

Thinking Outside

Alternatives to remand for children

Summary Report

Thinking Outside

Alternatives to remand for children

Summary Report

Jesuit Social Services

Acknowledgements

Julie Boffa

Dr Matthew Ericson

Ben Faulkner

Associate Professor David Green

Patrick Hayden

Michael Livingstone

John Maloney

Maree Tehan

Professor Tony Vinson AM

Corporate Statistics, Victoria Police

Effective Change Pty Ltd

Youth Justice and Disability Forensic, Department of Human Services, Victoria

The Remand Reform Taskforce

Kathryn Anderson, Assistant Director, Youth Justice and Disability Forensic, Department of Human Services, Victoria

Judge Michael Bourke, Chair of the Youth Parole and Youth Residential Board

Jeremy Cass, Legal Aid Victoria

Kate Colvin, Acting Chief Executive Officer, Youth Affairs Council of Victoria (YACVic)

Julie Edwards, Chief Executive Officer, Catherine Neville and Sarah Covill, Jesuit Social Services

Judge Paul Grant, President of the Children's Court of Victoria

Snr Sgt Timothy Hardiman, Community Engagement and Support, Victoria Police

Hilary Little, Sentencing Advisory Council

Wayne Muir, Chief Executive Officer, Victorian Aboriginal Legal Service (VALS)

Tiffany Overall, Co-Director, Youthlaw

Title

Thinking Outside

Alternatives to Remand for Children
Summary Report
Jesuit Social Services

ISBN : 978-0-9874670-0-3

Published by Jesuit Social Services 2013
326 Church Street
PO Box 271, Richmond VIC 3121
Australia

Tel +61 3 9421 7600

Email jss@jss.org.au

Web www.jss.org.au

This document is a Summary Report of the 'Thinking Outside: Alternatives to remand for children' study, a monograph funded through the Victorian Legal Services Board Grants Program.

Legal Services BOARD

Funded through the Legal Services Board Grants Program

Suggested citation:

Jesuit Social Services and Effective Change Pty Ltd (2013).

Thinking Outside: Alternatives to remand for children. Richmond, Jesuit Social Services

Published by Jesuit Social Services 2013

Designed by tommy gun

www.tommygun.com.au

Other reports in this series

Thinking Outside

Alternatives to remand for children
Research Report
Available at www.jss.org.au
February 2013

Young People on Remand in Victoria

Ericson, Matthew & Vinson, Tony 2010, – Balancing Individual and Community Interests, Jesuit Social Services, Richmond.

Foreword

Jesuit Social Services has over 35 years experience working with children and young people in Victoria's youth justice system. We know from our experience that the lives of the children who come into contact with this system are among the least fortunate in our community. They often have chaotic family relationships and involvement with child protection services, problems engaging in school, mental illness and substance abuse problems. These children and young people are more likely to come from communities that experience extreme levels of poverty and disadvantage. Their development is compromised by early life experiences and then further compounded as they become entangled in the web of disadvantage.

Contact with the youth justice system and exposure to remand often become further strands to this web. At heart, this study is about these children - for children they are, as legally defined until the age of 18. Victoria has a proud reputation for diverting children away from the justice system and has the lowest child custody rate in Australia, yet our rate of unsentenced detention increased by 67 per cent between 2007 and 2010. This is unacceptable, as detention more often than not exacerbates problems that are already entrenched for most of these children.

This Summary Report presents the main issues that arose from 12 months' research by Jesuit Social Services. These are outlined in the monograph *Thinking Outside: Alternatives to remand for children*, funded through a grant from the Legal Service Board Grants Program and supported by a Task Force of expert stakeholders. The fundamental question we set out to resolve in our study was: what can be done better?

There is no single solution. However, a first step would be to raise the age of criminal responsibility to 12 years; primary school children have no place in our criminal courts. We must promote attitudes *against violence and for children*. Our research has found that violent offending of varying degrees of seriousness is the main reason for remanding children and is fuelling an increase in arrests that is proportionally the greatest for the youngest children (those 10 to 13 years of age).

Once a child with known social and psychological risk factors comes to the attention of the police or courts we must ensure that an assessment of his or her particular circumstances takes place immediately – whether that be during business hours, late at night or on a weekend. This does not occur currently.

There is a need for services that children on remand or at risk of remand can access 24 hours a day, seven days a week. These services must overcome the present service system's fragmented response to such children. These children have often experienced significant harm yet, by failing to intervene early and intensively to halt such troubled and troubling life trajectories, valuable time to act decisively is lost.

Two groups of children are more affected than most - Aboriginal children and children subject to child protection involvement. Both are over-represented in the youth justice system. Our study identified that there was a small group of children who were remanded for the first time when they were between 10 to 12 years of age, all of whom had been involved in the child protection system. Almost a third of these were Aboriginal.

In recommending reforms this study builds on our previous research, notably *Young People on Remand in Victoria* (2010) and *Dropping off the Edge: the distribution of disadvantage in Australia* (2007). As such, it continues to express Jesuit Social Services' vision to build a just society and increase the potential of marginalised individuals and communities to better realise their goals and aspirations.

The recommendations for reform are presented in summary in this report. The full monograph is available at www.jss.org.au.

Julie Edwards

Chief Executive Officer
Jesuit Social Services

Contents

1.	The impetus for remand reform for children	5
2.	The youth justice system in Victoria	7
3.	Pathways into remand	10
4.	Way forward – proposed reforms	13
	Reform 1: Intervene early and locally	14
	Reform 2: Focus on prevention	16
	Reform 3: Target Aboriginal disadvantage	18
	Reform 4: Strengthen legislative protections for children	20
	Reform 5: Maximise diversion from remand	22
	Reform 6: Intensify support for the most vulnerable	24
	Reform 7: Develop infrastructure to build evidence	26
5.	Overview and conclusions	27
Appendix 1	<i>Key definitions and concepts</i>	31
Appendix 2	<i>Relevant features of the youth justice system</i>	32
Bibliography		32

1. The impetus for remand reform for children¹

Victoria has the lowest rate of remand in Australia at 0.07 per 1000 10 to 17 year olds compared with the national average of 0.20 per 1000. On an average night, according to a report by the Australian Institute of Health and Welfare (Juvenile Detention in Australia 2011), 48 per cent of children and young people in detention in Australia are unsentenced. This proportion ranges from 43 per cent to 68 per cent across states and territories—with the exception of Victoria, where 22 per cent are unsentenced (Australian Institute of Health and Welfare (AIHW), 2012).

Despite this, the report shows a 66 per cent increase in the number of children in unsentenced detention in Victoria on an average night, from 24 in quarter two 2007, to 40 in quarter two 2010, peaking at 49 in quarter one 2010 (AIHW, 2012). This has led to the mixing of sentenced and unsentenced children at the Parkville Youth Justice Centre. This runs the risk of breaching Victorian law, the Human Rights Charter, and wider principles of international human rights law. Over-crowding was one of several concerns raised by the Victorian Ombudsman in his 2010 report about the conditions and treatment of young people in Victorian youth detention facilities. Furthermore, extensive and unnecessary use of remand places a significant burden on police, court, and custodial services, particularly when compared with more constructive community-based services for children in the youth justice system.

Evidence tells us that children in custody are likely to be among the most vulnerable and disadvantaged in our community. The Youth Parole and Residential Board's snapshot of characteristics of young people in detention shows high proportions of children and young people in custody were already victims of abuse, trauma, and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability are also prominent. Research has also shown that children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers. Links have been established between crime and economic and social stress, higher rates of child neglect and abuse, and harsh, erratic, and inconsistent disciplinary practices (Dennison, 2011). Aboriginal children are over-represented in youth justice systems across all states and territories in Australia.

These two sets of circumstances—the increase in the use of remand in Victoria with the associated systems' burdens (most immediately over-crowding and the co-mingling of sentenced and un-sentenced children), and Jesuit Social Services' knowledge of the personal and socio-economic backgrounds of many of the children subject to remand—provided the impetus for this study. Reform is needed to offer these children the opportunity to reach their potential and become productive and engaged members of our community.

In 2004-05 there were 171 youth justice centre remand orders issued for children 15 to 17 years of age. By 2009-10, this had increased to 526.

Youth Residential & Parole Board, cited by Practical Lessons, Fair Consequences, 2012.

¹ Throughout the report, the term 'children' is used purposefully to refer to persons under 18 years of age. This is consistent with the definition of the governing legislation, the Children, Youth and Families Act 2005 (CYFA). An exception to this is youth justice data which includes young people aged 18 years or older. When referring to this data we use the term 'children and young people'. A child is defined by the CYFA (s3) as "in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court."

Figure 1:

Risk of involvement in the youth justice system



2. The youth justice system in Victoria

The Victorian youth justice system is administered by the Victoria Police, the Children's Court and the youth justice service in the Department of Human Services. Children aged 10 to 17 years who commit criminal offences are apprehended, processed, tried, and sentenced (if convicted). These children may be involved with the youth justice system through multiple interactions and programs, depending on the type of offence and their circumstances. The stated aims of the system are to assist young people to develop the knowledge, skills and attitudes to manage their lives effectively without further offending.

Legislation and principles

The youth justice system is principally governed by the *Children, Youth and Families Act 2005*, the *Bail Act 1977*, the *Crimes Act 1958*, the *Sentencing Act 1991*, the *Sex Offenders Registration Act 2004*, the *Magistrates Court Act 1989*, and the *Criminal Procedures Act 2009*. It is also guided by common law principles and norms of international human rights law, particularly the United Nations Convention on the Rights of a Child.

Key features and principles of Victoria's youth justice system include:

- treating children who commit an offence differently from adults, recognising the unique vulnerabilities of children
- using the detention in custody of children only as a last resort, avoiding the disruption that custody can cause to a child's life
- an emphasis on diverting children from entering or progressing into the criminal justice system

- a presumption that all children who are charged with an offence are innocent until proven guilty
- a dual-track system providing an option for young people (18 to 20 year olds) to be held in a youth justice centre rather than in an adult prison, if deemed appropriate by judicial officers.

Philosophical rationale

A critical issue underpinning legislation, policy and practice in youth justice is *how we authorise our response to children who offend*. Cross-national comparisons of approaches to youth justice demonstrate differences between jurisdictions with respect to the extent to which they adopt *justice or welfare* oriented approaches. Key determinants in these differences are the degree to which children are deemed developmentally vulnerable as opposed to independent moral agents, the extent to which coercion as opposed to rehabilitation is seen as the most effective means of controlling individuals and protecting societies, and the related issue of the age of criminal responsibility.

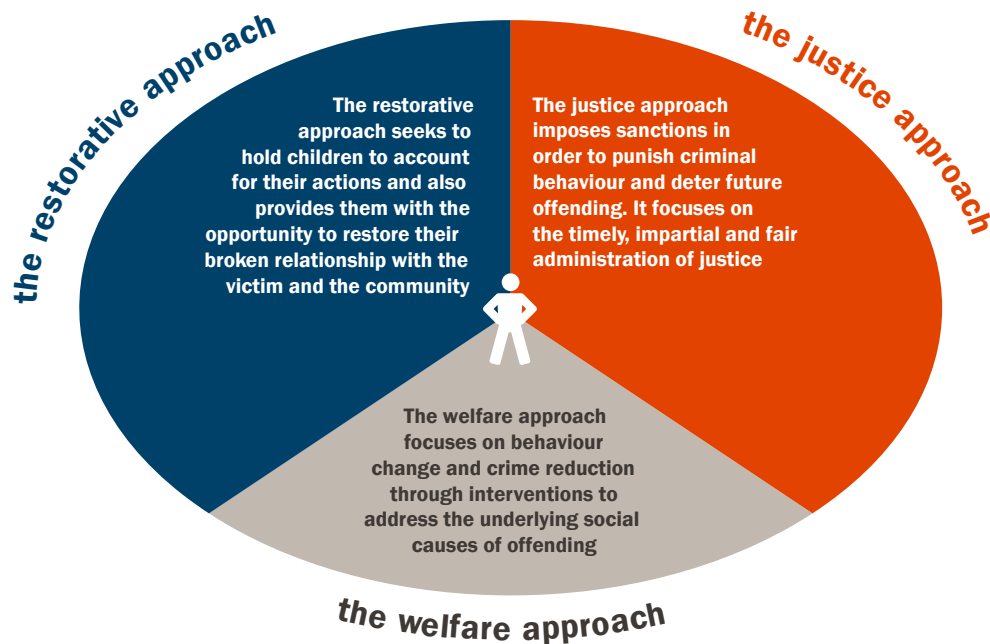
The Victorian youth justice system applies a combination of justice, welfare and restorative approaches to children who offend, as illustrated below. The age of criminal responsibility is set at 10 years of age, in common with all Australian jurisdictions but low by international standards, as will be returned to in Reform 4. How we authorise our response to children who offend determines the extent and terms of involvement of a child in the youth justice system, and is therefore a critical question for reform.

Children should be deprived of liberty only as a last resort for the shortest appropriate period of time.

United Nations Convention on the Rights of the Child Article 37b

A hybrid approach

The Victorian youth justice system applies a combination of justice, welfare and restorative approaches to young people who offend as illustrated below.



A spectrum of systems

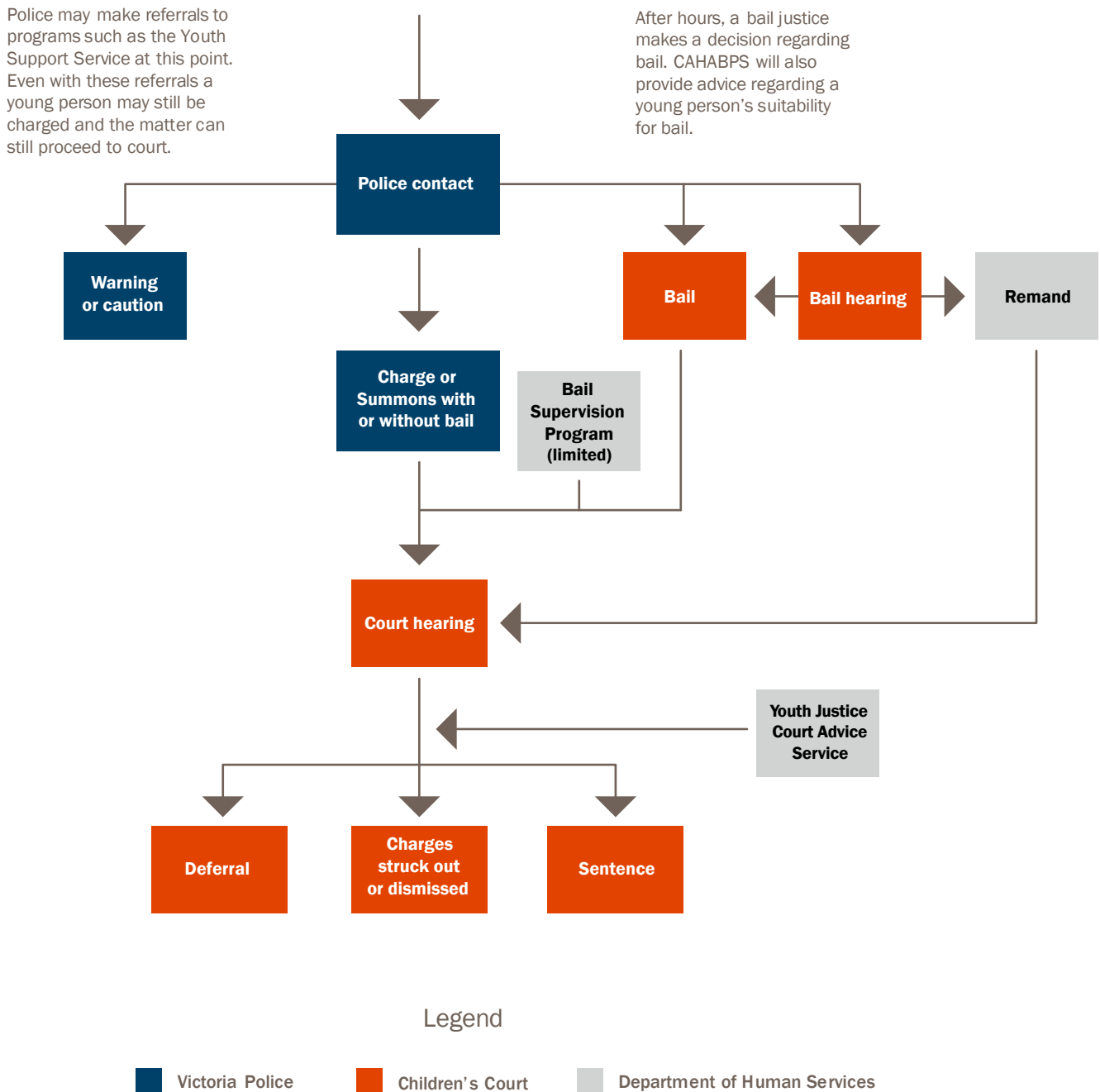
The youth justice system connects to, and operates within, a wider human and community services system. The overall goal of these systems is to support children to reach their full potential and participate in community life. A major challenge is coordinating the wide range of services and programs that children involved in the youth justice system and/or their families are involved with. The key service systems that interact with children in the youth justice system are presented below.



A range of programs, systems and providers

The Victoria police are the first point of contact in the youth justice system once a child has allegedly committed a crime. The following diagram² demonstrates the pathway through the youth justice system and the range of key programs, services and providers surrounding the focus of the remand reform research.

Focus of this study



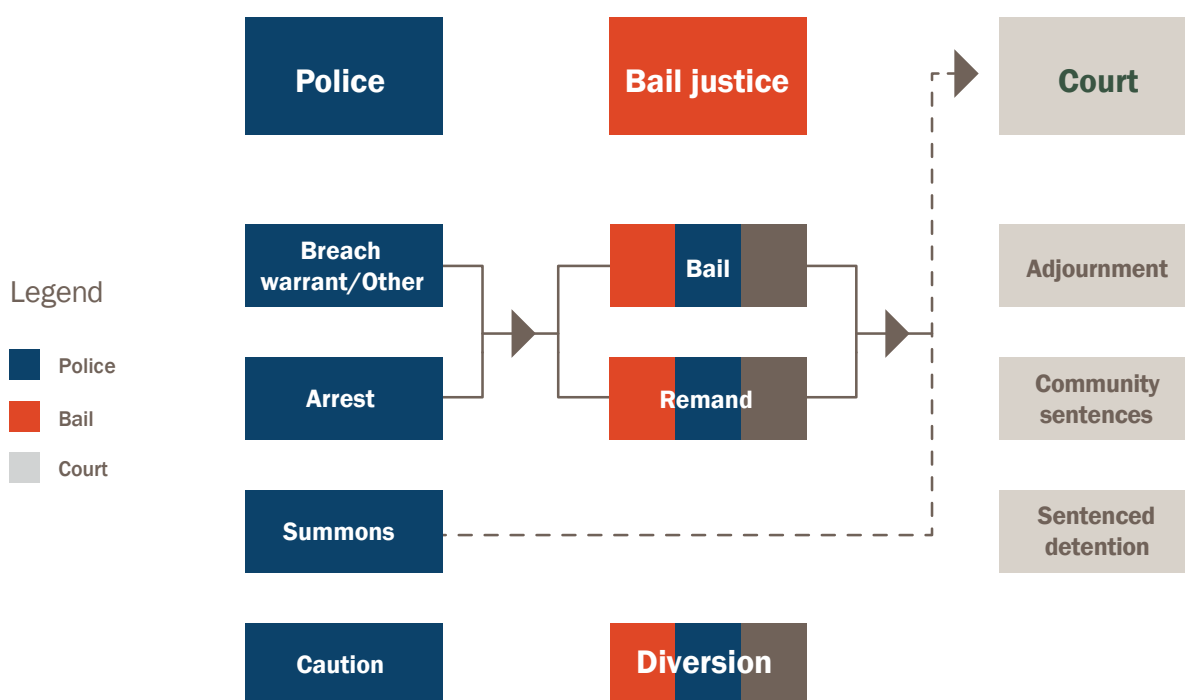
² Adapted from *Practical lessons fair consequences Improving diversion for young people in Victoria* Department of Justice Figure 6, p. 14

3. Pathways into remand

The pathways that children take into remand and their experience on remand are significantly impacted on by the decisions, policies and practices of police, courts and government agencies. These are governed by provisions in the *Bail Act 1977* and the *Children, Youth and Families Act 2005*, and the policies and practices of the respective agencies and individual decision makers.

The pivotal decision-making points, and the youth justice institutions responsible for these decisions, are illustrated in the diagram below.

Pivotal decision-making points



Police decision making over how to deal with a child who has allegedly committed a criminal offence will directly affect the child's risk of remand. Where police issue a caution or commence proceedings by issuing a summons, the question of bail or remand will not arise. Where police choose to arrest and charge a child, decisions over whether or not to grant bail or remand must be made.

Legislation gives police significant discretion in deciding how to deal with children.

Once a decision has been made to arrest and charge a child with a criminal offence, police determine whether the child will be released on bail or remanded in custody and taken before a court. If children are arrested out of hours and police refuse to grant bail, they must be brought before a bail justice who will decide on bail or remand. Where both the police and bail justice refuse to grant bail to children, they must be brought before the Children's Court on the next working day (or two days in regional areas).

Under the *Bail Act 1977*, the criteria used by police, bail justices and courts when deciding whether or not to release children on bail are the same as those used for adults. This includes a presumption that bail should be granted in most situations, with exceptions where a child has been charged with certain serious offences that are listed in the legislation. For all offences, bail can be refused where there is an 'unacceptable risk' that a child would fail to comply with bail, reoffend, endanger community safety, or interfere with the course of justice. Decision makers have the power to impose conditions when granting a child bail.

Protections for children – Bail Act 1977

- bail cannot be refused solely on the basis that a child lacks adequate accommodation
- remand orders by the court last 21 days, after which children must be brought back to court
- parents, guardians or an independent person must be present at police/bail justice hearings.

Support services

Administrators face challenges in determining the appropriate level of support for children on bail or remand who are yet to be convicted and sentenced for committing a crime. Police, bail justices and courts often have to make decisions with limited information, time and resources. Where bail decisions are made by police and bail justices after hours, workers from the Central After Hours Assessment and Bail Placement Service (CAHABPS) provide assessments on young people's suitability for bail. The Youth Justice Court Advice Service at the Children's Court provides information, advice and assessments for supervised bail.

A recent initiative, the Intensive Bail Supervision Program (IBSP), provides support to children who are assessed as being at a high risk of remand or re-remand. An evaluation of the pilot stage of this program found that over 40 young people were effectively supervised in the community, that the majority of these children adhered to their bail conditions, and that none received a custodial order when he/she returned to court for sentencing.

Children on remand

Children on remand are the responsibility of the Youth Justice Custodial Services, a branch of the Department of Human Services. Youth justice custodial facilities in Victoria which have the capacity to accommodate children on remand are located in the *Parkville Youth Justice Precinct*, with separate facilities depending on age and gender.

Remand facilities in Victoria	Remand accommodation	
	Boys	Girls
Parkville Youth Justice Centre	15 to 17 years	None
Separate multi-purpose unit to house remandees	26 beds	None
Parkville Youth Residential Centre	10 to 14 years	10 to 21 years
Bed numbers include sentenced and unsentenced	15	15
Police custody in regional areas	Dependent on police station and facilities	

Many children on remand will be in detention for a short period of time, perhaps a single night or a weekend, before being released on bail. Others may have a substantial stay on remand due to the risk they pose to the community or the length of time it takes for their matter to be finalised by the court.

While on remand, children are provided with access to:

- medical health assessments through the Adolescent Forensic Health Services (AFHS)
- coordination of support services necessary to meet the criteria for release on bail, overseen by a Remand and Bail Coordinator
- a structured education program focusing on literacy provided through the Parkville School (a recent initiative at the Parkville Centre).

Children on remand cannot access other structured interventions provided by AFHS, such as Be Real About Violence (BRAVE) or the Male Adolescent Program for Positive Sexuality (MAPPS) which are available to sentenced children, as this would imply guilt which is yet to be determined.

Cost of remand

The Victorian government has stated that the average per-day cost of custody for children is \$528. This figure can be used as an indicative basis for calculating the financial cost to the community of custody for children and young people within the youth justice system. The full cost would be far greater as it does not include costs of police processing and court appearances, nor allied health and welfare services.

In 2010, there were 718 episodes of remand averaging 24.74 days per admission. This study estimated that the cost of custody alone for these admissions is \$9,378,864.

4. The way forward – proposed reforms

This study has identified key principles that underlie our approach to reform in the youth justice system, and specifically to remand. These are that:

- there needs to be limited intervention within and through the justice system, with an emphasis on protecting the human rights of children
- comprehensive interventions commensurate with children's needs should be linked to the youth justice system. These interventions should be available irrespective of where the child sits within the justice system
- community and family have the opportunity to play a key role in preventing offending and rehabilitating children who offend. Responses to children should be embedded within social systems including family, local community, Aboriginal and culturally and linguistically diverse (CALD) groups
- children need to be empowered to have a say in the systems that affect them and to be involved in the processes of accountability, rehabilitation and restoration to the community
- children who offend are able to learn from mistakes when they have been held to account and understand that their actions impact on victims and the wider community.

The recommendations for reform that follow draw on the principles outlined above. Recommendations are informed by the detailed literature review and stakeholder consultations undertaken as part of this study, and the analysis of primary data. Data sources were:

- 2010-11 and 10 year LEAP data provided to Jesuit Social Services by Victoria Police for children aged 10 to 17 years who were dealt with by police
- the full history of youth justice orders of children and young people who received a youth justice order in 2010, provided to Jesuit Social Services by the Youth Justice and Disability Forensic Unit of the Department of Human Services. Orders were from first order ever through to 4 May 2012 when the data was extracted
- open court observations over four days in the Criminal Division of the Melbourne Children's Court
- interviews with five young people who experienced remand as children in Victoria.

The seven areas for reform identified by this study are:

1. Intervene early and locally
 2. Focus on prevention
 3. Target Aboriginal disadvantage
 4. Strengthen legislative protections for children
 5. Maximise diversion from remand
 6. Intensify support for the most vulnerable
 7. Develop infrastructure to build evidence.
-

Reform 1: Intervene early and locally

This study confirmed previous research findings that children's adverse early life experiences and developmental environments can influence the timing of the onset and persistence of involvement in the youth justice system.

...an explosion of research in the neurobiological, behavioural, and social sciences has led to major advances in understanding the conditions that influence whether children get off to a promising or a worrisome start in life.

(Shonkoff & Phillips, 2000).

A range of explanatory theories suggest an interplay of child, family and environmental factors in the background of young offenders. Specific risk factors which have been shown to increase the likelihood of offending include:

- the strains placed on households through poverty and disadvantage
- the nature of interactions with parents and the absence of pro-social bonds
- detachment from schooling and earlier contact with the criminal justice system (Dennison 2011).

The *age-crime curve* shows us that the majority of children who offend do so briefly during adolescence and desist as they mature. The identified risk factors are strongest in the small group of early onset and persistent offenders - children who commit the most crime and have been shown to cause the community the greatest costs (Allard, Chrzanowski & Stewart, 2012). Services that work with children during their early years need to be aware of these factors and intervene to strengthen protective factors in order to reduce the chances of later involvement in the criminal justice system.

Key issues

We have identified additional evidence that supports previous research showing that by the time children are known to the criminal justice system, they have already suffered adverse experiences that negatively impact on their development and life opportunities. Findings included:

- children who commit multiple alleged offences³ first came to police attention at a young age. When all children (10 to 17) alleged to have committed offences in 2010-11 were considered, 15 per cent were 13 years old or younger. When the age that these children first offended was considered, a high 46 per cent of all children alleged to have offended in 2010-11 were first processed for an offence at the age of 13 or younger
- a child's location affects the likelihood of their contact with the criminal justice system. There was a strong correlation between the lowest socio economic index for areas (SEIFA) quintiles and the local government areas of children and young people with youth justice orders in 2010

Twenty-five per cent of children on youth justice orders in 2010 came from 2.6 per cent of postcodes - this corresponds with earlier findings relating to the postcodes of adults on remand and prisoners in Victoria.

(See Vinson, 2004; Ericson & Vinson, 2010).

- there is a statistically significant association between locations with high rates of missed maternal and child health consultations, children who start school with developmental vulnerability on two or more domains on the Australian Early Development Index, and locations where larger numbers of children receive youth justice orders at younger ages (14 or younger)

Interventions that have been shown to reduce young people's later involvement in the criminal justice system are the same programs identified as protecting children from harm and promoting their wellbeing in the child and family domain.

³ See Appendix 1 for definition of Alleged Offenders.

- children aged 14 or younger with youth justice orders have greater proportions of high and intense VONIY* levels and of remand within their order histories than do older children

**Victorian Offending Needs Indicator for Youth- the DHS Youth Justice actuarial risk assessment tool.*

- seventy-eight per cent of children aged 10 to 12 years with youth justice orders in 2010, or those who had experienced remand at this age, were known to child protection services. Of these, 60 per cent were known before their seventh birthday.

The total cost of custody in the youth justice system for the 27 children in our sample who first experienced remand at 10 to 12 years was calculated as \$3,046,560*. For most of these children, these costs will continue to grow.

(*Cost is from first ever youth justice custodial order to May 2012).

The effectiveness of comprehensive approaches to early intervention has been shown through initiatives in Australia and internationally. Intervening with children and their families during their early years of life can reduce the likelihood of later involvement in offending.

In recent years in Victoria, there has been strong government investment to strengthen early intervention capacity in the child and family domain. This includes *Child FIRST* (Family Information, Referral and Support Team), providing an alternative intake and support network to high-need families; and the new *Cradle to Kinder* initiative for at-risk young families. These initiatives must be complemented by evidence-based early years' programs that target children's developmental opportunities and the relationships that nurture them.

The recent *Protecting Victoria's Vulnerable Children Inquiry* recommended greater integration and expansion of area-based, early intervention services—a recommendation consistent with Jesuit Social Services' submission to the inquiry. Children at risk of involvement in the criminal justice system must be explicitly targeted by these services.

The needs and voice of the youth justice population are too often absent from the political and policy discourse about vulnerable children and young people.

Recommended actions

1. Ensure that a key objective of the whole-of-government Vulnerable Children and Families Strategy (which is currently being developed) has the goal of reducing children's contact with the justice system.
2. Ensure that the local, area-based Vulnerable Child and Family Service Networks recommended by the Protecting Victoria's Vulnerable Children Inquiry include evidence-based early intervention services that are proven to reduce the onset of criminal behaviour.
3. Train all Child FIRST and family services workers to recognise and respond to the child, family and environmental factors associated with risk of offending by children.

Reform 2: Focus on prevention

This study found that the number of children dealt with by Victoria Police for criminal offences has declined over the past decade. Against this trend, the number of children being processed for crimes against the person has increased, with the biggest proportional increase among younger children.

Criminal activity by children, particularly violent crime, must be understood as a community issue. Action needs to take place at both a policy and a practice level to prevent youth crime and to effectively respond to violent behaviour by children. Attitudinal change will be required so that children are valued and engaged with in positive ways while violent behaviour is condemned. This entails *cultural change* rather than a narrow focus on the actions of children.

Key issues

We analysed police data in order to better understand the nature and extent of criminal activity among Victorian children. We also sought to understand the relationship between youth crime and the number of children on remand. The following key issues were identified:

- despite an overall decline of nine per cent in the annual number of alleged offenders over the decade to 2010-11, the numbers of alleged offenders for crimes against the person increased by 50 per cent, with the greatest increases among younger children (those 10 to 13 years of age)
- twenty-four per cent of young people remanded at first order in 2010 were remanded for alleged assaults. Forty-eight per cent of all remand admissions were for crimes against the person

Changing the culture in how children are valued and engaged with....

One young man who spoke to us was first placed in out-of-home by child protection at 11 and first remanded at 13 years of age.

He believed he was targeted by police and that he had no control and no rights.

"They remand me when they can and when they want."

'Crimes against the person' was the most common alleged offence category leading to remand, with 48 per cent of admissions at first offence in 2010 being remanded for this type of offence.

- there is debate among stakeholders about the degree to which the statistical increase in the rate of crimes against the person is attributable to an increase in actual incidence or whether it is the result of changes in reporting practices such as the reporting to police of school-related incidents, including bullying, and increased police responses to violence in the home
- some cultural groups were more prominent in the data than others, particularly some Pacific Islander and African groups, although overall numbers were small. (Aboriginal children are discussed in Reform 3)
- responses to violent behaviour should draw on approaches which have been shown to reduce anti-social and violent behaviours and promote protective factors for children, including:
 - *Communities that Care* (CTC), a comprehensive community wide risk-focused prevention strategy implemented nationally through the Centre for Adolescent Health and the Royal Children's Hospital in Victoria
 - evidence-based family-focused behaviour change programs such as *Coping Power* (for 10 to 14 year old children and their parents), *Parent Child Interaction Therapy* (for children aged three to six and their parents, Or aged four to 12 with parents who physically abuse), and Multi-Systemic Therapy
 - the use of restorative justice in schools and community settings. St Thomas of Canterbury College in Christchurch, New Zealand, has implemented a restorative justice approach to student discipline which has dramatically reduced suspensions and exclusions from school
 - *Multi-Dimensional Treatment Foster Care* (MTFC) has been used as an alternative to residential care for violent young offenders in the United States. Randomised control trials have shown reductions in violent behaviour and contact with the criminal justice system
 - different approaches to the care of children in custody complemented by evidence-based interventions to respond to violent behaviour (discussed in more detail in Reform 6).

Lessons can be learnt from the Victorian cross-government integrated approach to family violence. It encompasses high level political endorsement, a clear change in the way that police respond, a prevention framework increased on-the-ground services, and cross-sectoral governance of all of these initiatives.

More needs to be done to prevent violent behaviour among children and to effectively divert children who commit this type of offence from deeper penetration into the justice system.

Recommended actions

1. Whole-of-government crime and violence prevention strategies must specifically deal with the issue of crime and violence committed by children. They must be supported by expanded investment in youth-focused community prevention initiatives.
 - a. *community level violence prevention initiatives*
 - b. *restorative practices in schools and with diverse cultural groups*
 - c. *child and parent focused programs*
 - d. *a therapeutic approach to care for children in custody (see Reform 6).*
2. Community crime and violence prevention initiatives must engage with at-risk children in proactive and pro-social ways.
3. A continuum of evidence-informed interventions targeting violent offending is required, including:
 4. Implement an ongoing culture of evaluation and continuous improvement across the youth justice system to better understand the nature and impact of violent offending by young people. This must include further research into the reasons for the rise in the reported rate of this crime.

Reform 3: Target Aboriginal disadvantage

This study confirms that, in Victoria, compared with the general population, Aboriginal children come into contact with the criminal justice system at an earlier age, are more likely to have repeated contacts, and are over-represented throughout the entire youth justice system. This is a consequence of the broader disadvantage that is prevalent within Aboriginal communities and a range of unique risk factors. These include the trauma of forced removals, legacies of disempowerment and dependence, racial bias and discrimination, and the conflicting demands of different cultural practices and the law (Allard, 2011).

Reforms to reduce over-representation must focus on the broader disadvantage experienced by Aboriginal children. The third phase of the Aboriginal Justice Agreement (AJA – see below) must support evidence-based prevention initiatives within communities, and enhance the responsiveness of the youth justice system to the needs of Aboriginal children.

Key issues

Key findings from this study confirm that Aboriginal children in the justice system:

- come into contact with police at younger ages than non-Aboriginal children: 28 per cent of Aboriginal 10 to 17 year old alleged offenders in 2010-11 were aged 13 or younger compared with 18 per cent of non-Aboriginal children
- are more likely to have received a youth justice order at 14 years of age or younger than non-Aboriginal children (41 per cent compared with 22 per cent) and if in custody in 2010, this gap is even wider (57 per cent of Aboriginal children in custody issued a youth justice order at 14 years of age or younger, compared to 17 per cent of non-Aboriginal children)

- have higher incidence of being on remand across the course of their youth justice involvement (46 per cent on remand ever, compared with 32 per cent for non-Aboriginal children).

Despite being only 1.02 per cent of the population aged 10 to 19 years, 12.6 per cent of children and young people with youth justice orders in 2010 were Aboriginal.

For 10 to 19 year olds, one in every 15 Aboriginal males and one in every 59 Aboriginal females received a youth justice order in 2010, compared with one in every 213 non-Aboriginal males and one in every 1,212 non-Aboriginal females.

The broad and persistent nature of Aboriginal disadvantage means that more extensive responses outside the criminal justice system are required. Two recent initiatives are the Federal Government's *Closing the Gap* initiative and the Victorian *Indigenous Affairs Framework*, which aims to improve early childhood, health, education, economic participation, housing, and community safety outcomes for Aboriginal Australians. The Protecting Victoria's Vulnerable Children Inquiry also made recommendations for reforms to enhance the cultural competence and role of Aboriginal organisations within the child protection system. *Doing Time - Time for Doing*, the final report of the Senate Inquiry into Aboriginal children's involvement in the criminal justice system noted that many of these wider policy initiatives failed to adequately resource interventions to reduce Aboriginal over-representation.

The over-representation of young Aboriginals in the justice system has persisted despite this issue being the focus of policy and funded program initiatives at both a state and federal level over many years.

Within the Victorian criminal justice system, the Aboriginal Justice Agreement (AJA) is a partnership between the Victorian Government and the Aboriginal Community which aims to reduce Aboriginal over-representation in the criminal justice system. A range of initiatives and interventions has been developed under the first two phases of the AJA, including Regional Aboriginal Justice Advisory Committees (RAJACs), the Koori Youth Justice program, the Koori Court, and the Koori Youth Cautioning Pilot. The strengths of the AJA lie in the community-based responses and the more culturally appropriate responses within the criminal justice system.

Unfortunately, there is a dearth of rigorously evaluated youth justice interventions that have focused specifically on Aboriginal Children.

However, some promising interventions have been identified by policy makers and researchers. Features of these include that:

- they are holistic and build protective factors; an example is the Intensive Supervision Programs for Aboriginal offenders in New South Wales
- they involve collaboration between government and non-government, Aboriginal and non-Aboriginal agencies
- Aboriginal children are involved in the design and implementation of support services
- community strengths such as kinship, cultural identity and community knowledge are utilised.

Recommended actions

The third phase of the Aboriginal Justice Agreement (currently being developed) should prioritise the following as key areas for action to reduce Aboriginal over-representation:

1. Enhance support for both RAJACs and individual Aboriginal communities to develop, implement and evaluate area-based interventions that focus on the causes and consequences of offending by Aboriginal children. This should include:
 - an emphasis on family and supportive family environments through:
 - assertive referrals to child and family services
 - support services for children whose parents are offenders
 - training for Aboriginal Liaison and Family Services Workers within the Child FIRST and Family Service Alliances
 - youth-focused community legal education initiatives to build Aboriginal children's knowledge of their rights and responsibilities.
2. Continue to strengthen the cultural competence of the wider youth justice system and its capacity to effectively divert Aboriginal children from remand. This should include:
 - clear protocols for police diversion of Aboriginal young people. The Koori Youth Cautioning Project is an example of practice that should be expanded
 - a concerted effort within Victoria Police to reduce the large number of children who are processed without ascertaining their Aboriginal status
 - developing the capacity for the Children's Koori Court to hear bail applications from Aboriginal children on remand
 - articulated responsibility for Aboriginal children within the youth justice system to be included in the responsibilities of the dedicated Aboriginal Children's Commissioner or Deputy Commissioner, within the proposed Commission for Children and Young People recommended in the Protecting Victoria's Vulnerable Children Inquiry.
3. Include Aboriginal-specific eligibility criteria and cultural responsiveness in the pilot of intensive assessment and case management service models advocated in Reform 6.

Reform 4: Strengthen legislative protections for children

Despite a strong culture in favour of diversion across the youth justice system, Victoria has very few legislative protections to ensure that children are diverted away from the criminal justice system and not unnecessarily remanded. We have observed how this results in inconsistent practice, which ultimately jeopardises the principle of custody as a last resort.

It is of particular concern that there is a small number of primary school aged children with multiple needs in the youth justice system. The justice system often fails to deliver positive outcomes for these children. Many have repeated and substantial involvement in offending, including extensive time spent on remand.

Legislative reform is needed to better protect children involved in, or at risk of involvement in, the youth justice system. Reforms should be implemented to keep primary school children out of the justice system altogether by increasing the age of criminal responsibility to 12 years of age. Legislation must also promote effective diversion and provide a greater level of protection for children when decisions are made to either bail or remand them.

Key issues

Legislation plays a key role in determining under what circumstances children come into contact with the criminal justice system and how they are dealt with once in the system. In analysing the nature and

effectiveness of legislative protections for children, this study identified that:

- all 27 children first remanded at 10 to 12 years of age were known to Child Protection. Fifty-two per cent were known to Child Protection before their third birthday. The justice system appears impotent in halting these children's trajectories, with most going on to experience substantial youth justice involvement. They belong in the welfare system not the justice system

10 to 12 year olds who are remanded average 5.4 remand admissions, compared with 2.9 for those first remanded after the age of 12.

- the age of criminal responsibility throughout Australia is 10 (with exceptions through the principle of Doli Incapax). This means that Australia brings children into the criminal justice system at an earlier age than many other countries
- only 33 children with youth justice orders in Victoria in 2010 were 10, 11 or 12 years of age. Increasing the age of criminal responsibility to 12 would remove all 10 and 11 year olds from the youth justice system, and also many 12 year olds, given the delay in bringing matters to hearings

International comparison of age of criminal responsibility

AUS	NZ	CAN	ENG	USA*	FRA	GER	SWE	NED	CHN	JPN
10	13	12	10	6-12	13	14	15	12	14	14

(*varies across states)

- in the decade prior to 2010-11, there was a 20 per cent decrease among 10 to 11 year olds processed by police, with 797 alleged offenders processed by police in 2010-11. However, the rates of alleged violent offences and arrests of these youngest children have increased. Changing the age of criminal responsibility will necessitate the development of alternative services focusing on addressing the needs and antisocial behaviour of children below the age of criminal responsibility

In the decade to 2010-11, the use of arrest to process young people rose by five per cent, and the use of caution and summons decreased by 10 per cent and 13 per cent respectively.

- the use of arrest increased and the use of cautions and summons decreased across Victoria over the decade to 2010-11. Patterns in the use of arrest, caution or summons are inconsistent with variations across and even within different police regions. This inconsistency can be seen in the example of the Southern Police Region where 24 per cent of children were processed by arrest in 2006-7, a number that jumped to 35 per cent in 2009-10

- preference for summons over arrest of children is only legislatively mandated through the *Children, Youth and Families Act 2005* when issuing warrants. There is no legislative mandate for use of cautions with children
- the only specific protection for children at risk of remand in Victoria is a prohibition on remand due to a lack of suitable accommodation for a child
- other Australian and overseas jurisdictions have more specific legislative protections for children at risk of remand. The Victorian Law Reform Commission's report into bail in 2007 recommended the creation of child-specific bail criteria and a range of other reforms to the *Bail Act 1977* which have yet to be implemented
- under UK legislation (Legal Aid, Sentencing and Punishment of Offenders, 2012, UK) children are only remanded if over 12, there is a reasonable prospect that they will be sentenced to custody if convicted, and that remand is a last resort to protect the public and limit further offending
- a legislative framework for diversion must be supported by a culture of practice, training, and relevant support services so that decision makers (police and bail justices) will be encouraged to make the fullest warranted use of alternative options to remanding children.

The Victorian legislation that governs remand decision making offers very limited protection for children.

Recommended actions

1. Raise the age of criminal responsibility to 12 years of age, with intensive service responses for children younger than 12 who engage in anti-social behaviour to be provided through the child welfare system.
2. Amend the Children, Youth and Families Act 2005 to include a legislative framework for diversion that imposes a presumption in favour of diversion and provides a flexible range of diversion options for police and the courts.
3. Fully implement the legislative reforms from the Victorian Law Reform Commission 2007 report on Bail. Specifically:
 - amend Section 345 of the Children, Youth and Families Act 2005 to impose a presumption in favour of summons
 - provide child-specific criteria in the Bail Act 1977 requiring decision makers to have regard to a range of child-specific factors
 - remove 'reverse onus tests' from the Bail Act 1977 so that all bail decisions are made on the basis of 'unacceptable risk'.
4. Implement a Bail Justice Training Package and enhance police bail training to include a focus on the unique vulnerabilities of children and provisions of the legislation.

Reform 5: Maximise diversion from remand

Our research found that there are children unnecessarily held on remand. The use of remand is heavily weighted toward short stays with the majority of admissions ending with children receiving bail or the order expiring. This is most evident where children are held in custody overnight and throughout weekends. At the other end of the spectrum, children are on remand for extended time before assessments are completed and supports put in place to enable bail.

These issues throw the spotlight on resources available to decision makers to divert children from unnecessary remand and expedite timely bail and sentence outcomes. Timely assessment and service coordination, particularly after hours, must be at the centre of reform.

Key issues

This study identified:

- sixty-four per cent of all remand admissions in 2010 were for the length of a single court order (21 days) or less. Thirty-nine per cent of remand admissions were seven days or less and 25 per cent were one to three days
- twice as many weekend (40 per cent) as weekday (21 per cent) remand admissions are for one to three days. For weekend admissions, this means a child is remanded on a Saturday or Sunday by a Bail Justice then released on Monday at the next court sitting
- reducing the percentage of young people exposed to remand and those experiencing short-term remand, in particular under seven days, provides substantial cost savings that can be reinvested in alternative service options

More needs to be done to keep kids out of the lock up culture

Jack*, an Aboriginal man his twenties, has recently been released from adult prison. We spoke to Jack about his experience of remand as a child.

Jack was remanded six times from 12 to 17 years of age, four to six months each time. During these years his family relationships disintegrated and this led to a cycle of foster care, time on remand, sentenced custody, homelessness and extended child protection involvement.

Jack recalled how remand was scary the first time, but his experience improved as he learnt the rules and what to expect. With each remand, his status grew with the other children on remand.

We asked Jack what might have been done differently to avoid remand. He said he thought his family could have been helped more to deal with problems, and he could have made better choices in friends.

When asked what would make remand a better experience, Jack replied that it could have been more welcoming and less like prison, with a focus on keeping first timers from having repeated involvement in the system.

Jack told us that more needs to be done to keep kids out of the lock-up culture.

* Jack's name has been changed for privacy reasons.

Interview conducted with ethics approval and information published with the consent of the individual who was interviewed.

The Victorian Intensive Bail Supervision Program

Strengths: Community-based, intensive casework support, after-hours support, low caseloads, links to other support services.

Limitations: Limited geographic coverage, child protection clients excluded, lack of clear accommodation support pathways, support time limited to duration of bail.

- assessment of the support needs of children at risk of arrest, at the point of arrest, and in court remand hearings is inconsistent and haphazard. Children who end up on remand in Victoria often have a range of assessments, screenings, and interviews conducted by police, lawyers, youth justice support, and custodial services. There is not a clear process for prompt and coordinated assessments, or for sharing the information from these assessments
- assessment needs to be linked into community-based support and accommodation services. Overseas models demonstrate a role for integrated

local services with after-hours flexibility to link children, at arrest or charge, to appropriate support and accommodation

- after-hours support is provided through CAHABPS workers in Victoria. While CAHABPS workers undertake a valuable role in assessing children and advocating in favour of bail to police and bail justices, some of the limitations of this service include the lack of after-hours referral options, lack of capacity to provide in-person assessments outside the metropolitan area, and closure between 2 am and 9.30 am when 10 per cent of arrests happen
- initiatives to improve the efficiency of the Youth Justice System in Victoria include the Bail and Remand Coordinator role within custodial services and the CAYPINS system in the Children's Court.

Decision making, resources and broader systemic features, such as the coordination of services and the efficiency of processing criminal matters, influence the risk of young people being exposed to remand. After-hours services, efficient processes and access to support and accommodation are vital to ensure that children are not unnecessarily remanded.

Sixty-four per cent of remand admissions in 2010 were for seven days or under, at an average cost of \$1,625 per admission.

Recommended actions

Build on and integrate existing initiatives to divert Victorian children and young people from remand, including ensuring 24 hour coverage. Specific areas for reform include:

1. Expand the capacity of CAHABPS to operate from 2.00 am to 9.30 am and across all areas of Victoria. In rural and regional areas, provide this function through youth justice units or purchase from community sector agencies.
2. Improve and expand after-hours access to support for children at risk of remand, including crisis accommodation, drug and alcohol services, and outreach. Youth justice service of DHS could purchase additional access on a fee-for-service basis from community sector agencies.
3. Expand bail support for children across Victoria, including the expansion of Intensive

Bail Supervision for children at risk of remand. Integrate this function into youth justice units or existing community sector youth justice services in rural and regional areas.

4. Provide intensive assessment for children at risk of repeated exposure to the justice system. Risk factors include:
 - more than one police contact
 - multiple missing person's reports and family violence call outs
 - less than 14 years of age
 - being Aboriginal
 - known child protection involvement.

Reform 6: Intensify support for the most vulnerable

There is a small but significant group of children who have repeated and extensive contact with the youth justice system, including episodes of remand. The personal and social profile of these children is generally marked by experiences of trauma, family dysfunction, child protection involvement, exclusion from education, and a range of other health and welfare issues, including substance misuse and mental illness.

The human and community services system often fails to adequately respond to the intensive needs of this group. Within the youth justice system, levels of support vary and are often tied to particular stages in the criminal process or custodial or community settings. These shortcomings are often further compounded by a lack of coordination and consistency across the youth justice system and between youth justice and other services such as child protection.

Intensive and coordinated interventions are required to respond to the needs of these children in order to halt their negative trajectories through the criminal justice system and to improve their life opportunities.

- children subject to remand, particularly long periods of remand, are among the most at risk within the youth justice system, as measured by the VONIY criminogenic influence measure
- Aboriginal children are likely to have intensive needs and extensive involvement in the youth justice system-with higher rates of remand (46 per cent compared with 32 per cent) and, over all orders, higher levels of high and intensive VONIY classifications (53 per cent compared with 44 per cent)
- there is evidence that treatment approaches focusing on behaviour change and personal development are more effective at reducing re-offending than those which focus on discipline, fear and surveillance. Interventions with the strongest evidence base for reducing recidivism are delivered in community settings and rely on a defined therapeutic approach and high levels of intensity across a number of layers-the child, the family, school or, as the child matures, training and employment pathways-and specialist services such as disability, drug and alcohol and mental health

Key issues

This study explored the experiences of children with chronic involvement in the criminal justice system, their exposure to remand, and effective practice in responding to them. It identified:

- in 2010, 35 per cent of the 444 children or young people remanded that year had more than one distinct admission *in the same year*. Further, 104 of the 321 children or young people who experienced an episode of remand that lasted for 21 days or less also experienced another episode that lasted for more than 21 days in the same year

The paradox of remand in Victoria is that while the risk profile of children influences whether or not they are remanded, the presumption of innocence means that assertive responses to criminogenic influences are not pursued until guilt is determined. By contrast, internationally, both welfare-oriented (eg Sweden/Japan) and justice-oriented (eg United Kingdom) youth justice systems provide assertive responses focusing on criminogenic influences prior to a final determination of guilt.

Proportions of children with the highest risk classifications increase with more interventionist orders. Forty-five per cent of all children with recorded VONIY levels on any order in 2010 had high or intensive levels, compared to 56 per cent for children remanded 21 days or less and 77 per cent for children also remanded over 21 days.

- the prevalence of children who cross over from child protection to the youth justice system is deeply disturbing. In the United States, efforts at both a governance and practice level to resolve the cross over issue through the *Systems Integration Initiative* (SII) and the *Crossover Youth Practice Model* (CYPM) offer examples of a way forward
- the approach taken to custody can have a significant impact on the highly vulnerable children exposed to this last resort option. Too often, the experience of youth justice custody in Victoria is simply punitive and isolating and has a corrosive impact on children. The American state of Missouri offers a promising alternative focusing on therapeutic support and building positive relationships. This approach has resulted in lower rates of recidivism and a stronger record for staff safety than other similar jurisdictions.

To transform the care of most vulnerable children at risk of or on remand, a deeper, more intensive layer of support is required than that currently available. A service should be developed that is voluntary and which transcends service system boundaries, using relationships to engage children, their families and wider communities. This extends to court processes, with a docket system introduced to ensure consistency and maximise therapeutic jurisprudence. Person-centred funding could be co-opted for flexibility and brokerage capacity, including through the disability and mental health sectors, and job search and flexible employment funds. The service outcome should be a reduction in days in subsequent custody for participants.

Repeated exposure to remand has significant social and financial costs, with the average custody costs of children remanded in 2010 estimated by Thinking Outside to be \$143,648 per person. Given this cost, it makes sense to invest in intensive support that seeks to keep at-risk young people out of the youth justice system.

Recommended actions

1. Provide an intensive, multi-layered, community-based service that engages with children and their families on a voluntary basis either in custody or in the community. This would:
 - be activated through the assessment and coordination outlined in recommendation 5.4
 - be independent of, but collaborating with, other services at all stages of the criminal justice system including police, courts, custody and youth justice. The service will continue for a period commensurate to need, not dictated by a child's length of involvement in the justice system
 - ensure a 'docket system' in court so matters are returned to the same magistrate and the benefits of therapeutic jurisprudence can work in tandem with relationship-based voluntary engagement.
2. Strengthen coordination between youth justice and child protection where children are involved in both systems and prevent cross over between the two systems. This includes:
 - the use of alternative strategies, such as group conferencing, time-out residential services, and revised protocols regarding police involvement to better manage anti-social behaviour of children in out-of-home care
 - access to information regarding the child protection status of children in court for support services and decision makers in the Criminal Division of the Children's Court
 - joint responsibility and collaboration, with clear accountability, between the two systems to ensure that the needs of child protection clients who cross over into youth justice are addressed
 - flexibility in eligibility criteria and referral pathways into youth justice and child protection services with cross-over children given priority access to interventions.
3. Formally adopt a therapeutic approach to working with children across the entire youth justice system. This approach should be adhered to in community services, in the practice of the Children's Court, and in custodial environments.

Reform 7: Develop infrastructure to build evidence

This study has identified limitations in Victorian youth justice data consistent with limitations noted in other research, including the recent Sentencing Advisory Council report of sentencing outcomes of the Melbourne Children's Court (Sentencing Advisory Council, 2012), and Jesuit Social Services' previous research about young adults' experience of remand.

Because different data systems are used by police, courts and the Department of Human Services, the pathways of young people through the justice system cannot be comprehensively tracked. Gaps and quality issues in available data also impose limitations. This presents challenges for identifying key issues within the system and evaluating the effectiveness of decision making and support services. Reforms to youth justice data collection processes and systems are needed so that Victoria can develop the capacity to implement and evaluate outcomes-based youth justice services.

Key Issues

Some of the key limitations with data that were encountered in this study include:

- lack of capacity to link data (and therefore track young people) across police, Children's Court and Department of Human Services' Youth Justice Branch, or to integrate data with other sector data sets
- lack of capacity to track children as they transition to adult justice systems
- lack of capacity for police to report on arrest outcomes, specifically bail or not (data unreliable)
- lack of data about children's characteristics in the Department of Human Services' data (mental health, educational attainment and participation, housing, substance abuse)
- lack of data about dual client status (child protection and/or disability) in the Department of Human Services' data
- lack of capacity to track orders relating to initiating events and therefore recidivism in the Department of Human Services' data.

In recent years, there has been an increased focus on measuring the outcomes of youth justice interventions in the United Kingdom, the United States and in some Australian states. Outcomes based funding has been linked into program innovation and governance models which fund services on their ability to deliver on clearly defined performance outcomes. One example of this approach is *justice reinvestment* which directs funds to interventions designed to meet defined outcomes in an efficient and effective manner. Moving to outcome-based funding models as well as establishing robust systems for evaluating and extending evidence-based practice requires reliable and comprehensive data.

Recommended actions

1. Create an independent statutory body which has the capacity to collate and analyse data across the justice system. This should be modelled on BOCSAR in New South Wales. The bureau should additionally have responsibility for coordinating and disseminating a research agenda across youth justice to inform evidence-based practice and evaluation.
2. Commission community based youth justice services based on their ability to engage effectively with the target group, be innovative and use evidence based interventions to meet defined outcomes.
3. Resolve limitations identified in this study with the police and Department of Human Services' data sets in the following ways:
 - build capacity to directly link de-identified data between the youth justice, child protection and disability data sets
 - tag linked orders relating to the same initiating incidents as 'events' within the data set, enabling the better tracking of returns and recidivism
 - initiate training and quality improvement measures to improve the consistency of recording and reliability of data within the Department of Human Services' youth justice data set
 - incorporate key child characteristic data within CRIS as a matter of urgency
 - explore the possibility of maintaining a single set of court administrative data via the Court Link system that is subject to quality control measures and share this openly with Department of Human Services to ensure integrity and comprehensiveness of court data.

5. Overview and Conclusions

This study provides a comprehensive overview of key policy, legislation, theory and practice impacting on children's pathways to, and experiences of, remand.

Extending findings of previous research that highlight the powerful role of structural disadvantage in the life course of children who come into contact with the justice system, we have identified several key factors that influence the pathways that children take through remand. Critical issues that arose include:

- children who come into first contact with police or courts at a young age have the poorest trajectories
- the adverse influences of early childhood experiences and socio-economic disadvantage
- over-representation of, and worse outcomes for, Aboriginal children
- high rates of cross over between the child protection and youth justice systems
- increases in violence as reported to police and as the primary reason for the remand of children.

In the context of a two-thirds increase in the per-night average in numbers of children on remand in Victoria between 2007 and 2010, key systems issues identified by this project included:

- current legislation determining the age of criminal responsibility at 10 years of age
- police trends toward arrest and away from summons and caution, especially for the youngest children
- lack of a legislative framework for diversion
- very high rates of arrest after business hours when least supports are available

- high levels of short stay remands that result in bail, particularly over the weekend
- children exposed to multiple remand admissions and, for a troubling minority, lengthy stays
- the need for greater continuity between custodial and community services.

In grappling with responses to these issues, we also sought to take into account the multiple needs of the children involved in the youth justice system as well as the complexity of the system itself. In doing so we have highlighted:

- the tensions between justice and welfare approaches to youth justice
- the increasing numbers of children known to child protection in youth justice, and issues with coordinating appropriate responses where children cross over from child protection to youth justice
- the background of disadvantage which defines the youth justice population, especially for the younger children and Aboriginal children.

These factors are often more acute in the context of remand because the uncertainty of these children's legal status means it is often not possible to provide appropriate support to meet their wide range of needs.

On this basis, Jesuit Social Services calls for reform to the ways in which the government and the community act to prevent children's involvement in the remand process and the youth justice system in general. Where this is not possible, there is a need for sweeping reforms to the approach taken to children in custody, with a focus on ensuring that holistic, relationship-based care is provided for children on remand and that ongoing support is provided when they move from custody into the community.

Calls for reform – legislation and policy

- At state and federal levels, policy initiatives focusing on early childhood development and Aboriginal disadvantage often fail to consider the needs of children at risk of involvement with youth justice. Initiatives such as the whole-of-government *Vulnerable Children and Families Strategy* and the *Aboriginal Justice Agreement* need to specify means to promote protective factors that will reduce the likelihood of involvement in the youth justice system.
- The age of criminal responsibility must be raised to 12 to ensure welfare, not justice, responses to primary school aged children.
- A formal legislative framework for diversion should encourage the consistent diversion of children from youth justice involvement and should reinforce the preference for caution and summons as opposed to arrest.
- The *Bail Act 1977* should be amended to ensure that child-specific criteria are considered in bail and remand decision making.
- Efforts must be made to better integrate youth justice and child protection services.

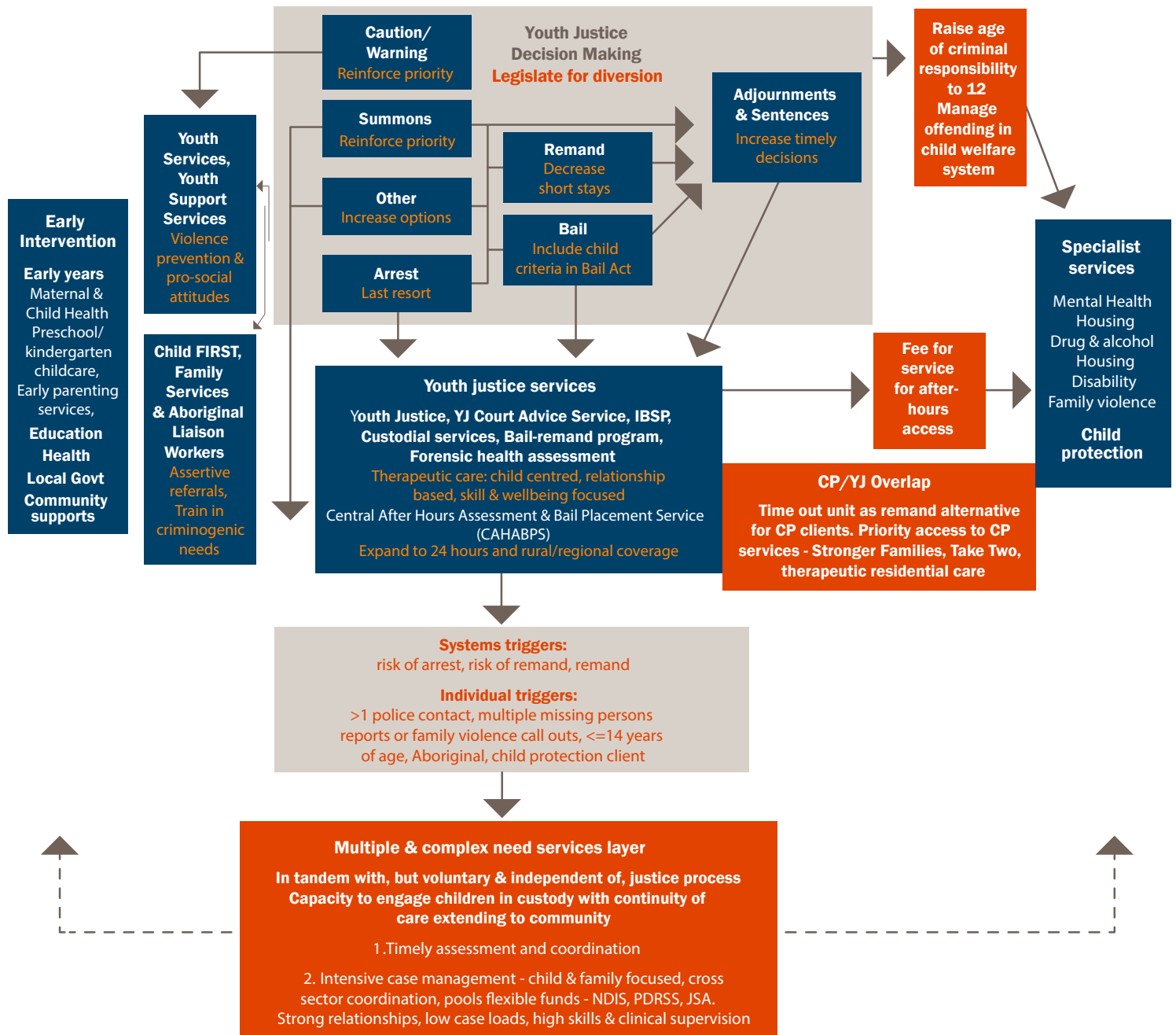
Calls for reform – services and practice

- Services that reduce the likelihood of involvement in the youth justice system through strengthening protective factors should better integrate evidence-based approaches that have been demonstrated to reduce the risk of offending. This will include early childhood and family services as well as services within Aboriginal communities.
- After-hours services must be strengthened to meet the demands of high numbers of children coming into contact with police during this time.

- Improved data systems and linkages must be developed across the youth justice system to support innovations in service delivery.
- A therapeutic relationship-based approach must be taken to children in custody. Services in custody must be reformed to reflect this approach and have as their primary focus the development of the skills and wellbeing of children in custody.
- An intensive and multi-layered support service that is independent of the justice process is required so that the most at risk children are provided with a deeper layer of support. This service will include timely assessment at identified trigger points and intensive case management that coordinates care across multiple sectors. It will build close relationships with the child and his or her family.

The wide range of reforms outlined above will reduce the use of remand by addressing some of the root causes of offending by children and, at the same time, strengthen the youth justice system's approach to diversion. They will also provide enhanced support for children who are on remand, or at risk of being on remand, through the provision of alternatives to remand (particularly after-hours) and more intensive support for children with high levels of risk. Many of these reforms are relatively straightforward and are unlikely to be costly. Some of the more substantial reforms such as the age of criminal responsibility and an intensive support service to operate across the justice system, are more substantial and will require an investment of resources and community goodwill in order to become a reality. These investments will be justified by the potential for longer-term reductions in the use of remand with significant economic and social benefits. Most importantly, these reforms will provide children in the youth justice system with enhanced opportunities to reach their potential and become productive and engaged members of our community.

Reformed Justice-Remand system map



Appendix 1

Key definitions and concepts used in Thinking Outside

Aboriginal – ‘Aboriginal’ is used throughout the project to refer to people of Aboriginal and/or Torres Strait Islander backgrounds.

Alleged Offenders – The method of collecting data used by Victoria Police which provides a snapshot of volume of offending. It refers to persons who have allegedly committed a criminal offence and have been processed for that offence between 1 July 2010 and 30 June 2011. Persons are counted on each occasion they are processed and for each offence counted in recorded offences (e.g. a person processed on three occasions will be counted three times). Only the offence in recorded offences for which the offenders has been processed is included.

Bail – The right to be released from custody which is granted to a person who has been arrested and charged with a criminal offence on the condition that they return to court at a specified time, together with any other conditions considered appropriate. It may be granted or refused by a court, a bail justice or a police officer.⁴

Children and young people – For the purposes of this report, ‘child’ or ‘children’ is used to refer to children and young people aged between 10 and 17 years as defined within the Children Youth and Families Act 2005. ‘Young people’ is used in addition when referring to 18-20 year olds subject to youth justice orders through the dual track system in Victoria.

Distinct Offenders – The method of collecting data used by Victoria Police which provides a snapshot of individuals who have been processed for offending at any point throughout the year. It refers to the number of distinct individual offenders processed for the commission of an offence between 1 July 2010 and 30 June 2011.

Diversion – Diversion refers to programs, interventions, and processes that divert children from entering into or continuing their involvement in the criminal justice system. It includes processes whereby children are dealt with informally by police as well as interventions at later stages of criminal proceedings that minimise penetration into the justice system.⁵

Doli Incapax – A rebuttable presumption that a person aged 13 or under is incapable of committing a crime. It operates in all Australian jurisdictions.

Minimum intervention – A concept from youth justice and child protection systems that seeks to limit the risks of stigmatisation that might result from involvement in the criminal justice and welfare systems. This is achieved through minimising the use of invasive sanctions and interventions.⁶

Protective factors – Protective factors are supports that safeguard children against the risks to which they are exposed. The presence of protective factors may be why some children who are exposed to a range of risk factors do not engage in anti-social behaviour or commit criminal offences.⁷

Remand – A person who is arrested and charged with a criminal offence but not released on bail is said to be ‘remanded in custody’. A child is considered to be on remand when they are detained in a Youth Justice Centre but have not yet been sentenced.⁸

Risk Factors – Risk factors can be defined in a variety of ways. Most pertinent in this study are the individual and social factors in children’s lives that increase the likelihood of their coming into contact with the criminal justice system.⁹

⁴ Practical Lessons, Fair Consequences Department of Justice Victoria 2012.

⁵ Chrzanowski, C & Wallis, R 2011, ‘Understanding the Youth Justice System’, in Stewart, A, Allard, T and Dennison, S (Eds), Evidence Based Policy and Practice in Youth Justice, p. 14, The Federation Press, Sydney.

⁶ Cavadino, M & Dignan, J 2006, Penal Systems: A Comparative Approach, p. 205, Sage Publications, London.

⁷ Blueprint for Youth Justice in the ACT, 2012-2022 ACT Government.

⁸ Practical Lessons, Fair Consequences, Department of Justice Victoria 2012

⁹ Blueprint for Youth Justice in the ACT, 2012-2022 ACT Government.

Appendix 2

Relevant features of the Youth Justice System

Bail Justices

Bail Justices are a unique feature of the Victorian justice system. Bail justices are volunteers from the community who conduct bail hearings at police stations, effectively reviewing police decisions to refuse bail.¹⁰

CAYPINS

CAYPINS is an alternative system to the traditional open-court summons process for dealing with children and young people who fail to pay on-the-spot and other penalties issued to them by Victoria Police and the Department of Transport. These matters are dealt with by Children's Court registrars instead of by magistrates.

Central After Hours Assessment and Bail Placement Service (CAHABPS)

Operates outside of business hours (Monday–Friday, 5pm–3.00am; Saturday–Sunday, 9.30 am–3.00 am) and provides a single point of contact for police in matters where police and/or a bail justice are considering remand of a child. CAHABPS' workers undertake assessments of children's suitability for bail placement and provide a bail-facilitation role.

Children's Koori Court

The Children's Koori Court is attached to the Children's Court in five locations. It involves the Koori community in the court process through the participation of elders and respected persons in the court process. All parties to a matter sit around a common table and children have the opportunity to speak for themselves.

Children's Court

The Children's Court operates out of a purpose-built facility in the City of Melbourne and at local magistrates' courts in metropolitan and regional areas. The Children's Koori Court and the Neighbourhood Justice Centre, which is located in Collingwood and which has jurisdiction to hear

criminal matters, sit within the Children's Court structure.

Intensive Bail Supervision Program (IBSP) Operates in the North and West and Southern Metropolitan Regions and provides support to young people on bail who are assessed as being at high risk of remand or re-remand. IBSP Case Managers help young people on bail to address needs and issues relating to accommodation, education and training, employment, health and development and family.

Police

The police are commonly understood as the 'gatekeepers' to the youth justice system. They detect and respond to allegations of offending by young people and make decisions on how to proceed in processing young people who offend.

Police Cautions

Cautioning is used by police for less serious and confined instances of offending (incidents where there are a small number of offences and victims). The use of cautioning is a diversionary practice; however the offender must admit the offence. Cautions may include referral to youth support programs and services.

Police Youth Bail Engagement program

This police initiative operates in the Southern Metropolitan Region and involves a proactive approach to enforcing bail conditions.

Koori Cautioning and Youth Diversion Pilot Project

A pilot project in Mildura and the La Trobe Valley which developed protocols and processes for cautioning young people, including a 'failure to caution' notice to be completed by police when they do not caution.¹¹ A review of this pilot program found that it led to increases in first-time cautioning and a drop in the re-offending rate of participants.

Victorian Offending Needs Indicator for Youth (VONIY)

¹⁰ Victorian Law Reform Commission, 2005, Review of the Bail Act Consultation Paper, p.38

¹¹ Victorian Aboriginal Legal Service (VALS), VALS submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people' Discussion Paper – sent 23 September 2008, pp. 18, 30 & 19.

VONIY is an assessment measure used by Youth Justice. It is a structured and risk-based approach to assessing children's levels of risk and exposure to identified criminogenic influences.

Youth Justice

The Department of Human Services' Youth Services and Youth Justice Branch has overarching policy and program responsibility for youth justice services. This includes Youth Justice Units which provide supervision to young people on community sentences, court-based support services, and bail services. DHS contracts services out to community sector organisations who deliver programs, including youth justice group conferencing and Youth Justice Community Support Services (YJCSS).

Youth Justice Children's Koori Program

Youth Justice Children's Koori Program operates in the community with Koori Youth Justice workers, bail support, school, employment, and pre- and post-release programs.

Youth Justice Court Advice Service (YJCAS)

¹² Practical Lessons, Fair consequences Department of Justice Victoria 2012

All children appearing at courts can access YJCAS. This service provides information to children, lawyers and the Children's Court on community-based options including diversion, bail, and community services.

Youth Justice Custodial Services

Youth Justice Custodial Services within DHS administer Victoria's custodial facilities for young people, including facilities at Parkville and the Malmesbury Youth Justice Centre.

Youth Justice Group Conferencing (YJGC)

A court ordered meeting when a Probation or Youth Supervision Order is being considered to raise the child or young person's understanding of the impact of their offending and to make reparation. Based on restorative justice principles, a YJGC brings together the child/young person and their family, the victim/s or their representative/s, the police and the child/young person's legal representative.¹²

Bibliography

Allard, T 2011, 'Indigenous Young People and the Justice System: Establishing an Evidence Base', in Stewart, A, Allard, T and Dennison, S (Eds), *Evidence Based Policy and Practice in Youth Justice*, The Federation Press, Sydney.

Allard, T, Chrzanowski, A & Stewart, A 2012, 'Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders', *Trends and Issues in Crime and Criminal Justice*, no. 445, Australian Institute of Criminology, Canberra.

Australian Institute of Health and Welfare 2012, 'Juvenile detention population in Australia 2011'. *Juvenile justice series* no. 9. JUV 9, AIHW, Canberra.

Dennison, S 2011, 'Developmental and Life-Course Criminology – Theories, Research and Policy Implications'. In Stewart, A, Allard, T and Dennison, S (Eds), *Evidence Based Policy and Practice in Youth Justice*, The Federation Press, Sydney.

Little, H and Karp, T, 2012, 'Sentencing Children and Young People in Victoria', Sentencing Advisory Council, Melbourne

Shonkoff, JP and Phillips, DA (Eds) 2000, *From Neurons to Neighbourhoods: The Science of Early Childhood Development*, The Science of Early Childhood Development Committee on Integrating the Science of Early Childhood Development, Board on Children, Youth and Families, National Academy Press, Washington, USA.

Also see footnotes throughout this report



JESUIT
SOCIAL
SERVICES

BUILDING A JUST SOCIETY