



Australian Government
**Australian Institute of
Health and Welfare**

AIHW



AIHW Submission

Inquiry into Australia's youth justice
and incarceration system

Senate Legal and Constitutional
Affairs Committee

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Introduction

The Australian Institute of Health and Welfare (AIHW) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee's inquiry into Australia's youth justice and incarceration system. This submission focuses on item (b) of the inquiry's terms of reference: 'the over-incarceration of First Nations children'.

About the AIHW

The AIHW is an independent statutory Australian Government agency with more than 35 years of experience working with health and welfare data.

The institute's role is to provide meaningful information and statistics for the benefit of the Australian people by:

- developing, maintaining and promoting statistical information standards for the health, community services and housing assistance sectors
- collecting and managing data on health and welfare issues, including from state, territory and federal government agencies
- analysing and releasing a range of health and welfare products (data and reports) to key policy areas, to support better policy and service delivery decisions
- enhancing data resources with the addition of new health and welfare data assets to the institute's data holdings to fill data gaps in the health and welfare sectors
- modernising the presentation and availability of national health and welfare products to meet the needs of diverse audiences such as state, territory and federal government agencies, universities, research centres, and non-government organisations.

Part 1: AIHW youth justice data

Youth justice publications

The AIHW publishes the following reports on [youth justice](#) in Australia using data from the Youth Justice National Minimum Data Set (YJ NMDS):

- [Youth justice in Australia](#): an annual report that provides a comprehensive overview of young people under youth justice supervision in Australia in the last year. This includes the number and rate (per 10,000 of the relevant population) of young people supervised in the community and in detention.
- [Youth detention population in Australia](#): an annual report that provides information on quarterly trends on the number and rate of young people in detention on an average night. The report also provides information on the number and rate of young people in sentenced and unsentenced detention.
- [Young people returning to sentenced youth justice supervision](#): a biennial report that provides information on the number of young people released from a supervised youth justice sentence who then returned to another supervised youth justice sentence. Returns to sentenced supervision are analysed over 6 months, 12 months and the entire youth justice supervision history of young people between ages 10–17.

- [Young people under youth justice supervision and their interaction with the child protection system](#): a biennial report that provides information on young people under youth justice supervision who also had an interaction with the child protection system.

First Nations young people

First Nations people have a long history of over-representation in the youth justice systems in Australia (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011; Johnston 1991).

On an average day in 2023–24:

- About 3,300 young people aged 10–17 were under supervision. More than half (over 2,200 or 57%) of these young people were First Nations Australians.
- About 2,600 young people aged 10–17 were under community-based supervision. Over 1,700 or 55% of these young people were First Nations Australians
- About 700 young people aged 10–17 were in detention. Nearly 500, or 65% of these young people were First Nations Australians.
- Of the 176,000 First Nations young people aged 10–17, 1.1% were under supervision. This compares to 0.1% of the 2.5 million non-Indigenous young people aged 10–17 in Australia:
- The rate of First Nations young people aged 10–17 under supervision was 113 per 10,000, compared with 5.6 per 10,000 for non-Indigenous young people:
 - for community-based supervision, the rate of First Nations young people under supervision was 88 per 10,000, compared with 4.7 per 10,000 for non-Indigenous young people
 - for detention, the rate of First Nations young people under supervision was 27 per 10,000, compared with 1.0 per 10,000 for non-Indigenous young people.
- First Nations young people aged 10–17 were about 20 times as likely as their non-Indigenous counterparts to be under supervision:
 - First Nations young people aged 10–17 were about 19 times as likely as their non-Indigenous counterparts to be under community-based supervision
 - First Nations young people aged 10–17 were about 27 times as likely as their non-Indigenous counterparts to be in detention.
- First Nations young people were overrepresented under youth justice supervision in every state and territory.

Young people aged 10–13

In Australia, young people are deemed to have criminal responsibility if they are aged 10 or over. Young people aged between 10 and 14 are given the presumption of *doli incapax*, meaning that they cannot be held criminally responsible unless it can be proved beyond reasonable doubt that the young person knew that their conduct was wrong. In 2023, the Northern Territory and Australian Capital Territory raised the minimum age of criminal responsibility to 12. In 2024, the Northern Territory lowered the minimum age of criminal responsibility back to 10 and in 2025 the Australian Capital Territory again raised the minimum age of criminal responsibility to 14. However, most 10 and 11-year-olds can still be under youth justice supervision in most jurisdictions in Australia.

On an average day in 2023–24:

- of all young people under youth justice supervision, 3.8% were aged 10–13
- 5.4% of all First Nations young people under youth justice supervision were aged 10–13 compared with 2.1% of all non-Indigenous young people
- of young people under youth justice supervision who were aged 10–13, almost 3 in 4 (74%) were First Nations.

Young people in unsentenced detention

In Australia, most young people that are in detention are in unsentenced detention. That is, they enter remand, when they have been either:

- charged with an offence and are awaiting the outcome of their court matter
- found guilty, or have pleaded guilty, and are awaiting sentencing.

On an average day in 2023–24, of all young people in detention aged 10 and over:

- 4 in 5 were unsentenced (80%)
- more than 4 in 5 (83%) First Nations young people were unsentenced. For non-Indigenous young people, this proportion was 3 in 4 (75%).

More than 9 in 10 (97%) young people who were in detention during 2023–24 had been in unsentenced detention at some time during the year. A similar proportion of First Nations and non-Indigenous young people had been in unsentenced detention at some point during the year (98% and 95%, respectively). This highlights the typically shorter duration of periods of unsentenced detention compared with sentenced detention.

Part 2: Future priorities in AIHW youth justice data

Recidivism measure

A current data gap is a national measure of recidivism (also known as reoffending). The AIHW publish a report on *Young people returning to sentenced youth justice supervision*, but returning to sentenced youth justice supervision is not the same as reoffending (repeated or habitual criminal behaviour). Recidivism is not currently measured by the AIHW for the following reasons:

- The YJ NMDS only contains data on supervised sentences, not offences.
- The YJ NMDS only includes data on young people and does not track them into the adult criminal justice system.

The National Crime and Justice Data Linkage Project has been developed to address the latter data gap. In partnership with the Australia Bureau of Statistics, the AIHW are progressing a national linkage of YJ NMDS data with police, courts and adult corrections data in the ABS' Criminal Justice Data Asset (in development). This linkage aims to provide a better understanding of the flows of young people from the youth to adult justice system.

Outcomes after youth justice

Another data gap is the outcomes that young people face after they have exited the youth justice system.

The AIHW is developing the Child Wellbeing Data Asset (CWDA), which is a measure under the National Strategy to Prevent and Respond to Child Sexual Abuse. The CWDA will be an enduring, child-centred, linked data asset that enables holistic analysis of children's service

pathways and outcomes. The YJ NMDS and CP NMDS have been identified as key collections to be included in the CWDA.

The CWDA will allow researchers to greatly expand upon the existing evidence base of outcomes for young people after they have left the youth justice system. The ability to link youth justice data with health and wellbeing data will help policymakers to better understand the challenges faced by young people in youth justice supervision and how they can be better supported once they leave the youth justice system.

Glossary

- **Average day:** A measure of the number of young people under supervision from the YJ NMDS. It is calculated by summing the number of days each young person spends under supervision during the financial year and dividing this by the total number of days in the year. This summary measure reflects the number of young people under supervision on any given day during the year and indicates the average number of young people supported by the supervision system at any time. It reflects both the number of young people supervised and the amount of time they spent under supervision.
- **Community-based supervision:** A legal arrangement that requires a young person to be supervised by a youth justice agency within the community. Community-based supervision may be unsentenced or sentenced.
- **Detention:** A legal arrangement that requires a young person to be detained in a youth justice facility. This comprises both sentenced and unsentenced detention.
- **Rate:** One number (the numerator) divided by another number (the denominator). The numerator is commonly the number of events in a specified time. The denominator is the population 'at risk' of the event. In YJ NMDS reporting, rates are multiplied by 10,000 to create whole numbers.
- **Young person:** A person whom a youth justice agency supervises as a result of their having committed, or allegedly committed, an offence.
- **Youth justice supervision:** The supervision of young people on legal orders. They may be supervised in the community or in detention facilities.
- **Youth justice system:** The set of processes and practices for managing children and young people who have committed, or allegedly committed, an offence.

References

- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011) *Doing time – time for doing: Indigenous youth in the criminal justice system*, Canberra: Australian Government.
- Johnston E (1991) *Royal Commission into Aboriginal Deaths in Custody: national reports, volumes 1–5*, Canberra: Australian Government Publishing Service.