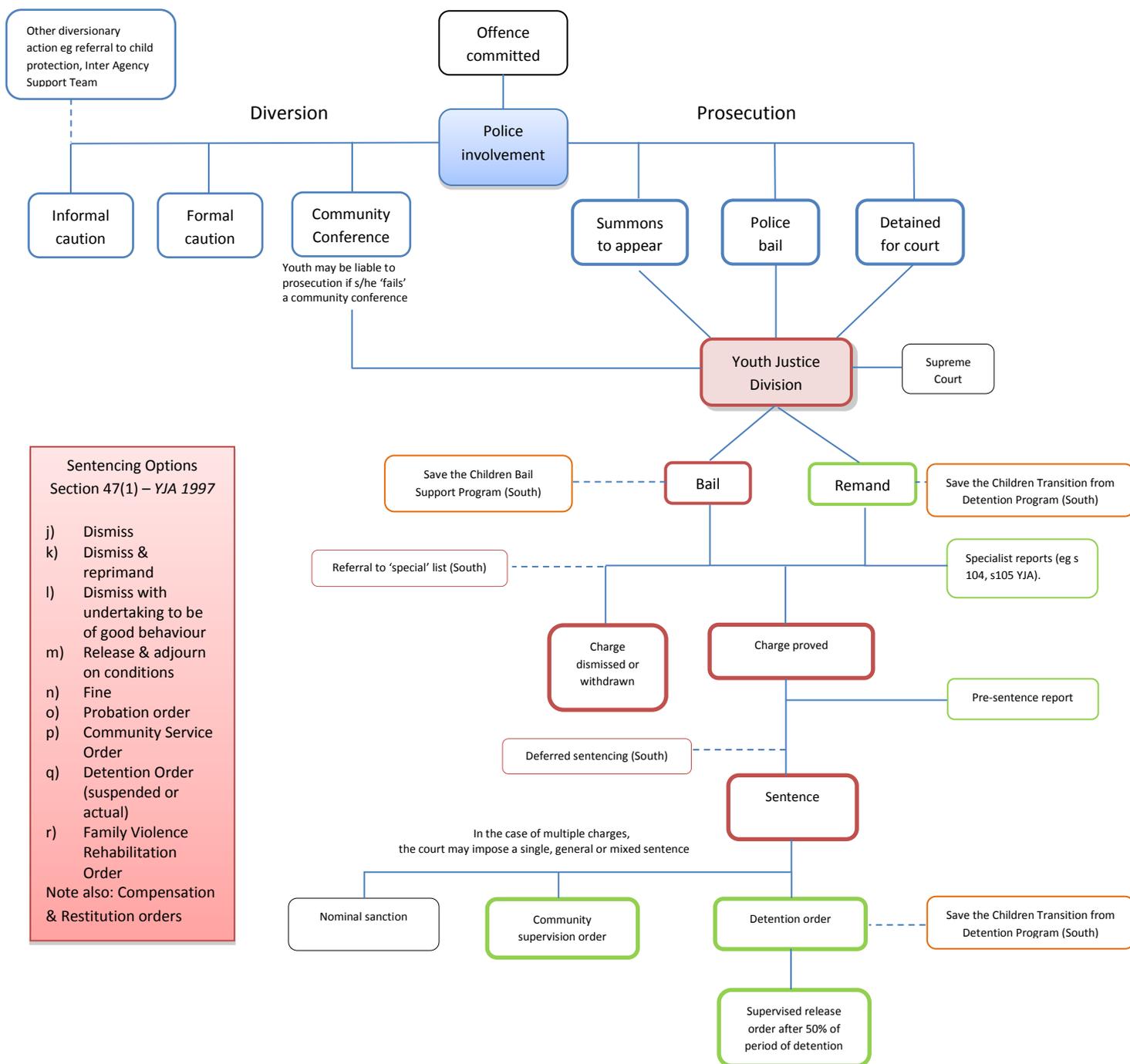
How do the different systems differ?

The different systems/strategies considered here differ in level and scope. In simple terms, **Justice Reinvestment (JR)** is a high-level funding shift model with a focus, according to some interpretations of JR, on place-based preventative strategies and services, driven by both data mapping and community participation.

Juvenile Detention Alternatives Initiative (JDAI) – While very similar in objectives and methodology (e.g., both rely on justice mapping), JDAI tends to focus on reforming the youth justice system and all its internal processes, rather than addressing broader causal issues that lead to criminal behaviour.

The Missouri Model – while the Missouri Model can operate within, or in conjunction with JR and JDAI, it is focused on the detention system, rather than the broader youth justice system.

Appendix E: Map of the youth justice system in Tasmania



- Sentencing Options**
Section 47(1) – YJA 1997
- j) Dismiss
 - k) Dismiss & reprimand
 - l) Dismiss with undertaking to be of good behaviour
 - m) Release & adjourn on conditions
 - n) Fine
 - o) Probation order
 - p) Community Service Order
 - q) Detention Order (suspended or actual)
 - r) Family Violence Rehabilitation Order
- Note also: Compensation & Restitution orders

Appendix F: Terms of reference

Alternatives to Secure Detention - Terms of Reference

Supplementary Project of the Youth Justice Continuum of Care

Version No: 5

13 November 2012

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Background

It is becoming increasingly recognised that community based restorative, preventive and early intervention programs are considered to be less expensive, and have a greater success rate in curbing re-offending behaviour than custodial options. With this in mind, the Government is keen to have a much greater emphasis given to such programs.

The Department of Health and Human Services, Children and Youth Services is undertaking a review of the Youth Justice Continuum and that will take into account the full spectrum of strategies/services required to deliver the preventative support programs, including secure detention and alternatives to secure detention. It is anticipated that the review may have significant implications funding and resource allocation, the redirection of existing resources and/or funding.

The Youth Justice Continuum of Care project

On the 19 July 2012, the Minister for Children endorsed that Children and Youth Services undertake a major review of the 'Youth Justice Continuum of Care'. This is to be followed by the development of a comprehensive recommendations paper that will outline the full suite of primary, secondary and tertiary services that currently exist and/or could be implemented to improve this Continuum. The recommendations will strengthen the services we provide to troubled youths, and is consistent with the Commissioner of Children's belief that 'an urgent comprehensive review of the youth justice system in Tasmania and the development of a comprehensive youth justice strategy which is long-term, evidence based, appropriately resourced'.

The Alternatives to Secure Detention project

In addition, on the 19 July 2012, the Minister charged the Commissioner for Children with providing a report addressing the possible closure of AYDC. The Terms of Reference contained in this document are based on the Ministers advice which was:

- *The Commissioner for Children inquire generally and report on the role of detention within the continuum of youth justice, through an analysis of the characteristics and pathways into detention of a cohort of AYDC detainees, and an assessment of, and recommendations for diversionary strategies, alternatives to incarceration, and possible closure of Ashley Youth Detention Centre.*

It is understood that the work to be undertaken by the Commissioner for Children will be very useful in informing the Review of the Youth Justice Continuum of Care.

Project Objective(s)

The main objective of the Alternatives to Secure Detention project is to provide Government with contemporary evidence based advice that will assist Children and Youth Services in developing the Youth Justice system in Tasmania.

Outcomes

The broad outcome for the Alternatives to Secure Detention Project is a reduction in the rate of young people entering secure detention in Tasmania.

The targeted outcomes for the Alternatives to Secure Detention Project include:

- An increased understanding of the key characteristics and pathways that contribute to youth offending which result in detention in Tasmania ; and
- Recommendations that will develop and strengthen the youth justice system in Tasmania.

Outputs

The Alternatives to Secure Detention Project will deliver an evidence based paper addressing:

- the key characteristics and pathways that contribute to youth offending - which result in youth detention in Tasmania
- the role of detention within the continuum of youth justice
- describe diversionary strategies alternatives to incarceration and pre/post release support services current in Tasmania;
- recommendations that will develop and strengthen diversionary programs and pre/post release support services, including alternatives to incarceration.

This work will assist Children and Youth Services in the review of the Youth Justice Continuum of Care.

Governance

The Commissioner for Children, Aileen Ashford is responsible for managing the project outputs.

The Commissioner for Children will advise the Minister for Children pursuant to her statutory functions and powers set out in s79(1) of the *Children, Young Persons and Their Families Act 1997*,

In providing this advice to the Minister the Commissioner for Children is mindful of her statutory obligation in s79(3) of the *Children, Young Persons and Their Families Act 1997*, to act independently, impartially and in the public interest.

It is noted that if the Commissioner advises the Minister on any matter relating to the policies and practices of another Government department, the Commissioner must provide that advice also to the Minister to whom that Government department is responsible in relation to the administration of those policies and practices (s79(2) of the *Children, Young Persons and Their Families Act 1997*

It is further noted that, pursuant to s.82 of the *Children, Young Persons and Their Families Act 1997* the Commissioner must not make a report that is adverse to any person unless the Commissioner has first given the person an opportunity to make representations to the Commissioner.

Project Development

The project will be guided by a Reference Group chaired by the Commissioner for Children and comprised of representatives of key stakeholders and external experts in this field.

It is anticipated that there will be a call for targeted submissions, and consultations with young people under community justice supervision, key experts and stakeholders. It is also anticipated that there will be at least one forum with Ashley detainees and another with staff at Ashley.

Project Development Plan

Table 2: YJCC Project Development Schedule

| Id | Description | Who | Scheduled Start | Scheduled Finish | Predecessor¹ |
|-----------|--|-----------------------------|------------------------------|-------------------------|--------------------------------|
| 1 | Agreement of the ToR | Minister's Office | October 2012 | November 2012 | - |
| 2 | Develop Program Plan | Commissioner for Children | October 2012 | December 2012 | |
| 3 | Establish Reference Group | Commissioner for Children | November December 2012 | Late January 2013 | |
| 4 | Data (1) provided to the Commissioner for Children | Children and Youth Services | January 2013 | February 2013 | 1 |
| 5 | Data (2) provided to the Commissioner for Children | Children and Youth Services | February 2013 | April 2013 | |
| 6 | Development of the Alternatives to Secure Detention Paper | Project Manager | January 2013 | May 2013 | 2 |
| 7 | Provision of draft Alternatives to Secure Detention Paper to Minister for Children | Project Manager | May 2013 | May 2013 | 3 |
| 8 | Submission of final Alternatives to Secure Detention Paper to the Minister | Project Manager | | June 2013 | |

Relevant Government Policy, Legislation and Rules

- Youth Justice Act 1997
- Sentencing Act 1997
- Corrections Act 1997

¹ Activities in the Predecessor column must be completed prior to this activity commencing.

- Criminal Law (Detention and Interrogation) Act 1995
- Police Offences Act 1935
- Children Young Person and their Families Act 1997
- Bail Act 1994
- *Criminal Justice (Mental Impairment) Act 1999*
- *Personal Information Protection Act 2004*
- The Beijing Rules
- Australasian Juvenile Justice Administrators (AJJA) Standards
- AJJA design guidelines for custodial services
- UNHCR Convention on the Rights of the Child (CROC)

End notes

¹ Richards K (2009), *Juveniles' Contact with the Criminal Justice System in Australia*, Monitoring Report 07, Canberra: Australian Institute of Criminology, p.22.

² General Comment No. 10 (2007) Children's Rights in Juvenile Justice CRC/C/GC/10.

³ *Youth Justice Act 1997*, section 3.

⁴ *Youth Justice Act 1997*, section 4(e). See also Porter J's discussion of the differences between the sentencing regime for young people compared with the regime for adults in *Tasmania v MAR* [2011] TASSC 56 [pp.20-21].

⁵ *Youth Justice Act 1997*, section 5(g).

⁶ Article 37 of the United Nations *Convention on the Rights of the Child*. Australia's instrument of ratification notes "Australia accepts the general principles of this Article. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia." See also para 28 General Comment No.10 op cit.

⁷ Weatherburn, Vignaeendra & McGrath (2009), p.10.

⁸ Weatherburn, Vignaeendra & McGrath (2009).

⁹ Commissioner for Children Tasmania Review of Juvenile Remandees in Tasmania (April 2006) –refer pp.9-11 inclusive.

¹⁰ Institute for Public Policy Research *Redesigning justice: Reducing crime through justice reinvestment* London (2011) p. 4.

¹¹ J. Payne, *Recidivism in Australia: findings and future research*, AIC, Research and Public Policy Series, No. 80, page vii, 2007.

¹² *Youth Justice Act 1997*, section 3.

¹³ A Stewart et al, *Evidence Based Practice in Youth Justice*, Federation Press: Leichardt, NSW, 2011, p9 (citing Marshall (1996)).

¹⁴ A Stewart et al, *Evidence Based Practice in Youth Justice*, Federation Press: Leichardt, NSW, 2011, p8.

¹⁵ K Warner, *Sentencing in Tasmania 2nd Ed*, Federation Press, para 3.506 (footnotes omitted), 2002.

¹⁶ *Youth Justice Act 1997*, section 4(e). See also Porter J's discussion of the differences between the sentencing regime for young people compared with the regime for adults in *Tasmania v MAR* [2011] TASSC 56 [20-21].

¹⁷ *Youth Justice Act 1997*, section 5(g).

¹⁸ [Generally and in particular, article 40.](#)

¹⁹ Commonwealth Government of Australia, National Youth Policing Model, 2010, p.26.

²⁰ E Mossman, Research to Validate the New Zealand Police Youth Offending Risk Screening Tool (YORST) Phase II: Predictive Ability Analysis', New Zealand Police: Wellington, 2012. Accessed on 27 June 2013 at <http://www.police.govt.nz/new-zealand-police-evaluation-reports>.

²¹ D Weatherburn, A McGrath and L Bartels, Three dogmas of juvenile justice, *University of New South Wales Law Journal*, Vol. 35, No. 3, 2012: pp.779-809.

²² *Youth Justice Act 1997*, s3 – The term 'offence' does not include a 'prescribed offence'.

²³ A summons must also be served on the youth's parent or guardian.

²⁴ As indicated above, a Bill introduced on 23 October 2012 proposes to amend this subsection to clarify police powers so that a young person may be arrested for a serious offence if it is necessary to prevent the commission of a different offence that is also serious in nature.

²⁵ Tasmania Law Reform Institute, *Offending While on Bail Research Paper No. 1*. 2004, p.2.

²⁶ Except in the case of treason or murder where the charged person has attained the age of 17 (s70 of the *Justices Act 1959*) and see also discussion regarding the *Family Violence Act 1995* below.

²⁷ FE Devine, *Bail in Australia*, Australian Institute of Criminology: Canberra, 1989, p.9.

²⁸ Youth Justice (Miscellaneous Amendments) Bill 2012, 51 of 2012.

²⁹ Deputy Chief Magistrate M Daly, The Hobart Youth Justice Pilot. *Doing Justice for Young People - Issues and Challenges for Judicial Administration in Australia and New Zealand*. AIJA Conference – Brisbane August 23-25, 2012.

³⁰ Urbis, Review of the *Family Violence Act 2004* (Prepared for the Department of Justice Tasmania), 2008, p.15.

³¹ Youth Justice Coalition, Bail Me Out - NSW Young People and Bail, 2010, pp.2 & 11. The Magistrates Court of Tasmania's Annual Report 2011-12 indicates that approximately 23% of youth justice matters lodged with the court during 2011-12 involved breaches of court orders (including breaches of bail). It is unclear what proportion of those matters were breaches of bail.

³² Youth Justice (Miscellaneous Amendments) Bill 2012, 51 of 2012.

³³ K Richards, Trends in Juvenile Detention in Australia, *Trends & Issues in Crime and Criminal Justice no. 416*, Canberra: AIC, 2011.

³⁴ Although it is possible for a youth to be detained in a prison if in the Secretary's opinion it is impractical to detain the youth at Ashley.

³⁵ U.N. Rules for the Protection of Juveniles Deprived of their Liberty, these Rules were adopted by the General Assembly on 14 December 1990 as Res. 45/113 and are designed 'to serve as convenient standards of reference

and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system' (Rule 5). They are based on two cardinal principles: that the deprivation of liberty should be the disposition of last resort (Rule 1), and that any deprivation of liberty should be 'consistent with human rights and fundamental freedoms ... with a view to counteracting the detrimental effects of all types of detention and to fostering integration into society (Rule 3). The Rules, totaling 87 articles setting 'minimum standards accepted by the United Nations' (Rule 3), start from the basic premise that the juvenile justice system 'should uphold the rights and safety and promote the physical and mental well-being of children' (Rule 1).

³⁶ Commissioner for Children (Tas) (2013). Fact Sheet No 3: Youth Justice (Detention) in Tasmania (2011-12).

³⁷ Commissioner for Children (Tas) (2013). Fact Sheet No 3: Youth Justice (Detention) in Tasmania (2011-12).

³⁸ Department of Health and Human Services, Review of the Youth Justice Act 1997 Public Consultation Paper 2009, p.65.

³⁹ Section 83(3) of the *Youth Justice Act 1997*.

⁴⁰ Adult correctional facilities including Risdon Prison have also been declared youth detention centres for the purpose of the Act.

⁴¹ Rimon, W. in Centre for Tasmanian Historical Studies, *The Companion to Tasmanian History* (2006), accessed on 11 April 2013 from http://www.utas.edu.au/library/companion_to_tasmanian_history/C/Children's%20Homes.htm.

⁴² *Tasmanian Government Gazette*, 28 June 2000.

⁴³ *Tasmanian Government Gazette*, 16 November 2000 & 30 May 2001.

⁴⁴ Tasmania, Parliamentary Debates (Hansard), House of Assembly, 26 June 2013 (part 2), Michael Ferguson.

⁴⁵ <http://www.tfseducation.com.au/school-program/juvenile-fire-lighter-intervention-program>, accessed 24 January 2013.

⁴⁶ Australian Institute of Health and Welfare. *Juvenile Justice in Australia: 2010-11*. Canberra: AIHW, 2012, page 187.

⁴⁷ <http://www.missionpromotion.com/uturn>, accessed 2 January 2013.

⁴⁸ Tasmania Police Media Release, March 2013, accessed on 10 March 2013 at

<http://www.police.tas.gov.au/news/posts/view/3978/cessation-of-funding-for-u-turn/>

⁴⁹ Australian Institute of Health and Welfare. *Juvenile Justice in Australia: 2010-11*. Canberra: AIHW, 2012, p.187.

⁵⁰ Commonwealth Government of Australia, National Youth Policing Model, 2012, p.27.

⁵¹ Commonwealth Government of Australia, National Youth Policing Model, 2012, p.27.

⁵² Dr I Bartkowiak-Théron, *Tasmanian Early Intervention Pilot Program: Helping Reduce Alcohol Misuse Among Young Australians*, Tasmania Institute of Law Enforcement Studies:Hobart, 2012, p.9.

⁵³ <http://www.police.tas.gov.au/programs/police-in-schools/>, accessed 24 April 2013.

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⁵⁵ <http://www.whitelion.asn.au/index.php?sectionID=51&pageID=51&staticID=Tasmania>, accessed 24 January 2013.

⁵⁶ http://www.development.tas.gov.au/sportrec/the_wilderness_program, accessed 24 January 2013.

⁵⁷ Information in this section was provided by the Office of Aboriginal Affairs - Department of Premier and Cabinet, 6 September 2012.

⁵⁸ Information provided to the Commissioner for Children by Office of Aboriginal Affairs, Community Development Division Department of Premier and Cabinet Tasmania, 7 September 2012.

⁵⁹ <http://www.headspace.org.au>, accessed 24 January 2013.

⁶⁰ Sexual Assault Support Service, Annual Report 2010-11. Accessed at <http://www.sass.org.au/annual-report> on 30 January 2012.

⁶¹ Sexual Assault Support Service, Annual Report 2011-12. Accessed at <http://www.sass.org.au/annual-report> on 30 January 2012.

⁶² http://www.dhhs.tas.gov.au/mentalhealth/mhs_tas/gvt_mhs/child_and_adolescent_mental_health_services, accessed 24 January 2013.

⁶³ A. France & R. Homel, *Developmental Criminology*, Griffith University,

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CDMQFiAA&url=http%3A%2F%2Fwww98.griffith.edu.au%2Fdspace%2Fbitstream%2F10072%2F31061%2F1%2F58762_1.pdf&ei=7gheUfGkD7GuiQezuoCwDQ&usg=AFOjCNE78-r3uFc3FyTFv26of5a3tAh7ww&sig2=fswMyck5YeaX_iNxCcA9ew&bvm=bv.44770516.d.aGc

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⁶⁹ Griffith University (JMAG), *Comparative Evaluation of Youth Justice Risk/Needs Assessment Tools*, pp.5-6, 2006

⁷⁰ In K. Richards, *What makes juvenile offenders different from adult offenders*, AIC Trends & Issues, No. 409, February 2011: "The longitudinal study by Allard et al. (2010) found that of all persons born in Queensland in 1990,

14% had one or more formal contacts (caution, youth justice conference or court appearance) with the criminal justice system by the age of 17 years.”

⁷¹ Scottish Prisons Commission, *Scotland's Choice, Report of the Scottish Prisons Commission*, p.14, 2008.

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⁷⁶ This diagram is based on similar in the A.C.T. Discussion Paper, *Towards a Diversionary Framework for the ACT*, 2011, but with Tasmanian data.

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²⁰⁴ According to the House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment, First Report of Session 2009*, the suggested data for such an exercise could include:

- adults and young people going in and out of prison, people on community sentences and those under the supervision of probation after leaving prison
- administrative, political, social, educational, and other boundaries, such as school catchments, council jurisdictions, neighbourhoods, or police areas
- socio-demographics, such as single parent households, unemployment, home ownership rates, poverty, and income
- health and welfare services, child welfare and benefit claimants
- prison expenditures
- probation caseload distributions, and
- geographical, and neighbourhood, overlaps between criminal justice and other agencies providing local services.

²⁰⁵ The House of Commons Justice Committee, *Cutting crime: the case for justice reinvestment, First Report of Session 2009*, identified the elements of effective evaluation as:

- appropriate performance measures including, for example, the amount justice expenditure saved or avoided; recidivism rates; and benefits to local communities;
- appropriate monitoring systems to collate data across agencies on outcomes and the capacity of agencies to collect, record and monitor the data required;
- the expertise to review how closely the actual impact corresponds to projections; and
- commissioning arrangements to enable changes to be made to the delivery of services in the event that the policies are not having the desired effect.

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