
The Parliament of the Commonwealth of Australia

Doing Time - Time for Doing

Indigenous youth in the criminal justice system

House of Representatives

Standing Committee on Aboriginal and Torres Strait Islander Affairs

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Canberra

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Foreword

It has been 20 years since the *Royal Commission into Aboriginal Deaths in Custody Report* and yet the incarceration rate of Indigenous Australians, including Indigenous youth, is worse now. Indigenous juveniles are 28 times more likely than non-Indigenous juveniles to be incarcerated, despite Indigenous peoples representing only 2.5 percent of the Australian population. This is a shameful state of affairs.

Indigenous social and economic disadvantage have contributed to the high levels of Indigenous contact with the criminal justice system. Sadly, the Committee found there is intergenerational dysfunction in some Indigenous communities which presents a significant challenge to break the cycle of offending, recidivism and incarceration.

The Committee examined current policy arrangements for overcoming Indigenous disadvantage and found it concerning that the Council of Australian Government's (COAG's) Closing the Gap Strategy did not include a National Partnership Agreement dedicated to the Safe Communities Building Block, nor did it include specific targets relating to justice. The Committee found this concerning in view of the weight of evidence it received during the inquiry that linked unsafe communities to the development of negative social norms and increasingly high rates of juvenile offending.

The Committee has made 40 recommendations to Government and believes that to effect change in the area of Indigenous disadvantage and disproportionate incarceration rates, the following principles must be applied:

- engage and empower Indigenous communities in the development and implementation of policy and programs
- address the needs of Indigenous families and communities as a whole

- integrate and coordinate initiatives by government agencies, non-government agencies, and local individuals and groups
- focus on early intervention and the wellbeing of Indigenous children rather than punitive responses, and
- engage Indigenous leaders and elders in positions of responsibility and respect.


We need to ensure that Indigenous Australians, including Indigenous youth, are given every opportunity to contribute positively not just to their communities but to Australian society as a whole. The Committee recognises the effective and dedicated local Indigenous community organisations and individuals who deliver programs to reduce the high incarceration rate of Indigenous youth.

A wide range of stakeholders contributed to this inquiry, with a variety of views on the overrepresentation of Indigenous juveniles and young adults in the criminal justice system. The Committee would like to thank all of those individuals and organisations who contributed to the inquiry by way of submissions and exhibits, or who had their say at the public hearings and roundtable.

I wish to thank the former Chair, the Hon. Bob Debus, and the Committee of the 42nd Parliament for their contribution to this inquiry, recognising the significant amount of work and time undertaken to collect a large body of evidence for this report.

Too many Indigenous juveniles and youth have done time in our detention centres and prisons. Now it is time to do something about it. It is my hope that this report, *Doing Time – Time for Doing*, will assist in bringing about positive change for Indigenous Australians and that the future will be one of strength and partnership between all Australians.

Mr Shayne Neumann MP
Chair



Membership of the Committee

43rd Parliament

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Deputy Chair The Hon. Dr Sharman Stone MP

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Terms of reference

The Committee shall inquire into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system. With a particular focus on prevention and early intervention, the Committee will identify:

- How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement
- The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this
- Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system
- The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised
- Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres
- The scope for clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system
- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.



List of acronyms

ABS	Australian Bureau of Statistics
AC	Aboriginal Connections
ACCG	Australian Children's Commissioners and Guardians
ACT	Australian Capital Territory
ADAC	Aboriginal Drug and Alcohol Council
ADCA	Alcohol and Other Drugs Council of Australia
ADF	Australian Defence Force
AFL	Australian Football League
AHL	Aboriginal Hostels Limited
AG's	Attorney-General's Department
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health of Welfare
AJA2	The Victorian Aboriginal Justice Agreement Phase 2
ALRM	Australian Legal Rights Movement
ALSWA	Aboriginal Legal Service of Western Australia
ANU	Australian National University

ANTaR	Australians for Native Title and Reconciliation
APY	Anangu, Pitjantjatjara and Yankunytjatjara Lands
ASC	Australian Sports Commission
ASTB	Aboriginal School Based Training
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AVPRSS	Adult Voluntary Post Release Support Service
CAHABPS	Central After Hours Assessment and Bail Placement Service
CAYLUS	Central Australian Youth Link-Up Service
CCC	Communities for Children Committee
CDEP	Community Development Employment Projects
CfC Plus	Communities for Children Plus
COAG	Council of Australian Governments
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
IDDI	National Illicit Drug Diversion Initiative
IEAP	Indigenous Education Action Plan
IFSA	Indigenous Family Safety Agenda
IPROWD	Indigenous Police Recruitment Out West Delivery
IPSS	Indigenous Parenting Support Services
ISP	Intensive Supervision Program
IYMP	Indigenous Youth Mobility Program
MCPEMP	Ministerial Council for Police and Emergency Management – Police
MERIT	Magistrates Early Referral into Treatment
MHATODS	Mental Health Alcohol Tobacco and Other Drugs Service

MSHR	Menzies School of Health Research
NAAJA	North Australian Aboriginal Justice Agency
NAHA	National Affordable Housing Agreement
NAIDOC	National Aborigines and Islanders Day Observance Committee
NAJAC	National Aboriginal Justice Advisory Council
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NGO	Non-Government Organisation
NIDAC	National Indigenous Drug and Alcohol Committee
PHaMS	Personal Helpers and Mentors
PIAC	Public Interest Advocacy Centre
PRP	Pre-Release Prisoner
PRSP	Post-Release Support Program
QPS	Queensland Police Service
VLA	Victoria Legal Aid
WAACH	Western Australian Aboriginal Child Health
YDAC	Youth Drug and Alcohol Court



List of recommendations

Indigenous youth and the criminal justice system: an overview

Recommendation 1 - National Partnership Agreement 40

The Committee recommends that the Commonwealth Government develop a National Partnership Agreement dedicated to the Safe Communities Building Block and present this to the Council of Australian Governments by December 2011 for inclusion in the Closing the Gap strategy.

Recommendation 2 - Justice targets..... 40

The Committee recommends that the Commonwealth Government endorse justice targets developed by the Standing Committee of Attorneys-General for inclusion in the Council of Australian Governments' Closing the Gap strategy. These targets should then be monitored and reported against.

The role of positive social norms

Recommendation 3 – Positive social norms 60

The Committee recommends the Commonwealth Government continue to fund holistic, intergovernmental services to Indigenous youth and their families and communities, such as Communities for Children Plus, and evaluate their effectiveness in strengthening positive social norms in communities and preventing Indigenous youth engagement with the criminal justice system.

Recommendation 4 - Mentors 64

The Committee recommends the Commonwealth Government support a national program to develop and provide local mentors for Indigenous youth at risk before, during and after custody.

Recommendation 5 – Sport and recreation 72

The Committee recommends the Commonwealth Government:

- work with state and territory governments to support more sporting, music and other recreational activities for Indigenous children and youth outside of school hours, particularly in remote and regional areas
- encourage sporting bodies and sporting celebrities to become more involved in organising sporting engagement for Indigenous children and youth
- ensure continued funding for sports partnership programs and the provision of infrastructure and services to ensure sports participation by Indigenous youth, and
- investigate and address impediments to sports participation for Indigenous young men and women.

Recommendation 6 – Identification documents 74

The Committee recommends the Commonwealth Government:

- investigate options to make the birth registration process more culturally appropriate and accessible in Indigenous communities
- investigate how to raise awareness of the utility and value of the birth certificate document in Indigenous communities
- address reasons for the low rate of birth registrations in Indigenous communities and ensure that Indigenous health services and youth workers are actively working to ensure that births are registered and that all Indigenous children have a birth certificate, and
- liaise with state and territory governments to coordinate assistance to all youth to ensure they have access to their birth certificate and that this is not an impediment to them fully participating in community, travel, education, or employment opportunities.

Recommendation 7 - Accommodation 85

The Committee recommends that the Commonwealth Government commit to ensuring that there exists within all states and territories an expanded number and range of safe and gender-appropriate accommodation options for Indigenous children and youth. These options should include access to coordinated and holistic intensive care services. A housing or accommodation plan needs to have been identified for every youth leaving detention.

The Committee suggests that the range of appropriate accommodation options should include extended family houses, identified safe houses, hostel and school accommodation, foster and respite care, and emergency refuge accommodation.

The link between health and the criminal justice system

Recommendation 8 – Alcohol and substance abuse..... 95

The Committee recommends that, in collaboration with state and territory governments, the Commonwealth Government increase funding for locally based alcohol, anti-smoking and substance abuse programs.

Recommendation 9 – Foetal Alcohol Spectrum Disorder 102

The Committee recommends that the Commonwealth Government urgently addresses the high incidence of Foetal Alcohol Spectrum Disorder in Indigenous communities by:

- developing and implementing Foetal Alcohol Spectrum Disorder diagnostic tools and therapies, with a focus on working in partnership with Indigenous health organisations in remote and regional Australia where there is a recognised prevalence of the disorders, and
- recognising Foetal Alcohol Spectrum Disorder as a registered disability and as a condition eligible for support services in the health and education systems.

The Committee further considers that a comprehensive inquiry into Foetal Alcohol Spectrum Disorder prevalence, diagnosis, intervention and prevention is required and recommends that the Minister for Health and Ageing refer the inquiry to the House of Representatives Standing Committee on Social Policy and Legal Affairs.

Recommendation 10 – Mental health 108

The Committee recommends the Commonwealth Government recognise mental health as a significant issue affecting Indigenous youth and collaborate with the states and territories to direct funding where possible to successful Indigenous community developed and led programs with a focus on healing, culture, emotional wellbeing and reconnection with family.

Recommendation 11 – Hearing tests 112

The Committee recommends that the Commonwealth Government provide all Indigenous children starting pre-school with comprehensive hearing tests with appropriate follow-up support when required.

The Committee further recommends that all Indigenous children between kindergarten and Year 2 be tested as an urgent priority due to the high incidence and impacts of hearing impairments amongst Indigenous children, particularly in rural and remote areas.

Recommendation 12 – Sound amplification systems..... 113

The Committee recommends that the Commonwealth Government allocate funding for sound amplification systems in schools with high Indigenous enrolments throughout Australia, with urgent attention to schools in remote areas.

Recommendation 13 – Police training to identify hearing loss 113

The Committee recommends that the Attorney-General take to the Ministerial Council for Police and Emergency Management – Police (MCPEMP) at its second meeting in 2011, a proposed program of training for police to better identify and respond to individuals with hearing loss, particularly in Indigenous communities.

Recommendation 14 – Pre-natal and anti-natal support 117

The Committee recommends the Commonwealth Government work with state and territory governments to coordinate greater capacity for Indigenous health services to provide further programs to support:

- sexual and reproductive health counselling and services
- pre and anti-natal care and advice for teenage parents
- parenting skills information and assistance
- alcohol risk awareness during pregnancy, and
- support for pregnant women with alcohol dependency or other substance abuse.

Recommendation 15 - Health 119

The Committee recommends that the Commonwealth Government, in collaboration with state and territory governments, ensure all Indigenous youth who enter the criminal justice system are provided with:

- comprehensive health screening, including for Foetal Alcohol Spectrum Disorders
- access to intensive holistic intervention programs which involve family, mentors and Indigenous leaders and include support for mental health, hearing loss and drug and alcohol reform, and
- access to wellbeing programs which involve families and Indigenous leaders, address underlying issues of trauma, low self-esteem and build resilience and the capacity for positive social and workplace engagement.

The Committee recommends that emotional, social and cultural programs should span the length of a youth's time in detention, and continue after release.

Improving education for Indigenous youth

Recommendation 16 – School and community relationships..... 135

The Committee recommends that the Minister for Education work through the Ministerial Council on Education, Employment, Training and Youth Affairs assist schools throughout Australia to deliver better education outcomes for Indigenous students and to foster more connected and positive relationships with their local Indigenous community. The Committee considers that as a minimum schools should be incorporating a range of the following activities within the school:

- hang or fly an Aboriginal Flag and the Torres Strait Islander flag alongside the Australian flag within the school grounds
- learn about Indigenous sites of significance in the local area
- incorporate an acknowledgment of country at the start of significant events as well as at school assemblies
- commission local Indigenous artists to paint a mural, or build or create sculptures within the school grounds
- use local Indigenous languages names for school classrooms or sporting houses/teams

- build an Indigenous garden and invite those with bush tucker knowledge to be involved
- celebrate Mabo day, NAIDOC week, Reconciliation week and Harmony day
- engage Indigenous school mentors for schools with high Indigenous populations, and/or
- engage the local Indigenous community to teach language and culture afterschool and provide extra curricula activities.

Recommendation 17 – School attendance data 146

The Committee recommends that the Minister of Education immediately conduct a review into how daily school attendance and retention rates are measured to ensure that data collected can accurately inform strategies to increase attendance and retention rates and monitor progress in these areas.

Recommendation 18 – School attendance incentive programs 146

The Committee recommends that the Commonwealth Government commit to the provision of funds and administrative assistance to establish and expand across Indigenous communities the number of school attendance incentive programs (such as breakfast and lunch programs, and sporting and cultural activities during and after school).

Recommendation 19 – Teacher development 152

The Committee recommends that the Minister for Education work with the Ministerial Council on Education, Employment, Training and Youth Affairs develop a comprehensive and mandatory teachers' professional development program that:

- provides specialist training on teaching Indigenous children, and where necessary the teaching of English as a second language (ESL)
- recognises poor English language skills and health and hearing issues which may impact on learning
- gives teachers a competency in cultural knowledge and sensitivity to assist in working with Indigenous communities and families
- can be adapted to reflect local Indigenous community needs and culture, and
- trains the teachers to set and achieve high expectations for Indigenous students.

The Committee also recommends that a portion of the 2011-12 Budget funds allocated to reward top performing teachers is directed towards the formal recognition of outstanding performance in the teaching of Indigenous students, where real outcomes in progress can be demonstrated.

Improving the effectiveness of transitioning from education to the workforce

Recommendation 20 - Apprenticeships 177

The Committee recommends that the Department of Education, Employment and Workplace Relations provide greater assistance and incentives to increase the uptake of Indigenous apprentices through:

- providing specific financial incentives for employers to take on Indigenous apprentices
- including Indigeneity as one of the eligibility criteria for the Australian Apprenticeship Access Program, and
- ensuring that the Australian Apprenticeship Access Program contract providers are able to demonstrate the ability to provide culturally appropriate support and successful outcomes for Indigenous job seekers.

Recommendation 21 – Driver licences 187

The Committee recommends that the Minister for Infrastructure and Transport, in partnership with relevant state and territory governments, establish:

- specific learner driver resources in multiple media formats that appropriately meet language and literacy needs of local Indigenous communities, and
- a remote and regional learner driver licensing scheme to assist people in remote and regional areas to obtain learner and provisional licences.

Recommendation 22 – Defence Force recruitment 193

The Committee recommends that the Australian Defence Force:

- include in its training material an acknowledgement of the important contribution Indigenous people have made to the Australian Defence Force in past wars. All staff currently employed by the Australian Defence Force should be made aware of this contribution

- review its recruitment material to ensure it provides strong encouragement for Indigenous people to join, which particular reference to existing role models, for example NorForce
- consider new and innovative strategies for raising its profile with Indigenous people and for recruiting both reserves and permanent members from remote, regional and metropolitan Indigenous communities
- offer work experience for older students in the defence force, and
- increase the provision of school based apprenticeships throughout Australia and target apprenticeships to Indigenous youth in regional and remote areas.

The criminal justice system

Recommendation 23 – Police training and Indigenous employment 205

The Committee recommends that the Commonwealth Government work with the Ministerial Council for the Administration of Justice to address the following priorities at its next meeting:

- The development of a national framework for the provision of comprehensive Indigenous cultural awareness training for all police employees that:
 - ⇒ Promotes better understanding and relations between police and Indigenous communities
 - ⇒ Addresses the specific circumstances of Indigenous youth over-representation in police contact, and
 - ⇒ Outlines the diversionary options that are available, and the positive impact that diversion can have.
- An expanded national network of Indigenous Liaison Officers, with facilities to share information and knowledge across jurisdictions, and
- Incentives to increase the employment of Indigenous police men and women and opportunities for mentoring and police work experience for Indigenous students.

Recommendation 24 – Court interpreter service and hearing assistance 209

The Committee recommends that the Attorney-General present to the Standing Committee of Attorneys-General a revision of criminal justice guidelines to include formal recognition of the requirement to ascertain the need for an interpreter service or hearing assistance when dealing with Indigenous Australians.

Recommendation 25 – National interpreter service 210

The Committee recommends that the Commonwealth Attorney-General's Department, in partnership with state and territory governments, establish and fund a national Indigenous interpreter service that includes a dedicated criminal justice resource and is suitably resourced to service remote areas.

The Committee recommends that initial services are introduced in targeted areas of need by 2012 with full services nationwide by 2015.

Recommendation 26 – Legal services funding 214

The Committee recommends that the Commonwealth Government increase funding for Aboriginal and Torres Strait Islander Legal Services to achieve parity per case load with Legal Aid Commission funding in the 2012-13 Federal Budget, with appropriate loadings to cover additional costs in service delivery to regional and remote areas.

Recommendation 27 – Post-release accommodation..... 229

The Committee recommends that the Attorney-General take to the Standing Committee of Attorneys-General the proposal to increase funding for appropriate accommodation options for youth who are granted bail, in order to prevent the unnecessary detention of Indigenous youth.

Recommendation 28 – Study on sentencing options 245

The Committee recommends that the Australian Institute of Criminology undertake an analysis of sentencing options and outcomes for Indigenous youth and young adults and the use of available diversionary options to determine whether alternative sentencing options are fully utilised before resorting to incarceration.

Recommendation 29 – Alternative sentencing options 245

The Committee recommends that the Attorney-General evaluate outcomes for alternative sentencing options, such as reduced recidivism and improved positive and independent living, and from this research develop a proposal for a range of Indigenous alternative sentencing

options and present it to the Standing Committee of Attorneys-General for inclusion in the National Indigenous Law and Justice Framework.

Recommendation 30 – Pre-court conferencing..... 246

The Committee recommends that the Attorney-General takes to the Standing Committee of Attorneys-General the proposal for a nationwide program that begins the rehabilitation process of young Indigenous offenders from the point at which they are charged with an offence. The Committee recommends that such a program should include:

- Assigning a community services case worker to an individual immediately after they have been charged to organise a family conference
- A victim contact meeting where the offender hears the consequences and impacts of their unlawful actions on the victim
- Ascertaining, through family conferencing, any underlying problems that are influencing offending behaviour and setting out a plan for behavioural change with clear targets to be achieved prior to attending court. Pre-court plans for the youth could include:
 - ⇒ Regular attendance at drug and alcohol counselling and medical treatment as required
 - ⇒ Regular meetings or counselling sessions with a court approved community or family mentor or elder
 - ⇒ A genuine apology to the victim(s)
 - ⇒ The development of clear goals and aspirations for living a more productive and independent life
 - ⇒ Where appropriate, more regular and constructive family engagement
 - ⇒ A renewed commitment from significant family members to engage with the offender and involve them positively in family life
 - ⇒ Improvement in school attendance or retention in school, and
 - ⇒ Improvement in apprenticeship or training outcomes.

Sentencing of individuals who have engaged with this program should take into account any genuine progress towards meeting these targets for behavioural modification.

Recommendation 31 – Indigenous offender programs 262

The Committee recommends that the Commonwealth Government establish a new pool of adequate and long term funding for young Indigenous offender programs. Organisations and community groups should be able to apply for funding for programs that assist young Indigenous offenders with:

- Post-release or diversionary program accommodation
- reintegrating into the community and positive social engagement through volunteering and team involvement
- reconnecting with culture where possible
- drug, alcohol and other substance abuse rehabilitation
- continued education and training or employment, and
- life and work readiness skills, including literacy and numeracy

The Committee recommends that this fund is geared towards small-scale community-based groups, operating in local areas, and includes a specific stream for programs that address the needs of young Indigenous female offenders. Local employers would be encouraged to mentor and train with a view to employment.

Government policy and coordination

Recommendation 32 – Evaluate Indigenous justice programs..... 272

The Committee recommends that the Commonwealth Government commit further resources to evaluate the effectiveness of Indigenous youth justice and diversion programs and that the findings be published on the Indigenous Justice Clearinghouse and the Closing the Gap Clearinghouse websites.

Recommendation 33 – Mapping offending 276

The Committee recommends that the Commonwealth Government invest in mapping research to identify areas of concentrated youth offending, types of offending and gaps in services, with a focus on Indigenous disadvantage and need.

Recommendation 34 – Expanding data collections 277

The Committee recommends that the Australian Bureau of Statistics expand its collection of data to include:

- offender data disaggregated by all jurisdictions and all categories of offence, including traffic and vehicle related offences
- court appearance data, disaggregated by all jurisdictions by Indigenous status, sex, offence and sentence
- prisoner reception data disaggregated by all jurisdictions, according to Indigenous status, sex, offence, age, sentence length and episodes of prior offending by category of offence, and
- data on the rates of which Indigenous people are victims of crime, disaggregated by all jurisdictions and all categories of offence.

The Committee recommends that the Australian Institute of Health and Welfare expands its collection of data to include:

- detainee receptions and census data disaggregated by jurisdiction, Indigenous status, sex, offence, age, sentence duration and periods of prior offending by category of offence.

The Committee recommends that these expanded data sets are made available by no later than June 2012. This data and any trends it shows should then be annually evaluated and reported on and used to inform future policy or program changes.

Recommendation 35 – Study on the imprisonment of women 278

The Committee recommends that the Australian Institute of Criminology undertakes a study of the reasons for the increasing imprisonment of Indigenous women, with a view to informing policymakers on how best to address the key drivers of offending and imprisonment and the consequences of that imprisonment for women, their children (if any) and their community.

Recommendation 36 – Indigenous Law and Justice Advisory Body 283

The Committee recommends that the Commonwealth Government propose to the National Congress of Australia's First Peoples the establishment of a subcommittee to focus on Indigenous law and justice matters. If the National Congress of Australia's First Peoples does not proceed with an Indigenous law and justice subcommittee, the Committee recommends that the Commonwealth Government establish an Indigenous law and justice advisory body.

The Committee recommends that the Commonwealth Government:

- seeks the subcommittee's or the advisory committee's advice on law and justice matters affecting Indigenous people

- requests that the subcommittee or advisory committee monitor and report on progress under the National Indigenous Law and Justice Framework, and
- seeks the views of the subcommittee or advisory committee on any suggested amendments to the National Indigenous Law and Justice Framework following each annual review.

Recommendation 37 – Parliamentary Indigenous representation..... 285

The Committee recommends that the Commonwealth Government establish an Independent Commission to undertake a series of public consultations and investigate options to increase Indigenous representation in the Parliament, for example, quotas or dedicated seats.

Recommendation 38 – Funding of the Family Responsibilities Commission 301

The Committee recommends that the Australian Government in partnership with the Queensland Government and the Cape York Institute for Policy and Leadership extend the funding of the Family Responsibility Commission until December 2013, pending further evaluation.

Recommendation 39 – Sustained flexible funding..... 321

The Committee recommends that the Commonwealth Government work with state and territory governments to coordinate sustained and flexible funding support for a range of youth justice diversion and rehabilitation services which are developed with and supported by local Indigenous communities.

Recommendation 40 – Justice reinvestment..... 321

The Committee supports the principles of justice reinvestment and recommends that governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the justice reinvestment approach in Australia.

