

Submission by
YOUTH ADVOCACY CENTRE INC
to the
SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

Regarding the
VALUE OF A JUSTICE REINVESTMENT APPROACH TO CRIMINAL JUSTICE
IN AUSTRALIA

MARCH 2013



The Youth Advocacy Centre Inc (YAC) has been operating for over 30 years and offers free, legal services, youth support and family support assistance and services to young people generally 10 years to 18 years (inclusive, particularly those who are in, or are at risk of being in, the youth justice system or the child protection system, and who live in or around Brisbane. It provides support on a limited basis to those under 10 and over 18 years of age and to young people outside of Brisbane via telephone, website and publications.

All services offered are voluntary and confidential. This means that YAC staff only work with a young person if they want to work with YAC staff and no contact is made with anyone (eg families, teachers, police, other adults) without the young person's permission (unless there is a risk of serious, immediate harm to the young person or someone else).

In any dealings with a young person, YAC is guided by the Convention on the Rights of the Child, in particular:

- the right of young people to be treated equally irrespective of “colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”;
- the right of a young person to have an opinion and to be heard in all matters affecting the young person; and
- the best interests principle to include consideration of the views of the young person.

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YAC is in complete agreement that the “revolving door” of offending and court which some young people find themselves caught in needs to be addressed. It is the very reason for the multidisciplinary service model which YAC has utilised from its inception.

Any response to youth offending behaviour should be based on evidence of what has been found to work – or is showing promise of positive outcomes – and should avoid those responses which clearly do not work. YAC supports a justice reinvestment approach as being the most likely strategy to succeed in reducing the number of young people in youth detention by enhancing the availability and quality of rehabilitation and therapeutic services and probation and parole programs.

This submission, through a review of the literature on justice reinvestment, will explore the concept of justice reinvestment; how and why it is effective in reducing prison populations in both the youth and adult systems; and how justice reinvestment has been successfully implemented overseas.

It should be noted that for the purposes of YAC’s submission, a broad definition of justice reinvestment in relation to young people will be incorporated to include investment in early intervention and prevention programs with specific examples outlined.

Prison as a response to offending behaviour

There is a recurring (unsubstantiated) view that Australia is in the middle of a crime wave, and that offending – especially offending by young people - is out of control. Claims in the media about increased crime, is often coupled with an expressed support to ‘get tough on crime’ and ensure that more (young) people are being sentenced to detention, and for a longer period of time.¹ Up until now, the focus of criminal justice policy has been creating more prisons or more space within existing prisons to accommodate the ever growing prison population, as opposed to addressing the causes behind offending. This applies to both adult and youth offenders.

Around the world, prison populations are used as a means of demonstrating the effectiveness of the government in responding to crime (such “three strikes” type policies), and thereby implying there is an increased level of community safety.² Yet the research shows that this approach to crime prevention is ineffective.³ It is taken for granted that upon their release, offenders will be reformed as a result of their time in prison and that they will never offend again.⁴ This approach fails to take into consideration any of the underpinning causes of crime and criminal behaviour.

In reality, incarceration does little to prevent recidivism. It has been demonstrated consistently though academic literature that prisons are an ineffective institution for rehabilitating offenders.⁵ For example, research has found that, in NSW, approximately 60% of the adult prison population had been incarcerated for a previous offence. Further, 30% of the NSW adult

¹ Becroft, A. 2007. Children and young people in conflict with the law: asking the hard questions. *Youth and Family Court Journal*. 57 (4):1-37.

² House of Commons Justice Committee: 2010. Cutting Crime: The case for justice reinvestment. London.

³ Ibid.

⁴ Becroft, A. 2007. Children and young people in conflict with the law: asking the hard questions. *Youth and Family Court Journal*. 57 (4):1-37.

⁵ Solonec, T., and W., YOUNG. 2011. Epidemic incarceration and justice reinvestment : it's time for change. *INDIGENOUS LAW BULLETIN*; 7 (26): 15-21.

prison population had been initially sentenced to detention in a youth court. These figures are even worse in the context of the Indigenous population.⁶

The result is a global phenomenon where official crime rates are steady or falling in general over the last decade (as is the case in Queensland), yet prison populations continue to grow, along with rates of recidivism.⁷ In response to this, billions of dollars are spent around the world constructing new prisons to house the ever growing prison population, in both the youth and adult sector.⁸ In 2010 – 2011 it was estimated that it cost Australians \$2.9 billion nationally to keep offenders incarcerated in prison⁹ or approximately \$230,000 to keep one person in prison for a year.¹⁰

Australia has a rapidly growing prison population (particularly the number of Indigenous Australians that are incarcerated), both in youth detention and adult prison, even though the number of offenders has been decreasing generally for some time. Although Australia does not imprison as many people as the United States or the United Kingdom, if Australia's prison rate was calculated based on the rate of imprisonment of Indigenous people, Australia would have a prison rate that is twice that of the United States (who currently have the highest rate of imprisonment in the world). Further, Australia's prison population has doubled since 1984, with a limited impact on recidivism rates and community safety.¹¹ A growing prison population requires money to be spent on expanding current or building new prisons. Prisons and detention centres are expensive to build as well as to run and the evidence shows that there is little return on this investment in terms of impact on recidivism or enhancement of community safety. Clearly this is not money well spent.

There is also no evidence that establishes a causal link between high prison populations and community safety, as safety is only improved through the removal of a small number of very serious offenders. Consistently removing large numbers of offenders from society often has a criminogenic effect. When large numbers of offenders are removed from society – often from the same disadvantaged community, this disrupts the social cohesion of the community and inhibits their ability to solve social issues that are at the heart of the community. This is the reason that prison populations are often made up of offenders that are from a small number of disadvantaged communities.

Excessive incarceration, especially if the incarceration disproportionately affects disadvantaged communities, can increase, rather than decrease the amount of crime committed in that area. Excessive incarceration also has a negative effect on young people, as children who grow up in a household where one parent is in prison have an increased likelihood that they will be imprisoned as well.¹²

⁶ Vumbaca, G. 2012. Young People and Violence. *National Council for Drugs / justice reinvestment for Aboriginal People*. 1-2.

⁷ Social Justice Report 2009; http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html.

⁸ Allen, R. 2007. 'justice reinvestment a new approach to crime and justice. *Prison Service Journal*. 176: 3-8.

⁹ MCCLELLAND, Robert. Lionel Murphy Memorial Lecture : vigilance against injustice in the justice system. *CURRENT ISSUES IN CRIMINAL JUSTICE*; 23 (3) March 2012: 433-445.

¹⁰ Susskind, Anne. Focus on prevention, not punishment, for young Aboriginal people: [justice reinvestment for Aboriginal Young People Campaign.] *Law Society Journal* (Sydney: 1982), v.50, no.5, June 2012: 29-30

¹¹ Social Justice Report 2009; http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html

¹² MCCLELLAND, Robert. Lionel Murphy Memorial Lecture: vigilance against injustice in the justice system. *CURRENT ISSUES IN CRIMINAL JUSTICE*; 23 (3) March 2012: 433-445.

What is justice reinvestment?

The expense and ineffectiveness of incarceration has caused countries such as America, the United Kingdom and New Zealand to re-think their approach and they are now moving towards a justice reinvestment model which aims to take funding out of incarceration programs and increase funding in community corrections, in a bid to cap the prison population and decrease recidivism rates.¹³

Justice reinvestment, put simply, aims to divert people away from the criminal justice system, by taking money that would normally be spent on building new prisons, or operating existing prisons, and using that money to fund community corrections and rehabilitation programs to address the underlying causes of crime with the aim of breaking the cycle of offending and thereby reducing recidivism. Cost-benefit analysis demonstrates that it is cheaper and more cost effective to treat and rehabilitate people within the community than it is to imprison them. A decrease in recidivism rates, and the overall prison population, will create millions of dollars in savings.¹⁴

The rationale behind justice reinvestment is that most criminal offences are being committed by a small number of people, who characteristically are disadvantaged and are likely to reside in the same local area.¹⁵ Once the particular local areas are identified, funding is given to those areas which can then be invested in community corrections programs.

Numerous cost benefit analyses that have been conducted globally in countries that have commenced implementation of this policy. It has been clearly demonstrated that rehabilitation and community corrections approaches are more cost effective than imprisonment.¹⁶ A justice reinvestment approach takes this one step further in identifying the specific areas where most of the offenders live. This allows the solutions to be tailored to the needs of the individual areas.¹⁷

Further, the literature indicates that continuously incarcerating and reintegrating large numbers of people from the one community can have a significant impact on the social cohesion of that community, especially in relation to family relationships and employment opportunities.¹⁸ A justice reinvestment approach will negate these consequences as it aims to keep people in the community.

Justice reinvestment and young offenders

In relation to young people, justice reinvestment includes the implementation of early intervention programs. This involves high risk groups being identified and early intervention programs being implemented to reduce their risk of becoming involved in the criminal justice system. These programs are targeted at young people who live in those areas that have been identified in having a large number of adult offenders.¹⁹ An example of an early intervention

¹³ Social Justice Report 2009; http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html

¹⁴ National Indigenous Drug and Alcohol Committee. *justice reinvestment Fact Sheet*.
<http://justicereinvestmentnow.net.au>

¹⁵ Social Justice Report 2009; http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html.

¹⁶ Mauer, M. 2002. 'State Sentencing Reforms: is the get tough on crime era coming to a close?' *Federal Sentencing Reporter*. 15(1):50-52.

¹⁷ Allen, R. 2007. 'justice reinvestment a new approach to crime and justice. *Prison Service Journal*. 176: 3-8.

¹⁸ Allen, R. 2007. 'justice reinvestment a new approach to crime and justice. *Prison Service Journal*. 176: 3-8.

¹⁹ Dossetor, K. 2011. 'Cost-benefit analysis and its application to crime prevention and criminal justice research. *Australian Institute of Criminology*. 42:1-57.

and prevention program is the Chicago Child Parent Centre, which will be discussed in detail later in this submission.

In terms of its application to young people, justice reinvestment can be used in two ways:

1. it can be used to divert young people away from youth detention, and into community corrections programs, as research has demonstrated that young people who serve a period of incarceration are more likely to continue offending in their adult life;²⁰ and
2. it can be used as a midway intervention applicable to young people who are at the end of their time in the youth system, and need to be diverted away from the adult system.²¹

Both of these approaches have been implemented in the United Kingdom (Gateshead). The first approach involves the creation of Youth Offending Teams and focus on health, education and prevention of offending; and young people are diverted away from the courts and into community programs.

The second approach establishes a Young Adult Offending Team, and is aimed at young people aged 18 years and older, who can no longer be dealt with by the youth system and whose needs are not adequately met during the period where they transit from the youth system to the adult system.²² This was brought on by the fact that almost half of the prison population in Gateshead was under the age of 26. This approach focuses on linking community agencies to provide a holistic multiagency approach, with the aim of diverting offenders away from the prison system and thus reducing the amount of young people who make the transition from the youth system and into the adult system.²³ The purpose of diverting young adults out of the adult prison system is to place them in a community program that will adequately deal with the reasons behind their offending, with the aim of permanently diverting them out of the adult prison system.

This involves diverting young adults who fall into this category away from the adult prison system, in hope that community intervention can break their cycle of offending and prevent them from ever entering an adult institution.

The effectiveness of justice reinvestment

There is increasing pressure to show the social benefit of early intervention, prevention and rehabilitation programs. Cost benefit analyses have clearly established that a focus on community corrections and offender rehabilitation –which is the central focus of justice reinvestment – can not only reduce the current prison population and associated costs, but will dramatically reduce offender recidivism, a conclusion that can be applied to both the youth and adult prison population.

The Australian Institute of Criminology has looked at the effect of community interventions on youth offenders. Previous studies have indicated that a large portion of youth crime can be attributed to a small number of offenders, and these offenders are more likely to carry their offending behaviour into adulthood.

²⁰ Allard, T, A., Chrznaowski, and A., Steward. 2012. 'Targeting Crime Prevention to Reduce Offending.' *Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice*. 1-8.

²¹ Allen, R. 2007. 'justice reinvestment a new approach to crime and justice. *Prison Service Journal*. 176: 3-8.

²² Ibid.

²³ Ibid.

Case study 1

This case study looked at the benefits of giving one group of offenders' intensive cognitive, behavioural and mental health treatment– while they were in detention. This was compared to a control group who received the “usual” detention treatment. This was accompanied by a 4.5 year follow up. It was concluded that while it cost more to provide the intensive treatment, the result was that, after the treatment program ended, those who were treated accrued substantially less criminal justice and prison costs (\$5927 and \$5153 respectively) in comparison to the offenders who were subjected to the usual detention treatment, (\$14,103 and \$47,367 respectively). The conclusion of this study was that by providing treatment, tax payers saved approximately \$50,390. The case study emphasised that this was a conservative estimate as it did not include savings of medical costs, costs of additional victims, costs of lost wages or property costs.²⁴

Case study 2

This study also related to young offenders and focused on whether community interventions assisted in reducing recidivism rates of young people. This study involved three groups; group one received intensive community supervision and monitoring, group two received intensive outpatient counselling and cognitive behavioural therapy, and the third group received the standard probation and parole treatment.²⁵

This treatment was implemented over a period of 6 months, and had a twelve month follow up. It was concluded that those in the treatment groups produced less than 1/3 of the expenditure of subsequent court referrals or time in detention. This case study demonstrated that for every dollar that was invested in community programs for young people, \$2 was given back to society.²⁶

Case study 3

The final case study involves a cost benefit analysis of an early intervention program in the lives of young people through the Chicago Child- Parent Centres. This Centre has been operating since 1965. The Centre's are located in Chicago public schools in the poorest neighbourhoods and provides educational and family support to children aged three to nine. The aim of the Centre is to promote educational achievement, school retention and low levels of delinquency. The program has three stages of intervention, preschool age, school age and extended intervention, and as a result the program deals with children up until they attain the age of 21.²⁷

This study compared groups of children who had intervention from the Centre and were of preschool age between 1983 and 1986 and those who did not, with a fifteen year follow up. The program involved early intervention and family support services for children between the ages of three and nine years. The children who participated in this study fell into the three categories, of preschool age, school age or extensive intervention. It should be noted that the intervention lasted for varying periods depending on what age the child was when first coming into contact with the program, and whether they fell into the extensive intervention category. The result was that those who participated in the program had a higher rate of school retention and a lower rate of youth arrest, in comparison to those children who did not have any early

²⁴ Ibid.

²⁵ Ibid.

²⁶ Dossetor, K. 2011. 'Cost-benefit analysis and its application to crime prevention and criminal justice research. *Australian Institute of Criminology*. 42:1-57.

²⁷ Ibid.

intervention. It was concluded that for every dollar spent on preschool age children participating in the Centre, society received a benefit of \$7.14.²⁸

International experiences

The USA

The USA imprisons more people than any other country in the world, and its prison population continues to rise. As a result billions of dollars are being spent on both maintaining the current prison population as well as budgeting for the constant need to construct more prisons to accommodate the ever growing prison population.²⁹ The USA also has extremely high recidivism rates with 2/3 of all offenders being re- incarcerated.

At least 11 states in the USA have implemented justice reinvestment programs, and are beginning to focus on the social causes of crime, by taking a holistic rehabilitative approach.

Texas

Justice reinvestment has been successfully implemented in the state of Texas (as set out above). Prior to implementing justice reinvestment, Texas had the second highest imprisonment rate in the USA, with 976/100 000 people imprisoned, largely due to a 300% increase in its prison population between 1985 and 2005 in response to various 'get tough on crime' policies.³⁰ When looking into the reasons behind its high prison population, it was discovered that a small number of counties that were more social disadvantaged were producing the majority of the prison population and were costing the government billions of dollars.³¹

In response to these findings, the government decided to invest money in community programs specifically in the counties that were producing the majority of offenders, instead of building another prison. The result of this is that two years after the reinvestment program was implemented, the Texas prison population has stopped growing for the first time in decades.³²

United Kingdom

The United Kingdom has experienced an exponential increase in its prison population in spite of a 42% decline in the amount of crime being reported since 1995. This growth can be attributed to the fact that the UK government has created 3000 new offences, of which about half attract a prison sentence. Up until now the approach in the UK has been to continue investing money into the prison system in a bid to keep up with the increasing demand for space. This is combined with the worse economic climate that the UK has experienced since world war two. The result is that the current prison system is not sustainable as the government cannot afford to keep building prisons and housing and ever increasing number of prisoners. Following its success in the USA, especially Texas, as discussed above, the UK is now moving towards a justice reinvestment approach in a bid to reduce cap the current prison population, prevent recidivism and save much needed government funds.³³ They are following a similar rationale to

²⁸ Ibid.

²⁹ House of Commons Paper Reference: House of Commons Justice Committee.2010. 'Cutting Crime: the Case for justice reinvestment. Vol 1. 1-228 at 28.

³⁰ Social Justice Report 2009; http://humanrights.gov.au/social_justice/sj_report/sjreport09/chap2.html.

³¹ Ibid.

³² Ibid.

³³ House of Commons Paper Reference: House of Commons Justice Committee.2010. 'Cutting Crime: the Case for justice reinvestment. Vol 1. 1-228.

the USA that only a small number of very serious offenders require incarceration, and all other offenders would benefit from community rehabilitation.

It should be noted that both the USA and the UK have established that approximately 2/3 of their prison population are incarcerated because of a minor probation or parole infringement. Those who advocate from a justice reinvestment approach argue that this problem can be solved by investing more funds into probation and parole programs – which can be afforded if less money is being spent on prison construction. Further, the House of Commons paper recognised that the United Kingdom is putting money aside in an attempt to budget for a future increase in the prison population. Those who advocate for a justice reinvestment approach being taken argue that the current prison population should be capped, and the money that has already been put aside should be invested in community corrections and rehabilitation.³⁴

Justice reinvestment and young people

There are significant negative consequences for imprisoning young people, such as high recidivism rates, low educational and employment outcomes and no increase in public safety.

US research has indicated that youth who spend time in institutional facilities do not develop social skills such as self-control or conflict resolution as effectively as those who are not incarcerated. Further, young people who are committed to an institution have higher recidivism rates than those who are not, and are less likely to age out of their offending behaviour – often carrying it into their adult life.³⁵

Like the USA, young offenders in Australia who are sentenced to a period of detention have higher rates of recidivism and are more likely to carry their offending behaviour into their adult life in comparison to those who were kept in the community, and had similarly lower educational and employment achievements.³⁶ Further, Australian studies have indicated a possible criminogenic effect of youth detention: that is, offenders are incarcerated for minor offences, and upon their release begin to commit more serious offences.³⁷

It costs society approximately \$237,980 per year to imprison one young person (in Australia) and studies have indicated that youth detention is a pathway to adult offending as 30% of adult offenders were first incarcerated in the youth system.³⁸

Justice reinvestment will have the greatest impact on young people in the area of early intervention and prevention programs. The aim of these programs is to identify high risk young people – for example, those who come from socially disadvantaged backgrounds, and to give them the opportunity to participate in intervention programs that aim to reduce their risk of coming into contact with the criminal justice system.

A justice reinvestment approach has been adopted for young people in the United States as \$5.7 Billion Dollars was being spent annually on imprisoning young people, most of who had committed nonviolent offences and could be safely managed in the community.³⁹ Specifically

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Vumbaca, G. 2012. 'Prevention is the only hope for young offenders because cure is failing.' *YAPRAP Youth Issues and Youth Work*. at 2.

³⁹ Ibid.

New York, California, Illinois and Ohio have decided to focus on investing in community corrections and rehabilitation as opposed to continuing to incarcerate young people.⁴⁰

It was established that investing in community programs was a more economical investment as for each dollar that was invested in community corrections gave \$13 dollars back to society. Further, the implementation of this policy has reduced the recidivism rates of young people by up to 22% in some of the participating states.⁴¹

The success of applying a justice reinvestment program to young people in the USA is indicative that the same approach could be effective in Australia.

Effect on Indigenous Population

Justice reinvestment

focuses on the geographical location of offenders and it is evident that the majority of offenders live in areas of socioeconomic disadvantage. Indigenous people are over represented in all areas of the criminal justice system, and tend to live in areas of social disadvantage. Justice reinvestment has the potential to “close the gap” in this area by putting in place responses which are relevant to the particular population and therefore will be culturally appropriate.

Benefits and Challenges of justice reinvestment

The benefits and challenges of Justice Investment are as follows:

Benefits

1. Reduction in the cost of incarcerating offenders on the community;
2. Addressing the underlying issues of offending and thereby reducing the amount of crime being committed and reducing the recidivism rates in both the youth and adult community.
3. Placement of resources into the communities where they are most needed and the ability for the programs to be tailored to the specific needs of the community.
4. Change the public perception that the only way to deal with crime – especially crime committed by young people - is through long and harsh periods of detention.
5. Address the over representation of Indigenous people in all levels of the Criminal Justice System, and may help close the gap between Indigenous and non – Indigenous Australians.
6. Community programs implemented as a result of justice reinvestment are more cost effective in comparison to prison.

Challenges

1. Funding: there needs to be an upfront investment to ensure that money can be invested in community programs, while ensuring the needs of the current prison population are maintained. However the literature has indicated that once initial funding has been obtained, and the community programs are running effectively, savings will be made very quickly as offenders are rehabilitated and provided treatment to deal with the underlying causes of their behaviour, significantly reducing the chances of re-offending.
2. A common perception that community programs are a ‘soft option’ and this is seen as condoning criminal behavior especially regarding young people.

YAC submits that the benefits that can be gained from implementing a justice reinvestment approach significantly outweigh the challenges and that implementing this approach in

⁴⁰ Justice Policy Institute. 2009. *The Costs of Confinement: Why Youth Justice Policies Make good Fiscal Sense*.

⁴¹ Ibid.

Queensland will have a valuable and positive impact on young people in Queensland and the community in general, as it will allow the underlying causes of offending to be addressed and will help prevent young people making a transition from the youth justice system into the adult justice system.

Recommendations

If our community is really committed to reduction in crime and a corresponding increase in community safety then we must be prepared to move from the “law and order” rhetoric and follow the evidence:

- Justice reinvestment programs need to be incorporated into the youth justice system as the current ‘get tough on crime’ approach is ineffective in dealing with the underlying causes of offending and therefore does little to prevent recidivism, thereby indicating a poor use of public monies. There is good evidence to indicate that justice reinvestment will be more effective.
- Money needs to be invested in community programs such as rehabilitation, probation and parole programs as well as early intervention and prevention programs, aimed at high risk young people, to prevent or limit their involvement in the criminal justice system.
- Community education is needed in relation to providing accurate information about offending behaviour and offenders so that the public understands that harsh penalties and long periods of detention will not reduce youth offending or make their community safer.

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