Youth Justice and Other
Legislation Amendment Bill 2014
Submission 25

Submission to the Legal Affairs and Community Safety Committee

Youth Justice and Other Legislation Amendment Bill 2014

26 February 2014

Prof Kerry Carrington
Assoc Prof Terry Hutchinson
Dr Kelly Richards
Dr Angela Dwyer

Crime and Justice Research Centre, Faculty of Law,
Queensland University of Technology
GPO Box 2434 Brisbane 4001
http://www.qut.edu.au

Introduction

This submission addresses the Youth Justice and Other Legislation Amendment Bill 2014 the objectives of which are to:

1. Permit repeat offenders' identifying information to be published and open the Children's Court for youth justice matters involving repeat offenders;
2. Create a new offence where a child commits a further offence while on bail;
3. Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence;
4. Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention;
5. Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort;
6. Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning; and
7. Make a technical amendment to the *Youth Justice Act 1992*.

As members of the QUT Faculty of Law Centre for Crime and Justice we welcome the invitation to participate in the discussion of these issues which are critically important to the Queensland community at large but especially to our young people. We have provided two previous submissions in response to suggested amendments to the *Youth Justice Act*. These appear in the appendix to this submission.

Because of the timeframes allowed for discussion during this phase of the legislative process, we have been forced to limit our discussion to only a few issues presented by this amendment; however we wish to place on record our disagreement with the legislative amendments proposed especially those that are contrary to empirical research in this area and will lead to increased numbers of children being held in detention. These amendments have significant future costs implications, both financial and social, and are not offset by targeted financial support for rehabilitative programs.

If any of the responses require further explanation please contact Associate Professor Terry Hutchinson at the QUT Faculty of Law. Email: t.hutchinson@qut.edu.au

Those involved in producing this response:

Professor Kerry Carrington, Head of School of Justice, QUT
Email: kerry.carrington@qut.edu.au

Professor Carrington is the Head of the School of Justice in the Law Faculty at QUT and Vice Chair of the Division of Critical Criminology, American Society of Criminology and Chief Editor for The International Journal for Crime and Justice. Kerry is a leading expert in the field of youth justice in Australia. Her contributions spanning 20 years include Offending *Girls (1993)*, (based on a PhD winner of the 1991 Jean Martin Award) and *Offending Youth* (2009).

Dr Angela Dwyer, Senior Lecturer, School of Justice, QUT
Email: ae.dwyer@qut.edu.au

Dr Dwyer's current research interests are focused in youth justice. Her reputation in this area is recognised internationally with an invitation to contribute to an international *Handbook of LGBT Communities, Crime, and Justice* to be published by Springer in 2013. Dr Dwyer was also recently awarded a Criminology Research Grant (CRG) to examine 'Reporting Victimisation to LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) Police Liaison Services'.

Associate Professor Terry Hutchinson BA, LLB (Qld), DipLib (UNSW), MLP, PhD (GU)
Email: t.hutchinson@qut.edu.au

Dr Hutchinson is an Associate Professor within the Law School. Her specialist areas are criminal law and legal research methodologies. Dr Hutchinson is a former full time member of the Queensland Law Reform Commission, and serves on the Queensland Law Society's Children's Committee, Equalising Opportunities in Law Committee, and the Law Council of Australia Equalising Opportunities in Law Committee.

Dr Kelly Richards BA (Hons), PhD (UWS)
Email: k1.richards@qut.edu.au

Dr Richards is a lecturer within the School of Justice. Her specialist areas are youth justice, restorative justice and crime research methods. She has published extensively in the area of youth justice, has conducted numerous empirical studies on this topic and is considered an authority on this topic in Australia.

In Summary:

1. The amendments are being based on rising statistical trends in offending that are partly the result of legislative and policy changes in the last 12 months.
2. The amendments are being directed towards a category of 'persistent young offender' who comprises a very small proportion of the entire group of offenders. More targeted responses towards this specific group would be a more effective response.
3. Permitting repeat offenders' identifying information to be published, and opening the Children's Court for youth justice matters involving repeat offenders has not been proven to be an effective deterrent strategy.
4. Removing the principle of detention as a last resort represents a fundamental change to the system of youth justice in Queensland which is not supported by the statistics on offending or empirical research. It is contrary to the tenor of the youth justice laws in other jurisdictions in Australia and contravenes Australia's human rights obligations under the Convention on the Rights of the Child.
5. The accepted age of majority for most civil rights in Australia is 18 years of age. By treating 17year olds as adults for the purposes of the criminal justice system, Queensland's *Youth Justice Act 1992* has been out of step with current practice both nationally and internationally. This legislative amendment further entrenches this anomaly and in removing judicial discretion in this area it additionally places young people in a more vulnerable position within the corrections system.
6. Bail breaches are often the result of unrealistic and onerous bail conditions being put in place. Having a breach of technical conditions of bail result in a second criminal offence especially in circumstances where guilt in relation to the original offence has not been determined is an unwarranted and harsh response to juvenile offending.

The Statistics

In Summary:

1. The amendments are being based on rising statistical trends in offending that are partly the result of legislative and policy changes in the last 12 months.
2. The amendments are being directed towards a category of 'persistent young offender' who comprises a very small proportion of the entire group of offenders. More targeted responses towards this specific group would be a more effective response.

The proposed reforms to the youth justice system in Queensland are premised on the assumption that offending by young people is increasing. We noted (Carrington, Dwyer, Hutchinson and Richards 2012, 8) in a recent submission about the boot camps legislation that:

> Statistics suggest that this concern is not warranted. Certainly studies show that 'rates per 100,000 juveniles in detention in Queensland have been relatively stable compared with the national trend' (Richards 2011) and that rates of detention of child offenders have declined generally in Australia over the last three decades. Youth offending statistics are affected by the diversion options used by the police, as well as by the numbers and levels of policing, and any special strategies such as Operation Colossus in the northern part of the state. 'Community concern' about crime does not always reflect the true rates of crime across Queensland. Policy should be based on valid evidence, not on 'community concern'. With stable numbers of young people being detained in Australia, the research clearly suggests that youth offending is not escalating.

The most recent Childrens Court of Queensland Annual Report reiterates that 'the trend line in relation to the number of juveniles dealt with shows a decline' over the last 10 years (2012 – 2013, 2). However the Report also notes that there was an upward trend 'in relation to the number of charges against juveniles' in the 2012-13 year. The Report explains that there were systemic issues explaining this increase arising from 'a substantial drop in the number of cautions being administered by the police' and the legislative amendment abolishing 'the diversionary mechanism of court ordered Youth Justice conferencing'. The Report concludes that 'thus there may have been both administrative and legislative changes that have contributed to the increase' (2012 – 2013, 4).

However, the Report also notes that 'the statistics seem to demonstrate that there are a number of persistent offenders who are charged with multiple offences' (2012 – 2013, 2). It would appear that this current set of amendments are directed to the 10% of young offenders who are responsible for up to 49% of charges (Queensland, Department of Justice and Attorney-General, 2012-2013 Annual Report, 24-25). For the remaining 90%

of children, the changes being instigated will be counter-productive and will almost certainly lead to negative outcomes.

The Department of Justice has acknowledged that ‘in recent years, the profile of a young offender has changed’ and that the ‘young people are presenting with increasingly complex issues such as drug and alcohol use, poor mental and physical health, low levels of education, exposure to violence during childhood and early adolescence and severe and long-term neglect and family dysfunction’ (Queensland, Department of Justice and Attorney-General, 2012-2013 Annual Report, 25). The punitive tenor of this current set of amendments cannot lead to better outcomes for children who have already experienced social harm in our society, nor does it support the Charter of Youth Justice Principles specifically that ‘a child should be dealt with in a manner that allows for reintegration into the community’.

Permitting Publication of Identifying Information of Repeat Offenders

In Summary:

3. Permitting repeat offenders’ identifying information to be published, and opening the Children’s Court for youth justice matters involving repeat offenders has not been proven to be an effective deterrent strategy.

Opening the Childrens Court for youth justice proceedings involving ‘repeat offenders’ means that a substantial number of cases involving children will be heard in open court. This flags a very serious change in approach to youth justice in Queensland. There is a definition in the amendments of a first-time offender. It is not limited to children who have been found guilty of exceptionally serious indictable offences. Children who have been found guilty of minor offences will potentially be caught by this provision. The provision will surely have administrative ramifications for the courts with further cost implications.

Removing the Principle of Detention as a Last Resort

In Summary:

4. Removing the principle of detention as a last resort represents a fundamental change to the system of youth justice in Queensland which is not supported by the statistics on offending or empirical research. It is contrary to the tenor of the youth justice laws in other jurisdictions in Australia and contravenes Australia’s human rights obligations under the Convention on the Rights of the Child.

Article 37 of the Convention on the Rights of the Child which has been ratified by the Commonwealth stipulates that States Parties shall ensure that ‘(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’. These principles

are echoed in other international instruments including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Treatment of Prisoners. Every other jurisdiction in Australia has included this principle in some form in their youth justice legislation:

Children and Young People Act 2008 (ACT) s94 (f)
Youth Justice Act 2005 (NT) s4 (c)
Youth Justice Act 1997 (Tas) s5(1)(g)
Young Offenders Act 1994 (WA) s7(h)
Young Offenders Act 1993 (SA) s3[1]
Children (Criminal Proceedings) Act 1987 s6
Children, Youth and Families Act 2005 (Vic) s362[2]
Children Young Persons and Their Families Act 1989 (NZ) s208[3]

In removing this principle Queensland is moving away from accepted international and national youth justice norms.

Entrenching 17 years as the Age of Criminal Responsibility in Queensland

In Summary:

5. The accepted age of majority for most civil rights in Australia is 18 years of age. By treating 17year olds as adults for the purposes of the criminal justice system, Queensland's *Youth Justice Act 1992* has been out of step with current practice both nationally and internationally. This legislative amendment further entrenches this anomaly and in removing judicial discretion in this area it additionally places young people in a more vulnerable position within the corrections system.

This table demonstrates how the current Queensland legislation is out of step with national and international norms:

	Age up to which dealt with in a youth court	**Reference**
Queensland	Under 17 years of age	YJA (Qld), Sch 4.
Northern Territory	Under 18 years of age	YJA (NT), s 6.
Western Australia	Under 18 years of age	YOA (WA), s 3.
Victoria	Under 18 years of age	CYFA (Vic), s 3.
South Australia	Under 18 years of age	YOA (SA), s 4.
New South Wales	Under 18 years of age	CCPA (NSW), s 3.
A.C.T	Under 18 years of age	CYPA (ACT), ss 11, 12.
Tasmania	Under 18 years of age	YJA (Tas), s 3.
England and Wales	Under 18 years of age	CYPA (UK) s 107, CDA

[1] (b) Family relationships should be preserved and strengthened (c) youth should not be unnecessarily withdrawn from family environment (d) no unnecessary interruption to education or employment.
[2] (a) Need to strengthen and preserve the relationship with family (b) Desirability to allow child to live at home (c) Aim to minimise disruption to education, training or employment.
[3] (d) A child or young person should be kept in the community where practicable

		(UK), s 117.
Canada	Under 18 years of age	YCJA (Can) s 2.

Most 17 year olds in Australia are still in the school system. An automatic transfer of 17 year old children to adult correctional facilities will have a negative effect on their future education and rehabilitation.

Creating a new offence where a child commits a further offence while on bail

In Summary:

6. Bail breaches are often the result of unrealistically onerous bail conditions being put in place. Having the breach of bail result in a second offence especially in circumstances where guilt in relation to the original offence has not been determined is an abuse of process.

The 2013 report on Bail and Remand for young people in Australia notes concerns that 'young people granted bail are often subject to inappropriately high numbers of bail conditions' which are often 'unrelated to the young person's offending', so that 'these behaviours would not be a criminal offence if the young person was not on bail'. (Richards and Renshaw, 2013, 74-75). The Report notes that 'criminalising breaches of bail criminalises non-criminal behaviours and results in the unnecessary accumulation of fresh charges against young people. In particular, where young people receive bail conditions that are intended to address their welfare needs, stakeholders argued that it is counterintuitive for a breach of these conditions to constitute a criminal offence. As described above, therefore, a distinction should be made between 'technical' and 'criminal' breaches of bail conditions imposed on young people'. (Richards and Renshaw, 2013, 80).

Additional References

Carrington, K, A Dwyer, T Hutchinson and K Richards, Submission to the Legal Affairs and Community Safety Committee*, Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*, 2012. Crime and Justice Research Centre, Queensland University of Technology.

Convention on the rights of the Child, GA Res 44/25, UN GAOR (20 November 1989) http://www2.ohchr.org/english/law/crc.htm

Hutchinson, T, 'Being seventeen in Queensland: a human rights perspective on sentencing in Queensland' (2007) 32 *Alternative Law Journal* 81-85

Hutchinson, T and J Nuich, 'Drawing the Line: the legal status and treatment of 17-year-old accused in Queensland' (2011) 17 (2) *Australian Journal of Human Rights* 91.

Hutchinson, T and K Richards, 'Scared Straight: Boot Camps for Queensland' (2013) 38(4) *Alternative Law Journal* 229.

Hutchinson, T, 'When is a Child Not a Child' (2006) 30 *Criminal Law Journal* 1-8

O'Leary, J, 'Naming young offenders: Implications of research for reform' (2013) 37 *Criminal Law Journal* 377.

Queensland, Children's Court of Queensland, *Annual Report 2012-2013,* (2013). http://www.courts.qld.gov.au/__data/assets/pdf_file/0015/220623/cc-ar-2012-2013.pdf

Queensland, Department of Justice and Attorney-General, 2012-2013 Annual Report (2013) http://www.justice.qld.gov.au/__data/assets/pdf_file/0004/211837/annual-report-2012-13.pdf

Queensland, Queensland Police Service *Annual Statistical Review 2011-2012* and various earlier years. http://www.police.qld.gov.au/services/reportsPublications/statisticalReview/

Richards, K and L Renshaw (2013) *Bail and remand for young people in Australia: A national study* Canberra: Australian Institute of Criminology http://aic.gov.au/publications/current%20series/rpp/121-140/rpp125.html

Richards, K, 'Police-referred restorative justice for juveniles in Australia (2010) *Trends & issues in crime and criminal justice no. 398*

Richards, K, 'Trends in juvenile detention in Australia' (2011a) *Trends and Issues in Crime and Criminal Justice: no. 416* Canberra: AIC

Richards, K, 'What makes juvenile offenders different from adult offenders?' (2011b) *Trends and Issues in Crime and Criminal Justice No. 409*. Australian Institute of Criminology: Canberra. http://www.aic.gov.au/documents/4/2/2/%7b4227C0AD-AD0A-47E6-88AF-399535916190%7dtandi409.pdf

Richards, K and M Lyneham, 'AIC monitoring reports 12: Juveniles in detention in Australia, 1981-2008' (Canberra: AIC, 2010)

Richards, K, L Rosevear and R Gilbert, 'Promising Interventions for Reducing Indigenous Juvenile Offending' (2011) *Indigenous Justice Clearinghouse Brief 10* http://www.indigenousjustice.gov.au/briefs/brief010.pdf

APPENDIX

K. Carrington, A. Dwyer, K. Richards, T. Hutchinson, Submission to the Department of Justice on the Amendments to the Youth Justice Act, July 2013

Submission: Proposed Reforms to Youth Justice in Queensland

Dr Angela Dwyer
Dr Kelly Richards,
Professor Kerry Carrington
Associate Professor Terry Hutchinson

Crime and Justice Research Centre, Faculty of Law,
Queensland University of Technology
GPO Box 2434 Brisbane 4001

The proposed reforms to the youth justice system in Queensland are premised on the assumption that offending by young people is increasing. We noted (Carrington, Dwyer, Hutchinson and Richards 2012, 8) in a recent submission about the boot camps legislation that:

> Statistics suggest that this concern is not warranted. Certainly studies show that 'rates per 100,000 juveniles in detention in Queensland have been relatively stable compared with the national trend' (Richards 2011) and that rates of detention of child offenders have declined generally in Australia over the last three decades. Youth offending statistics are affected by the diversion options used by the police, as well as by the numbers and levels of policing, and any special strategies such as Operation Colossus in the northern part of the state. 'Community concern' about crime does not always reflect the true rates of crime across Queensland. Policy should be based on valid evidence, not on 'community concern'. With stable numbers of young people being detained in Australia, the research clearly suggests that youth offending is not escalating.

Boot Camps
Question: Are the Sentenced Youth Boot Camps/Early Intervention Youth Boot Camps good ways to stop the cycle of youth crime and close the revolving door of youth detention?
Our position: Against: There is no empirical evidence to suggest boot camps are good for stopping the cycle of youth crime and closing the revolving door of youth detention. Further, we have concerns that the Early Intervention Youth Boot Camp may in fact draw young people into the criminal justice system who would ordinarily not have had any contact with the system.
Evidence: - Wilson et al.'s (2005) meta-analysis of 32 robust research studies of militaristic boot camps concluded that 'this common and defining feature of a boot-camp is not effective in reducing post boot-camp offending'. - Wilson and Lipsey's (2000) research has clearly demonstrated that boot camps and wilderness camps are ineffective unless they include a strong therapeutic focus on education, families, and psychological and behavioural change.
Question:

Are there other ways to stop the cycle of youth crime and detention for young people who are committing serious or repeat crimes and to get young people back on track?
Our position: There are better ways to stop the cycle of youth crime and detention for young people who are committing serious or repeat crimes and to get young people back on track.
Evidence: Research suggests that diversion is a more effective method of reducing reoffending (Carrington and Pereira 2009; Cunneen and White 2011). There are a number of effective programs which stop the cycle of youth crime, including: - Multisystemic Therapy, Aggression Replacement Training, Multidimensional Treatment Foster Care, and Family Intensive Teams (see eg Aos et al 2011) - A range of programs have been found to be effective in reducing offending by Indigenous young people, including community justice groups, night patrols, and mentoring (see Richards, Rosevear and Gilbert 2011) - White Lion in NSW and NT: http://www.whitelion.asn.au/ - The Victorian system of youth justice has been incredibly successful with diverting young people away from detention and keeping them out of detention, and they have consistently had the lowest rate of young people in detention in Australia (Richards and Lyneham 2010).

Naming and shaming
Proposal: Expanding the existing naming laws so that the names of repeat young offenders can be made public
Our position: Against: There is no empirical evidence to suggest that expanding naming laws will deter young people from offending
Evidence: - Crofts and Witzleb (2011, 41) note there is "little hard evidence to suggest that publication and shaming is actually effective as a specific or general deterrent in the case of the young…The young do not have the same ability to reason as adults, nor do they have the same life experience" to make decisions that adults do. Richards (2011) notes that 'risk-taking' attitudes and peer influences also hinder their capacity to make decisions about their conduct. - Naming and shaming young offenders is a direct breach of their human rights (Chappell and Lincoln 2009). - Gaskell (2008) found that naming and shaming young people through anti-social behaviour legislation in the United Kingdom made the young people feel disrespected and motivated them to use other ways of feeling respected and self-esteem through violence against other young people and members of the public. - Bernburg, Krohn and Rivera (2006, 67) conducted a longitudinal study on labelling practices with young people and found that naming and shaming lead to young people being more involved in serious forms of delinquency and engagements with "deviant social groups, namely, street gangs and delinquent peers".

Bail offences
Proposal: Making breach of bail an offence to reduce the number of repeat young offenders
Our position: Against: Making breach of bail an offence will only further criminalise repeat young offenders and further entrench them in the criminal justice system
Evidence: – Research shows that the intensive scrutiny of young people on bail is likely to result in 'offences' – including technical offences - committed by young people being recorded that may not have otherwise come to the attention of police. This is likely to result in young people becoming caught up in the criminal justice system, particularly on custodial remand (see eg Cusick et al 2010; Richards and Renshaw in press). – A better approach would be to increase support to bail support services (see Richards and Renshaw in press). There is a Youth Bail Accommodation Support Service in Brisbane. This requires funding so that the workers can find accommodation for the young people in the community. Additional emergency accommodation would also need to be funded and made available to ensure that young people are being supported in ways that maintain their links with the community while they are on bail. Models of other successful programs like this are the Intensive Bail Supervision Program in Victoria and the After Hours Bail Support Service in Canberra. Funding these forms of services in Queensland would also assist with the rising demand on populations in juvenile detention centres. Most young people in detention centres are on remand (Mazerolle and Sanderson 2008).

Effective sentencing options
Proposal: Removing the principle that when sentencing a young person for an offence, detention should be the last resort
Our position: Against: There is no evidence that suggests detention is an effective sentencing option. Indeed, evidence shows that detention is criminogenic. Further, removing the principle of detention as a last resort would be in contravention of several United Nations human rights frameworks to which Australia is a signatory.
Evidence: - Detention has been found to compound anti-social behaviour through secondary labelling and the association with more serious, potential future offenders (Bargen 1997; Carrington 1993; Gatti et al. 2009; Johns 2003). - Halsey's (2008a, 1257) research demonstrates clearly that "young men who have spent significant and repeated time in custodial environments return to such environments shortly after release". - Other than improvements in levels of literacy and education, detention does not provide

young people with the forms of rehabilitation that they require to become productive, contributing members of the community. As Halsey notes (2008, 1258), "a substantial divide stands between the types of skills and knowledge required to negotiate the custodial environment (codes of silence, extreme distrust of authority, devaluing of intellectual pursuits, routine use of physical force) as against those required to succeed in non-custodial settings and contexts ('open' and ongoing dialogue, nurturing of trust across a range of networks, active pursuit of academic and vocational skills, resolution of conflict through non-violent means)".
Question: Are there new options the court should have available to them when sentencing young people?
Our position: There are new reintegrative options being used in other states that the court should have available to them (see evidence below)
Evidence: Halsey's (2008b) research demonstrates the multiple issues that need to be addressed if young people are to stop reoffending. These issues require a holistic, reintegrative approach with intensive support from case workers. There are many reintegrative programs which are receiving positive feedback across Australia. These are the types of programs which should be the focus of targeted investment by the Queensland Department of Justice and Attorney-General: - White Lion, NSW and SA - Turnaround Program, ACT - Community Youth Justice, ACT - Perry House Residential Program for young people with intellectual disabilities who have been involved with the youth justice system, Victoria - XLR8 Mentoring Program, Victoria - Koori Youth Justice Program, Victoria - Brahminy Group, NT - Referral to youth justice conferences

Responding to causes of crime
Question: How can sentencing better address the causes of offending by young people?
Our position: Sentencing needs to be done in ways that holistically address the reasons a young person offends.
Evidence: - Research evidence suggests that we need to avoid detention as much as possible and focus on directing young offenders into reintegrative support in the community (Halsey, 2010). Non-government organisations are well placed to deliver these forms of reintegrative

support as they provide programs that address the causes of young people's offending. This approach would require more government funding of non-government organisations.

- Sentencing options need to holistically address young people's criminogenic needs, including alcohol and other drug misuse, mental and physical health needs, and family dysfunction. Holistic approaches such as Functional Family Therapy should be used (see Aos et al 2011).

Question:
What else can be done to address the causes of crime for young people already in the system?

Our position:
An integrated, reintegrative approach needs to be adopted so that young people are well supported when they re-enter their communities from the juvenile justice system

Evidence:

- Sentencing options need to holistically address young people's criminogenic needs, including alcohol and other drug misuse, mental and physical health needs, and family dysfunction. Holistic approaches such as Functional Family Therapy should be used (see Aos et al 2011).

Managing demand for youth justice services

Proposal:
Automatically transferring young offenders to adult prisons when they turn 18

Our position:
Against: the research evidence demonstrates that putting young people in adult prisons is detrimental and contributes to them returning to detention at a later date

Evidence:

- The evidence clearly shows that detention of any kind is not only detrimental to young people, but is actually criminogenic – ie it creates more crime (Gatti et al 2009). It has been well-documented that jails do not reduce recidivism and can act as 'universities of crime' for offenders. Incarcerated offenders can form criminal networks, learn new criminal skills and endure physical and/or psychological damage that may contribute towards future offending. These issues are likely to be more pronounced for young people exposed to adult offenders.
- Research has further shown that young people are uniquely vulnerable to a range of harms from being detained in adult jails, including physical and sexual violence. Psychological harm is also a common consequence of incarceration alongside adults, and suicides have been shown to be much more frequent among young people in adult jails than in juvenile detention (see Murrie et al 2009). This is especially concerning give that most detained young people in Queensland have not been convicted of an offence but are on remand.
- Further, international human rights frameworks stipulate that youth offenders should be subject to a system of criminal justice separate from adult offenders.

Question:
What new ways could support young people on bail to stay out of trouble?

Our position:
Early intervention is the best way to prevent young people becoming involved in crime

Evidence:
- Evidence shows that early intervention, including Nurse Family Partnerships and the Positive Parenting Program are effective in helping young people stay out of trouble (see www.triplep.net).
- For Indigenous young people specifically, night patrols, community justice groups and school- and culture-based programs have been found to be effective (see Richards, Rosevear, and Gilbert 2011).

Early intervention and diversion

Question:
What other strategies are there to intervene early and prevent young people starting to offend in the first place, or to prevent them from continuing to offend?

Our position:
Community based programs that engage young people in activities will prevent youth offending and the reintroduction of court-referred youth justice conferencing to reduce recidivism

Evidence:
- Police Citizens and Youth Clubs provide some outstanding programs which engage young people in their communities and make them feel like valued members of these communities. These programs are often not funded consistently so the programs are not consistently available. These programs have the potential to prevent a lot more young people from offending if they were more consistently funded over the long term.
- Youth justice conferences have been found to significantly reduce the number of young people returning to offending (Hayes and Daly 2003).
- Most referrals to youth justice conferences in Queensland have happened through the courts (Stewart and Smith 2004) before this referral path was discontinued. This is something which needs substantial investment and has been our most successful way of keeping young people out of the youth justice system and the adult criminal justice system.

Youth Justice Act Review

Question:
What other areas should be reviewed to try to reduce the number of young people committing crimes?

Our position:
The age classifications of a ‘juvenile’

Evidence:
- In ALL other states of Australia, a person is considered to be a juvenile up until the age of 17. Queensland is the only state in Australia that defines a juvenile as up until the age of 16.
- This is a breach of human rights frameworks (Hutchinson 2007) and is significantly detrimental to young people involved in the youth justice system as they are not able to access the services available in youth detention centres in adult prisons. The current

strategy is thus fostering repeat offending by young people.

Improving detention centre services
Question: What types of programs should be available inside detention centres and on release from detention?
Our position: - Programs targeted towards aggression and sexual offending would be useful in detention centres, in addition to educational, skills building, and counselling programs - Programs targeted towards long term support and reintegration would be useful post release
Evidence: - Programs that should be available inside detention centres: o MAPPS: Male Adolescent Program for Positive Sexuality, Victoria o Aggression Replacement Training Program, Victoria o Your Place Inc, Tasmania - Programs that should be available on release from detention centres: o Youth Links Post Release Support Program, NSW o White Lion, NSW and SA o Turnaround Program, ACT o Community Youth Justice, ACT o ACT For Kids – Youth Opportunity Program (Cairns only at this stage; should be available across Queensland) o U Turn, Tasmania o Perry House Residential Program for young people with intellectual disabilities who have been involved with the youth justice system, Victoria o XLR8 Mentoring Program, Victoria o Koori Youth Justice Program, Victoria o Brahminy Group, NT

References

Aos S et al. (2011) *Return on investment: Evidence-based options to improve statewide outcomes*. Olumpia: Washington State Institute for Public Policy

Bernburg, J. G., Krohn, MD, and Rivera, CJ (2006). Official Labeling, Criminal Embeddedness, and Subsequent Delinquency A Longitudinal Test of Labeling Theory. *Journal of Research in Crime and Delinquency* 43: 67-88.

Carrington, K, Dwyer, A, Hutchinson, T and Richards, K (2012). *Submission to the Legal Affairs and Community Safety Committee - Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*. Crime and Justice Research Centre, Queensland University of Technology.

Chappell, D and Lincoln, R (2009). 'Shhh ... we can't tell you': an update on the naming prohibition of young offenders.
Current Issues in Criminal Justice, 20: 476-484.

Crofts, T and Witzleb, N (2011). 'Naming and shaming' in Western Australia: Prohibited behaviour orders,publicity and the decline of youth anonymity. *Criminal Law Journal*, 35: 34-45.

Cusick, G et al, (2010) *Crime during the transition to adulthood: How youth fare as they leave out-of-home care*. Washington DC: US Department of Justice.
Halsey, M (2010). Imprisonment and prison reentry in Australia. *Dialectical Anthropology*, 34: 545–554.

Halsey, M (2008a). Assembling recidivism: the promise and contingencies of post-release life. *The Journal of Criminal Law and Criminology*, 97: 1209-1260.

Halsey, M (2008b). Pathways into prison: biographies, crimes, punishment. *Current Issues in Criminal Justice*, 20: 95-110.

Hayes, H and Daly, K (2003). Restorative justice conferencing and reoffending. *Justice Quarterly*, 20: 725-764.

Hutchinson, T (2007). Being seventeen in Queesland: a human rights perspective on sentencing in Queensland. *Alternative Law Journal*, 32: 81-85.

Mazerolle, P and Sanderson, J (2008). *Understanding remand in the juvenile justice system in Queensland*. Griffith University.

Murrie, D et al. (2009) Psychiatric Symptoms Among Juveniles Incarcerated in Adult Prisons. *Psychiatric Services*, 60: 1092-1097.
Richards, K (2011). What makes juvenile offenders different from adult offenders? *Trends and Issues in Crime and Criminal Justice No. 409*. Australian Institute of Criminology: Canberra. http://www.aic.gov.au/documents/4/2/2/%7b4227C0AD-AD0A-47E6-88AF-399535916190%7dtandi409.pdf

Richards, K and Lyneham, M (2010). *AIC monitoring reports 12: Juveniles in detention in Australia, 1981-2008*. Australian Institute of Criminology: Canberra.

Richards, K and Renshaw, L (in press) *Bail and remand for young people in Australia: A national study*. Canberra: Australian Institute of Criminology.

Richards, K, Rosevear, L and Gilbert, R (2011). *Promising Interventions for Reducing Indigenous Juvenile Offending*, Indigenous Justice Clearinghouse Brief 10 http://www.indigenousjustice.gov.au/briefs/brief010.pdf

Stewart, AL and Smith, F (2004). Youth justice conferencing and police referrals: the gatekeeping role of police in Queensland. *Journal of Criminal Justice*, 32: 345-357.

Wilson D et al. 2005. *Effects of correctional boot camps on offending*. Oslo: Campbell Collaboration http://campbellcollaboration.org/lib/project/1/

Wilson S and Lipsey M (2000). Wilderness challenge programs for delinquent youth: a meta-analysis of outcome evaluations. *Evaluation and program planning* 23: 1-12. http://www.wmich.edu/evalphd/wp-content/uploads/2010/05/Challenge_Programs.pdf

K. Carrington, T. Hutchinson, K. Richards, A. Dwyer, Submission to the Legal Affairs and Community Safety Committee, *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*, 8 November 2012

Submission to the Legal Affairs and Community Safety Committee

Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012

8 November 2012

Prof Kerry Carrington
Assoc Prof Terry Hutchinson
Dr Kelly Richards
Dr Angela Dwyer

Crime and Justice Research Centre, Faculty of Law,
Queensland University of Technology
GPO Box 2434 Brisbane 4001
http://www.qut.edu.au

Introduction

This submission addresses the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 which has as its objectives (1) the introduction of a Boot Camp Order as an option instead of detention for young offenders and (2) the removal of the option of court referred youth justice conferencing for young offenders. As members of the QUT Faculty of Law Centre for Crime and Justice we welcome the invitation to participate in the discussion of these issues which are critically important to the Queensland community at large but especially to our young people.

If any of the responses require further explanation please contact Dr Kelly Richards at the QUT Faculty of Law. Email: k1.richards@qut.edu.au.

Summary and Recommendations

We acknowledge that this Bill implements a pre-election commitment of the Government. However, we note that there is a very short opportunity for review of the amending legislation and, as such, an in-depth analysis of the proposals has not been conducted. It is possible that there are issues relating to fundamental legislative principles under the *Legislative Standards Act 1992* or unintended drafting consequences which we have not identified.

Recommendations

4. As the Bill is likely to disproportionately impact on Indigenous Youth who are already severely over-represented in the custodial hard end of the justice system we recommend the Bill not be legislated in its current form.

5. We also recommend that the Bill not be legislated in its current form as it is likely to have the opposite impact from what is intended. The evidence is clear that boot camps for young offenders are not effective in reducing reoffending.

6. Given that detention for young people is to be used as a last resort both under international instruments to which Australia is a signatory (such as the United Nations' (1989) *Convention on the rights of the child*), as well as Queensland's own *Youth Justice Act*, we recommend that youth justice conferencing should remain as a diversionary mechanism for the courts.

Those involved in producing this response:

Professor Kerry Carrington, Head of School of Justice, QUT
Email: kerry.carrington@qut.edu.au

Professor Carrington is the Head of the School of Justice in the Law Faculty at QUT and Vice Chair of the Division of Critical Criminology, American Society of Criminology and Chief Editor for The International Journal for Crime and Justice. Kerry is a leading expert in the field of youth justice in Australia. Her contributions spanning 20 years include Offending *Girls (1993)*, (based on a PhD winner of the 1991 Jean Martin Award) and *Offending Youth* (2009).

Dr Angela Dwyer, Senior Lecturer, School of Justice, QUT
Email: ae.dwyer@qut.edu.au

Dr Dwyer's current research interests are focused in youth justice. Her reputation in this area is recognised internationally with an invitation to contribute to an international *Handbook of LGBT Communities, Crime, and Justice* to be published by Springer in 2013. Dr Dwyer was also recently awarded a Criminology Research Grant (CRG) to examine 'Reporting Victimisation to LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) Police Liaison Services'.

Associate Professor Terry Hutchinson BA, LLB (Qld), DipLib (UNSW), MLP, PhD (GU)
Email: t.hutchinson@qut.edu.au

Dr Hutchinson is an Associate Professor within the Law School. Her specialist areas are criminal law and legal research methodologies. Dr Hutchinson is a former full time member of the Queensland Law Reform Commission, and serves on the Queensland Law Society's Equalising Opportunities in Law Committee, and the Law Council of Australia Equalising Opportunities in Law Committee.

Dr Kelly Richards BA (Hons), PhD (UWS)
Email: k1.richards@qut.edu.au

Dr Richards is a lecturer within the School of Justice. Her specialist areas are youth justice, restorative justice and crime research methods. She has published extensively in the area of youth justice, has conducted numerous empirical studies on this topic and is considered an authority on this topic in Australia.

1. Amendment of the *Youth Justice Act 1992* to introduce a Boot Camp Order as an option instead of detention for young offenders

One of the stated objectives of the boot camp program is to divert young offenders 'from further offending'. Reducing the rate of young people in detention is an admirable goal, as detention has consistently been shown to be criminogenic (ie it fosters reoffending) for young people (Gatti et al. 2009; Huizinga et al. 2003; McAra & McVie 2007) in addition to having a wide range of other negative outcomes for young people, families and communities (Bailey 2009; Brignell 2002).

The evidence is also clear, however, that boot camps for young offenders are not effective in reducing reoffending. Numerous rigorous studies have demonstrated that militaristic correctional boot camps do not reduce the likelihood of reoffending. For example, Wilson et al.'s (2005) meta-analysis of 32 robust research studies of militaristic boot camps concluded that 'this common and defining feature of a boot-camp is not effective in reducing post boot-camp offending'. Similarly, Drake et al.'s (2009) study of nine wilderness and 14 boot camp programs found that boot camps did not reduce recidivism among participants. While boot camps may seem a good option to instilling discipline in young people and leading them towards a more appropriate future path, the research demonstrates these are not outcomes of boot camps.

International research has clearly demonstrated that boot camps and wilderness camps are ineffective unless they include a strong therapeutic focus on education, families and psychological and behavioural change (Wilson & Lipsey 2000). In any case most research suggests that diversion is a more effective method of reducing reoffending (Carrington & Pereira 2009; Cunneen & White 2011). The main objective of diversion is to minimise the harm caused by stigmatisation especially for less serious and young offenders (Chan 2005). The need for diversion programs was recognised after research indicated that reoffending was more likely to occur if a young person received a punitive response to a first offence. Additionally, incarceration, especially for young people, has been found to compound anti-social behaviour through secondary labelling and the

association with more serious, potential future offenders (Bargen 1997; Carrington 1993; Gatti et al. 2009; Johns 2003). Existing research therefore suggests boot camps constitute a punitive response which is highly unlikely to make young people more disciplined or deter them from reoffending, and this is especially so when boot camps are designed in a way to overlooks reintegrating young people back into their communities.

2. Amendment of the *Youth Justice Act 1992* to remove the option of court referred youth justice conferencing

Restorative justice measures such as youth justice conferencing have numerous benefits, including addressing victims' needs, including communities in the criminal justice process, and fostering trust in criminal justice processes – all vital aims of the criminal justice system. In particular, the evidence that victims prefer restorative justice to traditional criminal justice measures is unequivocal (Sherman & Strang 2010).

All Australian jurisdictions except Victoria currently allow both police and courts to refer a young person to a youth justice conference (Richards 2011). Victoria's system is unique in that youth justice conferencing is only used if a young person is at risk of being sentenced to a supervised order (in the community or in detention) (Richards 2011). In this way, Victoria's system offers diversion for young people at the most severe end of the youth justice process. It should be noted in this context that Victoria has consistently had the lowest rate of young people in detention in Australia for many years (Richards & Lyneham 2010). This demonstrates their approach with young people may be more useful in deterring young people from reoffending.

An evaluation of Victoria's program (Success Works 1999) found that 'courts appreciated the additional option of the conference alternative and that the program appeared to have positive benefits for young people, families and victims' (Strang 2000: 11). Research in Queensland has also demonstrated positive outcomes for young people and their families (Hayes 2006). The consistency of positive outcomes across

jurisdictions in Australia suggests maintaining the referral of young people to youth justice conferences is of vital importance if young people are going to be deterred from reoffending in future.

Given that detention for young people is to be used as a last resort both under international instruments to which Australia is a signatory (such as the United Nations' (1989) *Convention on the rights of the child*), as well as Queensland's own *Youth Justice Act*, we contend that youth justice conferencing should remain as a diversionary mechanism for the courts. Indeed, given that reducing the rate of young people in detention is the stated rationale for the proposed introduction of boot camps, it seems incongruous that the abolition of court-referred youth justice conferencing is simultaneously being proposed.

3. Impact on Indigenous youth

The over-representation of Indigenous youth in custody remains one of Australia's most pressing social problems (Cunneen 2008; Snowball 2008). What data are available on youth offending have repeatedly revealed large discrepancies between the proportions of Indigenous and non-Indigenous youth drawn into the youth justice system in every Australian jurisdiction, although some are have higher rates of over-representation than others (Richards & Lyneham 2010). According to national data collected by the Australian Institute of Health and Welfare (AIHW 2012), Indigenous youth account for about one-third of all young people in Australia under youth justice supervision, yet they comprise only around five percent of the Australian youth population. Nationally, Indigenous youth are 20 times as likely to be in unsentenced detention and 26 times as likely to be in sentenced detention as non-Indigenous youth (AIHW 2012). Indigenous youth comprise over half of the juveniles under supervision in Queensland (AIHW 2012). Given this, the introduction of boot camps will impact disproportionately on Indigenous youth and communities and may increase current levels of incarceration.

4. Rates of youth offending

The Explanatory Notes to the Bill state that 'community concern regarding youth offending has been escalating'. Statistics suggest that this concern is not warranted. Certainly studies show that 'rates per 100,000 juveniles in detention in Queensland have been relatively stable compared with the national trend' (Richards 2011) and that rates of detention of child offenders have declined generally in Australia over the last three decades. Youth offending statistics are affected by the diversion options used by the police, as well as by the numbers and levels of policing, and any special strategies such as Operation Colossus in the northern part of the state. 'Community concern' about crime does not always reflect the true rates of crime across Queensland. Policy should be based on valid evidence, not on 'community concern'. With stable numbers of young people being detained in Australia, the research clearly suggests that youth offending is not escalating.

5. Queries concerning the draft legislation

We have some concerns and queries regarding the new legislation and programs that do not seem to be answered by the Explanatory Notes and other materials.

Other stated objectives of the new legislation are:

- To instil discipline
- To instil respect and values
- To support young people to make constructive life choices

There is no definition provided in the proposed legislation as to the meaning of the highly charged term 'boot camp'. The Explanatory Notes state that the program is to be provided 'through an individualised and intensive program which includes strenuous physical activities during the residential phase and offence focussed programs, counselling, substance abuse programs, community reparation, family support and

support to re-engage with learning or employment in both residential and community supervision phases'. 'Boot camp' suggests a deterrence based discipline camp program. Such programs have been proven ineffective at stopping re-offending and in some cases have been found to further alienate young people involved.

The Programs:

- Are the programs based on established youth programs such as Outward Bound? Will there be any choice within the programs? What provision will be made for communication with family?
- What provision is being made for education and schooling while the young people are on the programs?
- What provision is being made for reintegrating the young people once they have completed the programs?

Evaluation of the Programs:

- We note that this two-year trial is costing $2 million. Does this amount include an evaluation of the outcomes of the program?

Indigenous Participation:

- Will the program leaders be required to have undertaken cultural awareness training?
- We are concerned about the ability of a 13-year-old to provide any informed consent to take part in such a trial. Will there be adequate support provided for these children where their parents or guardians are unable to provide this? Is there specific provision for a supporting person from the community to be present to assist Indigenous children in making this decision? Will there be community participation in the programs where Indigenous children are involved? Are the programs holistic and culturally appropriate (Allard et al 2012)?

Consultation:

The Explanatory Notes assert that 'consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, Department of Communities, Child

Safety and Disability Services, Queensland Health, Department of Education, Training and Employment, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and the Commission for Children and Young People and Child Guardian. The Chief Magistrate, Magistrates of the Cairns area and the President of the Children's Court were also provided a copy of the draft Bill for comment'.

- What was the outcome of this consultation process? Were any changes made as a result of suggestions from these groups?

References

Allard T, A Chrzanowski, A Stewart 2012. *Targeting Crime Prevention to Reduce Offending: Identifying communities that generate chronic and costly offenders* No.445 Canberra: AIC

Australian Institute of Health and Welfare 2012. *Juvenile detention population in Australia 2011*. Canberra: AIHW

Bailey B 2009. Bail me out, Research report on detention and homelessness. *Parity* 22(8): 27-28

Bargen, J. (1997) *The Role and Function of the NSW Juvenile Crime Prevention Advisory Committee – A Personal Perspective*. Paper presented at the Australian Institute of Criminology Conference *Juvenile Crime and Juvenile Justice, Towards 2000 and Beyond*, Adelaide, 26 -27 June 1997

Brignell G 2002. *Bail : An examination of contemporary issues.* Sentencing Trends and Issues No 24. Sydney: Judicial Commission of New South Wales http://www.judcom.nsw.gov.au/publications/st/st24

Carrington, K. (1993) *Offending Girls: Sex, Youth & Justice*, Allen & Unwin: Sydney.

Carrington, K. Pereira, M. (2009) *Offending Youth: Sex, Youth and Justice,* Federation Press: Sydney.

Chan, J. (2005) *Reshaping Juvenile Justice: The Young Offenders Act 1997*, Janet B.L. Chan (ed). The Institute of Criminology Series, No. 22, Sydney: Federation Press.

Cunneen, C. (2008) 'Changing the Neo-Colonial Impacts of Juvenile Justice', *Current Issues In Criminal Justice*, Vol:20; Issue:1; pp.43-58;

Cunneen, C., and White, R., (2011) *Juvenile Justice: Youth and Crime in Australia*, 3rd ed., Oxford University Press: Melbourne.

Drake E, Aos S & Miller M 2009. Evidence-based public policy options to reduce crime and criminal justice costs: Implications in Washington State. *Victims and Offenders,* 4:170–196

Gatti U, Tremblay R, & Vitaro F 2009. Iatrogenic effect of Juvenile Justice. *The Journal of Child Psychology and Psychiatry* 50(8): 991-998.

Hayes, H. 2006. Apologies and accounts in youth justice conferences: reinterpreting research outcomes. *Contemporary Justice Review*, 9(4): 369-385.

Huizinga D et al. 2003. The effect of juvenile justice system processing on subsequent delinquent and criminal behaviour: A cross-national study. Washington, D.C.: US Department of Justice https://www.ncjrs.gov/pdffiles1/nij/grants/205001.pdf

Johns, R., (2003) Briefing Paper No 7/03, *Young Offenders and Diversionary Options*, Sydney: NSW Parliamentary Library.

McAra L & McVie S 2007. Youth justice? The impact of system contact on patterns of desistance from offending. *European Journal of Criminology* 4(3): 315-345

Queensland Police Service *Annual Statistical Review 2011-2012* and various earlier years. http://www.police.qld.gov.au/services/reportsPublications/statisticalReview/

Richards K 2011. *Trends in juvenile detention in Australia no. 416*. Canberra: AIC

Richards K 2010. *Trends & issues in crime and criminal justice no. 398: Police-referred restorative justice for juveniles in Australia*. Canberra: AIC

Richards K & Lyneham M 2010. *AIC monitoring reports 12: Juveniles in detention in Australia, 1981-2008*. Canberra: AIC

Sherman L & Strang H Restorative justice as a psychological treatment: Healing victims, reintegrating offenders. In Towl G & Crighton D (eds), *Forensic Psychology*. West Sussex: BPS Blackwell

Snowball, L. (2008) ‘Diversion of Indigenous Juvenile Offenders’, *trends and issues in crime and criminal justice*, (no 355), Australian Institute of Criminology, Canberra.

Strang H 2000. *Restorative justice programs in Australia: A report to the Criminology Research Council*. Canberra: CRC

Success Works 1999. *Juvenile Justice Group Conferencing Project Evaluation,* Success Works Pty Ltd, Melbourne

United Nations 1989. *Convention on the rights of the child.* Adopted by General Assembly resolution 44/25 of 20 November 1989.
http://www2.ohchr.org/english/law/crc.htm

Wilson D et al. 2005. *Effects of correctional boot camps on offending*. Oslo: Campbell Collaboration http://campbellcollaboration.org/lib/project/1/

Wilson S and Lipsey M 2000. Wilderness challenge programs for delinquent youth: a meta-analysis of outcome evaluations. *Evaluation and program planning* 23: 1-12.
http://www.wmich.edu/evalphd/wp-content/uploads/2010/05/Challenge_Programs.pdf