

Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

Submission No: 82
Submitted by: Hub Community Legal
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



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09 January 2024

Committee Secretary
Youth Justice Reform Select Committee
Parliament House
George Street
Brisbane Qld 4000

By email to youthjustice@parliament.qld.gov.au

Dear Committee Secretary,

Re: Youth Justice Reform in Queensland

About HUB Community Legal

We are a Community Legal Centre situated in Inala, Brisbane, Queensland. Whilst we are primarily a generalist legal centre, we have operated a specific youth legal service since 2006. Our youth legal service represents children and young people across a broad range of areas including criminal law and youth justice matters. The children we see in our Community Legal Centre present with issues consistent with those found in the research. In our experience, it is not uncommon or unusual for children to have multiple and persistent disadvantages. Whilst their stories are all different, many have suffered from trauma including sexual and other abuse. Almost all have been a victim of serious offences themselves. Many grieve the loss of family and most of our clients are subject to Child Protection Orders or are known to Child Safety. Almost all come from impoverished backgrounds. Some are from refugee backgrounds and have spent much of their lives in refugee camps. Many have mental health conditions, substance abuse issues and self-harm behaviours. Almost all have had a poor experience with schooling and are disengaged from education. Many have one or more diagnosed impairments such as autism, intellectual disability, reactive attachment disorder, speech and language impairment, ADHD and others. We can also attest to the resilience of the children we represent and join in their own hopes for a more positive future with the opportunity to live good lives.

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EMPOWERING THE COMMUNITIES OF INALA AND SURROUNDING AREAS

The community has a vested interest in doing everything possible to rehabilitate young offenders. We know that most young offenders do grow out of crime. The community's interests are best served by putting into place evidence-based programs and interventions. The tough on crime approach which locks up more and more offenders for longer and longer periods does not work. ***"In the case of a young offender there can rarely be any conflict between his interests and the public's. The public have no greater interest than that he should become a good citizen."*** (*R v Smith*¹ as per Matthews J)

We also need to remember that young offenders are also disproportionately the victims of serious offences.

The prevention of entry and diversion of youth offenders from the youth justice system and the consideration of risk and protective factors that reduce crime.

Adolescence is a time when boundaries are tested, and mistakes are made. Indeed, many adults can recollect a time where they broke the law in their teenage years. (e.g. stealing something or an assault such as punching a sibling or 'getting into a fight'). For most children, the offences are minor, and the child desists of their own accord or with the support of family or with a low level of intervention. It is important to note that the Youth Justice Act does work well in most situations to address the offending behaviours of most the children who are accused of committing an offence. The majority of children who are accused of committing an offence do desist from criminal offending. In considering reforms to the youth justice system, it is important to ensure that the things that are working well are retained.

It is accepted that there is a small group of children who commit offences with a frequency or severity of offending that accounts for a large and disproportionate number of the offences committed by children. These are known to be the children who have had the most adverse childhood experiences and have cumulative and persistent disadvantages. It is this group of children who require higher levels of assistance to reduce levels of offending and to desist from crime.

It has been our experience in representing these children that many of them, even the ones who are thought to be hopeless or lost causes can and frequently do, make significant progress. It is important to remember that children have limited control over their environments and are often stuck living in the same circumstances that have caused or contributed to their offending behaviours.

There are many risk factors and protective factors that affect a child's likelihood of becoming involved in crime. There is a significant amount of research in this area. The following lists of protective factors and risk factors are not exhaustive but are some of the most common ones we see in the children we represent.

¹ *R v Smith* [1964] Crim LR 70 as quoted in *R v GDP* (1991) 53 A Crim R 112 at 116 per Matthews J

Protective factors that prevent crime

1. Optimal baby development through good medical care, maternal nutrition, and avoiding substance use during pregnancy (preventing FASD and other conditions caused from damage to the foetus in utero).
2. Loving and consistent care from parents or guardians without neglect or abuse, so the child develops an ability to trust the adults who care for them.
3. Absence of domestic violence in the home and surroundings.
4. Positive, nurturing and stable childhood environments.
5. Timely, quality medical care for identifying and treating medical issues and disabilities, etc.
6. Positive learning experiences in school, ensuring ongoing engagement in education.
7. Strong connections with immediate and extended family.
8. Strong connections to culture.
9. Strong community ties (with cultural groups, religion, sports teams, youth workers, youth centres, etc.)
10. Positive and pro-social peer influences.
11. Good mental and physical health for both the child and the family.
12. Hope and a belief in a positive future.
13. Sufficient resources in the family and community to meet the child's needs.

Risk factors for criminal offending

1. Poor maternal health and substance abuse in pregnancy.
2. Intergenerational experiences of trauma.
3. Child abuse and neglect.
4. Poverty.
5. Loss of a parent.
6. Poor parenting and care.
7. Attachment issues and disorders – children who do not experience good care from consistent caregivers may develop attachment disorders (e.g. a baby removed from family due to abuse is placed with multiple different carers).
8. Disabilities and medical conditions affecting behaviour (e.g. cognitive impairments, autism, ADHD, speech and language disorders, FASD).
9. Lack of detection, treatment and responses to disabilities and medical conditions (e.g. an undetected hearing difficulty leads to frustration at school and learning problems which causes the child to fall behind, become disengaged, connect with a negative peer group which leads to offending).
10. Child Safety involvement and being in 'out of home care', especially if placed in the residential system.

11. Homelessness.
12. Inappropriate or inadequate housing (overcrowding, housing insecurity, residential homes and refuges that close during the day).
13. Lack of family, community and cultural connections.
14. Disengagement from schooling. This requires early identification and investigation, with support provided to both the child and the family. The practice of suspending or excluding children as young as 4 or 5 years old from school is nonsensical. Educational institutions must move away from relying on suspensions and exclusions as methods to manage behaviour, particularly for these young learners who require more, not less, schooling for their development. The transition to high school often marks another point of educational disengagement as mainstream high schools often lack the flexibility to accommodate the needs of children who require more personalised programs or struggle with the transition. This disengagement often becomes an entry point into crime, as children find a group of similarly disengaged peers who engage in progressively antisocial behaviours and substance use. Reintegrating young offenders into appropriate school placements can have a substantial positive impact on reducing or preventing further criminal activity. Unfortunately, offenders are often placed in a 'too hard basket', even when of compulsory school age, and can face considerable challenges in securing school enrolment. For example, a recent client of our service was released from custody, and it took 5 months to find a school placement.
15. Family members who have been in jail or detention. A common entry point for crime is for a child to tag along with older brothers, cousins or friends who are involved in crime.
16. Antisocial attitudes within the home or family.
17. Negative peers with antisocial attitudes.
18. Mental health conditions, grief and emotional distress. Children who are experiencing poor mental health are at risk of using substances to 'numb' or distract from feelings they find overwhelming.
19. Substance abuse.
20. Survival state - where a child's brain becomes 'locked' into hypervigilance due to numerous adverse events, leading them to be easily 'triggered' into aggressive reactions or overreactions to perceived threats.
21. Hopelessness – children can enter a state of hopelessness where they feel they have nothing to gain and nothing to lose. They perceive no improvement in their circumstances and exhibit a lack of concern about their own wellbeing, to include whether they live or die. This emotional state can drive risky behaviours, such as car stealing, which provide surges of adrenaline, temporarily diverting their attention from feelings of hopelessness and desolation.

While every child's path is unique, our experience is that entry (or re-entry) into crime often starts with a breakdown of the protective factors which prevent crime and an accumulation of harm to the child from experiencing multiple adverse events.

Desistance from crime is complex and just as a heavy smoker may take many attempts to stop smoking a young offender will often experience setbacks in their journey to reduce the frequency and severity of offending behaviours.

Ways to stop recidivism.

The best ways to reduce the entry into crime and to encourage desistance from crime is to increase the protective factors and decrease and address the risk factors.

In particular, by:

1. Protecting the human rights of children.
2. Strengthening positive connections with family and with culture.
3. Strengthening positive connections with the community through educational engagement. This can be supported through individual learning plans, practical learning goals, more flexible mainstream schooling, and more flexi school options.
4. Funding a wide variety of community programs and supports (for all children, not just offenders), including locally based and culturally driven programs.
5. Fixing the Child Protection system so we do not have children who are subject to child protection orders who are homeless. Consider if children can be returned to family and provide the necessary supports and make other options available such as independent and semi-independent living for older children.
6. Minimising the time children spend in detention, where meeting other offenders' risks increasing anti-social attitudes, skills and behaviours.
7. Giving children hope that they can still have a decent future.
8. Enabling children to have opportunities to become competent in areas of interest, e.g. mechanics, welding, carpentry, music, hair dressing, beauty, sports.
9. Diagnosing medical conditions such as cognitive impairments, autism, ADHD, hearing loss, speech and language disorders etc and then providing treatments or appropriate planning (such as NDIS) to address these issues.
10. Have seamless transitions from detention to appropriate housing, schooling, and programs to reduce reoffending.

Increasing maximum penalties does not result in less offending.

Children do not read legislation to ascertain the penalties for offences. Children tend to act impulsively and opportunistically. Increasing penalties does not reduce offending by children. Deterrence has limited utility for young offenders. Children's brains are still immature and their ability for consequential thinking (i.e. the ability to consider a likely outcome of a course of action) is not present or still evolving.

Sufficient scope already exists for sentencing outcomes to reflect the objective criminality involved in offending. Magistrates and Judges require flexibility in sentencing ensure fairness in varying circumstances. For example, a driver of a stolen car might warrant a higher penalty than a child who is just a passenger. Or distinctions may be made based on age, cognitive impairments, or a child's demonstrated remorse and progress towards rehabilitation. This approach recognises the nuanced nature of individual cases and allows for tailored sentencing decisions.

Reducing people carrying weapons

In our experience people are most likely to start carrying weapons, especially knives, when they feel unsafe. Homelessness often heightens this sense of vulnerability. Carrying a weapon is sometimes used as a proactive measure to signal to potential perpetrators that they are not an easy target for robbery or sexual abuse. Others start carrying weapons due to specific threats from known individuals or groups. Increasing the safety of children by reducing homelessness and providing safe places to go in a crisis will reduce the carrying of weapons.

Reducing the numbers in custody on remand

a. Fast-track sentencing trial.

There is a current trial of a fast-tracking sentencing program underway in the lower children's courts in Brisbane, Townsville, Southport and Cairns to try to reduce the time spent on remand. It is hoped that the focus on providing early disclosure of police material to lawyers and other measures will be successful in reducing some of the time a child spends on remand. We consider the fast-track program to be a promising initiative however note that the program's success is dependent on resources which are not always optimal.

b. Changes to structural systems.

Matters proceeding in the children's court can proceed more quickly with the disclosure of police evidence at an early stage (e.g. CCTV footage), increasing the availability of legal visits to children in detention, and the availability of time for courts to hear lengthier matters are some of the systemic issues that could result in a reduction of the time spent on remand.

c. Breach of Bail.

The new breach of bail offences will continue to increase the number of children held in custody on remand and fails to address any of the causes of crime.

d. Reducing the maximum penalties for offences

This means that earlier pleas of guilty are more likely. Enabling penalties and therapeutic interventions to be given much closer to the time of the offence it increases their effectiveness and lowers the changes of repeat offences whilst on bail. The higher the penalty the more need

for lawyers to obtain disclosure of material or obtain briefs of evidence from police. This causes delays.

- e. Reduce the number of offences which must proceed on indictment and reduce the delays for offences that do proceed on indictment.
Offences with higher penalties cannot be finalised in the (lower) Children's Court and must proceed on indictment to a higher court, usually to the Children's Court of Queensland. For those matters, children are likely to experience long periods on remand and a delay in the finalisation of those matters. Proceedings on indictment have delays between the committal occurring in the lower court. Currently, there is a period of 6 months for the proceedings to be commenced in the higher court. This is too long. This period should be reduced, and priority given to the quicker resolution of these matters by police, the Director of Public Prosecutions and by the courts.
- f. Suitable accommodation
For many children a lack of suitable accommodation means that they spend longer on remand than they should. This is especially a problem for children subject to child protection orders where there is no available placement for them to be released to.
- g. Improve transition from custody planning.
As soon as a child enters detention there should be a case plan for when the child leaves detention. For example, a recent client of our service was released from custody but then waited more than 5 months for a school to accept his enrolment. Other children leave custody into unstable accommodation which soon leads to homelessness. These poor transitions often mean that children either reoffend or fail to comply with bail conditions which results in a return to custody and an unlikelihood of getting bail again.

Serious Repeat Offenders Declaration and Shaming

A declaration of a child as a serious repeat offender is stigmatising. We know that children in their adolescent years are forming their concepts of self. We know that shaming offenders does not work for this reason. We do not want children to think of themselves in this way as it is a self-fulfilling prophecy and is criminogenic for those children.

Alternatives to detention

We strongly advocate for detention being a last resort and for the shortest possible time. Children in detention are removed from their families and the community and placed in the company of other children who are offenders. This inevitably leads to children making connections with other young offenders. They talk about the crimes they have committed. They learn from each other about how to

commit other crimes, how to get and use substances. Anti-social and negative attitudes worsen and, in some cases, become entrenched. Detention is criminogenic as it strengthens negative connections and attitudes with other offenders.

Detention and other consequences of offending

- a. **Detention in watchhouses** has caused and continues to cause damage to children. A watchhouse cell is a very small room that has a concrete ledge for a bed/seat with a partially screened toilet. Children (as young as 10 years of age) are being kept in these cells at police stations whilst waiting to be transferred to a detention centre. Sometimes children are in these cells for weeks. There is no natural light, no fresh air, and no exercise yard. Showers and clean clothes are irregular. Children are exposed to the noises of adult prisoners. There is no school. They are usually given nothing to occupy their time. Any therapeutic interventions are extremely minimal. Watchhouse detentions worsen existing mental health issues and create new issues.

- b. **Offenders who turn 18 years being transferred to adult jails.**
Offenders who commit offences as a child should remain in youth detention centres. Units for older offenders should be kept separate from younger offenders. Children do often express that turning 18 years of age is a milestone for them in terms of being motivated to stop offending. That motivation can be a valuable time in terms of a child making changes, benefiting from therapeutic interventions, developing empathy, and stopping or reducing substance use. A child who knows they are going to be transferred to an adult jail will not have that motivation to make changes and their risks of continuing to offend increase.

The most suitable infrastructure used for custody, detention or residential components necessary to reduce crime.

- a. Children should be kept close to their homes and families to enable visits and to encourage good transition planning out of detention.
- b. Children should be kept in groups of similar ages and levels of criminal offending and kept apart from older detainees or those with more significant criminal histories.
- c. Staff are the most important resource. Children need consistent and positive relationships and mentoring to grow and to change.
- d. Providing opportunities for learning and growth. For example, workshops for learning practical skills.
- e. Providing opportunities for exercise (sports, swimming), cultural programs, music programs and other similar activities that are universally known to be good for children's development.
- f. Providing sufficient visiting spaces for lawyers, youth justice workers and other professionals to have easy access to the children they need to visit.

- g. Ensuring the human rights of children are protected at all times. (This includes not holding children in watch house environments and not being subject to regular lock down periods due to staff shortages etc).
- h. Planning for discharge from custody should commence from the entry of the child into detention so that housing, schooling, case planning and therapeutic interventions transition from detention into the community to give children chances of being successful in desisting from offending.

Systems and processes to provide immediate and ongoing support for victims of crime.

Immediate assistance needs to be provided to victims of crime to reduce the impact of some offences. For example, if a house has been broken into, immediate assistance should be available for a locksmith or repairer to make the house safe, to minimise the ongoing fear that arises from feeling that offenders could return. There are limited services available, especially on short notice or at night, even for those who can afford the cost.

It is important to note that most young offenders have also been victims of crime.

The current youth justice system has a strong framework for restorative justice programs. These programs enable a young offender to meet with a victim. These programs can be very satisfying for victims to feel heard and to participate in the outcome plan for the offender. More resources are needed for these programs to reduce delays.

Victim compensation schemes are also important to provide for the needs of victims.

We appreciate the opportunity to provide feedback to this Select Committee. The comments made in this submission attempt to address the terms of reference to the best of our knowledge and experience. Please don't hesitate to contact the writer should any additional consultation be beneficial.

Yours faithfully,



Carolyn Juratowitch

Principal Lawyer
HUB Community Legal