Thinking Outside

Alternatives to remand for children

Research Report

JESUIT SOCIAL SERVICES

BUILDING A JUST SOCIETY

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Ericson, Matthew & Vinson, Tony (2010)
Young People on Remand in Victoria: Balancing Individual and Community Interests
Richmond, Jesuit Social Services.

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RESEARCH REPORT

EXECUTIVE SUMMARY

Thinking Outside: Alternatives to Remand for Children, focuses on society's response to youth offending in Victoria. The report is the result of twelve months research by Jesuit Social Services that was funded by a grant from the Legal Services Board Grants Program. Along with conventional social research methods, the approach was influenced by Jesuit Social Services' long record of engagement in the field and its mission of seeking to build a just society.

The impetus for reform

The impetus for remand reform for children is discussed in the introductory section of the report. The report adduces evidence of Victoria's achievements in this field. Victoria has the lowest rate of young people on remand in Australia. However, the number of unsentenced Victorian children is growing with consequential mixing of unsentenced and sentenced children in the Parkville Youth Justice Centre – with an attendant risk of breaching Victorian law and national and international principles of human rights. The trend to make greater use of custodial remand also raises questions, taken up in later sections, about the cost effectiveness associated with the use of custodial measures at the expense of constructive community-based services.

Profiles of children in the youth justice system

Several interrelated features of the social backgrounds of the children dealt with by the youth justice system form recurrent themes of the report (Section 3). For example, profiles of young people in detention show that a high proportion of detainees have been victims of abuse, trauma, and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability are also prominent. Particular attention is given to the need for a wider focus on the environments in which children develop and this brings in factors such as family, school, community and society. Evidence gathered in the present project shows that children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers. Also, Aboriginal children are over-represented in youth justice systems across all states and territories in Australia.

Victoria's youth justice system

In *Section 4* of the report, the underlying values, structure and operation of the youth justice system in Victoria are described. Jurisdictions vary in the relative emphasis placed upon two approaches: the *welfare approach* which focuses primarily on behaviour change and crime reduction through interventions to address the underlying social causes of offending, and the *justice approach,* which is underpinned by traditional notions of criminal behaviour and appropriate responses to it. This approach is influenced by deterrence theory and seeks to hold children to account for their actions and to ensure swift, impartial and fair administration of justice. Another approach to youth justice which has been influential in Australia in recent years is *restorative justice*. This approach seeks to hold offenders to account for their actions and to provide them with the opportunity to restore their broken relationship with the victim, the community and, in many cases, with their own family. *Thinking Outside* conceives the Victorian youth justice system to be a hybrid mix of both justice and welfare approaches to children, while also incorporating elements of the restorative justice approach.

The Victorian system is administered by the Victoria Police, the Children's Court and the Youth Justice Branch of the Department of Human Services. Children on remand are the responsibility of the Youth Justice Custodial Services, a branch of the Department of Human Services (*Section 5*). Children aged 10 to 17 years who commit criminal offences are apprehended, processed, tried, and sentenced (if convicted). Key features and principles of Victoria's youth justice system include:

- recognising the unique vulnerabilities of children;
- wherever possible, avoiding the disruption that custody can cause to a child's life;
- an emphasis on diverting children from entering or progressing further in the criminal justice system; and
- a dual-track system providing an option for young people (18 to 20 year olds) to be held in a youth justice centre rather than in an adult prison, if deemed appropriate by judicial officers.

The age of criminal responsibility is set at ten years of age, in common with all Australian jurisdictions but low by international standards, an issue discussed later in the report.

The broader social service system in Victoria

The youth justice system connects to, and operates within, a wider human and community services system. The overall goal is to support children to reach their full potential and participate constructively in community life. Achieving that outcome depends, in large measure, on the effective coordination of services and programs directed at young offenders and their families. *Thinking Outside* has found that, for a number of reasons addressed in the report, achieving such coordination remains elusive. This is particularly true where children are remanded in custody. It is widely acknowledged that remand poses serious risks of harming a child's healthy development. For that reason and the questionable return on the substantial financial investment incurred – a daily average in excess of $500 for custody alone – the use of remand should be a measure of last resort.

Bail and remand decision making

The decision to grant bail or remand is discussed in section 5.3. Many children on remand are in detention for a short period of time, perhaps a single night or a weekend, before being released on bail. Others may have a substantial stay on remand due to the risk they pose to the community and/or the length of time it takes for their matter to be finalised by the court. Under existing legislation, the criteria used by police, bail justices and courts when deciding whether or not to release children on bail, include a presumption that bail should be granted in most situations, with exceptions where a child has been charged with certain serious offences that are listed in the legislation. For all offences bail can be refused where there is an *'unacceptable risk'* that a child would fail to comply with bail, reoffend, endanger community safety or interfere with the course of justice. Decision makers have the power to impose conditions when granting a child bail.

Access to services and information

The effective weighing of these considerations depends on the availability of reliable information – about the circumstances and disposition of the offender, and about the capacity of support and treatment agencies to offer timely and coordinated assistance. That this prospect is not simply wishful thinking has been demonstrated by a recent trial project called the Intensive Bail Supervision Program (IBSP). An evaluation of the pilot stage of this program found that over 40 young people were effectively supervised in the community, that the majority of these children adhered to their bail conditions, and that none received a custodial order when returning to court for sentencing.

Methodology of the research

Before proceeding to outline the recommended reforms generated by the *Thinking Outside* project, the report describes the methodology employed (*(Section 6*). First, the research draws on Jesuit Social Services' 35 years of experience gained from working with children in Victoria's criminal justice system. We have sought to build on the understanding gained from the organisation's previous research, notably 'Young people on remand in Victoria', which explored the issues of young people in the justice system in the context of 18-24 year olds.

The present study has relied on information and data gathered from a number of sources:

- A review of relevant literature, policy and legislation;
- Extensive meetings and consultation with key stakeholders in the youth justice system, including police, the children's courts, and service delivery and policy agencies in both the government and the community sectors, including Jesuit Social Services youth justice field staff;
- A stakeholder taskforce which met on three occasions to discuss the issues identified in our research and ways forward in addressing these issues. Participants in taskforce meetings included senior representatives of government and non-government agencies involved in the field;
- Analysis of primary source data gathered for the purpose of undertaking this research. These sources included:
    - Victorian Police (LEAP) data;
    - Department of Human Services Youth Justice (CRIS) data;
    - Interviews of young people (5); and
    - Children's Court observation.

The key limitation to this study was the longstanding problem affecting Victorian criminal justice research, namely the lack of capacity to link relevant data sets, most particularly to the youth justice cohort, police, Court Link and youth justice service itself. Further, the study did not include direct observation of the conditions in the custodial remand units.

Key findings and recommendations

In the report, the complete findings and recommendations for reform are presented under seven reform themes.

Reform 1: intervene early and locally (7.1)

This reform theme builds on the evidence concerning the early onset of offending by those children with multiple offence histories. The findings: approximately 2.5% of Victoria's postcodes account for 25% of youth offenders; the offenders' areas of residence have low rates of maternal and child health consultations, and high rates of developmental vulnerabilities at admission to school; and histories of offenders being clients of child protection agencies. The *Thinking Outside* findings strongly endorse the recommendation of the recent Protecting Victoria's Vulnerable Children Inquiry that there be greater integration and expansion of area-based, early intervention services. Children at risk of involvement in the criminal justice system must be explicitly targeted by these services which should include early intervention services of demonstrable effectiveness in reducing the onset of criminal behaviour. Examples of such programs include family or parent training programs, structured pre-school education programs, centre-based developmental day care, home visitation services, and family support services.

Recommended actions

1. The goal of reducing children's contact with the justice system should be a key objective of the whole-of-government Vulnerable Children and Families Strategy which is currently being developed.
2. Ensure that the local, area-based Vulnerable Child and Family Service Networks recommended by the Protecting Victoria's Vulnerable Children Inquiry include evidence-based early intervention services that are proven to reduce the onset of criminal behaviour.
3. Train all Child FIRST and family services workers to recognise and respond to the child, family and environmental factors associated with risk of offending by children.

Reform 2: Focus on prevention

The project has found that the number of children dealt with by Victoria Police for criminal offences has declined over the past decade, but the number of children being processed for crimes against the person has increased, with the biggest proportional increases among younger children (those 10 to 13 years of age). There are a range of approaches which have been shown to reduce anti-social and violent behaviours and to promote the influence of protective factors for children. These are characterised by a highly intensive level of engagement and comprehensive reach aimed at developing non-violent social skills in a range of contexts including home and school. In summary, the project findings indicate the necessity of the following measures.

Recommended actions

1. Whole-of-government crime and violence prevention strategies must specifically deal with the issue of crime and violence committed by children. They must be supported by expanded investment in youth-focused community prevention initiatives.
2. Community crime and violence prevention initiatives must engage with at-risk children in proactive and pro-social ways.
3. A continuum of evidence-informed interventions targeting violent offending is required, including:
    a. community level violence prevention initiatives
    b. restorative practices in schools and with diverse cultural groups
    c. child and parent focused programs
    d. a therapeutic approach to care for children in custody (see Reform 6).
4. Implement an ongoing culture of evaluation and continuous improvement across the youth justice system to better understand the nature and impact of violent offending by young people. This must include further research into the reasons for the rise in the reported rate of this crime.

Reform 3: Target Aboriginal disadvantage

The project has confirmed that in Victoria, compared with the general population, Aboriginal children come into contact with the criminal justice system at an earlier age, are more likely to have repeated contacts, and are over-represented throughout the entire youth justice system. This is a consequence of the broader disadvantage that is prevalent within Aboriginal communities and a range of unique risk factors.

Recommended actions

The third phase of the AJA (currently being developed) should prioritise the following as key areas for action to reduce Aboriginal over-representation:

1. Enhance support for both RAJACs and individual Aboriginal communities to develop, implement and evaluate area-based interventions that focus on the causes and consequences of offending by Aboriginal children. This should include:
    - an emphasis on family and supportive family environments through:
        - assertive referrals to child and family services
        - support services for children whose parents are offenders
        - training for Aboriginal Liaison and Family Services Workers within the Child FIRST and Family Service Alliances
    - youth-focused community legal education initiatives to build Aboriginal children's knowledge of their rights and responsibilities.
2. Continue to strengthen the cultural competence of the wider youth justice system and its capacity to effectively divert Aboriginal children from remand. This should include:
    - clear protocols for police diversion of Aboriginal young people. The Koori Youth Cautioning Project is an example of practice that should be expanded
    - a concerted effort within Victoria Police to reduce the large number of children who are processed without ascertaining their Aboriginal status
    - developing the capacity for the Children's Koori Court to hear bail applications from Aboriginal children on remand
    - articulated responsibility for Aboriginal children within the youth justice system to be included in the responsibilities of the dedicated Aboriginal Children's Commissioner or Deputy Commissioner, within the proposed Commission for Children and Young People recommended in the Protecting Victoria's Vulnerable Children Inquiry.
3. Include Aboriginal-specific eligibility criteria and cultural responsiveness in the pilot of intensive assessment and case management service models advocated in Reform 6.

Reform 4: Strengthen legislative protections for children

Despite a strong culture in favour of diversion across the youth justice system, Victoria has very few legislative protections to ensure that children are diverted away from the criminal justice system and not unnecessarily remanded. The project has observed how this results in inconsistent practice, which ultimately jeopardises the principle of custody as a last resort.

It is of particular concern that there is a small number of primary school aged children in the youth justice system. Legislation must also promote effective diversion and provide a greater level of protection for children when decisions are made to either bail or remand them.

Recommended actions

1. Raise the age of criminal responsibility to 12 years of age, with intensive service responses for children younger than 12 who engage in anti-social behaviour to be provided through the child welfare system.
2. Amend the *Children, Youth and Families Act 2005* to include a legislative framework for diversion that imposes a presumption in favour of diversion and provides a flexible range of diversion options for police and the courts.
3. Fully implement the legislative reforms from the Victorian Law Reform Commission 2007 report on Bail. Specifically:
    - amend Section 345 of the *Children, Youth and Families Act 2005* to impose a presumption in favour of summons
    - provide child-specific criteria in the *Bail Act 1977* requiring decision makers to have regard to a range of child-specific factors

- remove 'reverse onus tests' from the *Bail Act 1977* so that all bail decisions are made on the basis of 'unacceptable risk'.

4. Implement a Bail Justice Training Package and enhance police bail training to include a focus on the unique vulnerabilities of children and provisions of the legislation.

Reform 5: Maximise diversion from remand

The project has found that there are children unnecessarily held on remand. The use of remand is heavily weighted toward short stays with the majority of admissions ending with children receiving bail or the order expiring. This is most evident where children are held in custody overnight and throughout weekends. Eighty per cent of arrests happen outside business hours when young people are most active but when access to support services is most limited. At the other end of the spectrum, some children are on remand for extended time before assessments are completed and supports arranged to enable bail. The project has concluded that timely assessment and service coordination, particularly after hours, must be at the centre of reform.

Recommended actions

Build on and integrate existing initiatives to divert Victorian children and young people from remand, including ensuring 24 hour coverage. Specific areas for reform include:

1. Expand the capacity of CAHABPS to operate from 2.00 am to 9.30 am and across all areas of Victoria. In rural and regional areas, provide this function through youth justice units or as purchased from community sector agencies.
2. Improve and expand after-hours access to support for children at risk of remand, including crisis accommodation, drug and alcohol services, and outreach. Youth justice service of DHS could purchase additional access on a fee-for-service basis from community sector agencies.
3. Expand bail support for children across Victoria, including the expansion of Intensive Bail Supervision for children at risk of remand. Integrate this function into youth justice units or existing community sector youth justice services in rural and regional areas.
4. Provide intensive assessment for children at risk of repeated exposure to the justice system. Risk factors include:
    - more than one police contact
    - multiple missing person's reports and family violence call outs
    - less than 14 years of age
    - being Aboriginal
    - known child protection involvement.

Reform 6: Intensify support for the most vulnerable

There is a small but significant group of children who have repeated and extensive contact with the youth justice system, including episodes of remand.

There is evidence that treatment approaches focusing on behaviour change and personal development are more effective at reducing re-offending than those that focus on discipline, fear and surveillance. Interventions with the strongest evidence base for reducing recidivism are delivered in community settings and rely on a defined therapeutic approach and high levels of intensity across a number of layers – the child, the family, school, training and employment pathways, as well as specialist services. Often, the experience of youth justice custody in Victoria is simply punitive and isolating and has a corrosive impact on children.

Recommended actions

1. Provide an intensive, multi-layered, community-based service that engages with children and their families on a voluntary basis either in custody or in the community. This would:
    - be activated through the assessment and coordination outlined in recommendation 5.4
    - be *independent* of, but collaborating with, other services at all stages of the criminal justice system including police, courts, custody and youth justice. The service will continue for a period commensurate to need, not dictated by a child's length of involvement in the justice system
    - ensure a 'docket system' in court so matters are returned to the same magistrate and the benefits of therapeutic jurisprudence can work in tandem with relationship-based voluntary engagement.
2. Strengthen coordination between youth justice and child protection where children are involved in both systems and prevent cross over between the two systems. This includes:
    - to better manage anti-social behaviour of children in out-of-home care through the use of alternative strategies, such as group conferencing, time-out residential services, and revised protocols regarding police involvement
    - access to information regarding the child protection status of children in court for support services and decision makers in the Criminal Division of the Children's Court
    - joint responsibility and collaboration, with clear accountability, between the two systems to ensure that the needs of child protection clients who cross over into youth justice are addressed
    - flexibility in eligibility criteria and referral pathways into youth justice and child protection services with cross-over children given priority access to interventions.
3. A therapeutic approach to working with children should be formally adopted across the entire youth justice system. This approach should be adhered to in community services, in the practice of the Children's Court, and in custodial environments.

Reform 7: Develop infrastructure to build evidence of what interventions are effective

Thinking Outside echoes calls by several antecedent inquiries to reform youth justice data collection processes and systems so that Victoria can improve its capacity to implement and evaluate outcomes-based youth justice services.

Recommended actions

1. Create an independent statutory body which has the capacity to collate and analyse data across the justice system. This should be modelled on BOCSAR in New South Wales. The bureau should additionally have responsibility for coordinating and disseminating a research agenda across youth justice to inform evidence-based practice and evaluation.

2. Commission youth justice services based on their ability to engage effectively with the target group, be innovative and use evidence based interventions to meet defined outcomes.
3. Resolve limitations identified in this study with the police and Department of Human Services' data sets in the following ways:
    - build capacity to directly link de-identified data between the youth justice, child protection and disability data sets
    - tag linked orders relating to the same initiating incidents as 'events' within the data set, enabling the better tracking of returns and recidivism
    - initiate training and quality improvement measures to improve the consistency of recording and reliability of data within the Department of Human Services' youth justice data set
    - incorporate key child characteristic data within CRIS as a matter of urgency

- explore the possibility of maintaining a single set of court administrative data via the Court Link system that is subject to quality control measures and share this openly with Department of Human Services to ensure integrity and comprehensiveness of court data.

1. Introduction

The 'Thinking Outside: alternatives to remand for children' report is the result of 12 months' research by Jesuit Social Services which was funded by a grant from the Legal Services Board Grants Program.

The impetus for this research came from concern about recent sharp increases in unsentenced detention among Victorian children and our awareness of the highly vulnerable personal and socio-economic backgrounds of many of the children subject to remand. This increase in unsentenced detention has occurred despite Victoria's low remand rates compared with other Australian jurisdictions.

This report outlines the findings of the research and presents 'proposals for action' for an improved response to children who encounter the justice system. Throughout the report, the term 'children' is used purposefully to refer to persons under 18 years of age.[1] This is consistent with the definition of the governing legislation, the *Children, Youth and Families Act 2005*[2] (CYFA).

Jesuit Social Services has witnessed the injustices suffered by many of these children during 35 years' experience of the Victorian justice system. The current research aimed to identify how they could be more effectively provided with the opportunity to reach their potential and become productive and engaged members of our community. We have built on knowledge gained through previous Jesuit Social Services' research, notably *Young people on remand in Victoria* which explored related issues in the context of 18 to 24 year olds (Ericson & Vinson, 2010). While orthodox social research methods have been used, our approach to this study was influenced by Jesuit Social Services' mission of seeking to build a just society. This has its practical expression in our work which, at all times, aims to build the capacity of marginalised individuals and communities to better realise their goals and aspirations.

This report documents the collection and analyses of primary data and includes a cohort of children involved with youth justice who are also known to child protection. It highlights the uncertain boundary that frequently separates the two spheres, the patterns of disadvantage defining the remand population, especially its youngest members, and children who have multiple remand experiences. Our data collection demonstrates the over-representation of Aboriginal children, an increase in violent offences leading to the use of remand, and a lack of explicit legislative support for approaches based on diversion.

Recurring themes during the research were the most appropriate approach to dealing with criminal behaviours in children and the impact that their underlying social and individual conditions may have on these behaviours. Different perspectives on these issues included a strong focus on law and order, the impartial dispensation of justice, and wider welfare or restorative approaches that consider the underlying needs of children and victims. The discussion which follows clarifies and expands on the aforementioned issues. The evidence garnered during the research, both statistical and observational, is analysed. In addition, consideration is given to international research and practice, culminating in the final section of the report which presents seven themes for reform.

[1] An exception to this is youth justice data which includes young people aged 18 years or older. When referring to this data we use the term 'children and young people'.
[2] A child is defined by the CYFA (s3) as "in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court".

2. Background discussion

The impetus for remand reform for children

According to a 2011 report by the Australian Institute of Health and Welfare into juvenile detention in Australia, Victoria has the lowest rate of remand in Australia at 0.07 per 1000 10 to 17 year olds compared with the national average of 0.20 per 1000. On an average night 48 per cent of children and young people in detention in Australia were unsentenced. This proportion ranged from 43 per cent to 68 per cent across states and territories, with the exception of Victoria, where 22 per cent were unsentenced (Australian Institute of Health and Welfare, 2011).

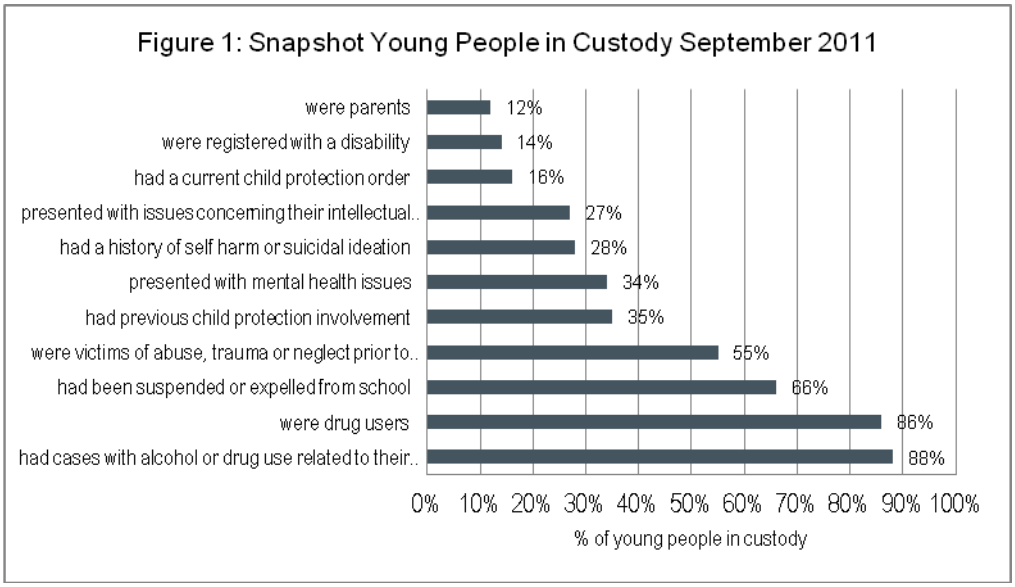
Despite this, the report shows an increase in the number of children in unsentenced detention in Victoria on an average night, from 24 in quarter two of 2007 to 40 in quarter two of 2010. This represents a two-thirds increase. The trend peaked at 49 in quarter one of 2010.

In 2004-05 there were 171 youth justice centre remand orders issued in Victoria for children 15 to 17 years of age. By 2009-10, this had increased to 526—a threefold increase (Department of Justice Victoria, 2012). Such increases do not occur in a legislative or international treaty vacuum. At the very least they raise the possibility of breaches of Victorian law, including section 22 of the Victorian *Charter of Human Rights and Responsibilities Act 2006* and Article 10 of the *International Covenant on Civil and Political Rights 1966,* which require accused persons to be detained separately from sentenced prisoners. Over-crowding was one of several concerns raised by the Victorian Ombudsman in his 2010 report about the conditions and treatment of children in Victorian youth detention facilities. Extensive and unnecessary use of remand also challenges the widely held principle that children should only be detained as an option of last resort and that they should be brought to trial as quickly as possible (Chrzanowski & Wallis, 2011).

The range of principles limiting the use of remand for children reflects widely-held views regarding the negative impacts of custody. These include exposure to the risk of further criminalisation due to peer contagion, stigmatisation, and disruption to everyday life and important relationships (Richards, 2011). Consequently, remand presents a practical challenge to those involved in youth justice systems. Police, bail justices and courts often have to make decisions regarding remand with limited information, time, and resources. Clearly, there will be situations where the interests of justice and public safety mean that remanding a child is the only feasible option available to a particular decision maker. However, there are also situations where the use of remand for children can be questioned, such as when suitable alternative support or accommodation for a child cannot be located. Administrators also face a challenge in determining an appropriate level of support for children, and in particular how to authorise this support for children who are yet to be convicted and sentenced for committing a crime. Lastly, extensive and unnecessary use of remand places a significant burden on police, court, and custodial services, particularly when compared with more constructive community-based services for children in Victoria's youth justice system.

Our previous research confirms that disadvantage, and the human and social conditions it fosters, is heavily concentrated within relatively few locations with a higher incidence of poverty, unemployment, child protection reports—and prison admissions, including remand (Vinson, 2007). Evidence tells us that children in custody are likely to be among the most vulnerable and disadvantaged in our community. The Victorian Youth Parole and Residential Board's snapshot of characteristics of children and young people in detention shows that high proportions of children and young people in custody were already victims of abuse, trauma and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability were also prominent (see Figure 1). The current research provided an opportunity to test the persistence of these patterns of disadvantage within the samples covered by our data collections and, if confirmed, to offer

suggestions for intervening in these young lives to achieve the greatest benefit for both the children concerned and the community.



The following sections of this report (sections 3, 4 and 5) provide a discussion of current knowledge of youth behaviour and offending, including the factors that dispose children to offend, and the principles of youth justice. In section 6, we provide an overview of the primary research data. We then proceed to the discussion of key findings and our recommendations for reform.

3. Children and the youth justice system

3.1 The nature of youth offending

Every child who becomes involved in the youth justice system is unique; as is the nature of the offending behavior that results in their involvement and the reasons why this behavior occurs. However, longitudinal studies have shown some general patterns of youth offending. The age crime curve is one such pattern and shows that offending rates among children increase from early adolescence into the teenage years and peak between 15 and 19 years, after which they then generally decrease as children mature into adulthood (Dennison, 2011). Within this broader pattern are some other more discreet patterns in offending by children. These include that:

- Children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers.
- Antisocial behavior and offending are consistent across childhood, adolescence and adulthood. This means that high levels of antisocial behavior are associated with higher levels of offending.
- There is a small proportion of chronic offenders who commit a large proportion of all crimes. Characteristics of chronic offenders include an earlier onset of offending, a higher frequency of offending, and longer criminal careers (Dennison, 2011).

These patterns have implications for policies and initiatives that seek to reduce youth offending; for example, the development of initiatives to reduce the frequency of offending among the group of children identified as chronic offenders. Queensland research, which has identified communities with higher rates of chronic offenders and calculated the significant costs of this offending, could be useful here (Allard, Chrzanowski and Stewart, 2012).

3.2 Understanding youth offending

Offending by children is linked to the process of adolescent development and the interactions and relationships within the development environments of children. This wider focus on the environments in which children develop brings in factors such as family, school, community and society. Importantly, these factors are not considered in isolation; instead they are understood as being integrated, interrelated and dynamic (Dennison, 2011). This understanding of youth offending means that, in order to effectively promote healthy development and limit children's involvement in the justice system, programs for children must take into account the many-faceted environments and relationships that influence development.

Different understandings regarding environmental factors and their impact on adolescent development have been used to explain the onset, persistence and desistance of offending among children. Relevant considerations include the strength of social control bonds, levels of maturity, peer influence, acquired or inherited neuro-psychological defects, family, parenting practices, school attachment, poverty, and disadvantage within both families and communities (Dennison, 2011).

3.3 Commonly identified risk factors for involvement in the youth justice system

Figure 2: Commonly identified risk factors which are associated with children who are involved in the youth justice system

- **Disability** – *three per cent of the Australian public has an intellectual disability and one per cent of adults incarcerated in New South Wales prisons were found to have an IQ below 70 in a recent study. By comparison, 17 per cent of juveniles in detention in Australia have an IQ below 70* (Richards, 2011).

- **Mental illness –** *"It is incorrect to assume that remand rates are driven solely by the seriousness of the crime; in fact, mental health and drug abuse are common contributors to increased remand rates"* (Ericson & Vinson, 2010).

- **Gender** – *There are several factors that commonly underlie or precede girls' delinquency, including depression, eating disorders, attempted suicide, relational aggression, self-mutilation, victimisation, and risky sexual behaviour. Lack of attention to these matters may impede girls' amenability to rehabilitation* (Matthews & Hubbard, 2008).

- **Drug and alcohol abuse –** *Regarding alcohol and drugs, detained children's experience with substance abuse has been found to dwarf that of adolescents in the general population. Although it was not possible to confidently gauge levels of substance dependency among the juveniles, two thirds of the detainees interviewed in a study were using a substance once or several times a day in the six months before they entered detention* (Prichard & Payne, 2006, p. 93).

- **Exposure to crime and violence –** *"The boundary between juvenile offenders and juvenile victims can easily become blurred. Cohorts of juvenile victims and juvenile offenders are unlikely to be entirely discrete and research consistently shows that these phenomena are interlinked"* (Richards, 2011).

- **Homelessness** – *"There is consistent evidence that homeless youths break the law more than the general population of young people. They do so in order to survive, stealing for food or breaking into premises for somewhere to sleep…There is also an association between running away from home and long-term involvement in crime; nearly half of sentenced prisoners report having run away from home as children"* (Johnson, 2006).

- **Child Abuse and Neglect –** *"Children and young people who have progressed deeper into the juvenile justice system are more likely to have experienced abuse and neglect, have mental health problems, and be developmentally delayed"* (Cashmore, 2011).

3.4 Structural disadvantage and youth offending

In Victoria, children aged 10 to 17 years living in areas of the lowest socio-economic status were almost three times as likely to be in detention on an average day as those from the highest socio economic status (Australian Institute of Health and Welfare, 2012). Jesuit Social Services' research found entrenched disadvantage in communities to be associated with increased indicators of criminal behavior (Vinson 2007). Areas with high levels of indicators such as low individual and family income, limited formal education and work credentials, health problems, and disability have also been shown to have higher rates of imprisonment.

With respect to juvenile offending, a study of young people placed in custodial remand in Victoria during the period 1 July 2008 to 30 June 2010 found that 2.1 per cent of the State's postcodes accounted for 25 per cent of this group.

This geographic clustering of crime has been depicted as reflecting the operation of a *web of disadvantage* with multiple strands of inter-connected disadvantage reinforcing the influence of crime disposing tendencies.

Ericson, M. & Vinson, T 2010*, Young People on Remand in Victoria—Balancing Individual and Community Interests,* Jesuit Social Services, Richmond.

The link between socio-economic disadvantage and crime has been explored in a range of studies. A number of theories have been developed that attempt to explain the link between crime and socio-economic disadvantage by focusing on opportunities for criminal activity within communities, the collective efficacy (or collective will to work to improve achievements) in communities, and social disorganisation within communities. In 1997, Weatherburn and Lind explored the relationships between disadvantage, family processes and crime. The project reached the conclusions that economic and social stress resulted in higher rates of child neglect and abuse as well as harsh, erratic and inconsistent disciplinary practices (Weatherburn & Lind, 1997). These factors drove children away from their families and increased the likelihood that susceptible children would become involved in crime. The level of social support or stress within a family could either attenuate or accentuate the levels of economic stress experienced by families (Weatherburn, 2011).

3.5 Aboriginal and Torres Strait Islander children

A marked pattern of over-representation of Aboriginal Australians in the youth justice system occurs across all states and territories in Australia. A range of reasons are given for this and these will be explored in more detail in section 7.3. They include the wider disadvantage faced by the Aboriginal community, the fact that Aboriginal children are more likely to come into contact with the justice system at a younger age and compile a criminal record throughout childhood, and some instances of racial bias, although the extent of this is disputed (Allard, 2011). Other additional risk factors are unique to the Aboriginal communities. The consequences of historic trauma, cultural conflicts, and patterns of treatment by government and the wider non-Aboriginal community have been identified as specific risk factors which have contributed to the levels of over-representation in the criminal justice system by Aboriginal Australians (Allard, 2011).

Although only around 5 per cent of young Australians are Indigenous, over one-third (38 per cent) of those under supervision on an average day were Aboriginal and Torres Strait Islander

AIHW 2011*, Youth justice in Australia 2009-10.*

3.6 Brain development throughout childhood and adolescence

The importance of early life experiences and their relationship to healthy brain development and subsequent life outcomes is now irrefutable:

> (A)n explosion of research in the neurobiological, behavioural, and social sciences has led to major advances in understanding the conditions that influence whether children get off to a promising or a worrisome start in life. These scientific gains have generated a much deeper appreciation of: (1) the importance of early life experiences, as well as the inseparable and highly interactive influences of genetics and environment, on the development of the brain and the unfolding of human behaviour; (2) the central role of early relationships as a source of either support and adaptation or risk and dysfunction; (3) the powerful capabilities, complex emotions, and essential social skills that develop during the earliest years of life, and (4) the capacity to increase the odds of favourable developmental outcomes through planned interventions (Shonkoff & Phillips, 2000, pg 1).

Children in the youth justice system—particularly those who have experienced child abuse, neglect and trauma, stressed and dysfunctional family relationships, (including exposure to homelessness, domestic violence and crime)—are more likely to have grown up in environments that are not optimal for healthy brain development. Consequently, their life opportunities have been severely compromised. Studies have demonstrated that early social and emotional development, and the quality of the parent-child relationship, affect the acquisition of social competencies and self-control and are important predictors of later health and social outcomes such as substance misuse, aggression and crime (Robinson, Silburn and Arney, 2011). Adverse early life experiences have further been shown to inhibit the development of oral language competence—the listening and talking skills that are usually acquired from birth onwards with the most rapid acquisition occurring during the first five years of life. Oral language competence in early years has an impact on a child's social interactions, development and maintenance of relationships, learning capacity, and behaviour. Studies have identified a high rate of oral language deficits in children in the youth justice system, with Snow and Powell finding that 50 per cent of a sample of 100 incarcerated young offenders met the criteria for language impairment. (Snow & Powell, 2012). Clinical theorists such as Perry and Van der Kolk (cited by Miller, 2007) have written extensively about the intense and cumulative harm experienced by children exposed to neuro-developmental trauma. These include abandonment, betrayal, physical or sexual assaults or witnessing domestic violence. Consequently, there may be developmental delays across a broad spectrum, including cognitive, language, motor and socialisation skills, and fluctuating behavioural and emotional disturbance such as rage, hyper vigilance and attention deficit disorder.

During adolescence, the brain begins its final stages of maturation and continues to rapidly develop well into a person's early 20s (Williams, 2012). The dorso-lateral prefrontal cortex, which governs the high level thinking, impulse control, and making longer term judgements only matures during the late teenage years (Williams, 2012). Factors such as these contribute to children's lack of maturity, propensity to take risks, and susceptibility to peer influence, as well broader risk factors (see Figure 2), thus increasing their risks of contact with the criminal justice system (Richards, 2011).

3.7 School retention, education and employment

A number of Australian and international studies have shown that, after the introduction of a range of appropriate controls, there is a strong relationship between school performance, rates of school retention, truancy and involvement in crime (Weatherburn, 2001). The link between levels education and children in the Victorian youth justice system is illustrated by the fact that 66 per cent of children and young people in custody in Victoria in 2011 had either been expelled or were disengaged from school. Poor school performance is a strong indicator of crime and has been shown to be a key risk factor in studies that have controlled for socio-economic status (Weatherburn, 2001). There is some debate about whether the link between school performance and crime is actually a result of the lower IQs of children who perform poorly at school and their involvement in crime. However, the importance of school performance has been made evident through the success of interventions which have improved performance and reduced involvement in crime (Weatherburn, 2001).

The school, therefore, plays a key role. Many of the factors pointing to a high risk of the onset of offending become evident in the school environment. These include truancy, rule breaking, non-

compliance and aggressiveness. Schools play an important role in individual development and as instruments of social change and value transmission. This extends to their influence on a range of risk factors that indicate the possibility of the onset of offending (Omaji, 1992).

A related issue is the radical decline in the availability of low-skilled full-time and respected work for children leaving school early, or at school-leaving age, in Australia over the past 30 years. Research undertaken by Bullis et al examined the facility-to-community transition of 531 incarcerated youth (58 per cent had a disability) and their findings pointed to the importance of the availability of involvement in work and school in reducing recidivism. It was apparent that engagement in work or school immediately after leaving a custodial facility had protective effects and that this benefit was pronounced for youths with disabilities. About 40 per cent of the sample returned to the juvenile correctional system within 12 months after release. Only 47 per cent were engaged in work or school at six months after release, and 31 per cent were engaged at 12 months after release. Participants who were engaged in work or school at six months after release tended to stay involved in those positive activities at 12 months and not return to the juvenile correctional system (Bullis et al. 2002).

4. Youth Justice

4.1 The principles of youth justice

The nature, and the interpretation of the effectiveness, of a youth justice system is determined by where one stands relative to a series of higher order principles that can be understood as the 'philosophical intent' of the system. These higher-order principles are informed by the findings of criminological research and the theories to which those findings have given rise (Hazel, 2008). They are also informed by understandings and values attached to the unique characteristics of children, and by how youth justice systems should respond to them (Chrzanowski and Wallis, 2011). Surrounding the application of these research and value-based considerations is a larger question concerning the degree of responsibility for law-abiding conduct that society requires of its children and young people. Across societies a distinction of varying degrees of exactitude is made between adults as moral agents and beings who make choices, and children who are not regarded as independent moral agents (Vinson, 2012). As one UK commentator pointed out: *"There is no well-defined rite of passage from the status of incompetent, supervised child to that of autonomous and morally responsible adult. Instead, there is the ambiguous status of (indefinitely extended) adolescence…We are uncertain whether to treat young offenders as children requiring help and guidance or as morally responsible agents…Each juvenile justice system represents a particular accommodation of this tension"* (Smith, 2005).

The 'accommodation of this tension' is reflected in the different approaches to youth justice. Internationally, the two most common approaches are the *welfare approach* and the *justice approach* (Hazel, 2008).The *welfare approach* focuses primarily on behaviour change and crime reduction through interventions to address the underlying social causes of offending (Hazel, 2008). Types of interventions under the welfare approach include treatment programs focused on the developmental needs of children (Chrzanowski and Wallis, 2011). The *justice approach* is underpinned by traditional notions of criminal behaviour and appropriate responses to it. This approach is influenced by deterrence theory and seeks to hold children to account for their actions and to ensure swift, impartial and fair administration of justice (Chrzanowski & Wallis, 2011).

Cavadino and Dignan (2007) extended the traditional justice approach to take account of more recent developments in the socio-political response to youth crime. Known as the 'neo-correctionalist' model, its principal philosophical foundation derives from an unashamedly populist 'law and order' ideology that equates effectiveness with the imposition of tough and punitive interventions. While the neo-correctionalist model incorporates early intervention and prevention, or responsibility and reparation features which resemble welfare or restorative approaches, its mechanisms for delivering these objectives are punitive. This is evidenced by its preference for early intervention predominantly through tough interventions such as the electronic monitoring of young offenders and zero tolerance policing policies.

Another approach to youth justice which has been influential in Australia in recent years is *restorative justice* (Chrzanowski & Wallis, 2011). This approach seeks to hold offenders to account for their actions and to provide them with the opportunity to restore their broken relationship with the victim, the community and, in many cases, with their own family. Victims are often afforded the opportunity to be part of the process through which offenders are made to account for their actions. Youth justice group conferencing, which is used throughout Australia, is an example of restorative justice in practice. This process brings together offender, victim, police, families and members of the community to discuss an offence and to make plans to move forward from the offence.

The influence of each of these approaches varies within and across jurisdictions. Different practices and processes within youth justice systems reflect the different principles and values that underlie each approach. The Victorian youth justice system is understood to be a hybrid mix of both justice and

welfare approaches to children, while also incorporating elements of the restorative justice approach (Department of Justice Victoria, 2012).

4.2 Youth Justice in Victoria

Victoria's youth justice system is the criminal justice system for 10 to 17 year olds. It is administered by Victoria Police, the Children's Court, and the youth justice service in the Department of Human Services. These three agencies administer a system that is principally governed by the *Children, Youth and Families Act 2005*, as well as several other pieces of legislation[3]. The *Children, Youth and Families Act 2005* confers jurisdiction upon the Children's Court (s.516), sets the age of criminal responsibility at 10 years (s.344), and outlines the key principles of the youth justice system (ss.360-362).

A notable feature of Victoria's youth justice system is its 'dual track' component which operates for offenders aged 18 to 20 years. Convicted offenders in this age category can be held in a youth justice custodial centre instead of in an adult prison when courts decide that they have reasonable prospects for rehabilitation or vulnerabilities which make them at risk in the adult system (Ericson & Vinson, 2010).

Police are commonly understood to be the 'gatekeepers' to the youth justice system. They detect and respond to allegations of offending by children and make decisions on how to proceed in processing children who offend (Chrzanowski & Wallis, 2011). Victorian police also play a role in the delivery of programs for young offenders through programs such as ROPES and monitoring children when they are on bail.

In Victoria, the Criminal Division of the Children's Court hears all criminal matters for children except murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death, and culpable driving causing death. These are heard in the Supreme Court. The Children's Court operates out of a purpose-built facility in the City of Melbourne as well as at local magistrates' courts in metropolitan and regional areas. There is also a specific Koori Court which hears matters involving young Aboriginal and Torres Strait Island People. The Neighbourhood Justice Centre, located in Collingwood, also has jurisdiction to hear criminal matters that would be heard in the Children's Court.

Youth Justice Custodial Services within the Department of Human Services administer Victoria's custodial facilities for children and young people, including facilities at Parkville and Malmsbury. The department also provides a range of services and programs for children in the justice system. These include Youth Justice Units which provide supervision to children on community sentence, court-based support services, and bail services including after-hours support. The department also contracts out services to community sector organisations to deliver programs such as youth justice group conferencing and Youth Justice Community Support Services (YJCSS) which provide intensive support to high-needs children in the community.

It is important to note that only a small number of the total population of children in Victoria is involved in the youth justice system, and an even smaller number progresses to the serious end of the system. According to available statistical figures there are 537,461 children aged 10 to 17 in Victoria (Australian Bureau of Statistics, 2012), with 31,353 alleged offenders (Victoria Police, 2011) and 12,551 cases finalised in the Children's Court in 2010-11 (Children's Court of Victoria, 2011). This resulted in a daily average of 956 children and young people on community-based orders and 84 in custody. The rate of 1.74 per 1000 children aged 10 to 17 on community-based orders per average day in 2010-11 was lower than the national rate of 2.24. For custody, the average daily rate per 1000 10 to 17 year old Victorians was 0.15, less than half the national rate of 0.35 (Australian Institute of Health and Welfare, 2012).

[3] These include the *Bail Act 1977,* the *Crimes Act 1958,* the *Sentencing Act 1991,* the *Sex Offenders Registration Act 2004,* the *Magistrates Court Act 1989,* and the *Criminal Procedures Act 2009.*

These figures illustrate the Victorian youth justice system's emphasis on diverting children from entering or progressing further into the criminal justice system. This is reflected in the sentencing hierarchy established in the *Children, Youth and Families Act 2005* requiring courts to consider lower order (non-custodial) sentences when sentencing children (s.361). The Victorian government has also expressed a commitment to diversion and enhancing diversionary practice throughout the youth justice system (Department of Justice, 2012).

For appropriate cases, diversion early in the criminal justice process offers a less costly and more efficient way of dealing with alleged offenders (Department of Justice, 2012). There is also evidence suggesting that, by avoiding the stigmatisation of involvement in the criminal justice system, diversion has the potential to reduce recidivism and other negative outcomes (Department of Justice, 2012). Diversion can be seen in practice throughout the justice system. It includes the informal ways that police deal with young offenders as well as formal cautions and referrals to diversion programs and support services. It is also in evidence in interventions available at the Children's Court such as youth justice group conferencing.

Despite the promising examples of diversion outlined immediately above, there are some limitations in the availability and effectiveness of diversionary processes and services in the Victorian youth justice system. Data from the Productivity Commission suggest that diversion is more extensively used in some other Australian states, with 57 per cent of children and young people in New South Wales diverted and 44 per cent in Queensland compared with 33 per cent in Victoria (Productivity Commission, 2012). Other limitations were identified by stakeholders of the Victorian youth justice system (including children themselves) in responses to the Victorian government's consultation process on the issue (held in 2012). Shortcomings that were identified included:

- the absence of a sound legislative basis for diversion (Youthlaw, 2012)
- inconsistent practice across the state and within organisations such as the police and courts, often depending on different locations (Youth Affairs Council of Victoria and Centre for Multicultural Youth, 2012)
- the absence of a continuum of support services and interventions to meet the needs of children who come into contact with the justice system in order to divert them away from further involvement (Youth Affairs Council of Victoria and Centre for Multicultural Youth, 2012).

4.3 How remand fits with the principles of youth justice

Remand exists in tension with the enduring presumption, consistent with the presumption of innocence, that no person should be imprisoned unless and until they have been fairly convicted and sentenced. In Victoria's youth justice system, the use of remand is also informed by the principle that children should only be detained as a last resort (Chrzanowski & Wallis, 2011). Historically, courts tolerated the suspension of that presumption in cases where there was an 'unacceptable risk' that the person charged would abscond, re-offend, or seek to influence the course of their impending trial. Presumptions in favour of a charged person being released on bail, and exceptions where there is 'unacceptable risk,' are now enshrined in legislation in Victoria (*Bail Act 1977*, s.5).

However, recent decades have seen the dilution of this presumption in favour of bail and an increased reliance on remand in the adult and youth justice systems of many countries. In Victoria, 19 such qualifiers have been added to the Bail Act in the past 35 years. Bail is commonly not presumed—which is to say, it is for the defendant to argue *for* it rather than the prosecution *against* it—in particularly serious charges, such as those involving homicide, aggravated burglary or drug trafficking. Furthermore, in instances where bail is granted, it often has attached to it a range of conditions, many of which are not related to the primary purposes of bail and which increasingly resemble the types of sanction that are imposed upon convicted offenders at sentence (Freiberg & Morgan, 2004).

The increasing reliance on remand and the tendency to impose more onerous bail conditions on accused persons have brought to light the tension that exists between the justice-oriented principles of

remand and the hybrid (justice, welfare and restorative) approaches taken to youth justice in Victoria and many other jurisdictions. The fundamental principles that govern decision making on remand and bail, particularly the limitations on the considerations that can be taken into account, focus on ensuring an accused offender makes it to court and does not re-offend. This is not surprising, as these principles, contained in the *Bail Act 1977*, are taken from the adult justice system.

In Victoria, practice regarding remand and bail for children also seems to be influenced by the welfare and restorative justice approaches within our youth justice system. This is evident in the imposition of bail conditions relating to a child's broader needs (such as accommodation or directives to seek treatment for drug and alcohol or mental illness). Furthermore, children on bail and on remand are provided with support services and interventions that extend beyond monitoring their compliance with bail conditions. While some might question how far these welfare measures can and should go for children on remand, it can also be argued that in many cases such support allays concern about the defendant's ability to meet the traditional bail safeguards. Problems arise, however, when intended benevolence distorts the impartial adjudication of guilt, or the imposition of penalties or orders of greater than usual weight for the reason of benefiting the defendant.

Nevertheless, in the interest of adequate coverage of current debates we refer to the work of the legal philosopher, Ronald Dworkin, who espouses the idea of 'law as *integrity*' (Dworkin, 1986). For Dworkin, it is essential to the very *concept* of law that it is possessed of integrity in how legal decisions and legal instruments are made and understood. According to this idea, if welfare and restorative approaches are applied to children on bail or remand then the law must make this explicit, as opposed to adopting such positions at the discretion, or not, of decision makers.

5. How remand works in Victoria

The pathways that children take into remand and their experience on remand are significantly impacted on by the decisions, policies and practices of police, courts and government agencies. These are governed by the provisions of the *Bail Act 1977* and the *Children, Youth and Families Act 2005*, as well as the policies and practices of the respective agencies and individual decision makers (Department of Human Services, 2012).

5.1 Police decisions to divert

The decisions made by police regarding how to process an alleged young offender will have a direct bearing on whether the child is subjected to remand or bail. When making this decision, police can either issue a formal or informal caution, a summons, or they can choose to arrest and charge the child. Should they process a child by way of arrest and charge, considerations regarding bail and remand come into play. At present in Victoria, there is little legislative guidance or structure to police decision making around how they should process children. One benefit of this is that it provides a level of flexibility for operational police to use their discretion in dealing with children. However it also means that there are risks of inconsistency in practice across the youth justice system. Instances of this will be demonstrated through the data analysis in this report.

Police Cautions

In Victoria, cautioning is used by police for less serious and confined instances of offending; for example, incidents where there are small numbers of offences and victims (Sentencing Advisory Council, 2012). The use of cautioning as a diversionary practice is supported by evidence that it lowers the likelihood of further offending (Dennison, Stewart & Hurren, 2006) and is an efficient way to deal with less serious offending (Allard et al. 2010). For a caution to be issued there must be sufficient admissible evidence to establish the offence and the offender must admit the offence (Children's Court of Victoria). Police can follow up cautions by referring children to diversionary programs. These programs are designed to engage with children and provide them with support to address underlying issues that contribute to their offending behavior (Sentencing Advisory Council, 2012). The Youth Support Service, which operates across the Metropolitan area and in regional centres, is the most significant diversion program in the state. Case workers in the program can work with children for up to three months and provide comprehensive assessments, referral to specialist support services and the delivery of a behavior-change intervention, BRAVO (Better Relationships Result in Valuable Outcomes), which focuses on developing positive relationships.

The low rate of youth cautioning was identified as a problem by Victoria Police in its *2009-13 Children and Youth Strategy* which committed to implementing an effective model of cautioning and diversion for children (Sentencing Advisory Council, 2012). More specifically, the low level of cautioning among indigenous children has been identified as an issue both within Victoria (Victorian Law Reform Commission, 2007) and at a national level (Snowball, 2008). An attempt to address this issue was made through the Police Cautioning and Youth Diversion Pilot Project. The project developed protocols and processes for cautioning children, including a 'failure to caution' notice to be completed by police when they did not issue a caution. A review of this pilot program found that it led to increases in first time cautioning and a drop in the re-offending rate of participants ((Victorian Aboriginal Legal Service, 2008).

Summons or arrest

If a decision is made that the alleged offences are serious enough to warrant prosecution in the Children's Court, police can commence proceedings by issuing a child with a summons or by arresting and charging them. Provisions in the *Crimes Act 1958* and the *Children, Youth and Families Act 2005* encourage law enforcement to issue summons to individuals instead of obtaining arrest warrants from registrars. While these provisions, in theory, limit the use of arrest and bail or remand, they only apply to situations where police obtain warrants to arrest children and not to police decisions to arrest and

charge in the everyday course of duty. Submissions to the Victorian Law Reform Commission's review of the Bail Act expressed concern about the inappropriate use of arrest by police when dealing with children. This was seen to be due to a lack of clarity as to appropriate situations for arrest and the fact that arrest is often a more procedurally convenient option than summons. In response to these concerns the Victorian Law Reform Commission recommended the creation of a legislative presumption in favour of summons that would be reviewable by magistrates. The Law Reform Commission also recommended that criteria for decisions to issue summons or arrest be developed by police and made available to the public (Victorian Law Reform Commission, 2007).

5.2 Remand decision makers

The police

When a child is arrested and charged, police are only able to decide on bail if it is impracticable to bring the child before a court (Victorian Law Reform Commission, 2007).However, it is usually the practice that, once a child is charged, police will decide whether to release them on bail. This decision will be made at a bail hearing and must be made by either an officer above the rank of sergeant or the officer-in-charge of a police station. A parent, guardian or independent person must be present at police and bail justice hearings (see below). It is police policy to remand children only as a last alternative and that bail with conditions is preferable to remand (Victoria Police Manual). This is made somewhat easier because of rules allowing parents or guardians to enter into an undertaking of bail on behalf of a child (*Children, Youth and Families Act 2005*, s.346 (10)). If bail is not granted, then the *Bail Act 1977* requires that the police decision be reviewed by a bail justice.

Bail justices

Bail justices are a unique feature of the Victorian justice system. They are volunteers from the community who conduct bail hearings at police stations out of court sitting hours, effectively reviewing police decisions to refuse bail. In doing this, bail justices are said to impose a higher level of accountability on police bail decision making (King, Bamford & Sarre, 2005). However, statistics show that bail justices rarely overturn police bail refusals (Victorian Law Reform Commission, 2005). Furthermore, submissions to the Victorian Law Reform Commission's report into bail outlined concerns that bail justices lacked independence from police, failed to utilise the Central After Hours Assessment and Bail Placement Service (CAHABPS, see below), and did not sufficiently understand the *Children, Youth and Families Act 2005* (Victorian Law Reform Commission, 2005). This report resulted in reforms to bail justices, including fixed terms, new eligibility criteria, a code of conduct, and mandatory training (Department of Justice, 2010). Some stakeholders have raised questions as to the extent to which these reforms have been implemented (Jesuit Social Services, 2012).

Central After Hours Assessment and Bail Placement Service (CAHABPS)

Where bail justice hearings take place, the Central After Hours Assessment and Bail Placement Service (CAHABPS) must also be contacted. CAHABPS workers attend metropolitan police stations to provide assessments on children's suitability for bail. The service is provided in regional areas via telephone assessments. However, telephone assessments with children in custody can be problematic, especially where a child has difficulty in communicating. CAHABPS workers also support children in police custody to make arrangements for accommodation and support services. Their ability to do this is constrained by the limited range of available services. CAHABPS is unique as it incorporates the Streetworks Outreach Service, making it the only service within Victoria's Department of Human Services with both a child protection and youth justice function. It also enables CAHABPS workers to access child protection records and draw on the information therein when making bail suitability assessments.

The Children's Court

When both the police and a bail justice have refused to grant bail to a child, they must be brought before the Children's Court on the next working day, or within two working days in regional areas (*Children, Youth and Families Act 2005,* s.346 (4)). Court bail hearings have a significance that extends

beyond individual matters because the court's approach to interpreting the provisions of the Bail Act is adhered to by other decision makers. If the court refuses bail, an order can be made that the child be remanded for a maximum of 21 days. Children also have the right to make further applications for bail if new facts arise or their circumstances change (*Bail Act 1977,* s.3A).

When a child is brought before the Children's Court for a bail hearing, a range of support services can be accessed. Under the *Children, Youth and Families Act 2005*, children in criminal matters must have legal representation. This can be provided through private legal practitioners appointed by the child or through Legal Aid lawyers. During bail hearings, children, their families, their legal representatives, magistrates, and other community services' workers can be assisted by the Youth Justice Court Advice Service (YJCAS). YJCAS workers provide information, advice, support, referrals to diversionary services, and assessments for supervised bail (Sentencing Advisory Council, 2012).

While not directly part of a bail hearing, there are also diversion programs at the Children's Court to which children can be referred. These programs might be accessed while a child is on bail. The ROPES program is for children charged with a summary offence, who have no prior convictions, and admit to their offending. The young offender and the police informant (or other member of Victoria Police) together complete an outdoor ropes course which aims to develop trust and an understanding of the other individual's perspective (Sentencing Advisory Council, 2012).The Right Step program operates out of the Moorabbin Children's court and is a pilot partnership between the court, local police and Youth Connect. Children on the program have their matter adjourned for eight weeks, during which time they undergo intensive therapeutic case management which focuses on skills, capacity building, information and referral, mediation, and mentoring.

5.3 Deciding to remand or grant bail

Section 4 of Bail Act creates a general presumption in favour of bail being granted to individuals in custody. However, there are exceptions to this where individuals are charged with certain serious offences (including treason, murder or drug-related offences). In these situations, the court must be satisfied that there are *'exceptional circumstances'* that justify the granting of bail. There is also a series of offences for which children must 'show cause' why their detention in custody is not justified when seeking bail. The 'exceptional circumstances' and 'show cause' requirements have the potential to result in unfair outcomes for children. In particular, it can result in their being remanded for low level offences committed while on bail. However, research by King, Bamford and Sarre noted that police often 'turned a blind eye' to the operation of the reverse onus provisions, which could be indicative of a culture that prioritises bail over custodial remand (King et al. 2005).

For all offences, bail can be refused where there is an *'unacceptable risk'* that the individual seeking bail:

- would fail to comply with a bail order, or
- would commit an offence on bail, or
- would endanger the safety or welfare of members of the public, or
- would interfere with witnesses or otherwise obstruct the course of justice (*Bail Act 1977).*

The Bail Act lists a range of factors that are to be taken into account when considering whether an individual poses an unacceptable risk. These include:

- the nature and seriousness of the offence
- the character, antecedents, associations, home environment and background of the accused
- the history of any previous grants of bail to the accused
- the strength of the evidence against the accused
- the attitude, if expressed to the court, of the alleged victim of the offence to the grant of bail
- any conditions that may be imposed to address the circumstances which may constitute an unacceptable risk (*Bail Act 1977).*

In Victoria, children cannot be refused bail solely on the basis that they lack adequate accommodation (*Children, Youth and Families Act 2005,* s.346 (9)). There is some evidence that the unique circumstances of children are taken into account by Children's Court magistrates and that the principle of detention as a last resort is complied with (Children's Court of Victoria, 2012). Furthermore, superior courts have recognised the vulnerable position of children in determining whether a child seeking bail has 'shown cause' or demonstrated 'exceptional circumstances' (Victorian Law Reform Commission, 2005). Despite this there is concern that the lack of child-specific criteria in bail decision making means that the unique characteristics and vulnerability of children in custodial settings are neglected (Victorian Law Reform Commission, 2007).

Decision makers have the power to impose conditions when granting a child bail. The Bail Act requires decision makers to initially consider undertakings before imposing bail conditions. However, in practice conditions are used far more often than sureties and undertakings. These conditions are not supposed to be any more onerous than public interest requires, taking into account the nature of the offence and the circumstances of the accused person. Conditions can be imposed to ensure that the above-mentioned 'acceptable risk' requirements are upheld. There has been concern, both in Victoria and nationally, about the inappropriateness of bail conditions being imposed on children. An area of particular concern is the imposition of geographical exclusions and curfews without considering a child's ability to comply with them (Victorian Law Reform Commission, 2007). The lack of clear direction on what are valid considerations in imposing bail conditions can be contrasted with the clear list of considerations that must be taken into account when sentencing children.

5.4 Children on bail

Children's compliance with bail conditions can be monitored through support workers, courts, and Victoria Police. A recent development in the area of police bail compliance is Victorian Police's Youth Bail Engagement program. This initiative operates in the Southern Metropolitan region and involves a more proactive approach to enforcing bail conditions (Dowsely & Hurley, 2011). In consultations, practitioners in the youth justice sector expressed concern at the punitive focus of the program, rather than on engaging and supporting children on bail. This could lead to an increase in the number of children on remand. However, formal evaluation of this program's effectiveness is yet to be completed.

Youth Justice workers from the Department of Human Services can provide bail supervision (where suitable) on a case by case basis. There is also the Intensive Bail Supervision Program (IBSP) which operates in the North and West and Southern Metropolitan Regions. The program is voluntary and provides support to children who are assessed as being at high risk of remand or re-remand. Referral for assessment can come from Children's Court staff, the police, Youth Justice Custodial Services, CAHABPS, and legal representatives. Bail supervision helps children on bail to address needs and issues relating to accommodation, education and training, employment, health and development, and family. Where children on the program breach their bail conditions, case managers are required to notify police. An evaluation of the pilot stage of this program found that over 40 children were effectively supervised in the community, the majority of whom had adhered to their bail conditions, and none had received a custodial order when they returned to court for sentencing (Department of Human Services, 2011).

5.5 Children on remand

In Victoria, children who are remanded in custody are the responsibility of Youth Justice Custodial Services. Boys aged 15 to 17 are held at the Melbourne Youth Justice Centre, while girls aged 10 to 17 and boys aged 10 to 14 are held in the Parkville Youth Residential Centre, known together as the Parkville Youth Justice Precinct. Increasing and fluctuating numbers of children on remand present a challenge for youth justice custodial services. In January 2011, 60 per cent of the custodial population was made up of remandees, but this had reportedly dropped to around 35 per cent by early 2012. High

remand numbers also present a challenge to the government's ability to meet requirements of the *Children, Youth and Families Act 2005* for sentenced and unsentenced children to be kept separate. This is also potentially a breach of Victoria's Human Rights Charter. Concerns about mixing sentenced and unsentenced prisoners were raised by the Victorian Ombudsman in a recent report into the conditions and treatment of children in Parkville (Victorian Ombudsman, 2011). This report also outlined concerns that remandees were not able to access training and mental health support services. In response to these reports, the state government has commenced implementation of reforms including capital works to improve the condition of the facilities and changes to service provision for children on remand, including the establishment of the Parkville College.

Children who are held on remand are provided with support to make bail, where appropriate. This is overseen by the Manager, Bail and Remand Coordination at Parkville, who helps these children access services and options required to make bail. Departmental policy is to promote flexibility and appropriate support to help children make bail (Department of Human Services, 2012). All children who are admitted to Parkville are provided with medical screening by Adolescent Forensic Health Services and are enrolled in the Parkville school, where they undertake a structured day of classes with a focus on literacy. When children leave remand, school staff help them transition into learning opportunities within the community. Services that respond to criminogenic or crime-producing influences are not available pre-conviction.

5.6 Alternative legislation, policy and practice approaches from Australia and overseas

Diversion

Diversion is legislated for and incorporated into youth justice practice in all Australian jurisdictions, with some differences between them. The two most common diversionary practices are formal cautions and conferencing, with other less utilised options including warnings, diversion projects, and referrals to drug and alcohol programs (Little & Allard, 2011). While the culture of diversion is strong in Victoria, other Australian states incorporate some notable differences in their diversion schemes:

- In the Northern Territory and Queensland the legislative framework for diversion places a greater onus on police to consider options for diverting children instead of arresting and charging them.
- More extensive obligations are tied to cautions in some jurisdictions, with children required to agree to conditions or undertakings when cautioned.
- Youth justice legislation in New South Wales and Queensland also limits the circumstances in which police can proceed against children by way of arrest. Legislation in both states requires that proceedings be initiated by way of summons (or equivalent), except for serious offences or where there is a risk of non-compliance or re-offending.

In Victoria there is no universal or consistent approach to diversions other than cautions and conferencing. The use of diversionary programs such as Youth Support Service, ROPES, and Right Step are heavily impacted on by the discretion of decision makers, both police and Courts, and the availability of supports in different locations.

Bail/Remand decision making

While generally consistent, there are some differences between bail criteria and procedural protections for children across Australia's states and territories. Provisions in New South Wales and ACT bail legislation require that decision makers take into account the interests of children and principles of youth justice when deciding whether or not to grant bail (*Bail Act 1992* ACT, s.23). Queensland also has a unique child-specific provision in its legislation, prohibiting decision makers from releasing children from custody if there are existing or apprehended risks to their safety (*Juvenile Justice Act 1992* Qld, s.48 (7)). These types of provisions are ineffective in the absence of appropriate support services (Chrzanowski & Wallis, 2011). Reforms that require service providers to engage with and support children on remand are currently being implemented in the United Kingdom. Legislation has been

amended so that children who are remanded are automatically deemed to be 'looked after', and are subject to support from the local equivalent of child protection services. The same series of reforms have also imposed much more restrictive standards for decision making on whether or not to remand a child. Children will only be able to be remanded if they are older than 12, there is a reasonable prospect that they will be sentenced to custody if convicted for their alleged offences, and that remand is a last resort to protect the public and limit further offending (*Legal Aid, Sentencing and Punishment of Offenders Act, 2012,* UK).

The ability of children to apply for bail after being remanded by a court differs across states. Bail legislation in New South Wales requires courts to refuse to hear additional applications for bail unless applicants can show that new facts or circumstances have arisen or that they were not represented in the first instance. A study by the Bureau of Crime Statistics and Research in NSW identified this reform as having led to an increase in the numbers of people on remand and a significant increase in the average time spent on remand (Vignaendra et al. 2009). Amendments to this section, which provided greater scope for additional applications, were made in 2009, but a recent New South Wales Law Reform Commission report into bail has recommended that restrictions on further applications be removed for children (NSW Law Reform Commission, 2012).

Monitoring children on bail

The approach taken to the enforcement of bail in other Australian states and territories presents some lessons for Victoria. Research and reviews into youth justice in New South Wales have identified inappropriate bail conditions and strict enforcement as factors that have contributed to rising numbers of children on remand (Heller & Mathis, 2012). There is little evidence that this approach has reduced rates of offending (Vignaendra et al. 2009). Problems with police data systems have also impacted on bail enforcement in New South Wales. Delays in updating police records have resulted in police mistakenly arresting children for breach of bail conditions when their bail period has ended. The Public Interest Advocacy Centre (PIAC) estimates that three per cent of a sample of children arrested for breaching bail were wrongfully detained because of data problems (Mawuli, 2012).

The Northern Territory has a strict approach to dealing with breach of bail. Amendments to the Bail Act in 2011 included the imposition of 200 penalty units, or imprisonment for up to two years, for breach of bail undertakings conditions (*Bail Act (NT),* s.37b). The maximum penalty imposed for this offence cannot exceed the maximum penalty for the original offence but it applies equally to both adults and children.

Bail support services

A range of support services are provided to children on bail throughout Australia. In Queensland, Tasmania, Western Australia and the ACT, children on bail are offered case management support so that they can comply with their bail conditions. Western Australia has adopted a justice reinvestment approach to resource its bail support services, reallocating funding for a regional youth justice custodial facility to youth bail services (Harker, 2012). A lack of secure and stable accommodation for children often results in their being held on remand (UnitingCare Burnside, 2009). This problem has been identified in New South Wales and Queensland where there have been calls for greater accommodation options and support so that children are not unnecessarily remanded. A similar problem has been encountered in the United Kingdom where recent reforms to bail legislation have placed an onus on local authorities to provide accommodation for children who would otherwise be remanded. In response to this development, remand-fostering initiatives have been expanded. These initiatives provide an alternative to custody by placing children in foster accommodation for the duration of their remand period.

Children on remand

Throughout Australia, children are remanded in purpose-built youth justice facilities. The size, age and practices within these facilities vary, but in general there are few significant differences in how they deal with children who are remanded. Internationally, a range of approaches is taken to children who are on remand. In some countries children are not remanded in custodial facilities. Instead, under more welfare-focused approaches, they are remanded in residential facilities where the factors contributing to offending are assessed and treated. These facilities have a variety of names including 'Closed Education Centres' in France (Wyvekens, 2008), 'Closed Youth Care' in Sweden (Lindstrom & Leijonram, 2008), and 'Classification Homes' in Japan (Takahashi, 2008). Foreign youth justice systems place limits on the minimum age from which children can be remanded; for example remand for under 15 year olds is prohibited in Sweden (Storgaard, 2005). There are also limits to how long children can be detained without conviction (Ministry of Justice Japan, 2009). This can be contrasted with the approach in Victoria, where there are limitations on the system's response to criminogenic or crime-promoting influences in the absence of a formal finding of guilt. However, this does not preclude the provision of voluntary services with informed consent.

6. Research methodology and data overview

This research draws on Jesuit Social Services' 35 years of experience gained from working with children in Victoria's criminal justice system. We have sought to build on the understanding gained from our previous research, notably *Young people on remand in Victoria*, which explored the issues of young people in the justice system in the context of 18-24 year olds (Ericson & Vinson, 2010).

This study has relied on information and data gathered from a number of sources:

- review of relevant literature, policy and legislation as detailed in the previous section
- extensive meetings and consultation with key stakeholders in the youth justice system, including police, the children's courts, and service delivery and policy agencies in both the government and the community sectors, and including our own Jesuit Social Services' youth justice field staff.
- a stakeholder taskforce which met on three occasions to discuss the issues identified in our research and ways forward in addressing these issues. Participants in taskforce meetings included the following individuals and organisations:
    - Judge Paul Grant, President of the Children's Court of Victoria
    - Judge Michael Burke, Chair of the Youth Parole and Youth Residential Board
    - Department of Human Services
    - Victoria Police
    - Legal Aid Victoria
    - Youthlaw
    - Youth Affairs Council of Victoria (YACVic)
    - Victorian Aboriginal Legal Service (VALS)
    - Sentencing Advisory Council
    - Brosnan Services, a program of Jesuit Social Services

- analysis of primary source data gathered for the purpose of undertaking this research. These sources are described in more detail to follow but included:
    - Victorian Police (LEAP) data
    - Department of Human Services Youth Justice (CRIS) data
    - Interviews of young people (five)
    - Children's Court observation.

6.1 Primary data sources

Police data

Police data purchased for use by this research was extracted from the LEAP database in relation to offences, distinct alleged offenders, and alleged offenders (see Figure 3) recorded against children 10 to 17 years. This data was de-identified and was for either offences or alleged offenders processed by police in the 2010-11 financial year or for the full 10 year period to 2010-11. Variables included:

- age at offence
- age at first offence or first arrest
- gender
- Aboriginal status
- country of birth
- Local Government Area of residence
- method of processing
- police region
- most serious alleged offence.

The 2010-11 LEAP data recorded 11,695 children (distinct alleged offenders), 24,551 offences, and 31,353 alleged offenders, as defined in Figure 3 below.

Figure 3: Definition of terms (police data)

Offences: refers to offences committed by *known* alleged offenders. This is not the full count of offences committed in Victoria by children under 18—but the full count cannot be known unless a person is processed for that offence and thus his or her age ascertained. There are more offences than *distinct offenders* as one young person can be charged with more than one offence. There are more *alleged offenders* than offences as more than one young person can be charged with the same offence.

Distinct alleged offenders: (Distinct offenders) refers to the number of distinct individual offenders processed for the commission of an offence. Individuals who allegedly offended on more than one occasion between 1 July 2010 and 30 June 2011 will only be counted as a single distinct alleged offender.

Alleged offenders: refers to persons who have allegedly committed a criminal offence and have been processed for that offence by arrest, summons, caution or other (penalty notice, official warning, or warrant of apprehension) between 1 July 2010 and 30 June 2011 regardless of when the offence occurred. Persons are counted on each occasion they are processed and for each offence counted in recorded offences (e.g. a person processed three times will be counted three times). Only the offence in recorded offences for which the offender has been processed is included. It is important to note that this is the definition from the police crime statistics. It is for *alleged* offenders, not court determinations.

Youth Justice data

The Department of Human Services Youth Justice and Disability Forensic Unit provided de-identified data extracted from the Youth Justice Client-Relationship-Information-System (CRIS) database for the specific purpose of this study.

Types of variables accessed through the Department of Human Services' data included:

- order type
- unique client identifiers
- issue and outcome dates
- order outcomes
- offence category description
- custody admissions details
- age, gender and Aboriginal status
- postcode and Local Government Area (LGA)
- country of birth
- VONIY classification level (Victorian Offending Needs Indicator for Youth).

We requested the full youth justice order history of all children and young people who had a youth justice order at any time in 2010, from their first order through to the cut-off point when data was extracted on 4 May 2012. Data was requested in this manner to enable a full history of the youth justice involvement of these children and young people before and after a point of intersection with youth justice.

The Youth Justice orders that these children and young people experienced is merely an indication of their likely contact with the Children's Court, as CRIS only collects data about court orders supervised by

Youth Justice. This excludes pre-sentence court appearances and orders pre-conviction (which are recorded on the Court Link database). Nor does the CRIS data system inform us about the offending rate of the children, because multiple court appearances and orders can relate to a single offence. The CRIS order record does represent, however, the extent of children and young people's interactions with the statutory component of the criminal justice system. In addition to the individual and social burden represented by these interactions, there are the administrative costs of processing this volume of matters by the court system and agencies such as legal aid and the police.

Number of children

Data was provided for 2,358 children and young people, 1,609 (68 per cent) of whom were 10 to 17 years of age when the order commenced in 2010. The orders for young people 18 years and older are a combination of children's and adult court orders (the source was not identified in the data accessed by this research). The Children's Court can issue orders for young people who were 17 or under at the time of the offence and no older than 19 when proceedings commenced (*Children, Youth and Families Act 2005*). Other orders for this older cohort are issued by adult courts through the operation of the dual track system which can sentence young people aged 18 to 20 to Youth Justice Centre Orders. As the data cannot be disaggregated to include only Children's Court data, all orders are included in the analysis. Generally, when all orders are referred to, we use the broader descriptor of 'children and young people' to refer to their recipients.

The orders of primary focus for this study relate to the experience of remand. This data was made available to us in two forms. The first was all order data which included all remand and re-remand orders issued for the 2,358 children and young people included in the data set. As a remand admission can include multiple remand or re-remand orders, the Department of Human Services further collapsed the data into 'admissions data' with a single issue and exit dates relating to the entire episode of remand. This had the positive effect of ‘cleansing’ the data and making the ‘end reason’ date more reliable than was observed in the all order data set.

In all, 826 (35 per cent) of the 2,358 children and young people who had a youth justice order in 2010 were issued remand orders at any time over their youth justice involvement to May 2012. The admissions data was reported for 806 of these children and young people (the reason for the discrepancy between the two data sets is unknown). In all, 789 (96 per cent) of the children and young people with remand orders were 10 to 17 years of age at remand, the remaining four per cent were older. All these remand orders are issued by the Children's Court as, under an anomaly in the Victorian dual track system, young people outside Children's Court jurisdiction can be *sentenced* to custody, but not remanded, in youth justice facilities. Ninety-eight per cent (434) of the 444 children with remand orders that commenced in 2010 were, in fact, 10 to 17 years of age.

Number of orders

The 2,358 children and young people received a combined total of 16,325 orders from their first order through to the cut-off date of 4 May 2012; 6,684 of these orders were in the years preceding 2010, 5,978 were in 2010, and there were 3,663 after 2010 to the cut-off in May 2012 (see Table A1, Appendix C). Table 1 immediately below shows the order distribution in 2010 with respect to both numbers of children and young people and number of orders.

Table 1: 2010 orders by classification type

Order classification	N Young People	Percent Young People (N = 2,358)	N order	Percent Orders (N = 5,972)	Ratio orders to young people
Adjournments*	867	37%	1,080	18%	1.2
Bail	210	9%	382	6%	1.8
Community orders	1,609	68%	2,110	35%	1.3
Remand	475	20%	1,530	26%	3.2
Sentenced Custody	383	16%	870	15%	2.3

*Almost exclusively Deferral of sentence orders, see Table 9 Appendix 1. Data is from all order data table and includes higher numbers of children with orders (475) than admission data table (444), as reported above.

Twenty-two per cent (522) of children or young people received only one order (the 2010 order) and had not received another order to the date of data extraction in May 2012. The remaining 78 per cent of children or young people received more than one order—51 per cent more than three orders and 18.5 per cent more than 10 orders over the course of their youth justice involvement (see Tables A2 & A3, and figure A1, Appendix C).

Remand contributes greatly to these figures, with 26 per cent of all orders in 2010 being for remand alone (30 per cent of all orders ever in relation to the 2010 sample, Table A1 Appendix C). There is some merit in the volume of orders if the protection afforded to children through the *Children, Youth and Families Act 2005—that* remand orders can be for no longer than 21 days without returning to Court for an extension—is provided. This can only be the case, however, if these remand admissions are both necessary and in the child's best interests. These two issues are of central importance to the data analysis and discussion of reform directions which follow.

Interviews of young people

The research interviewed five young people to gain an understanding of their perspective on the experience of remand and to add a qualitative element to the statistical analyses.

The interview purpose and structure were subject to the internal Jesuit Social Services' ethics approval process, which includes appraisal by an independent academic. It was determined that to comply with legislative obligations relating to confidentiality and disclosures concerning young people on orders, interview subjects should:

- be 18 years of age or older
- not be on current youth justice orders
- have experienced remand while subject to a youth justice order.

Five young people were selected who met these criteria, one being Aboriginal and four non- Aboriginal.

Of the young people interviewed:

- first remands were at 12, 13 (x2), 14 and 17 years of age
- numbers of remand admissions were 1, 2, 4, 6 and 8 (at least)
- four of the five had childhood involvement with Child Protection
- only one had been attending school at the time of their first remand (the young person was aged 12 at first remand).

Narrative information offered by the young people is dispersed through the results and discussion to follow.

The interviews followed a structured format (attached at Appendix A) and were undertaken with the young people by youth or social workers. Young people were given a $50 voucher for participating.

Court observational data collection

To increase our understanding of remand decision making and the circumstances of children who end up being remanded, a week of observations of remand and bail hearings was conducted in the Children's Court of Victoria. This also provided an opportunity to verify some of the patterns evident in the analysis of police and departmental data. Observations were conducted over the course of one sitting week (four days), between 8 and 11 October 2012 at the Children's Court in Melbourne. These observations took place in the courtroom which hears bail applications, remand hearings, and mentions of criminal matters at various stages of progress through the Children's Court. The fact that proceedings in the Children's Court are conducted in public open courts enabled us to observe and take notes of proceedings. In doing so, the privacy requirements of the court were complied with. Further to this, permission to conduct observations in the court was sought and granted, and we liaised with the court over what information could be recorded.

The limited nature of these observations meant that quantitative analysis of the findings and conclusions on bail and remand decision making in the court was not advisable. However, the observations provided an opportunity to observe the processes of remand and bail decision making in practice and the involvement or otherwise of the children who appear in court on these hearings. It also provided an opportunity to better understand the relationship between bail, remand and the wider work of the Children's Court.

In total, 58 matters were observed of which five were a bail application, a remand hearing, or a sentencing hearing for a child on remand. In addition to this, a significant number of children (23) who came to court during the week were on bail or some other form of community-based order.

Outcomes of the court observations are included as Appendix B and dispersed, as relevant, through the discussion of reform directions.

Cost of custody

In order to understand the cost of remand, custody costs were calculated for a number of different cohorts of children identified through our research data, as seen in Box 1 below. These cohorts will be further explained through the analysis in section 7 to follow.

The cost per child of a single day in custody was based on the cost quoted by the Victorian Minister for Community Services, Mary Wooldridge, in the 2011-12 budget announcements of approximately $528 per day in custody.[4]

[4] Victorian State Budget FY2011 (http://www.budget.vic.gov.au/domino/Web_Notes/budgets/budget11.nsf/d6e571e551bef80eca2572bb002bcea7/4efe7a52cad51f24ca2578850006470c!OpenDocument)

Box 1: Cost of custody for sample remand cohorts

Category	Admissions	Days	Total cost	Avg days in custody per admission	Avg costs per admission	Average cost per child
Short-term remand (1-7 days)	282	868	$458,304	3.08	$1,625.19	NA
Remand admissions ending in bail	414	6,854	$3,618,912	16.56	$8,741.33	NA
Total all admissions (up to May 2012) for 444 children remanded in 2010	1,834	120,795	$63,779,760	65.86	$34,776.31	$143,648.11
Total all remand admissions (up to May 2012) for 444 children remanded in 2010	1,472	40,138	$21,192,864	27.27	$14,397.33	$ 47,731.68
Remand admissions in 2010 for 444 children remanded in 2010	718	17,763	$9,378,864	24.74	$13,062.72	$21,123.57
27 children first detained under 12 years old (sentenced and remand)	182	5,770	$3,046,560	31.70	$16,739.34	$112,835.56
27 children first detained under 12 years old (remand)	145	2,716	$1,434,048	18.73	$9,889.99	$53,112.89

The key limitation to this study was the perennial issue of Victorian criminal justice research—the lack of capacity to link relevant data sets, most particularly to the youth justice cohort, police, Court Link and youth justice itself. Further to this, the study did not include direct observation of the conditions in the custodial remand units, with such access not explored as part of the study's methodology.

Numerous other issues were encountered regarding the nature or quality of available data. Foremost among these was the lack of demographic or profile data available within the youth justice data set on attributes of children on orders. This includes data about child protection status, with the only direct data coming from a records-matching exercise undertaken by the Youth Justice and Disability Forensic Unit with respect to 51 children who were first remanded, or who had any youth justice order in 2010, between the ages of 10 and 12 years There was also a lack of data on mental health or disability status, substance use, educational attainment and participation among other demographic variables. These issues will be returned to in section 7.7.

7. Themes for reform

Our analysis of the information sources outlined in section 6 has identified seven themes for reform as the basis of practice, policy or legislative alternatives to remand for children. These are:

1. Intervene early and locally
2. Focus on prevention
3. Target Aboriginal disadvantage
4. Improve legislative protections for children
5. Maximise diversion from remand
6. Intensify support for the most vulnerable
7. Develop infrastructure to build evidence.

The key findings from the primary data analysis are presented where relevant to each of these themes, leading to directions for reform and specific recommendations, as specified in a later section. These reforms will enhance decision making on remand and bail and provide more intensive, timely and better coordinated support services. In doing so, they will meet the needs of children and satisfy the community's desire to reduce offending and the numbers of children caught up in the criminal justice system. Before considering specific reforms, it is important to reflect on the principles and purposes of our youth justice system and how these should influence our approach to remand.

What should be our approach to remand for children?

The Victorian youth justice system endeavours to dispense a fair and impartial form of justice to children, while taking into account many of the underlying issues that influence their behaviour. However, it does not, as its primary purpose, seek to address these issues as would be the case in a more welfare-oriented youth justice system. This is evident in relation to remand and bail where legislation limits the use of remand and provides procedural protections for children. There are, however, some limited support services to assist children to satisfy and comply with the requirements for release on bail. This approach to remand reflects the hybrid nature of Victoria's youth justice system which incorporates various elements of justice, welfare, and restorative approaches when dealing with young offenders.

The youth justice system is part of wider framework of services working with children, their families and communities. Other service systems that work with children include education, child protection, and health and wellbeing. In general, and as stated by the Victorian Government, these systems work towards a Victoria where children have the opportunities to reach their potential and become productive and engaged members of our community (Office for Youth, 2012). This broadly stated objective provides a context for decision making and practice in relation to remand. The combination of the government's stated goal, the findings of our research, the consultations we have undertaken, and the practice advice we have received, have led to the identification of key principles that shape our approach to reform in youth justice and specifically to remand. These principles are:

- There needs to be limited intervention[5] through the justice system, with an emphasis on protecting the human rights of children.
- Comprehensive interventions commensurate with children's needs should be linked to the youth justice system. These interventions should be available irrespective of where the child sits within the justice system.
- Community and family have the opportunity to play a key role in preventing offending and rehabilitating children who offend. Responses to children should be embedded within social systems including family, local community, Aboriginal and culturally and linguistically diverse (CALD) groups.

[5] See Appendix, F, Key definitions and terms

- Children need to be empowered to have a say in the systems that affect them and to be involved in the processes of accountability, rehabilitation and restoration to the community.
- Children who offend are able to learn from mistakes when they have been held to account and understand that their actions impact on victims and the wider community.

The discussion and recommendations for reform that follow are based on the principles outlined above. We believe that reforming the remand system will enable the youth justice system to better contribute to the wider goal of helping children reach their potential and become productive and engaged members of our community.

7.1 Intervene early and locally

Section 3 of this study presented research and theories that identified healthy childhood and adolescent development as crucial to understanding the onset and persistence of offending by children. Some of the key risk factors for involvement in the youth justice system included socio-economic disadvantage, the quality of learning environments and attachment to education, instances of childhood neglect and abuse, and the quality of family relationships and other social supports. Research, including the present study, suggests that children who come into contact with the criminal justice system at an earlier age are likely to offend more often and over more extended periods of time.

Key findings and discussion

There are clear links between area-based socio economic disadvantage and the experience of youth justice involvement. There are also associations between the youngest in our youth justice system, environmental factors and early life experiences. There was a strong statistical correlation between areas of marked disadvantage on the SEIFA scale (Socio-Economic Index for Areas) and high rates of youth justice involvement (see Box A1, Appendix D1). Consistent with findings from previous Jesuit Social Services' research, this study found that 25.1 per cent of children with youth justice orders in 2010 came from 2.6 per cent of Victoria's postcodes. Previous Jesuit Social Services' research found that 25 per cent of adult prison admissions in 2003 came from 2.1 per cent of postcodes (Vinson, 2004) and that 25.4 per cent of young adults (aged 18 to 24) who were remanded between 2008-2010 came from 2.2 per cent of postcodes (Ericson & Vinson, 2010). This suggests that the concentration of adult offenders in disadvantaged communities identified in previous research also occurs among child offenders.

This study further found that, for children who were aged 14 years or younger at their first youth justice orders, there were significant correlations between their local government area and areas with higher rates of missed maternal and child health appointments and developmental vulnerability on two or more domains of the Australian Early Development Index (see Boxes A2 and A3, Appendix D1 for supporting detail). These findings suggest a need for action earlier in life to address the risks of offending and that this should be directed to disadvantaged communities where the onset of offending is more likely. Recommendations for early intervention in disadvantaged communities have previously been made by Jesuit Social Services in our submission to the Protecting Victoria's Vulnerable Children inquiry.

Younger children are a small component of the offending population and the prospect of involvement in the youth justice system increases with age. As described in the introduction to this study, very small numbers of the general population come into contact with the youth justice system, and even fewer are detained in custody. The age-crime curve suggests that the 'peak' age for offending in society is middle adolescence (14 to 17 years: see Table 2 below for age range of children who offended in 2010-11). By contrast, younger children are a small component of the offending population. Specifically, within the general population in 2010-11, children aged 11 to 13 years accounted for approximately 41 per cent of 11 to 17 year olds but they accounted for less than half of that proportion

(19 per cent) of offenders in the same 11 to 17 years age group. This could reflect a reluctance to treat anti-social behaviour by primary school aged children as 'criminal'—a policy which we later show is officially endorsed in some jurisdictions—or it may simply reflect an increasing potential to engage in such behaviour as children grow older.

Although the numbers of younger children (those aged 13 or below) involved in the justice system in any given year are low, a significant number of children involved in the youth justice system are first involved at this young age. When age of first offending for the 2010-11 cohort of young offenders (10 to 17 years) is considered, it is found that, while 19 per cent of this cohort were 10 to 13 years of age as reported above, 36 per cent first offended at 13 years of age or younger (see Table 2 below and Fig A2, Appendix D1). The more interventionist the method of processing in 2010, the higher the proportion of children first processed at 13 years or younger. For example, 57 per cent of children 10 to 17 arrested in 2010-11 were 13 or under at their first offence, compared with only 34 per cent of children cautioned by police (see Table A5, Appendix D1).

The findings are more alarming for Aboriginal children. Twenty-eight per cent of the Aboriginal and Torres Strait Islander (ATSI) children who offended in 2010-11 were aged 13 or younger, compared with 18 per cent of the non-ATSI children of the same age band who offended in the same year. However, the proportion of all 11 to 17 year old ATSI offenders in 2010-11 who first came to official notice when they were 13 or younger (64 per cent) bordered on double the rate of non-ATSI young offenders (35 per cent). (See Table 2 below and Fig A3 Appendix D1). The specific issue of Aboriginal over-representation in the justice system will be further examined in Reform 3.

Table 2: Distinct offenders under 18 in 2010-11; age in 2010-11 and at first offence by Aboriginal status

	Distinct Offenders					
	ATSI		**Non-ATSI**		**Total under 18**	
	Age 2010-11	**Age 1st offence**	**Age 2010-11**	**Age 1st offence**	**Age 2010-11**	**Age 1st offence**
<=11	41	171	278	808	406	1,208
12-13	133	219	1,319	2,270	1,789	3,058
Total<=13	**174**	**390**	**1,597**	**3,078**	**2,195**	**4,266**
%<=13	**28%**	**64%**	**18%**	**35%**	**19%**	**36%**
14-15	200	143	3,193	3,384	4,162	4,340
16-17	239	80	4,116	2,446	5,331	3,084
Total < 18	**613**	**613**	**8,906**	**8,908**	**11,688**	**11,690**

It also appears that children who come into contact with the justice system at a younger age are more likely to commit multiple offences. When multiple offences are considered for alleged offenders in 2010-11 (as opposed to the per child count for the distinct alleged offenders reported above), this study found that while only 15 per cent of all alleged offenders in 2010-11 were 13 or younger, three times that many (46 per cent) first offended at 13 years of age or younger (see Tables A5 and A6, Appendix D1). This suggests that those children who offend repeatedly are more likely to come to police

attention at younger ages, compared with the incidence of the youngest children in the offending cohort in any year.

Involvement in the justice system at a younger age appears to increase the likelihood of poorer outcomes including remand. On the basis of the youth justice orders data we have compiled, this study found that while only 12 per cent of children with such orders in 2010 were 14 or younger (see Table A7, Appendix D1), three times as many (38 per cent) of those with remand in 2010 were the recipients of their first order(s) at 14 years or earlier (see Table A9, Appendix D1). This pattern again was more pronounced among Aboriginal children. Fifty-one per cent of Aboriginal children with remand as their first order in 2010 had incurred their first youth justice order at 14 years of age or younger (see Table A9, Appendix D1, and Table A8 for age at first order by Aboriginal status).

The links between early childhood experience and the onset and persistence of offending was most evident among children who were remanded at the age of 12 or under. In the youth justice system in 2010-11 there were 27 children who had experienced remand at the age of 12 or under. All of these children experienced child protection during their childhood, as did 54 per cent of children with youth justice orders in 2010 who had not experienced remand (see Table 3 below). It should be noted that very small numbers of children 10 to 12 years of age are remanded in Victoria over the course of a year, with nine remanded in 2010.

Table 3: Child protection history of children aged 12 and under with or without remand history

	12 or under at remand with YJ order in 2010		**Children 12 & under in 2010 with no current or previous remand**		**Total**	
Age of 1st report to CP	N	Percent	N	Percent	N	%
3 days or less	2	7%	2	8%	4	8%
Under 1 year	5	19%	3	13%	8	16%
Under 2 years	3	11%	2	8%	5	10%
Under 3 years	4	15%	1	4%	5	10%
Total known to CP under 3	**14**	**52%**	**8**	**33%**	**22**	**43%**
3-6 years	6	22%	2	8%	8	16%
Total known to CP under 7	**20**	**74%**	**10**	**42%**	**30**	**60%**
10-12 years	5	19%	3	13%	8	16%
13-14 years	2	7%	0	0%	2	4%
Not known to CP	**0**	**0%**	**11**	**46%**	**11**	**22%**
Total	27	100%	24	100%	51	100%

(Note: Experience of remand at 10-12 years is at any time over involvement with youth justice, not only 2010.)

The 27 children who experienced remand at 10 to 12 years of age went on to accrue three times more youth justice orders over the period of their involvement to May 2012 than the average for all children with youth justice orders in 2010 (average of 21 orders per child compared with seven for the whole cohort). As seen in Table 4, these children experienced more average remand, sentenced admissions, and more average days in both remand and sentenced custody than did children remanded over the age of 13. Combined, they have spent to the date of data extraction 5,770 total days in custody at a

total cost of $3,046,560 (see Box 1). Importantly as 19 of the 27 children first detained at 12 or younger were still 16 or under at their last recorded detention order, more days in detention are highly likely before they age out of the youth justice system.

Table 4: Detention history of children first remanded at 10-12 years (N=27) and at 13 or older (N=779)

		Remand Admissions	Sum of Days Spent on Remand	Sentenced Admissions	Sum of days spent in sentenced detention	Total detention admissions	Total days detained
10-12 years	**Total**	145	2,716	37	3,504	182	5,770
	Average	5.4	100.6	1.4	113.1	6.7	213.7
13 yrs & older	**Total**	2,247	55,244	743	74,491	2,990	129,735
	Average	2.9	70.9	1.0	95.6	3.8	166.5

This study offers two possible explanations as to why the youngest children in the justice system have such poor experiences. *The first is that it is the most vulnerable children who come into contact with the justice system at the youngest ages.* The present study has provided several sources of evidence supportive of the reasonableness of this perspective: the geographic concentration of child offenders and, for that matter, offenders generally, in locations of marked socio-economic disadvantage; the manifestations of disadvantage in the histories of young offenders, including their upbringing in areas characterised by relatively poor early education and social development, as assessed by the Australian Early Development Index (AEDI), and areas with comparatively higher rates of missed maternal and child health consultations; and, most strikingly, an overlap between the identification of some children as being in need of protection and their early engagement in anti-social behaviour. This evidence of social factors contributing to juvenile offending is confirmatory for the State of Victoria and its children rather than something in the nature of a discovery. In earlier sections we have drawn upon the evidence of national and international research pointing in the same direction.

Thus, according to the aforementioned perspective, the anti-social behaviour that brings many children into contact with criminal justice authorities must be understood within the context of harm experienced as a result of wider childhood experiences. This includes the range of individual and environmental factors, including within the family, described in section 3 of this study.

The second view is that the response of the youth justice system to younger offenders has a self-perpetuating effect which leads to further contact with the system. This position is grounded in the criminological concept of 'labelling' or official reactions to anti-social behaviour that serve to engender self-fulfilling responses. Numerous earlier cited research findings demonstrate an association between higher rates of recidivism resulting from more punitive levels of intervention within the youth justice system (Richards, 2011). It is also supported by the notion and practice of imposing more invasive responses for successive offences which means that those entering the system at a younger age, particularly Aboriginal children, are more likely to experience successively more interventionist justice responses throughout their childhood years. This understanding will be explored in more detail when discussing Aboriginal over-representation in section 7.3.

This study takes the position that both perspectives—that the most vulnerable children come to the attention of the justice system at youngest ages and that the system then compounds these vulnerabilities—interact to explain the poor experiences and outcomes for the youngest children, those 14 or under, and 10 to 12 in particular, in the youth justice system. Later reform proposals (sections

7.4, 7.5 and 7.6) deal with ways to improve the justice response by diverting as many children as possible to sources of support to help overcome the causes of their anti-social conduct. It is also possible for action to extend beyond the confines of the youth justice system and address some of the environmental factors that influence the risks underlying children engaging in offending behaviour. The reform directions considered immediately below emphasise initiatives to address these environmental factors, particularly the support available to children and families early in life to prevent later involvement in the youth justice system.

Reform directions

The need for intervention early in life

Developmental systems theory and the isolation of risk factors for children's later involvement in the criminal justice system provide theoretical and empirical justification for intervening with children during their developmental years to reduce the likelihood of their later involvement in offending. Early intervention directs resources towards children, their families, schools and communities with the ultimate aim of enhancing the protective factors that mitigate against involvement in crime (Freiberg & Homel, 2011). The focus on protective factors and positive skills development is important as research shows this focus is more effective than risk mitigation. Early intervention extends beyond children themselves to the wider social systems within which they develop (Freiberg & Homel, 2011).

A range of interventions can be characterised as early intervention/prevention. The most effective of these at reducing delinquency and youth crime have included family or parent training programs, structured pre-school education programs, centre-based developmental day care, home visitation services, and family support services. Some early intervention initiatives have developed frameworks of these interventions to enhance the overall developmental systems for children in high-risk communities. Examples of this comprehensive systems approach include the Pathways to Prevention initiative in Queensland, and Sure Start Children's Centres in the United Kingdom (Freiberg &Homel, 2011). In Victoria, there has recently been strong government investment to strengthen its early intervention capacity in the child and family domain. This includes the Best Start platform for integration of early years services, the new *Cradle to Kinder* initiative for at risk young families, and Child FIRST (Family Information, Referral and Support Team) which provides an alternative intake and support network to high-need families. Nationally, the Commonwealth government is committed to a long-term approach to ensuring the safety and wellbeing of Australia's children through the National Framework for Protecting Australia's Children 2009-2020.

Outcomes include that children live in safe and supportive families and communities and that children and families access adequate support to promote safety and intervene early. A key initiative within this is the national implementation of *Communities for Children*, a strategic partnership between Federal, State and Local Government, community organisations, and local schools aimed at providing prevention and early intervention programs to families and children (Muir et al. 2010).

A major challenge for early intervention initiatives is the still-developing evidence base regarding what works and the challenge of upscaling and replicating evidence-based practice. In the United Kingdom, the Realising Ambition initiative (Catch 22, 2012) is focusing on building evidence around effective early intervention and diversion programs through rigorous evaluation processes. The learnings from these evaluations are being disseminated to partner organisations through a network that aims to promote effective evidence-based practice.

Linking in with the findings of the Protecting Victoria's Vulnerable Children Inquiry

The final report of the Protecting Victoria's Vulnerable Children Inquiry (PVVCI) made recommendations for area-based early intervention services for children and families. This was based on analysis of child protection reports and other key measures of children's wellbeing which found strong correlations

between higher rates of reports, children who were identified (by the AEDI) as vulnerable on entering school, and areas of high socio-economic disadvantage. These findings parallel those from our data analysis (outlined above) which found similar correlations for younger people in the justice system. The PVVCI affirmed the role of Victoria's antenatal and maternal and child health services and early childhood education and care services. However, it concluded that much of the current approach to early intervention in Victoria was not comprehensive, coherent, or coordinated. A number of recommendations were made about strengthening these services and how they might contribute to meeting the needs of Victoria's vulnerable children (PVVCI, 2012).

It is important to recognise that many of the interventions that have been shown to reduce children's later involvement in the criminal justice system are the same as those identified to protect children from harm and promote their wellbeing in the child and family domain. The needs and voice of the youth justice population are, however, too often absent from the political and policy discourse about vulnerable children and young people, as indeed they largely were from the PVVCI. The needs and developmental pathways of potential youth justice clients require articulation in policy and governance arrangements for early intervention services. The PVVCI recommended that a whole-of-government Vulnerable Children and Families Strategy be developed. This should be expanded to include a youth justice perspective. Concern was also raised about the lack of evidence on what types of early intervention initiatives work, particularly within Victoria where such programs have not been rigorously evaluated (PVVCI, 2012).

Recommended actions

1. The goal of reducing children's contact with the justice system should be a key objective of the whole-of-government Vulnerable Children and Families Strategy which is currently being developed.
2. Ensure that the local, area-based Vulnerable Child and Family Service Networks recommended by the Protecting Victoria's Vulnerable Children Inquiry include evidence-based early intervention services that are proven to reduce the onset of criminal behaviour.
3. Train all Child FIRST and family services workers to recognise and respond to the child, family and environmental factors associated with risk of offending by children.

7.2 Focus on prevention

The numbers of children on remand, their pathways through the justice system, and the issues that they face are influenced by a wide range of factors, including childhood background (explored in the previous section) and the processes and services in the youth justice system response (explored in later sections). Importantly, the factors mentioned above can also be influenced by the nature of offending among children and how this offending is responded to by police and the community (Gelb, 2011). In light of this, the present study sought to understand the nature of offending among Victorian children and what relationship, if any, could be identified between types of offending and the children on remand. We also sought to explore any patterns or changes in offending over the past decade and considered the implications this might have for remand and the wider youth justice system.

Key Findings and Discussion

Despite an overall decrease in children dealt with by police for alleged offending, there has been an increase in numbers of children dealt with for violent offences. Against an overall decline of nine per cent in the annual number of alleged child offenders over the 10 years between 2001-02 and 2010-11 (Table 5), the numbers of alleged child offenders for crimes against the person has increased by 50 per cent (Table 7 below). The causes for the increase in recorded violence are uncertain, with some stakeholders in the youth justice system expressing the view that the increase relates to changes in reporting practices. This includes, for instance, the reporting to police of school related incidents including bullying, and increased police responses to violence in the home. This is explored in more detail below.

Table 5: No. offences, alleged child offenders, and distinct offenders by year (10)

	No. of Offences	No. of Alleged Offenders	No. of Distinct Offenders
2001-02	28,871	34,267	13,497
2002-03	27,381	32,598	13,318
2003-04	25,506	30,738	12,255
2004-05	24,538	28,337	11,481
2005-06	24,045	29,116	11,469
2006-07	24,911	30,699	13,196
2007-08	27,175	33,933	13,388
2008-09	29,514	35,952	14,007
2009-10	28,999	35,900	13,673
2010/11	24,551	31,353	11,695
10yr change	**-15%**	**-9%**	**-13%**

The proportion of girls processed by police increased over the decade to 2010-11 in both real terms and as a proportion of total alleged offenders. While male alleged offenders greatly outnumber female alleged offenders, in the decade to 2010-11 the total number of female alleged offenders increased by eight per cent to 7,129, while the number of males declined by 12 per cent from 27,605 in 2001-02 to 24,182 in 2010-11 (see Table 6) .The female proportion of all alleged offenders increased from 19 per cent to 23 per cent in the decade to 2010-11, while males decreased by four per cent. Despite fluctuations over the decade, the 2010-11 figures were the highest percentage of female and the lowest percentage of male alleged offenders under 18 recorded in the ten-year period.

Table 6: Gender of alleged offenders (AO) 2001-02 to 2010-11

	Female		Male	
	No.	% AO	No.	% AO
2001-02	6,625	19%	27,605	81%
2002-03	6,573	20%	25,953	80%
2003-04	5,745	19%	24,974	81%
2004-05	6,016	21%	22,313	79%
2005-06	5,668	19%	23,441	81%
2006-07	6,468	21%	24,224	79%
2007-08	6,443	19%	27,479	81%
2008-09	7,177	20%	28,771	80%
2009-10	7,878	22%	27,995	78%
2010-11	7,129	23%	24,182	77%
10 yr change	**8%**	**+4%**	**-12%**	**-4%**

The greatest proportional increases in crimes against the person are among younger children 10 to 13 years of age (Table 7; note small base). The number of children aged 10 or 11 years who were dealt with by police for alleged offending declined at a greater rate during the decade to 2010-11 than children in older age groups (alleged offender aged 11 and under decreased by 20 per cent; see Table 8). Specifically, over the 10 year period, the number of 10 to 11 year olds processed by police decreased from 997 to 797 (Table 8), while the numbers charged with crimes against the person, increased from 84 to 150, an increase of 79 per cent (Table 7). Crimes against the person have therefore increased from eight per cent to 19 per cent of all offences for which children this age were processed. This pattern was repeated for children aged 12 to 13 years with alleged offenders in this age group decreasing by nine per cent over the decade (Table 7), while numbers processed for crimes against the person increased from 405 to 766, an increase of 89 per cent (Table 8). This pattern is regrettable and raises the question of the extent to which the share of processed crimes against the person is linked to the youngest children. As previously noted, the 13 years and under age group represents 44 per cent of the 11 to 17 year-olds in the community—but they account for just 13.3 per cent of the total of the 6,865 crimes against the person in 2010-11 attributed to our total sample of 11 to 17 year old offenders (Table 7). Thus older children commit more alleged offences, with a higher proportion of crimes against the person, than do younger children. The rate of violent offending is therefore a concern across all ages in the justice system.

'Crimes against the person' was the only crime type with consistent increases across the 10 year period. Consequently, this crime type was the focus of this research. Trends in other crime types are presented in Table A11, Appendix D2.

Table 7: Most serious alleged offence by age category by year – crimes against person

	Crimes against person				
	<=11	12-13	14-15	16-17	Total
2001-02	84	405	1,720	2,378	4,587
2002-03	72	421	1,579	2,381	4,453
2003-04	133	508	1,436	2,406	4,483
2004-05	102	450	1,541	2,711	4,804
2005-06	109	510	1,537	2,631	4,787
2006-07	91	603	1,872	2,855	5,421
2007-08	82	696	2,406	3,454	6,638
2008-09	130	554	2,235	3,527	6,446
2009-10	133	785	2,462	3,492	6,872
2010-11	150	766	2,366	3,583	6,865
10 year change	**79%**	**89%**	**38%**	**51%**	**50%**

Table 8: Total alleged offenders by age category

	<=11	12-13	14-15	16-17	Total
2001-02	997	4,311	12,394	16,565	34,267
2002-03	961	4,288	11,866	15,483	32,598
2003-04	930	3,967	10,941	14,900	30,738
2004-05	819	3,389	9,775	14,354	28,337
2005-06	758	3,488	10,110	14,760	29,116
2006-07	769	4,144	11,445	14,341	30,699
2007-08	891	4,609	12,955	15,478	33,933
2008-09	908	4,429	13,344	17,271	35,952
2009-10	790	4,500	13,364	17,246	35,900
2010-11	797	3,923	11,380	15,253	31,353
10 year change	**-20%**	**-9%**	**-8%**	**-8%**	**-9%**

Changes in crime rates may in part relate to changes in policing practices rather than children's behaviour *per se*. Patterns in police data show that increases and falls in particular offences are relatively consistent across age groups, suggesting policing of children's behaviours impacts on the numbers of alleged offenders (see figures A5-A8, Appendix D2). The influence of reporting and police practice is also emphasised by recent data from the Australian Bureau of Statistics which show that the overall victimisation rate for physical assaults in Victoria dropped from 3.3 per cent in 2008-09 to two per cent in 2010-11 (Australian Bureau of Statistics, 2012).

Assault was the number-one offence among children whose first youth justice order in 2010 was remand, with assault accounting for 24 per cent of recorded most serious alleged offences (see Table A12, Appendix D2). In total, 48 per cent of children who were remanded at their first order in 2010 were charged with crimes against the person, although crimes against the person comprised only 22 per cent of all alleged offences in 2010-11 (Table 9). Violence causes understandable community concern. Thus any reform aimed at reducing the use of remand in cases involving violence must also aim at reversing the upward trend in violence. One approach is to increase the provision of targeted interventions that reduce children's aggressive behaviour, both proactively in the wider context of their development as described in Reform 1 of this study, and reactively, when the children present within the criminal justice system. Additionally, cultural change is required, particularly in combating violence within society. These issues will be taken up in the directions for reform to follow.

Table 9: Most serious offence: remand admissions (2010) and all offences (2010-11)

	Remand admissions (2010)		***All offences (2010/11)***	
Most serious offence	N	Per cent	N	Per cent
Crime against the person	145	48%	6,865	22%
Crime against property	94	31%	19,376	62%
Drugs	8	3%	795	3%
Other crime	55	16%	4,317	14%

Higher proportions of *Maori, Pacific Islander and some African communities with orders in 2010 were more likely to include a remand order at some stage of their youth justice involvement than either Aboriginal or other children identified as Australian*[6] (Table 10). While the samples are not directly comparable, it was notable that these same cultural groups had relatively high proportions of alleged offences dealt with by police through summons in 2010-11. For instance, 50 per cent of Samoan alleged offenders, 44 per cent of Somali/Sudanese, and 38 per cent New Zealand (Maori rate

[6] Aboriginal children will be considered in detail in Reform 3. Most serious alleged offence data for remand admission was not matched to ethnicity in the data set available to this study.

not available) were dealt with by way of summons, compared with 36 per cent for all children aged 10 to 17 years (see A13 Appendix D2).

Table 10: Remand admissions by cultural identification of most numeric groups on remand in 2010

Remand admissions ever	Australian	Aboriginal	Pacific Islander	Maori	African	Middle Eastern	Vietnamese	Grand Total
No. admission	813 64%	167 54%	26 37%	28 48%	28 50%	31 61%	33 73%	1,550 66%
1 or more	457 36%	142 46%	44 63%	30 52%	28 50%	20 39%	12 27%	806 34%
Total N	**1270**	**309**	**70**	**58**	**56**	**51**	**45**	**2,356**

Pacific Islander Samoan, Cook Islander, Tongan, Fijian, Polynesian, Papua New Guinean
African Sudanese, Somali, Ethiopian
Middle Eastern Lebanese, Iraqi, Afghan, Egyptian, Iranian.

Reform Directions

The evidence gathered during this study clearly shows that violent offending is a major youth justice issue which needs to be confronted, and one that is linked to the numbers of children on remand in Victoria. However, a full exploration of the context and circumstances of violent crime among children is beyond the scope of this study. One particular area of uncertainty, as described above, is whether the increase in the statistical rate of crimes against the person is attributable to an increase in incidence, or changes in policing of children's behaviour. This uncertainty emphasises the need for further research to determine the actual incidence of violent offending, and its causes and consequences.

Violence prevention—Policy

At present the state and Commonwealth governments fund violence prevention programs, the most notable of which are family violence programs and programs targeting bullying. The Victorian government has recently released the Victorian Action Plan to Address Violence against Women and Children. The youth crime sector can learn from this statewide approach to family violence. This includes: the broad authorisation for the plan across government (the plan was signed and authorised by the Premier and six Ministers); the breadth of its integrated service system reforms; the dramatic turnaround of police culture and practice under its family violence protocol that has seen responses escalate; and the explicit inclusion of a prevention strategy alongside early intervention and responses to women, children and perpetrators. Aspects of the prevention strategy that are relevant to violence prevention among children include:

- a focus on educating the community to change attitudes and behaviours that have allowed violence against women and children to continue
- initiatives in schools, media and workplaces
- the engagement of organisations and communities to promote gender equity, cultural respect and a culture of non-violence (Department of Human Services, 2012).

Violence prevention—Interventions

Early intervention and prevention initiatives have an important role to play in reducing the incidence of violent behaviour among children. These initiatives vary and include holistic early intervention of the type outlined in the previous section, through to initiatives seeking to reduce violence that target children generally (Hemphill & Smith, 2010). An exemplar of an evidence-based program targeted at reducing youth crime and implemented in Australia is Communities that Care (CTC), a comprehensive, community-wide risk-focused prevention strategy based on research on predictors of health and behaviour problems, building on the work of Catalano and colleagues in the US. Adapted and implemented nationally in Australia through the Centre for Adolescent Health at the Royal Children's

Hospital in Victoria, evaluation of the large trial of Communities That Care in the Mornington Peninsula Shire is showing indications of positive improvements in adolescent health behaviours and social environmental perceptions (Toumbourou, 1999).

Further interventions that have been evaluated and shown to be effective include social development training, violence prevention curricula in schools, behavioural monitoring and reinforcement, family therapy, parent training and mentoring, or different combinations of these. Some key elements of effective violence prevention programs include comprehensiveness, utilisation of a variety of teaching methods, that they are theory based, provide a sufficient level of intervention, and promote positive relationships (Hemphill & Smith, 2010). Building positive relationships with children is of particular importance. Stakeholder consultation suggests the importance to such relationships of pro-social engagement with children in their homes and natural communities—whether this be on public transport, at music festivals, skate parks and other open or recreational spaces, or shopping centres.

Utilise restorative justice for diversion

Our consultations with stakeholders identified a number of factors contributing to the rise in reports of violent youth crime. These included increased reporting of violent behaviour for bullying, difficult behaviour in schools, family conflicts and violence, and problems in out-of-home care in the child protection system. A question that arises is whether police and court resources should be directed to dealing with violent behaviour in these circumstances. Diversion could provide alternative means to deal with some of the violent behaviour that stakeholders believe is being increasingly reported to police but which could be better dealt with outside the formal youth justice system. In particular, already established restorative justice practices could be used to hold children to account, and repair some of the harm done, without progressing into the formal youth justice system. Clearly, there would be a need for the development of a systematic understanding of the circumstances in which this approach is most effective. Legislative reform would also be required as these interventions are currently not legislated for in Victoria; this is outlined in section 7.4.

Examples of this approach can be seen in the trialling of group conferencing in schools in Queensland, New South Wales, Victoria and New Zealand. These trials have resulted in positive outcomes for victims, perpetrators and school communities (Victorian Association of Restorative Justice). One particularly successful example of restorative diversion occurred at St Thomas of Canterbury College Christchurch, which has fully implemented a restorative justice approach to student discipline with the conferencing process at its heart (Caritas New Zealand, 2009). The results of this have been impressive; in the three years before the launch of the program, the school stood down 60 students, suspended 18 and excluded two. After five years of the new program in practice, there was only one stand-down (Edmund Rice International, 2010).

Stakeholders believe that restorative justice practices would be useful in the management of crime within culturally diverse communities, particularly through the involvement of respected community members, as in the original development of group conferencing within Maori communities in New Zealand (Alder & Wundersitz, 1994). The Youth Justice data available to this study suggests a contrasting picture with respect to the cultural groups with greatest numbers within the youth justice population. As well as Aboriginal children (discussed elsewhere), this includes, in particular Maori, wider Pacific Islander and some African communities. Higher proportions of each of these cultural groups (than either Aboriginal or children identified as Australian) with orders in 2010 were likely to include a remand order during their youth justice involvement. In the police data, high rates of summons were also witnessed in the Samoan and African alleged offenders' cohorts. This suggests that, while a minority of these communities has a serious involvement in the justice system as seen in the remand profile, the larger sub-group is lower risk and potentially open to community interventions. Jesuit Social Services' experience indicates that, provided due care is taken to discourage the imposition of additional severe physical punishment because of family shame, Group Conferencing can be beneficial.

Intervening with violent offenders

Prevention and diversion initiatives must be complemented by community-based initiatives in order to keep alleged violent offenders out of custody and to rehabilitate individuals convicted of violent offending. Many interventions exist because of the demonstrated utility of approaches that focus on delinquent behaviour in general, rather than on the prevention of violent behaviour in particular. In the United States, a study was conducted to determine the effectiveness of multi-dimensional treatment foster care (MTFC) in preventing subsequent offending by serious and chronic offenders relative to services-as-usual group home care. A sample of children who would have been in out-of-home care placements was placed with a MTFC-trained and supported foster family. Throughout the duration of the program, the young offenders received intensive around-the-clock support and interventions at home and school, focusing on developing non-violent social skills in a range of contexts. An evaluation concluded that children randomly assigned to MTFC experienced significantly fewer criminal referrals for violence in a two-year period than a control group assigned to more generalised treatments. More specifically, the MTFC program had a positive effect on general rates of offending and on self-reports of serious violent behaviour, on rates of official violent offences, and on self-reports of more common violent behaviour (Eddy, Whaley & Chamberlain, 2004).

Recommended actions

1. Whole-of-government crime and violence prevention strategies must specifically deal with the issue of crime and violence committed by children. They must be supported by expanded investment in youth-focused community prevention initiatives.
2. Community crime and violence prevention initiatives must engage with at-risk children in proactive and pro-social ways.
3. A continuum of evidence-informed interventions targeting violent offending is required, including:
    a. community level violence prevention initiatives
    b. restorative practices in schools and with diverse cultural groups
    c. child and parent focused programs
    d. a therapeutic approach to care for children in custody (see Reform 6).
4. Implement an ongoing culture of evaluation and continuous improvement across the youth justice system to better understand the nature and impact of violent offending by young people. This must include further research into the reasons for the rise in the reported rate of this crime.

7.3 Target Aboriginal disadvantage

The over-representation of Aboriginal children in the criminal justice system has been a "wicked policy problem" that has been the focus of policy initiatives and community action across Australia for nearly a generation (Allard, 2011). Despite the focus on the issue and significant investment in services, there is evidence that over-representation has in fact increased in recent years (Commonwealth of Australia, 2011). This study explored the nature of Aboriginal children's experience of remand in Victoria to determine whether the levels of over-representation detailed across other youth justice systems were also present in this part of Victoria's system. In addition, to provide some context for the experience of Aboriginal children on remand, we analysed data on their experience in the wider youth justice system.

Key Findings and Discussion

Aboriginal children make up a relatively small percentage of the total number of child offenders in Victoria, but there are challenges in determining their precise numbers. In 2010-11, Aboriginal children represented 5.24 per cent of the total number of children dealt with by police for offending. However, the exact number is difficult to discern due to the high number of instances in which Aboriginal status is not recorded (18.5 per cent of distinct offenders had their Aboriginal status listed as unknown in 2010-11) (Table 12). It appears that a better performance in police recording of Aboriginal status is possible. In data on alleged offenders collected by Victoria Police, the number of alleged offenders whose Aboriginal status was unknown dropped to eight per cent or under between 2004-05 and 2007-08, but has since jumped to 20 per cent which is comparable to the high of 26 per cent in 2001-02 (Table A14 Appendix D3).

The total number of alleged offenders (10 to 17 years old) who were Aboriginal decreased over the decade to 2010-11 with the most significant decrease in the number of male alleged offenders. In 2010-11, seven per cent (2,162) of alleged offenders aged 10 to 17 were identified as Aboriginal. This figure represented a decline of two per cent from the number in 2001-02. The number of male alleged offenders who were Aboriginal declined by 14 per cent from 1,801 to 1,549 (Table A15 Appendix D3) over the decade to 2010-11. The extent of this decrease was more significant than for similar decreases in numbers of non-Aboriginal alleged offenders.

However, the number of Aboriginal female alleged offenders increased more than for any other cohort. The greatest growth in numbers of alleged offenders was within the female Aboriginal cohort, with a 48 per cent increase in the decade to 2010-11 from 415 to 613. The increase among non-Aboriginal females was 44 per cent (Table A15, Appendix D3).

Greater numbers of Aboriginal children are dealt with by police at younger ages than non-Aboriginal children (see Table 2 earlier in this report)***.*** As noted in the data analysis for Reform 1, of the 613 Aboriginal children who were dealt with by police in 2010-11, 174 (28 per cent) were below the age of 14. This proportion is noticeably higher than for non-Aboriginal children, 18 per cent of whom were younger than 14 when dealt with by police in 2010-11. On the present evidence it seems that the structure of the age-crime curve is different for Aboriginal children, with the curve peaking at a younger age (diagrammatically illustrated in figures A2 and A3, Appendix D1). Reasons for this will be discussed in more detail below.

Most Aboriginal child offenders first offend before the age of 14. Sixty-four per cent (390) of the 613 Aboriginal children aged 10 to 17 who were dealt with by police in 2010-11 first offended at the age of 13 or younger. This is nearly double the rate of non-Aboriginal children processed by police of whom a much smaller, but still significant, 35 per cent first offended before the age of 14 (Table 2). Aboriginal children are also more likely to have received a youth justice order at 14 years of age or younger than

non-Aboriginal children (41 per cent compared with 22 per cent) (Table A16 Appendix D3). These statistics lead to the conclusion that not only is there a greater proportion of younger Aboriginal children coming into contact with the justice system, a large number of these children are going on to have repeated involvements with the system. It suggests the need for more effective measures to intervene with Aboriginal children who present in the justice system at a young age in order to divert them away from future involvement in offending.

Significant numbers of Aboriginal children on remand and sentenced custody received their first youth justice order before they turned 14. When we looked at the ages that children on youth justice orders in 2010 received their first youth justice order, some trends regarding Aboriginal children became clear. Table 11 confirms what has previously been stated: that a higher proportion of Aboriginal children involved in the youth justice system in 2010 received an order at the age of 14 years or younger than did non-Aboriginal children (41 per cent Aboriginal compared with 22 per cent non-Aboriginal). As well as the finding reported above, that over three times as many Aboriginal children with a custody order in 2010 first received a youth justice order at 14 or younger compared with non-Aboriginal children (57 per cent compared with 17 per cent), 51 per cent of Aboriginal children who received a remand order as their first youth justice contact in 2010 had their first ever youth justice order at the age of 14 or younger, compared with 36 per cent of non-Aboriginal children. These figures again emphasise how Aboriginal children enter the justice system at a younger age. They also show that Aboriginal children who are subject to the most punitive dispositions available to the justice system (custody/remand) are more likely than non-Aboriginal children to have entered the system at a young age.

Table 11: Children 14 years or under at first order ever by order type 2010*

	Order Type				
	All orders	**Remand**	**Sentenced Custody**	**All custody**	**Community orders**
Non Aboriginal	22% 454	36% 103	17% 27	29% 130	20% 324
Aboriginal	41% 124	51% 29	57% 13	52.5% 42	37% 82
All young people	25% 578	38% 132	22% 40	33% 172	22% 406

*Order type is for first order in 2010 if child or young person subject to multiple orders.

Aboriginal children have a higher incidence of being on remand across the course of their youth justice involvement. Forty-six per cent of Aboriginal children and young people who received a youth justice order in 2010 had experienced remand at some stage during their youth justice history, compared with 32 per cent for non-Aboriginal children (Table 10, above). Coupled with the previous findings, this raises the question of whether the nature of the offending and risk profiles of Aboriginal children are more serious than non-Aboriginal children, or whether there are other factors which result in their receiving more serious dispositions. It also emphasises the need for more effective diversion for Aboriginal children and for custodial environments to be competent in providing support for this group.

Aboriginal children are a small section of the Victorian community but make up a significant proportion of the youth justice population. The level of over-representation is extreme. Aboriginal children are much more likely than non-Aboriginal children to be dealt with by police for offending and also to end up on orders in the youth justice system. Despite making up only 1.22 per cent of the population of 10 to 17 year olds, Aboriginals made up 5.24 per cent of the children dealt with by police for offending in 2010-11 (Table 12). They are over five times more likely to have been processed by police than non-Aboriginal children. This level of over-representation carries through into the youth justice system, with youth justice order data showing that one in every 15 Aboriginal males and one in every 59 Aboriginal females received a youth justice order in 2010 compared with one in 213 non-Aboriginal males and one in every 1,212 non-Aboriginal females (Table A18 and Table A19, Appendix D3).

Table 12: Rate of distinct offenders by Aboriginal status and gender

	ATSI			Non-ATSI			Total Population*		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
Distinct offenders aged 10-17	210	403	613	2,462	6,422	8,906	8,293	8,368	11,688
Percentage of distinct offenders (%)	1.80	3.45	5.24	21.06	54.95	76.20	70.95	71.59	100%
Total population aged 10-17	3,338	3,378	6,716	26,3736	27,8450	542,186	267,074	281,828	548,902
Percentage of population aged 10-17 (%)	0.61	0.62	1.22	48.05	50.73	98.78	48.66	51.34	100%

*includes unknown ATSI status

Discussion: Understanding Aboriginal over-representation

The findings on the broad nature of Aboriginal over-representation and the patterns of involvement from a younger age at the more punitive end of the youth justice system correspond with existing research and findings on this issue. Indeed the report of the Senate Inquiry into Aboriginal Youth in the Criminal Justice System, *Doing Time - Time for Doing,* outlined how rates of incarceration among young Aboriginals had increased over the past 20 years. The extent and persistence of this over-representation can be understood as a consequence of the broader disadvantage that is prevalent within many Aboriginal communities. In *Doing Time - Time for Doing*, elements of disadvantage that were identified as contributing to increased risk of involvement in the criminal justice system included family dysfunction, health problems, low levels of educational attainment and employment, and inadequate accommodation (Commonwealth of Australia, 2011). A range of risk factors unique to Aboriginal and Torres Strait Islander communities has also been identified in literature on this issue including:

- the psychological, social and physical trauma of forced removals
- dependence on the state and loss of self-determination
- cultural features such as the conflicting demands of different cultural practices and the law
- alcohol (Allard, 2011).

There is recognition by both researchers and policy makers that efforts to reduce Aboriginal over-representation will only be successful if the trauma and broader disadvantage that characterises life in many Aboriginal communities is alleviated. Some ways in which this might more effectively take place in Victoria will be considered in more detail further on in this section.

Another issue linked to Aboriginal over-representation in the youth justice system is racial bias and discrimination. The extent and impact of racial bias remains a point of contention, with competing explanations provided to explain why indigenous youth are less likely to be diverted or cautioned for similar offences (Allard, 2011). Anecdotal evidence has been documented that demonstrates instances of racial bias within the youth justice system (Nous Group, 2012). However, there does not appear to be evidence that systemic racial bias is leading to over-representation (Allard, 2011). Another potential factor contributing to over-representation of Aboriginal children, particularly at the more punitive end of the youth justice system, is that they are more likely to come to official attention for anti-social behaviour at an early age. Thus they run the risk of incurring successively more punitive punishments with each re-appearance before judicial officers. In general, the willingness of the state to consider non-custodial punishments diminishes with evidence that a person has had previous offences of the same kind. This pattern of sentencing, known as the 'ladder of penalty,' has been found in many jurisdictions to contribute significantly to higher rates of custodial detention in those groups that start their offending behaviour at an early age (Baldry & Vinson, 2000). There is no legal constraint on Victorian sentencers limiting their use of discretion in devising penalties for children who are convicted of offending. Nonetheless, the Victorian Sentencing Advisory Council's report into sentencing in the Children's Court noted that the vast majority of children in detention had extensive prior involvement in the youth justice system (Little & Karp, 2012), a fact which has been emphasised through our data analysis in relation to Aboriginal children. Analysis of the full impact of this practice on the extent and depth of Aboriginal over-representation is beyond the scope of this study, but warrants further consideration.

Reform Directions

Addressing Aboriginal Disadvantage

As noted above, the trauma and disadvantage lying at the heart of Aboriginal over-representation in the youth justice system is a problem that must be alleviated. Efforts to achieve this are being directed by the Federal Government's *Closing the Gap* initiative and the Victorian *Indigenous Affairs Framework*. These initiatives seek to improve early childhood, health, education, economic participation, housing, and community safety outcomes for Aboriginal Australians. The PVVCI also made a range of recommendations for reforms to enhance Victoria's family services and child protection system's ability to support Aboriginal children and families. Key reforms include the establishment of an Aboriginal Children's Commissioner, the expansion of Aboriginal family support programs, and the development of a 10 year plan to delegate care and control of Aboriginal children in the out-of-home care system to Aboriginal communities. The sum of these initiatives represents significant investment in services and programs in Aboriginal communities across Victoria. However, the nature of Aboriginal disadvantage means that tangible outcomes from these initiatives are likely to take many years to materialise. Indeed, some of the targets in the *Closing the Gap* initiative aim to achieve outcomes over a 25-year period.

Importantly, the influence that disadvantage and the traumatic environments in which some Aboriginal children may spend their early years have on subsequent involvement in the youth justice system is something that is often neglected by broader initiatives. *Doing Time - Time for Doing* noted that many of these initiatives failed to adequately resource interventions to reduce Aboriginal over-representation in the criminal justice system and recommended that this outcome be an additional focus of *Closing the Gap* initiatives (Commonwealth of Australia, 2011). A similar focus needs to occur in Victoria, particularly in initiatives and strategies that are developed in response to the PVVCI. Such response may not necessarily entail specific programs or services but might instead involve initiatives in other service systems which aim to develop an awareness of the links between disadvantage and the youth justice system. It could also involve developing the skills of practitioners within the family and education sectors in their understanding of criminogenic influences on Aboriginal children, and the incorporation into professional practice of evidence-based approaches to building protective factors.

Justice system responses

There are specific policy initiatives that focus directly on reducing over-representation in the criminal justice system. In Victoria, the major government initiative is the Aboriginal Justice Agreement (AJA) which is a partnership between the Victorian Government and the Aboriginal community, developed as a result of the recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody. A range of initiatives and interventions has been developed under the first two phases of the AJA including Regional Aboriginal Justice Advisory Committees (RAJACs), the Koori Youth Justice program, the Koori Court, and the Koori Youth Cautioning Pilot. A recently completed evaluation of Phase 2 of the AJA found that, although overall levels of over-representation had not reduced, there were signs that the justice system was more responsive to Aboriginal people and that community-based initiatives and governance had been improved. The AJA evaluation recommended the need for improved data collection and the monitoring and evaluation of programs, support for alleged offenders prior to court, an expanded role for the Koori Court, more effective diversion for young offenders, and improved justice services across family groups (Nous Group, 2012). Our stakeholder consultations identified Aboriginal children's lack of awareness and understanding of their legal responsibilities, the criminal justice system, and their rights. These consultations and the recommendations from the evaluation of RAJAC have the potential to impact on Aboriginal children on remand and on their over-representation in the youth justice system more generally. They form the basis for recommendations (below) on how the cultural competence of the youth justice system could be enhanced in order to reduce Aboriginal over-representation.

Community-based interventions

As noted in the previous paragraph, RAJACs have been identified as an important feature of the AJA. The regional-based committees have overseen and coordinated the development of area-based interventions to address criminal justice issues in different Aboriginal communities. These include interventions that aim to reduce Aboriginal over-representation at various stages of the youth justice system. Unfortunately, the evaluation of the AJA noted that none of these initiatives had been evaluated with regard to their capacity to actually achieve outcomes (Nous Group, 2012). This is consistent with a lack of rigorous evidence regarding the effectiveness of initiatives throughout Australia in reducing or minimising young Aboriginals' contact with the justice system (Richards, Rosevear & Gilbert, 2011; Allard, 2011). In research literature, common features of promising interventions for Aboriginal children include holistic interventions addressing a range of factors, collaboration between government and non-government, Aboriginal and non-Aboriginal agencies, collaboration with young Aboriginal people in the design and implementation of services and interventions, and the utilisation of community strengths such as kinship, cultural identity and community knowledge (Richards, Rosevear & Gilbert, 2011). These features, together with whole-of-community strategies that research has shown to be successful in reducing crime, should be at the heart of community-based interventions to prevent and respond to offending.

The findings of the PVVCI, the evaluation of the AJA, published research, and the stakeholders participating in this study all emphasised the importance of family environments and relationships for Aboriginal children involved in, or at risk of involvement in, the youth justice system. Family violence, trauma and breakdown are common factors in the lives of Aboriginal young offenders (Dodson & Hunter, 2006). Community-based early intervention and prevention services must form part of any response intended to reduce the over-representation of Aboriginal children in the justice system. Furthermore, as noted in the evaluation of Phase 2 of the AJA, family relationships and support also play a role in responding to offending by Aboriginal people (Nous Group, 2012). Support services that seek to strengthen relationships and minimise the stigma and trauma that may have resulted from contact with the criminal justice system are required for Aboriginal children who offend, and for their families.

Recommended actions

The third phase of the AJA (currently being developed) should prioritise the following as key areas for action to reduce Aboriginal over-representation:

1. Enhance support for both RAJACs and individual Aboriginal communities to develop, implement and evaluate area-based interventions that focus on the causes and consequences of offending by Aboriginal children. This should include:
   - an emphasis on family and supportive family environments through:
     - assertive referrals to child and family services
     - support services for children whose parents are offenders
     - training for Aboriginal Liaison and Family Services Workers within the Child FIRST and Family Service Alliances
   - youth-focused community legal education initiatives to build Aboriginal children's knowledge of their rights and responsibilities.
2. Continue to strengthen the cultural competence of the wider youth justice system and its capacity to effectively divert Aboriginal children from remand. This should include:
   - clear protocols for police diversion of Aboriginal young people. The Koori Youth Cautioning Project is an example of practice that should be expanded
   - a concerted effort within Victoria Police to reduce the large number of children who are processed without ascertaining their Aboriginal status
   - developing the capacity for the Children's Koori Court to hear bail applications from Aboriginal children on remand
   - articulated responsibility for Aboriginal children within the youth justice system to be included in the responsibilities of the dedicated Aboriginal Children's Commissioner or Deputy Commissioner, within the proposed Commission for Children and Young People recommended in the Protecting Victoria's Vulnerable Children Inquiry.
3. Include Aboriginal-specific eligibility criteria and cultural responsiveness in the pilot of intensive assessment and case management service models advocated in Reform 6.

7.4 Strengthen legislative protections for children

Decision makers, including police, bail justices and members of the judiciary, are guided by the terms of *Bail Act 1977* and the *Children, Youth and Families Act 2005* when making decisions in regards to remand and bail for children. This legislative framework is as notable for its absences as it is for the protections it provides to children. The only protections for children are requirements that children remanded by police be brought to court, a 21 day limit on remand orders, and a prohibition on remanding a young person due to a lack of suitable accommodation. Otherwise, children are subject to the same criteria for bail and remand as adults who have been arrested and charged. There are also issues with wider systemic features of youth justice legislation which, instead of promoting the diversion of children from the criminal justice system, extends criminal responsibility to 10 year olds and does not place an onus on decision makers to divert children from more punitive interventions within the youth justice system.

This study sought to determine the effectiveness of legislative protections in keeping children out of the youth justice system in general, and remand in particular. In so doing, we analysed data on episodes of remand as well as diversionary youth justice orders issues by the Children's Court. We also looked at some of the characteristics of the youngest children in the youth justice system in order to determine whether they were being appropriately responded to. In examining police practice in processing children for offending behaviour we looked at data on methods of processing including arrest, summons, caution or other means (including penalty notice, official warning or warrant of apprehension). A full explanation of police methods of processing was made earlier in this report in section 6.1.

Key Findings and Discussion

The most common method of processing of children in Victoria has been by summons, followed by arrest, and caution. In 2010-11, 36 per cent of children aged 10 to 17 were processed by police via summons, followed by arrest (32 per cent), caution (24 per cent), and other methods of processing (eight per cent) (see Tables 13a & b, below). This has largely been the same pattern in Victoria over the decade from 2001-02 and is consistent with police policy to deal with children via the least punitive means. As police data does not include informal cautions, it is not possible to comment on the full extent of diversionary practices by Victoria police beyond the 24 per cent (7,637) children in 2010-11 who were issued with cautions.

At the same time, this 24 per cent caution rate in 2010-11 is among the lowest recorded in the decade to 2010-11. The highest rate of 30 per cent cautioning (see Tables 13a & b) was recorded in 2006-2007, followed by 29 per cent in 2007-08. This coincided with the Victorian Law Reform Commission's release of a review of the Bail Act which was critical of the low rates of caution in Victoria, and it was during the same period that the apparently successful but subsequently discontinued Police Cautioning and Youth Diversion Pilot Project operated.

Table 13: Processing method of alleged offenders by year and per cent change

13a: Nos alleged offenders by processing type

	Arrest	Caution	Summons	Other	Total
2001-02	9,566	8,462	12,791	3,448	34,267
2002-03	8,691	8,324	12,310	3,273	32,598
2003-04	7,888	7,611	12,098	3,141	30,738
2004-05	7,107	6,684	11,447	3,099	28,337
2005-06	7,252	7,555	10,805	3,504	29,116
2006-07	7,349	9,289	10,618	3,443	30,699
2007-08	9,425	9,730	11,163	3,615	33,933
2008-09	10,466	9,707	11,993	3,786	35,952
2009-10	11,628	9,044	11,516	3,712	35,900
2010-11	10,021	7,637	11,133	2,562	31,353
10 year change	**+5%**	**-10%**	**-13%**	**-26%**	**-9%**

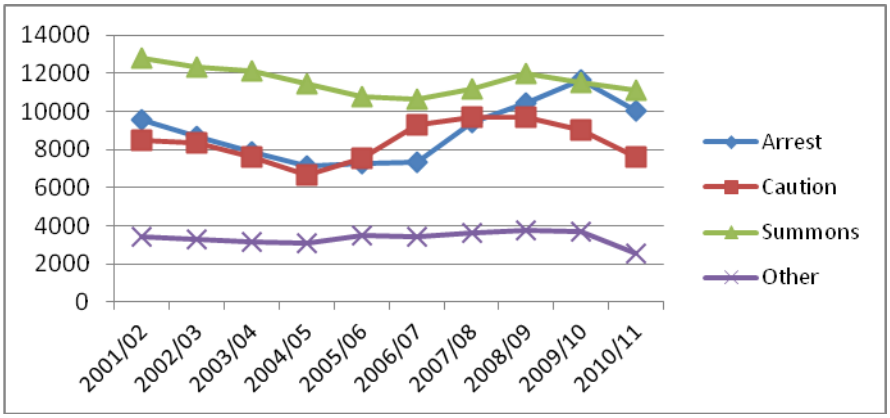
13b: Per cent processing type of all alleged offenders

	Arrest	Caution	Summons	Other
2001-02	28%	25%	37%	10%
2002-03	27%	26%	38%	10%
2003-04	26%	25%	39%	10%
2004-05	25%	24%	40%	11%
2005-06	25%	26%	37%	12%
2006-07	24%	30%	35%	11%
2007-08	28%	29%	33%	11%
2008-09	29%	27%	33%	11%
2009-10	32%	25%	32%	10%
2010-11	32%	24%	36%	8%
10 year change	**+4%**	**-1%**	**-1%**	**-2%**

The gap between summons and arrests is decreasing; the greatest increase in the method of processing for children is arrests. In the context of a nine per cent reduction in crime over the decade to 2010-11, arrests have risen by five per cent, while other methods of processing have decreased (caution by 10 per cent, summons by 13 per cent, and other by 26 per cent; see Table 13a and Figure 4).

Table 13b shows that, even taking account of the decrease in crime, arrests have risen as a percentage of all children processed (by four per cent), while cautions and summons have both decreased by one per cent. In 2009-10 roughly the same numbers of children were processed by arrest as summons (32 per cent: 11,628 by arrest; 11,516 by summons - Table 13b and 13a). A possible influence on the trend towards increased arrests could be the 50 per cent increase in crimes against the person described previously in Reform 2. However, the increase in arrests has not been as significant as the increase in offences against the person. It would be extremely helpful when shaping policy responses to have more specific data about the nature and comparative seriousness of the offences against the person committed by juvenile offenders. In the absence of such data, the trend towards increased arrests and decreased cautions and summons is troubling. It means greater numbers of children are subject to the most invasive form of police contact—up to 10,021 arrests from 9,566 a decade earlier—despite the overall decrease in crime (Table 13a). Notwithstanding a clear policy position from Victoria Police in favour of effective cautioning and diversion (Victoria Police, 2009), there has not been a reversal of this pattern. This raises the question of whether legislative protections for children are needed to promote cautioning and diversion.

Figure 4: 10 year trends in alleged offenders by method of processing



The increase in arrests and decrease in cautions is proportionally greatest for the youngest children, while arrests have decreased and cautions have increased for the oldest children. The trend towards an increase in arrest rates over the decade to 2010-11 decreases with each ascending age category, as seen in Table 14 below (see also additional tables A20-A22, Appendix D4). Ten and 11 year olds comprised 797 alleged offenders processed by police in 2010-11, a decrease of 20 per cent from 10 years earlier. However, the rates of arrests of these youngest children have increased. In 2001-02 only three per cent of 11 year olds were arrested; by 2010-11, 17 per cent were arrested – an increase from 31 to 104 children. By contrast, the number and the percentage of all 16 to 17 alleged offenders processed by police who were cautioned has increased over the 10 year period, while the number and rate of cautioning for children aged 15 and under has decreased. The net effect is that, while it remains true that a larger proportion of older children are arrested than younger children, the difference in the manner in which different age cohorts are processed is decreasing over time, with proportionally more of the younger age groups becoming subject to arrest.

Again, these findings call into question the need for greater protections for children when being processed by police. The needs of the youngest children who come into contact with the justice system should be given particular emphasis, especially in light of the fact that in many other countries children in these younger age groups are not involved in the criminal justice system.

Table 14: Ten year change rates to 2010-11 in the method of processing alleged juvenile offenders

	<=11	12-13	14-15	16-17	Total
Arrest	332%	30%	22%	-9%	5%
Caution	-42%	-19%	-18%	20%	-10%
Summons	16%	-8%	-13%	-15%	-13%

Rates of arrest, cautioning, and summons vary across different parts of Victoria and over different years. In 2010-11, the rates of arrest, cautioning, and summons differed considerably between police regions in Victoria (Table 15.). For arrest there was a 10 per cent range, with only 27 per cent of children dealt with by arrest in the North Western Metropolitan Region compared with 37 per cent in the Western Region. Similarly, there was a seven per cent range in the use of summons, with 33 per cent of children in the Southern Metropolitan Region proceeded against by way of summons compared with 40 per cent in the North Western Metropolitan Region. There was less difference for cautions (five per cent range) and other (two per cent range) methods of processing (Table 15). Clearly, differences in offending patterns and operational conditions in local areas will impact on the methods of processing of children. However, data on most serious offences by region suggests that there is some variation that cannot be explained by trends in offending and methods of processing. For example, it might be expected that increases in arrests would be related to increased crime against the person. The Western Region, however, which had the highest rate of arrests in 2010-11 (37 per cent - see Table 24 in

Appendix D4), had the lowest rate of children processed for crimes against the person (18 per cent of alleged offenders in the Western Region - see Table A25 in Appendix D4). There is a view that effective policing necessarily rests on a partnership between police and the community served (Bayley, 1989). In setting goals and securing public collaboration in crime control measures, community policing enjoys considerable support. However, there are some areas of legal administration where statewide consistency is vital. One of these is the handling of children in their formative years when criminal tendencies can be either consolidated or minimised.

Table 15: 2010-11 no. and per cent alleged offender (AO) by method of processing and police region

	East		North West Metro		South		West		Total Victoria^	
	No.	% AO	No.	% AO	No.	% AO	No.	% AO	No.	% AO
Arrest	2,866	33%	2,283	27%	2,167	31%	2,697	37%	10,021	32%
Summons	2,873	34%	3,407	40%	2,334	33%	2,476	34%	11,133	36%
Caution	2,158	25%	1,950	23%	1,925	27%	1,570	22%	7,637	24%
Other	674	8%	786	9%	626	9%	472	7%	2,562	8%

Significantly, all regions have had their highest rates of arrest and lowest rates of summons in one of the last three years (Table A26 in appendix D4). Three of the four regions (except the Eastern) have also had their lowest rates of caution over the last three years. Thus, notwithstanding the influence of local conditions, the overall pattern of increasing arrests and decreasing cautions appears to hold. The details concerning variations across the regions are presented in Table A26A in Appendix D4.

It is not possible to determine the precise extent of diversionary practices in the Children's Court. As stated previously, Victoria has no system for linking and aggregating, in one place, data on the various arms of the criminal justice system for both children and adults. For this reason, the full picture of diversionary practice by the Children's Court is not captured by either police data that precedes the court appearance or Department of Human Services' data, which covers supervisory orders and post-conviction orders. Despite this, some policy-relevant findings can be discerned.

Deferral of sentence is frequently used by Children's Court magistrates and offers potential for diversionary outcomes, with 40 per cent of children issued this order in 2010. Forty per cent (650) of the 1,609 children aged 10 to 17 years who received youth justice orders in 2010 received a total of 816 deferral of sentence orders. These orders can provide diversion from more invasive sentencing outcomes for the child, most obviously through Group Conferences, but also through assessments and testing of the child's capacity and willingness to follow through with requirements specified by magistrates to reduce subsequent sentences. Youth Justice is able to provide what is in effect informal 'bail supervision' to children over the course of sentence deferrals to assist them to access services and make changes that will divert them from more invasive orders. However, it is not possible to assess the specific outcomes of these orders from the available data (e.g. whether the child received a subsequent sentence or not), or whether the order was matched with a referral to a diversionary source of support due to the method of data recording.

The use of supervised bail is extremely low in the Children's Court, reflecting the limited reach of the intensive supervised bail program and lack of legislative mandate in Victoria. Only 32 young people (10 to 17 years) received a total of 49 supervised bail orders in 2010. This is two per cent of the 1,609 10 to-17 year old children who received orders in 2010, and predominantly reflects referrals to the intensive supervised bail service operating as pilots in North and West and Southern Regions. Pre-conviction adjournments, including bail, are not included in the Department of Human Services' data set. However, our observations of proceedings in the Children's Court enabled us to see that bail is frequently used for children in the criminal process, with 23 of the 58 matters observed involving children who were on bail.

In contrast to the low rates of supervised bail of children, 87 per cent of the 382 supervised bail orders recorded in the 2010 youth justice data set were for young people aged 18 years or older, sentenced to youth justice supervision as part of the dual track system. These orders would have predominantly been issued through the Magistrates Court which, unlike-the Children's Court, provides the CREDIT/Bail Support program for adults in eight magistrates' courts across the state. Youth Justice provides bail supervision and supervised deferral of sentencing for its clients in the adult court where diversion from a more intensive adult justice outcome is possible. These findings suggest that diversionary options make a real difference to how decision makers can enact their responsibilities in order to increase diversionary options through the Court.

Despite Victoria's efforts to minimise the use of remand, unnecessary remand admissions still occur. In 2010 there were 181 short-term remand episodes lasting one to three days which made up 25 per cent of all remand admissions during that year (see Table 16 and Table A29, Appendix D5). Ninety-six per cent of these short admissions ended with a child being granted bail or released on expiry of an order (see Table A28, Appendix D5). It is not possible to comment definitively on the reasons for these remand admissions in the absence of specific information about each case, most particularly the offence that gave cause to the arrest and admission. The fact, however, that these (and longer) admissions end with bail or expiry of order suggests that alternatives to remand may have been feasible at the initial (or a subsequent) decision making point. Such alternatives include a different legislative environment (discussed further below) or the availability to decision makers of different assessment, support, or co-ordination services (discussed later with respect to Reform 5). It is for this reason we refer to these remands as potentially unnecessary.

The scope for more effective decision making to avoid unnecessary remands is highlighted by short-stay admissions over the course of weekends. Of 160 total weekend remand admissions in 2010, 40 per cent lasted one to three days and all but one of these ended in a young person being released on the following Monday or Tuesday (see Table 17). The practice of weekend remand followed by immediate release on bail was verified during our Children's Court observations. As will be discussed below, this calls into question the different decision-making practices of police and bail justices (who administer after-hours admissions) compared with Children's Court magistrates. Given that these same magistrates adjudicate over both the Criminal and Family divisions of the Children's Court, their understanding of both children's presentations, and the range of support services open to them, is far more advanced. It is possible, and indeed information from stakeholder consultations and our observations of the Children's Court suggest it is likely, that the knowledge and approach taken in bail decision making in the Children's Court differs from that employed by police and bail justices. However, there are additional factors involved in the use of unnecessary remand.

In Reform 5 we will consider how the dearth of access to appropriate assessments and support services, particularly after-hours, contributes to this problem.

Finally, at the other end of the spectrum, there is a concerning minority of young Victorian children who experience extended stays on remand, with 36 per cent of children remanded over 21 days, and 136 (19 per cent) remanded over 43 days (see Table 16). Recent findings published by the Australian Institute of Health and Welfare (AIHW) show that Victoria remands a smaller number of children than other Australian jurisdictions but for longer periods than some other Australian states (median of 10 days in Victoria, compared with two in NSW, nine in Queensland and three in South Australia) (AIHW, 2012).This suggests that more could be done in terms of either tighter legislative constraints for the remand of children or the expediting of final decisions (see Reform 5 below).

Table 16: Per cent and cumulative per cent of length of remand admissions 2010

Days in Remand	N admissions	% admissions	Cumulative percent
1-3 days	181	25%	25%
4-7 days	101	14%	39%
8-21 days	181	25%	64%
22-42 days	119	17%	81%
43-63 days	67	9%	90%
64-180 days	62	9%	99%
180+ days	7	1%	100%
Grand Total	**718**	**100%**	

Reform Directions

At what age should children be criminally responsible?

The age of criminal responsibility provides the foundation for criminal jurisdiction to be exercised over children, a process that might eventually result in their being held on remand. Throughout Australia, the age of criminal responsibility is 10, with the principle of *Doli Incapax* limiting this by creating a rebuttable presumption that a person aged 13 or under is incapable of committing a crime. Theories on youth offending suggest that many of the youngest people who come into contact with the justice system are likely to have personal, familial or social factors that contribute to their offending (Dennison, 2011). The evidence adduced in section 7.1 of this report details a range of contributing factors uncovered by the present study. Younger people entering the justice system are more likely to come from areas with higher levels of socio-economic disadvantage, poorer results in the Australian Early Development Index and poorer compliance with maternal child health checks. The example of the 27 children who were remanded at the age of 12 or under further emphasised this point. All were known to Child Protection; 52 per cent before their third birthday. As mentioned, our data analysis suggests that the youngest people who come into contact with the justice system go on to have repeated contacts (again see section 7.1). In the analysis conducted above, it was shown that increasing numbers of the very youngest children are being subject to more punitive methods of police processing. All these factors raise questions as to whether the youth justice system is the most appropriate environment to deal with the offending behaviour of younger people and what benefit the community gains from dealing with children in this way.

The Australian approach to the age of criminal responsibility differs from that taken in a range of other countries, and brings children into the justice system at an earlier age than most other jurisdictions. An international comparison of the age of criminal responsibility in 90 countries found that the most common age of criminal responsibility was 14 years old and that the median age of criminal responsibility was 13.5 years. International law does not identify an appropriate age of criminal responsibility but the Beijing Rules on Juvenile Justice—adopted by the UN General Assembly—call for the age of criminal responsibility not to be set at too low a level (United Nations, 1985). However, the UN Committee that monitors the Convention on the Rights of the Child has criticised countries that set the age of criminal responsibility at below 12 years (Urbas, 2000). There is also concern that children lack the capacity to understand, and fully participate in, criminal proceedings. This raises questions about the appropriateness of handling the anti-social conduct of such immature children by means of a justice-oriented Children's Court (Bradley, 2003).

In countries where the age of criminal responsibility is higher than in Australia, younger people engaging in anti-social and offending behaviour are dealt with through a range of different means. In Sweden (age of responsibility, 15) children who engage in what would be considered criminal behaviour

in Australia are dealt with through the child welfare system. In France (age of criminal responsibility, 13) younger people are dealt with through civil 'educational sanctions' requiring attendance at training courses and imposing curfew-like conditions. A similar approach is taken in the Netherlands (age of responsibility, 12) where police can arrest children aged 10 and over and refer them to educative social work (Hazel, 2008). These approaches demonstrate the potential for different responses to very young children who engage in delinquent behaviour. They are relevant for Victoria, especially the state's response to the extreme challenge posed by very young children who currently enter the criminal justice system. Very few of these children progress to the point of attaining a court-determined outcome, particularly the more invasive remand and sentenced custody outcomes. Moreover we have found a consensual view among practitioners across all parts of the justice field—from case workers, court workers, legal aid and the judiciary—that there is a high representation of the community's most troubled children, including cross-over child protection clients, within the juvenile justice system.

Legislating for diversion

In Victoria, the approach to diversion of children has developed through the policies and practice of police, the Children's Court and other stakeholders (government and non-government organisations) in the youth justice system. Although lacking a comprehensive legislative framework, this approach has been quite successful with a reasonably high rate of cautioning by police and use of diversion programs by Children's Court magistrates. The most telling evidence of the success of this approach is the fact that the youth detention rate in Victoria is among the lowest in Australia (0.15 young people per 1,000 of population 10 to 17 years per average day; less than half the National rate of 0.35) (AIHW, 2012). It can be reasonably inferred that the flexibility given to decision makers in the justice system, combined with a culture favouring diversion, has seen large numbers of children successfully diverted. This study's findings support this inference with analysis of police data showing a consistent use of cautions and an overall decline in numbers of children dealt with by the youth justice system. Furthermore, limited data analysis and observations of practice in the Children's Court clearly show that diversionary processes such as pre-sentence deferrals and services such as Intensive Bail Support are being utilised.

Despite these successes, concerns have been raised about the inconsistency of diversion practices in Victoria. Submissions to the 2007 Victorian Law Reform Commission report into bail, and to the Victorian government's 2012 consultation paper on youth justice diversion, *Practical Lessons, Fair Consequences,* have expressed concern at inconsistent police use of cautioning, the lack of appropriate resources to support diversion, and procedural barriers to diversion within the courts. The findings of this study provide some evidence to support these concerns. The increase in the use or arrest over the past decade is concerning, particularly given the fact that this increase is proportionally strongest among the youngest children. Furthermore, fluctuations in rates of arrest, cautioning and summons across different parts of Victoria and over different years which cannot be linked to identifiable patterns of offending suggest a level of inconsistency in practice towards diverting children.

In response to the concerns raised in submissions to the Victorian Law Reform Commission bail inquiry, the final report recommended the creation of a legislative scheme for the diversion of children. Further calls for this scheme were made by community agencies and the legal profession in submissions to the Victorian government's recent consultation on youth justice diversion. A legislated diversion scheme would bring Victoria into line with other Australian states and territories which have frameworks outlining what methods are available to police and courts in diverting children. Some of these legislative schemes go beyond establishing a framework for diversion and impose requirements on decision makers to use the least serious option when proceeding against a young person. In Queensland[7] and New South Wales,[8] for example, police must commence proceedings using the equivalent of a

[7] *Youth Justice Act 1992*, s.12

[8] *Children (Criminal Proceedings) Act 1987*, s.8.

summons except where serious offences have been committed (in both states), or where children are unlikely to comply with conditions, will continue offending, or have behaved violently (in New South Wales). Interestingly and as previously mentioned, these two states have greater numbers of young people on remand than Victoria (AIHW, 2012). However data from the Productivity Commission suggests more extensive use of diversion in these states, with 57 per cent of young people in New South Wales diverted and 44 per cent in Queensland compared with 33 per cent in Victoria (Productivity Commission, 2012). These statistics, combined with the decrease in rates of cautioning and increases in arrests over the past decade, emphasise the need for the implementation of the Law Reform Commission's recommended legislative framework for diversion. This framework should make it clear that diversion is preferred to arrest while giving decision makers leeway to deal with individual matters in the most appropriate manner. It is important that this framework is supported by relevant support services for decision makers (discussed below in relation to Reform 5) and a culture of practice that understands the benefits of diversion.

Child specific bail and remand criteria

As noted at the outset of this section, the criteria that guide decisions on whether or not to remand or release a young person on bail are the same as those applying to adults. The only child-specific criteria are that children cannot be remanded on the basis of lack of suitable accommodation. Principles from the Bail Act, such as the requirement to 'show cause' why detention is not justified for certain offences, apply as equally to children as they do to adults. However, as noted earlier in this report, there is qualitative evidence that suggests that in bail hearings in the Children's Court and superior courts (for more serious cases), decision makers take into account the unique circumstances and vulnerabilities of children (Victorian Law Reform Commission, 2005). Nevertheless, the lack of clear guidance for decision making regarding children is problematic and can result in inconsistency, failure by decision makers to consider the unique circumstances of children, and an undermining of the principle of custody as an option of last resort. These issues were identified in the Law Reform Commission Report and were reiterated during consultations with stakeholders as part of this study. Findings from our data analysis support some of the concerns about bail and remand decision making for children. Specifically, remand admissions data shows instances where children appear to be unnecessarily remanded in custody for a short period of time and then released on bail once they appear in court.

The principle of custody as a last resort for children necessitates efforts to reduce the small but significant episodes of unnecessary remand which were identified in our research. Child-specific considerations for decision makers are one part of the means to reduce the number of unnecessary remands, a strategy already proposed by the Victorian Law Reform Commission. Child-specific protections and criteria for bail decision makers are contained in legislation in other jurisdictions. In Queensland, section 48 of the *Youth Justice Act 1992* lists a range of considerations that decision makers must take into account when deciding whether or not to grant bail, including the young person's background, their home environment, associations, and employment. The Queensland legislation also has Aboriginal-specific criteria that need to be considered, including community relationships and cultural ties. Significantly, decision makers must take into account the strength of the evidence against a young person, and courts must consider the type of sentence the young person would receive if found guilty. Though less specific in listing considerations, legislation in the ACT requires bail decision makers to take into account the broader principles of youth justice when deciding whether or not to grant bail. These principles focus on accountability, the needs of a young person, and the use of custody only as a last resort.

Legislation in overseas jurisdictions places similar, if somewhat stricter, limits on remand decision makers to those found in Australia. The seriousness of an alleged offence is a key factor in Finland, Germany and the United Kingdom, with remand only available where a young person is charged with an offence that will result in a custodial sentence of several years or more (Solomon & Allen, 2009). Evidence and likelihood of conviction are other considerations, with Austria, Belgium, Finland, Germany and Canada all requiring that there be strong evidence of offending and the likelihood of conviction for

a young person to be remanded (Solomon & Allen, 2009, Hazel, 2008). Finally, legislation in the American state of Florida lists grounds that cannot be used to justify remand, including punishment, treatment or rehabilitation, parents avoiding their legal responsibilities, and using remand as a more convenient means of administering justice. Australian and international approaches offer a template for reform of bail legislation relating to children in Victoria. At the heart of the legislation should be a clear indication that remanding children is an option of last resort and should only occur where a child has allegedly committed a serious offence and is at risk of further offending or not making it to court. The legislation should also ensure that decision makers consider a range of child-specific factors in deciding whether or not to remand a young person.

Supporting a culture where custody is an option of last resort

It is important to acknowledge the limits of legislative reform and the need to link it to concerted efforts to promote practice that limits remand. These wider systemic efforts must include the development of alternatives to remand (considered in the next section), and efforts to build a culture of practice that views custody as a means of last resort. Legislation is important for its symbolic value as well as for its capacity to impose requirements on decision makers and to promote consistent practice. However, there are limits to what it can achieve as has been made clear by the fact that Victoria, with relatively weak protections to keep children out of remand, has a lower rate of remand than Queensland, which has much more restrictive remand legislation. The experience of remand reform in Florida illustrates the importance of wider reform of practice to accompany legislative reform. In Florida, reforms to legislation were accompanied by '*cross sector training, forums and patience'* that sought to build understanding and a culture of practice across the youth justice system (Orlando, 1999).

Recommended actions

1. Raise the age of criminal responsibility to 12 years of age, with intensive service responses for children younger than 12 who engage in anti-social behaviour to be provided through the child welfare system.
2. Amend the *Children, Youth and Families Act 2005* to include a legislative framework for diversion that imposes a presumption in favour of diversion and provides a flexible range of diversion options for police and the courts.
3. Fully implement the legislative reforms from the Victorian Law Reform Commission 2007 report on Bail. Specifically:
    - amend Section 345 of the *Children, Youth and Families Act 2005* to impose a presumption in favour of summons
    - provide child-specific criteria in the *Bail Act 1977* requiring decision makers to have regard to a range of child-specific factors
    - remove 'reverse onus tests' from the *Bail Act 1977* so that all bail decisions are made on the basis of 'unacceptable risk'.
4. Implement a Bail Justice Training Package and enhance police bail training to include a focus on the unique vulnerabilities of children and provisions of the legislation.

7.5 Maximise diversion from remand

Previous sections have considered the diversion in Victoria including the role of legislation, the importance of a 'diversion' culture, and the appropriate forms of 'processing' alleged offenders. In this section we focus on the experience of children on remand and the potential for supports and services to divert them away from any or extensive exposure to remand.

Key findings and discussion

The majority of children who are remanded in Victoria are remanded for short periods of time. Sixty-four per cent of all remand episodes for children and young people in Victoria in 2010 lasted less than 21 days at an average cost of $1,625 per admission (see Box 1 in section 6.1). This is the maximum time that a child can be on remand under a court order before they have to be brought back to court. A significant number (39 per cent) of remand episodes lasted less than seven days and 25 per cent of all admissions for the year lasted between one and three days (see total admissions, Table 17).

***Table* 17: Weekend[9] and weekday admissions**

Days on Remand	Weekday N admissions	Weekday % admissions	Weekend N admissions	Weekend % admissions	Total N admissions	Total % admissions
1-3 days	117	21%	64	40%	181	25%
4-7 days	72	13%	29	18%	101	14%
8-21 days	146	26%	35	22%	181	25%
22-42 days	107	19%	12	8%	119	17%
43-63 days	54	10%	13	8%	67	9%
64-180 days	55	10%	7	4%	62	9%
180+ days	7	1%		0%	7	1%
Grand Total	**558**	**100%**	**160**	**100%**	**718**	**100%**

The data presented in Table 17 supports the conclusion reached in section 7.4 that there are instances where remand is used unnecessarily. Given the brevity of the period of remand, it is apparent that the *system of appraisal* has changed. This finding highlights the nature of assessments and support services available to decision makers, including the potential for alternative *circuit breakers* when children's behaviour is seen as escalating beyond control other than through detention. The findings from the data analysis in relation to episodes of remand that commence on weekends compared with weekdays, and police processing patterns (both considered immediately below), further support the conclusion that the organisation of the youth justice system and the availability of support services are influencing whether or not children are remanded. It indicates the need to consider how the system might be reformed to address this issue.

More of the shortest remand episodes commence on the weekend compared with during the week, and these weekend admissions are more likely to end with a young person being released on bail. As seen in Table 17, almost twice as many weekend admissions (40 per cent) than weekday admissions (21 per cent) last between one and three days. Weekend remand admissions are less likely to last for as long as admissions that commence between Monday and Friday, with only 20 per cent of weekend admissions exceeding 21 days compared with 36 per cent of weekday admissions. In terms of the outcomes of weekend admissions, only eight per cent flow through to a sentenced order while 66 per cent end with a child being released on bail. For remand episodes commencing during the working week, 19 per cent end in a sentence and 55 per cent in a child being released on bail (See Table A27, Appendix D5). The 40 per cent of weekend admissions that last for one to three days indicate a practice whereby a child is remanded on either a Saturday or Sunday and then released when they are brought

[9] Weekend admissions were defined as any Saturday and Sunday admission plus all Monday admissions lasting one day, which were young people admitted overnight on Sunday and released on Monday. This is likely to be an under-estimate as it does not include Friday night admissions which cannot be distinguished in the data.

to the Children's Court early in the following week. This is supported by analysis of the exit reasons of one to three day remand episodes that commenced on the weekend, with 58 of the 64 episodes ending in the child being released on the following Monday, five with release on the Tuesday and one ending with the young person being sentenced. We witnessed an example of this practice during our observations at the Children's Court; a young male who was apprehended on Saturday evening for breach of bail was brought to court on the Monday morning and then immediately released on bail.

Eighty per cent of arrests happen outside business hours when support services are unavailable to decision makers to divert children from remand. Table 18 shows that only 19 per cent of arrests happen between the business hours of 9.30 am and 5.00 pm. This is when police are most likely to deal with offending by issuing a caution, with 39 per cent of cautions issued between 9.30 am - 5.00 pm Monday to Friday. However, 81 per cent or a total of 8,127 arrests of children in 2010-11 took place outside business hours. These 'after hours' are, from the perspective of children's engagement in criminal activity, the 'in hours', and the times when services are most required to offer support to children when they are at risk of remand. Significantly, 10 per cent of arrests occur between 3.00 am and 9.30 am when CAHABPS is not funded to operate.

Table 18: Per cent of processing type, 2010-2011

	Time of Day	Arrest		Caution		Summons		Other		Total	
Fri 5pm to < Mon 9.30am	5pm<3am	2,956	29%	1,804	24%	3,468	31%	875	34%	9,103	29%
	3am<9:30 am	487	5%	218	3%	460	4%	113	4%	1,278	4%
	9:30am<5 pm	686	7%	938	12%	781	7%	187	7%	2,592	8%
9.30am Mon to < Fri 5pm	5pm<3am	3,451	34%	1,437	19%	3,345	30%	716	28%	8,949	29%
	3am<9:30 am	547	5%	283	4%	510	5%	98	4%	1,438	5%
	9:30am<5 pm	1,894	19%	2,957	39%	2,569	23%	573	22%	7,993	25%
Total		**10,021**	**100%**	**7,637**	**100%**	**11,133**	**100%**	**2562**	**100%**	**31,353**	**100%**

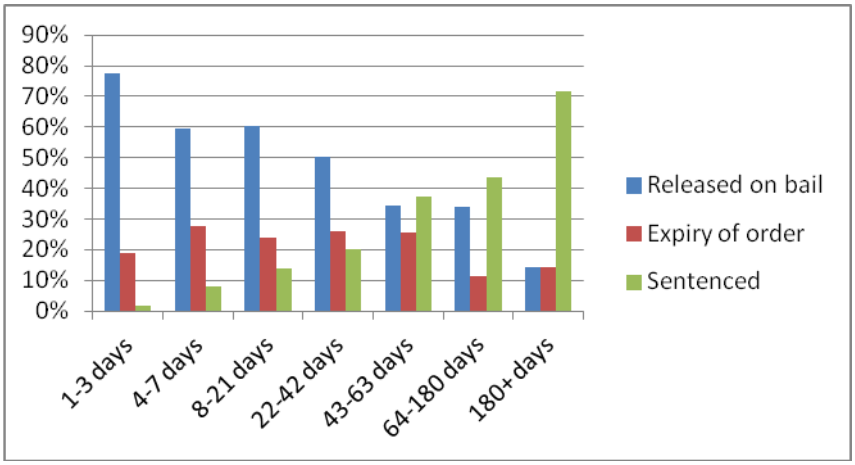
Discussion: Significant numbers of children are not being effectively diverted from remand particularly outside of normal business hours

The findings presented in Table 18 (above) add weight to anecdotal evidence provided by numerous stakeholders, most notably Children's Court personnel, legal aid and youth justice workers. The evidence supports the conclusion that a significant number of children are being arrested overnight or over the weekend, remanded by bail justices, only to be released at the next sitting of the Children's Court. Three key explanations for this are proposed by stakeholders and this study. The first is the different understanding of decision-making criteria by bail justices compared with the more experienced and highly qualified Children's Court magistrates. At heart is the different understanding of the interaction between adult bail criteria and a child's best interests as described in section 7.4 of the *Children, Youth and Families Act 2005*. The second is a lack of support services available to police and bail justices after hours and on weekends when these decisions are made. The third and related point is that there is a lack of adequate and timely assessment, especially after hours, to enable better targeting of remand and reductions in unnecessary or unnecessarily extensive periods of remand for children.

Shorter episodes of remand are more likely to end with a child being released on bail as opposed to longer episodes which are more likely to end in sentence. When all remand episodes in 2010 are

considered, 58 per cent ended in bail, 22 per cent ended with the expiry of a remand order, and only 16 per cent ended with a young person being sentenced (see Table A28, Appendix D5). Figure 5 shows how, not surprisingly, shorter episodes are more likely to end in bail and longer episodes to end with a young person being sentenced. Analysis of the seriousness of offence would provide greater understanding of these patterns. Regardless, the fact that so many short-term remands end in bail begs the question as to why these children were remanded in the first place.

Figure 5: Major remand exit reasons by time on remand



A considerable number of children are on remand for extended periods while their criminal matters are being finalised, or prior to a bail decision being reached. Of the 718 episodes of remand in 2010, only 136 lasted for 43 days or more (Table A29 & A30, Appendix D5). The 124 children and young people who were responsible for these 127 admissions spent a total of 10,829 days on remand throughout the year, or just over 87 days per individual. Fifty-seven of these long-term episodes of remand resulted in a young person's criminal matter being finalised and their being sentenced (see Table A28 Appendix D5) while 45 children were remanded for more than 43 days and then released on bail.

These figures are of concern because of the adverse impacts for children of extended exposure to incarceration in custodial facilities, and the demand that is placed on the youth justice system. The fact that 46 children could spend over 43 days in custody before being released on bail again emphasises the issue of the speed with which the youth justice system responds to children who are in custody. Another issue that is raised by children who have extended stays on remand is the time taken to finalise criminal matters in the Children's Court. Data from the Children's Court shows that a significant percentage of matters (20.9 per cent) were still pending six months after initiation (Children's Court, 2011). Expediting finalisation of criminal proceedings against children and prompt assessment and the procurement of appropriate resources for children on remand are as important to diversion as initiatives to divert children at the point of arrest. The need for prompt and intensive support for children who are held on remand for substantial periods will be examined in more detail in the discussion on directions for reform.

Reform Directions

Divert children at the point of arrest

This study's data findings reinforce the need for support services at the point of arrest so that children who are at risk of remand can be effectively diverted. In particular, the number of short remand episodes that commence on the weekend and then end in immediate release on bail suggests that there are not enough resources of the right kind to prevent children being remanded by police after hours. At present, after-hours support for children who are arrested and denied bail by police is

provided through CAHABPS workers. However, as has been noted, the capacity of CAHABPS to assist children is constrained by the lack of resources available to the service, including being closed from 2 am through to 9.30 am when some 10 per cent of arrests occur. While CAHABPS workers undertake a valuable role in assessing children and advocating in favour of bail to police and bail justices, they are not able to have children bailed into their care, nor do they have resources to secure accommodation places for children. Furthermore, CAHABPS can only provide in-person assessments in metropolitan areas. These limitations inhibit the capacity of CAHABPS to prevent unnecessary remand for Victorian children.

Other jurisdictions in both Australia and internationally provide after-hours services to respond to children who are at risk of remand. In 2011 the ACT government launched an After Hours Bail Service in response to recommendations made in a review of youth justice by the ACT Human Rights Commission. The service provides support for children at risk of remand including locating alternative accommodation options, providing or arranging transport, and contacting parents. During its first six months of operation, the program saw the number of short-term remand episodes in the ACT youth justice custodial facilities decline by 17per cent compared with the same period of the previous year (Burch, 2012). In the American city of Sacramento, local initiatives that limited the ability of police to remand children resulted in situations where police had children in their custody with no appropriate accommodation to which they could be returned. Youth Justice Services in the city responded to this issue by establishing a neighbourhood alternative centre that children could be taken to by police. Staff at the centre provided support to children to secure appropriate accommodation and linked them in with other support services that were co-located at the centre (Orlando, 1999).Similar models of short-term after-hours support, assessment and accommodation services operate in other US cities including New York and Portland (Orlando, 1999; Solomon & Allen, 2009).

With the exception of CAHABPS, there are no after-hours support services in Victoria that are funded to provide support to children who are at risk of remand. However, there is a range of street outreach, drug and alcohol, and accommodation services that have the capacity to respond to issues that arise outside normal business hours. Examples of these services include outreach street teams operated by the Salvation Army, the Youth Support and Advocacy Service, and on- call accommodation support from Brosnan Services, a program of Jesuit Social Services. These existing services have the potential to provide a foundation for the development of a more comprehensive after-hours response for children at risk of remand including, for example, brokerage funds that CAHABPS workers could access to purchase the services and the support that are necessary to keep a child from being remanded in custody. A model of using brokerage funds to purchase accommodation and support services for children on bail has already been successfully implemented in Queensland through the Youth Bail Accommodation Support Service (YBASS), about which more is said below. This model should be implemented in Victoria to provide access to after-hours support for children who at the point of arrest are at risk of remand.

Support for children in the community

Community-based bail support services provide an alternative option to remand for children who might otherwise be remanded due to the risk they represent. Community-based bail programs commonly take the form of caseworker support services. In Victoria the only specific community-based alternative to remand is the Intensive Bail Supervision Program which operates in the North and West and Southern Metropolitan Regions. Similar programs exist in Tasmania, Queensland, Western Australia and the ACT and overseas in local government areas in the United States and United Kingdom.

As noted earlier in this report, the pilot of the Victorian intensive bail supervision program was evaluated and children participating in the program were found to have successfully made it to court without being rearrested or breaching their bail (DHS, 2011). This corresponds with evaluations of this type of program in the United States which found a 90 per cent program completion rate (Solomon & Allen, 2009). Successful features of caseworker bail programs that have been identified in cross-national

comparisons of remand alternatives include low caseloads, community-based services staffed with case workers who are perceived as being separate from the justice system, intensive supervision available 24 hours a day, support in building relationships with family, and strong support from local courts (Solomon and Allen, 2009). The Victorian Intensive Bail Supervision Program has many of these features, most notably community-based and intensive after-hours supervision. However, the program is limited by location-based eligibility criteria (it only operates in certain locations) and the fact that child protection clients are unable to access the service. Given the widely acknowledged value of community-based bail support programs for children, there is a need for this type of support to be available to all Victorian children who need support to remain in the community on bail.

An alternative model to caseworker support services is after-hours support centres. This model operates in New York and has resulted in high levels of bail compliance and reductions in the use of custody (Solomon & Allen, 2009). These centres operate during evenings for children on bail and assist them in meeting curfew and reporting requirements. Children charged with serious offences are required to attend these centres between the hours of 3.00 pm and 9.00 pm. They are provided with meals and undertake activities including group and individual counselling, education support, behaviour interventions, recreational sports and activities. The centres are located in the community and have low staff to client ratios. This type of program may offer the requisite level of supervision and support for children who are at risk of breaching bail, particularly outside normal business hours when 80 per cent of arrests take place. Another benefit they could offer is to link in with police efforts to monitor and enforce compliance with bail conditions, which has been a particular focus of initiatives such as the Bail Engagement Program in the Southern Metropolitan Region. However, it is uncertain whether the resources required to develop centre-based bail support programs would meet the demand within local areas. This is particularly the case in outer suburban and rural and regional areas where relatively dispersed populations and a lack of transport options would present significant challenges to the feasibility of this type of program. In light of this, it is our view that present efforts should be made to expand and evaluate the existing Intensive Bail Support Program and that consideration of centre-based bail support programs be deferred until after this has occurred.

Residential alternatives to remand

Research and literature on children on remand in other Australian jurisdictions and internationally has identified the inability to secure appropriate accommodation as a major issue (NSW Law Reform Commission, 2005; UnitingCare Burnside, 2009). As a result, residential alternatives have been developed to provide accommodation for children who would otherwise be remanded. Models that are used include brokerage, bail hostels and foster care arrangements. In Queensland, the Youth Bail Accommodation Services (YBASS) secures accommodation for children on remand due to difficulties in locating and maintaining accommodation. Children accessing YBASS are provided with casework support to locate and maintain accommodation for the duration of their bail. Placements can be within families or youth accommodation services (such as live-in supportive housing), depending on the needs and circumstances of the child. Another approach is bail hostels which have been used as alternatives to remand in the adult prison system in the United Kingdom (Ericson & Vinson, 2010). A criticism of this model of alternative accommodation is that conditions are often quite similar to remand and that the grouping of young alleged offenders together in accommodation enhances risks of stigmatisation and contamination of children (Ericson & Vinson, 2010). However, bail hostels that are well supervised provide decision makers with an alternative to custodial remand when no less restrictive approach is deemed appropriate.

Remand fostering, which has been used in the United Kingdom, places children in foster care for the duration of their time on bail (NACRO, 2004). Studies on residential bail options have concluded that remand foster care is the most effective type of residential alternative to remand and that models of foster care incorporating treatment, such as Multi-Dimensional Treatment Foster Care, have the potential to reduce re-offending among children (Eddy, Whaley & Chamberlain, 2004). Moreover, such models would be more appropriate to the Victorian context as overall numbers of children remanded

from any single location in the course of a year are generally too small to support a dedicated, locally-based residential facility.

In Victoria, the *Children, Youth and Families Act 2005* specifically prohibits the remand of children due to the lack of suitable accommodation. This places the onus on the justice system to provide alternative accommodation options for children at risk of remand. At present these alternatives are provided through youth housing and homelessness services and residential care within the child protection system. Data was not available to this study that could provide insights into the influence of accommodation issues on the number of children being held on remand in Victoria. However, our observations at the Children's Court, our interviews with individuals who had been remanded as children, and our stakeholder consultations have lead to our conclusion that the availability of accommodation is not a major contributing issue to the remand of children. However, what is clear is that major problems exist regarding the suitability of accommodation for some children who are on remand. This is most clearly the case in the residential care system where children experience unstable residential placement that increases the risk of offending or even committing offences in the residential care environments. A major challenge is to ensure that these groups of children have suitable support with their accommodation issues. This could be through more effective use of existing out-of-home care services in the child protection system or through a community-based residential alternative within the youth justice system. The detail of initiatives to address this issue will be addressed in more detail in our discussion of Reform 6.

Assessment must take place immediately

With the exception of the CAHABPS risk assessment, children who are remanded in custody, particularly after hours, are unlikely to have an assessment of their needs until several days in custody have passed. During that time, the child might attend court for bail hearings and be interviewed by lawyers, have assessments conducted by Youth Justice Workers for programs such as Intensive Bail Supervision, and be assessed in custody by Youth Justice Custodial Services and other custodial services such as Forensic Health Services. With the exceptions of CAHABPS, these assessments are likely to be conducted during business hours and the timing and speed with which assessments take place is haphazard.

This study's finding that most remand episodes end with a child being released on bail suggests that, once assessments of children take place and any issues precluding them from making bail are addressed, children are able to be released into the community on bail. The timely and consistent screening and assessment of children has been identified as a key feature of effective remand admissions practice by the Juvenile Detention Alternatives Initiative (JDAI) in the United States (Mendel, 2009). This initiative supports American youth justice systems to develop and implement assessment procedures for children who are admitted into remand. Efforts to complete needs assessments of children at the commencement of cases (instead of during sentencing) were supported in some local areas (Henry, 1999). The prompt and consistent assessment of children admitted into remand 'transform[ed] detention from a building or facility into a continuum of supervision' (Henry, 1999). A key element of these reforms was ensuring that assessments were shared between different decision makers and service providers in the remand system. More effective and timely assessments of children were identified as a factor in reducing unnecessary remand in Broward County, Florida. Four years after assessment reforms were introduced, the total number of children on remand had dropped from 147 to 67. Importantly, among the 67 children on remand was a larger number of alleged serious and violent offenders than when the remand population was 147 (Henry, 1999). Prompt assessment focusing on the needs of children who are admitted to remand allows for expeditious development and implementation of support, enabling children to move back into the community. There is a clear need for reform to ensure that children at risk of remand are promptly assessed and given appropriate support to assist them and divert them from custody.

Intensive assessment should occur as early as possible for any child about whom the police have prior knowledge (including, stakeholders suggest, through multiple missing persons reports and family violence call-outs) or where an alleged offender is under 14 years of age, is Aboriginal, or is known to have child protection involvement.

Recommended actions

Build on and integrate existing initiatives to divert Victorian children and young people from remand, including ensuring 24 hour coverage. Specific areas for reform include:

5. Expand the capacity of CAHABPS to operate from 2.00 am to 9.30 am and across all areas of Victoria. In rural and regional areas, provide this function through youth justice units or as purchased from community sector agencies.
6. Improve and expand after-hours access to support for children at risk of remand, including crisis accommodation, drug and alcohol services, and outreach. Youth justice service of DHS could purchase additional access on a fee-for-service basis from community sector agencies.
7. Expand bail support for children across Victoria, including the expansion of Intensive Bail Supervision for children at risk of remand. Integrate this function into youth justice units or existing community sector youth justice services in rural and regional areas.
8. Provide intensive assessment for children at risk of repeated exposure to the justice system. Risk factors include:
    - more than one police contact
    - multiple missing person's reports and family violence call outs
    - less than 14 years of age
    - being Aboriginal
    - known child protection involvement.

7.6 Intensify support for the most vulnerable

Section 3 of this study outlined the range of issues often faced by children who come into contact with the youth justice system. These may relate to family, accommodation, education and learning, mental health, and drugs and alcohol. There is evidence to suggest that children who have more extensive exposure to the justice system and those who come into contact with it from a younger age are often influenced by a number of aspects of developmental disadvantage (Dennison, 2011). This study sought to explore the nature of highly vulnerable children's exposure to the youth justice system and the extent to which they experienced remand. In understanding this experience we also sought to identify any issues with how the justice system responded to these children and whether it was sufficiently meeting their needs. To make this assessment, we explored data on children's transitions from custody to the community, their exposure to remand, and how the youth justice system links to the child welfare system.

Key findings and discussion

Nineteen per cent (444) of children who received a youth justice order in 2010 experienced remand during that year. These 444 children experienced 718 remand admissions[10] in the year in question. This study estimated that the cost of custody alone for these admissions is $9,378,864 (see Box 1, above in section 6.1). As seen in Table 19, 65 per cent of children who were remanded had one admission in 2010, 35 per cent had multiple admissions, including 28 per cent who had two or three admissions, and seven per cent of children had more than three admissions in the single year. The largest number of admissions for a child during the year was 13.

Table 19: Total number of 2010 remand admissions for children who experienced remand admissions that year.

N Admissions	1	2	3	4	5	6	7	8	13	718
N children % young people	288	95	33	16	5	4	1	1	1	444
Per cent	65%	21%	7%	4%	1%	0.9%	0.2%	0.2%	0.2%	100%

The incidence of remand almost doubles when a childhood, as opposed to single year rate of admissions, is considered. Many children recycle through multiple remand admissions over the course of their youth justice involvement. While 444 children with youth justice orders in 2010 experienced remand during the year 2010, 826 (35 per cent) of children with youth justice orders during this year experienced remand at some point over their youth justice involvement (from first order through to May 2012). Forty-one per cent (327) had only one admission. For 288 children this was the 2010 admission but 59 per cent (470) who experienced more than one remand admission included a small but worrying three per cent (23) children who had between 10 and 24 admissions (see Table 31, Appendix D6).

Services that aim to improve the life opportunities of children on remand must operate in a context of often short, but for a sizeable subgroup of children, repeated admissions to remand. Reforms 4 and 5 noted that 64 per cent of remand admissions in 2010 were for less than 21 days, with 25 per cent for three or less days. These figures add to the above findings—a majority of children (59 per cent) remanded over their childhood or youth experience multiple admissions. In terms of length of time spent on remand, 39 per cent of children who were remanded in 2010 spent seven or less days on remand. For the 25 per cent who spent between eight and 21 days on remand, the average stay was

[10] Each admission represents a continuous period of incarceration and may include multiple remand orders when the time in custody exceeds 21 days.

approximately 13 days (Table 20 below). One hundred and four of the 321 children who experienced an episode of remand that lasted for 21 days or less also experienced another episode that lasted for more than 21 days *in the same year*. Repeated exposure to remand has significant social and financial costs with the average custody costs of children remanded in 2010 estimated by *Thinking Outside* to be $143,648 per person (see Box 1 in section 6.1).

Table 20: Detailed breakdown of remand admissions

					Average days					
	N Individuals	**Sum remand admission**	**Sum days on remand**	**Average days on remand**	**< 7 days**	**8 - ≤21 days**	**22 - ≤42 days**	**43 - ≤63 days**	**64 - ≤180 days**	**>180 days**
Pre 2010	445	1,258	29,432	66.14	3.34	14.03	29.30	51.74	94.49	239.00
2010	444	718	17,763	40.01	3.08	13.32	30.71	51.67	91.11	245.43
Post 2010	235	416	10,765	45.81	3.26	13.85	30.39	50.96	95.02	217.00
Total	806	2392	57,960	51.57	3.25	13.80	29.92	51.61	93.57	240.35

Services to support vulnerable children experiencing remand often have limited timeframes in which to assess and initiate services for the majority (64 per cent are in custody for less than 21 days). This alone is an inadequate timeframe to enable change given the multiple needs such children present with, as detailed throughout this report. Directions for reform must consider, firstly, what can be best achieved while children are in custody, and secondly, how best to provide continuity of care for such children as they move between custody and community settings, often multiple times in a year.

When VONIY[11] levels are compared for all children and young people with a sentenced order in 2010, it is seen that the proportions of children and young people with high or intensive VONIY levels increase with the extent of exposure to remand. We know that, in 2010, 35 per cent of remand episodes lasted more than 21 days and 10 per cent exceeded 42 days. When VONIY levels are compared for all children and young people with an order that year, it is seen that the proportions of children young people with high or intensive VONIY levels increase with more extended periods on remand. Children and young people who received a 21-day admission for remand had higher VONIY levels than the total group of children and young people with youth justice orders in 2010 (this includes community orders). In percentage terms, 45 per cent of the entire youth justice population in 2010 had high or intensive VONIY levels compared with the 65 per cent of children and young people with a 21-day remand admission (Appendix D6, Table A32). Moreover, 56 per cent of children and young people who had only a 21-day (or under) admission had high or intensive VONIY levels compared with 77 per cent of those who had both short-term and long-term admissions (Appendix D6, Table A32).

These findings again emphasise the need to consider the nature of services and support provided to children on remand. The majority of children who have extended exposure to custodial remand have more significant risk profiles, and yet the nature of services and support available to them is often limited due to their uncertain legal and custodial status. There is a risk that these children experience extended periods of time on remand when support could commence to meet their needs.

Again, the children with the greatest risk are likely to be those who entered the youth justice system at the youngest ages, as indicated by VONIY levels and known child protection involvement. As detailed earlier in this research, all 27 children who experienced remand between the ages of 10 to 12 years of age were known to child protection, 52 per cent before their third birthday. Their risk levels are likely to be among the highest of all children. Additionally, all children who were 10 or 11 at the time of

[11] Victorian Offending Needs Indicator for Youth – measure of factors that predispose a child to commit anti-social behaviour.

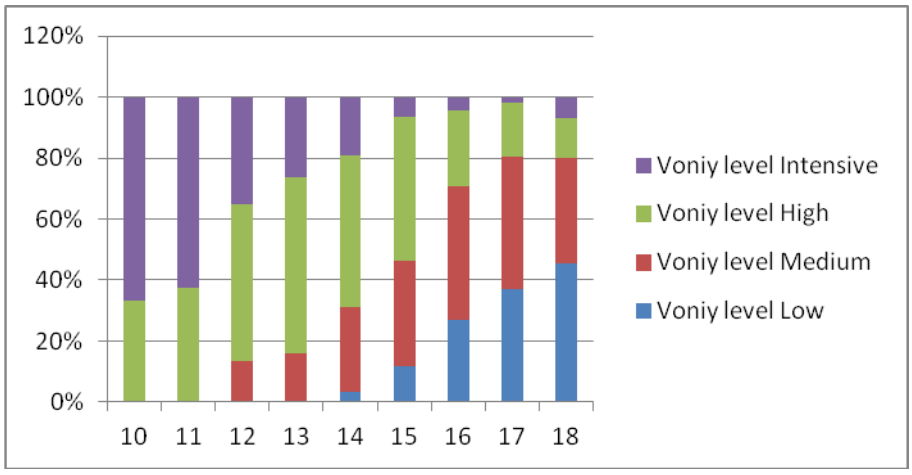
their first order had high or intensive VONIY levels, and 86 per cent of those with sentences in 2010 who were 12 at first order were similarly placed. (See Table 21 below).

Children 14 or under at first order were far more likely to have a high or intensive VONIY level in 2010 than those children and young people older at first order. Proportions of these highest risk levels decrease with ascending age at first order. Specifically, 76 per cent of young people with first orders at 14 or under had high or intensive VONIY levels in 2010, compared with 33 per cent of those 15 to 18 years at first order. The descending proportion of high VONIY classifications with ascending age of first order to 18 years can be seen in Table 21 and Figure 6. (See also Appendix D6, Table A33).

Table 21: Age at first order and proportion high or intensive VONIY levels in 2010

Age 1st order	10 - 11	12	13	14	15	16	17	18
Per cent high or intensive VONIY	100%	86%	84%	68%	53%	29%	20%	20%

Figure 6: Age at first order by VONIY level in 2010 (See also Appendix D6, Table A33)



Aboriginal children and young people have higher rates of remand than non-Aboriginal children and young people, as seen in Table 22. Forty-six per cent of Aboriginal children and young people with youth justice orders in 2010 experienced remand at some time over their youth justice involvement, compared with 32 per cent of non-Aboriginal children or young people. Moreover, as described previously, Aboriginal children recorded more 'high' and 'intensive' VONIY classifications in relation to 2010 sentenced orders' than non-Aboriginal children (56 per cent compared with 44 per cent) and were more likely to have been younger at their first youth justice order. For example, 57 per cent of Aboriginal children in custody in 2010[12] received an order at 14 years or younger compared with 17 per cent of non-Aboriginal children.

Table 22: Remand admissions ever by Aboriginal status.

	Aboriginal status		
Remand admissions ever	**No**	**Yes**	**Grand Total**
Zero	1,383 68%	167 54%	1,550 66%
1 or more	664 32%	142 46%	806 34%
Total N	2,047	309	2,356
Total Per cent	100%	100%	100%

[12] At first order in 2010 if multiple orders in that year.

Reform Directions

This study has confirmed findings from existing research (Dennison, 2011) that there is a small (in terms of the overall population of children) but substantial group of children and young people who have repeated and extensive contact with the justice system. From stakeholder consultations and our observations of proceedings in the Children's Court we know that the personal and social profile of these children and young people is generally marred by experiences of trauma, family dysfunction, exclusion from education and repeated contact with the youth justice system. Our data analysis supports this, with children who experience more extensive and repeated exposure to remand presenting with higher risk profiles than the general youth justice population. It is also evident from the sample of children who were remanded at the age of 12 years old or under, all of whom were child protection clients, and who went on to accrue more admissions and more orders in general than the wider youth justice population. Aboriginal children are also likely to have intensive needs and extensive involvement in the youth justice system. The key question that arises for children and young people with high levels of risk and vulnerability who are subject to or at risk of remand is how the youth justice system should respond to them before they have been convicted of an offence.

The challenge of supporting children on remand

The risk profile of children is heavily implicated in the decisions for their being remanded as opposed to being bailed. The paradox of remand lies in the presumption that children are innocent until proven guilty and consequently assertive responses to criminogenic influences on their lives are not pursued. The support available to children on remand is limited due to uncertainty regarding the outcomes they will receive when their criminal case is finalised. This is further compounded by uncertainty as to how long they will be in custody if remanded. This paradox must be resolved if effective services are to be provided to children on remand.

Within the youth justice system, children might receive casework support from the Intensive Bail Supervision Program or local Youth Justice Unit. Recent reforms within the Parkville Youth Justice Precinct mean that children on remand now can attend the Parkville School and access general health and mental health services. These reforms are welcome, and positive views of the impact of the Parkville School were expressed during this study's stakeholder consultations. These views, which are discussed in more detail below, are supported by the evidence on the educational needs of children in the youth justice system and the key role of learning in breaking cycles of offending. However, some doubts remain about the ability of these programs to offer the continuity and level of intensity commensurate with the needs of highly vulnerable children and young people. The issue of continuity is critical given that a significant number of children experience repeated episodes of remand as outlined in our data findings at the start of this section. As discussed previously some of the children most at risk of this vicious cycle of repeated remand admissions are those first remanded as 10 to 12 year old children. The intersecting youth justice-child protection profile was also apparent in young people interviewed for this research.

> The young person was removed from his parents' care by Child Protection when he was 11 years old and first remanded at the Parkville Youth Justice Precinct when he was 13. "It was OK" he said "I was with my mate and knew a lot of people in there". Now 20, this young man has been in and out of residential care, secure welfare and remand multiple times. He was remanded twice at 15 for one and two months respectively, and most recently another month in the Melbourne Assessment Prison. Asked what would make remand a better experience, he said "something to do during the day".

A more effective rehabilitative system operating holistically across these multiple levels and systems must be made available to children in the pre-conviction period if this self-perpetuating cycle is to be broken.

Internationally, the approach taken to intervening with children and young people who enter the justice system before conviction differs from Victoria. In youth justice systems that take a welfare corporatist approach, such as Sweden and Japan, the therapeutic needs of a child or young person who offends are the key foci of the system, and this response is triggered from an initial contact with the equivalent of the youth justice system. Children who offend are referred by authorities to the Welfare Board in Sweden and the Family Court in Japan (Cavadino & Dignan, 2006). These institutions explore the offending behaviour of the children and focus on their needs. Decisions are made as to the most appropriate and proportionate response to the needs of children and can involve the community and family in order to deal with their issues. The youth justice systems in England and the United States, which are closer to the model in Victoria than those in Sweden and Japan, are also grappling with the challenges of responding to children and young people pre-conviction (Orlando, 1999; .Solomon & Allen, 2009).Some of these responses (custodial and community-based) incorporate programs that assess and support children and young people in dealing with a range of their needs. In the United Kingdom, legislative reforms have taken place that deem children and young people who are remanded in custody to also be clients of local child protection authorities and therefore able to access the full range of child protection interventions while on remand.[13] In London, as part of the Youth Justice Reinvestment Partnership, children and young people who are at risk of remand can be referred to multi-systemic therapy in the community (North East London Partnership, 2012). These approaches demonstrate that in a youth justice system with a justice and minimal intervention focus, it is possible to provide more substantial support to highly vulnerable children and young people prior to conviction.

Changing Victoria's approach to remand – problems of principle

As discussed in an earlier section of this report, the focus and intensity of support provided to children and young people in a youth justice system is influenced by whether the system takes a justice, welfare, restorative, or neo-correctional approach. Victoria's system takes a hybrid approach that draws on different aspects of all these approaches but with a substantial emphasis on justice. The 'paradox of remand' within the Victorian youth justice system seems to paralyse the impetus to address the underlying issues that contribute to these higher levels of risk. The provision of support services may be further compartmentalised by the stage a child is at within the criminal justice process—bail, pre-conviction, pre-sentence, remand or sentenced—and further by whether the child is detained in custody or supervised in the community. In the hybrid justice/welfare context, conditions on remand and bail orders are often imposed in the best interests of the child, yet failure to comply with the imposed conditions may result in a more onerous burden than the original offence (Freiberg & Morgan, 2004). Stakeholders in Victorian youth justice settings report disparities in practice between different courts or different police regions regarding the imposition and policing of such conditions, and the adverse and inconsistent impacts for children as a consequence.

An alternative way forward in these matters is, like the more welfare-oriented approaches to youth justice evident in Scandinavian countries, to deal with children's offending predominantly as a welfare issue. There are many attractive aspects to this approach which focuses on responding to the maturational and developmental environments of childhood and adolescence as the basis of the service response. Recommendation 4.1 advocates this type of response for children below the age of criminal responsibility, as part of reforms to lift the age of criminal responsibility to 12 years. The appropriateness of such an absolute welfare-oriented response for the entire youth justice cohort should remain an open question and a challenge to law and policy makers alike. This approach itself is not without criticism—questions remain about effectiveness given the limited extent of evaluations of specific interventions reported in the literature (discussed further below), and concerns about exposing

[13] *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (UK), s.104

children to extensive interventions, which would possibly be more intrusive than a justice response. The current structure of the youth justice system in Victoria—characterised by a welfare/justice split most evident in the separation of the family and criminal divisions of the Children's Court—would also require overhaul. While the small numbers and special circumstances of the youngest in our justice system (those aged 10 and 11 years) deserve such a radical transformation in approach, further analysis and shifting of community perceptions would be required before the Victorian system could adopt a similar approach beyond this group. It is evident that a compromise position is required.

For us, this compromise is captured by two of the core principles underpinning our approach to reform, as stated in the introduction to this section of this report:

- There is minimum intervention within and through the justice system with an emphasis on protecting the human rights of children.
- Interventions that are linked to the youth justice system and commensurate with children's needs should be available irrespective of what stage a child is at in the justice system.

Fundamentally, we believe that the justice response should be as minimal as is required to deal with the criminal aspects of the child's offending, but provide a gateway to comprehensive and therapeutic responses founded on voluntary, engaged relationships and with the child or young person consenting to service. This proposition is given in the knowledge that any offer of voluntary service in the pre-conviction or pre-sentence phase is not wholly voluntary as there is usually a stated understanding—though not guarantee—that participation may reduce the severity of the final court outcome. While the service is voluntary, the presence of the background potential for higher sanction imposes an important lever for initial engagement. It is then up to the skill of the worker to establish the foundations for an ongoing, engaged and cooperative relationship with the child or young person as the key to change. We believe that this approach provides a level of pragmatic compromise necessary to ensure the minimum invasiveness of the justice, and the maximum engagement of the welfare, responses in practice. This approach, known as the constructive use of authority, has been an established part of the armamentarium of case workers in the adult and juvenile corrections fields for half a century, following the seminal writings of Elliot Studt (Studt, 1977).

Effective interventions in youth justice

Comprehensive support for children on bail and remand must be informed by evidence of what works in providing intensive needs-focused support to children in the justice system. Prior to the 1990s there was a sustained period of scepticism about the impact of treatment programs on the behaviour of children in the justice system. However, there is recent and growing evidence that interventions can impact on the behaviour of children in the justice system. This is connected with the development of techniques of meta-analysis and their application to evaluations that meet certain standards of design. A recent update of the findings of meta-analysis on the impacts of correctional programs considered the results of 548 evaluation studies (Lipsey et al. 2010).

One of the key aspects to the success of programs was whether they utilised control or treatment philosophies. Control philosophies emphasise external control techniques for suppressing delinquency (for example, instilling discipline, fear of consequences, and surveillance) while treatment philosophies focus on behaviour change by facilitating personal development by means such as restoration, personal and vocational skill building, counselling and multiple coordinated services. The study concluded that programs with a therapeutic philosophy were more effective than those with a control philosophy.

It is important to note that treatment programs differ and cannot be considered the panacea for managing juvenile offending given the inconsistency of results that have been observed across a range of therapeutic intervention types (Clark, 2001). Furthermore, responses need to focus on the wider range of needs of children, including mental health and substance abuse problems which are prevalent among young offending populations, and deficits in cognitive functioning, language, and communication skills (Allard et al, 2010). Nonetheless, meta-analysis of rigorous evaluations of different program types

does provide invaluable insight into the types of interventions that are effective. Approaches that have been shown to reduce further offending by participants include family-based interventions, multi-systemic therapy, community-based interventions, behaviour modification, and cognitive behavioural therapy.

Research on the effectiveness of youth justice interventions has also shown that one of the most important elements of effective practice is the nature of the relationships between those offering support and the children (Clark, 2001). There is clear evidence that the relationship between worker and participant and the level of meaningful contact provided through an intervention impacts upon rates of recidivism for participants in programs (Allard et al, 2010). Key elements which influence the nature and strength of the relationship include the belief of the child that they are being listened to and understood, the acceptability of the relationship and the support being offered to the child, reliability and predictability in how the child is treated by support workers, and the level of warmth and self-expression in the relationship (Clark, 2001). Support workers also need the skills and resources to help children to deal with issues relating to family, school, justice, health, drugs and alcohol, and mental health.

The involvement of family is critically important. The family environment and relationships within that environment are identified as key factors influencing childhood development and which can impact on the risk levels of children becoming involved in the youth justice system (Clark, 2001). It can also lead to other problems such as homelessness, with research in the United Kingdom finding that 42 per cent of young offenders with accommodation issues cite family breakdown as the cause of their housing need (Youth Justice Board for England and Wales, 2006). Despite this, processes in the youth justice system often give children the choice not to include their parents or, as research has shown, parents become bystanders to proceedings unless they are directly invited to speak in court (Varma, 2002). Good practice must therefore always include attempts to involve the defendant's family at all stages, to ensure regular communication, explain jargon, remain positive about the role of family, and link the family in with support.[14] Family-specific interventions might also be required and can include parenting skills development, mediation, and family conferencing. Interventions such as functional family therapy and multi-dimensional treatment foster care which have family and caregivers as a key focus have been evaluated and shown to reduce rates of re-offending (Ogilvie & Allard, 2011). Evaluations of another intervention, Multi-Systemic Therapy, have identified its focus on improving parenting and the skills of parents to disengage children from deviant peers as key means of changing the behaviour of children and preventing offending (Henggeler & Schaeffer, 2010).

Finally, as referred to previously, engagement with education, training, and employment is another significant factor in moving children away from the criminal justice system. Research in the United States tracking the progress of children and young people after release from custody found that gaining employment was of significance in deterring a return to custody in the first six months after release. This same study concluded that motivation to work could be strengthened by earlier treatment and institutional education and training (Bullis & Yovanoff, 2006). Similar research focusing on the experience of youth leaving custody with disabilities found that children with special education disabilities fared worse than their peers in terms of returning to the juvenile justice system and in failing to become involved in work or education in the community. Children in the study with disabilities who did become engaged in work or learning were less likely to return to custody than those who were not so engaged (Bullis et al. 2002). In light of these findings, the implementation of an educational program for children in Parkville is justified and should be applauded. The importance of maintaining learning when returning to the community is evident. The need for consistency and support in transitioning between custody and community—for all services—will be explored in more detail later in this section.

[14] RESET,Family Handbook for professionals see also Strong Bonds, Jesuit social Services.

Features of successful programs

Informed by theory and empirical research
Delivered in community rather than institutional settings
Matched to an offender's risk level, needs and responsitivity
Appropriate to meet the needs of young Aboriginal offenders
Delivered on an individual rather than group basis
Provides sufficient level of treatment consistent with the program's design.

Intensive multi-layered responses for the most vulnerable children

It can be seen that children on remand or at risk of remand need intensive, therapeutically-informed, multi-layered responses and interventions. Developmental, socio-economic and educational problems identified in earlier sections of this report will not be solved by simple or brief interventions.

The need to deepen and extend the Victorian service response to children and young people who become involved with the criminal justice system does not substitute for the responsibility and capacity for child protection to care better for its own. There are a number of specialist services available within child protection that should review eligibility criteria to ensure that children within the youth justice system are explicitly identified as priority targets. Such services include the therapeutic response of *Take Two,* the *Stronger Families* integrated placement prevention models working in partnership with *Take Two*, *Finding Solutions* youth services with considerable brokerage capacity, and still-evolving therapeutic residential care options. The degree of integration between youth justice and child protection will be addressed below.

Linking custody and the community

As noted above, evaluations have demonstrated that interventions delivered in community settings are more effective than those delivered in custody. This sits against a wider body of evidence demonstrating the 'corrosive, damaging and counter-productive' effects of youth custody (Goldson, 2001). Problems with custody, combined with the chaotic circumstances of children in youth justice systems who experience repeat episodes of remand, emphasise the importance of enhancing the links between custodial remand and the community. Of particular importance for highly vulnerable children is how these links can be maintained while they are on remand, and support provided for children as they transition between custody and the community. For Victorian children on remand, efforts to link remand with community can be seen in the work of the Remand and Bail Coordinator and the school program at Parkville. Both work with children in custody and support them in returning to the community on bail. For sentenced children, more extensive transitional services are available through Youth Justice Community Support Services which provides case management support to connect children with family, education, training, employment and the community.

Similar models of transitional support, often termed 'aftercare', operate in other jurisdictions in Australia and internationally. The need for these services is demonstrated through extensive qualitative research in the UK which focused on children leaving custody. The research found that very few children being released from custody returned to anything resembling a respectful and supportive environment. As the researcher Halsey noted, "The system manufactures unreasonable hazardous states of affairs for children to negotiate instead of ensuring that as many protective factors as possible are in place the moment the young person leaves the custodial institution" (Halsey, 2007). As noted previously, links to education and employment on release have been demonstrated to reduce the rate of re-offending among children released from custody and are already a focus of Youth Justice Community Support Services in Victoria. Despite many of the problems with custodial environments, they do provide an opportunity to 'anchor' measures and interventions to support children in the justice system. In practice

this can be seen in the efforts by the school at Parkville to link children with the wider education system when they are released from custody. A model of support that commences in custody and continues with ongoing support for children as they transition into community warrants expansion.

There is also a need to address the fact that custodial environments cut children off from links to the community and positive aspects of their lives. Relationships and daily routines are disrupted when children enter custody and move from an environment largely characterised by freedom to one that emphasises control. This has been identified as having a 'corrosive' effect on children by inflicting emotional damage (Goldson, 2001). As one of the young people interviewed as part of this study said, "While I'm in the cells I feel like they forget about me". It is important that children on remand maintain a sense of connection with the community while in custody. Ongoing community-based support that engages with children regardless of whether they are in custody or the community would provide one form of connection. At present in Victoria the links between children who are in custody and the community come in the forms of visits and the community services that engage with them. However, there is a lack of consistency and coordination in the approach. The American state of Missouri provides an example of a systemic approach that links custody and the community (Mendel, 2010). In that state, residential custodial facilities are located within community settings including in parks and university campuses. By having a number of smaller facilities located in different local areas, it is possible for children to be held in custody close to their homes. Within all custodial environments, efforts are made to provide detained children with opportunities to undertake supervised activities in the community. For the more serious offenders, community activities are initially provided in custody with a focus on building the child's capacity to eventually participate in community-based activities. Connecting custody with the outside community is a fundamental principle of the Missouri Approach and is supported in each facility through a community liaison council of local leaders who foster links between the community and the custodial facility. The focus on linking to community in Missouri is part of a broader approach to youth custody which will be considered in more detail below.

Custodial environments for children

Despite the move to a justice focus in youth justice system and tougher rhetoric and laws to deal with young offenders over recent decades, the focus on rehabilitating children is still embedded in juvenile justice and corrections institutions. As noted above, some aspects of this approach extend to children and young people on remand in Victoria, who are provided with mental health and drug and alcohol services, and support with their education through the Parkville school. A range of other service providers have offered different activities and interventions to children on remand in Victoria. However the nature of these activities and interventions differed and we are not aware of serious evaluations of their effectiveness. As noted earlier in this report, the environment within Victorian youth custodial environments has been the subject of some controversy in recent years, with an Ombudsman report recommending significant reforms to the system. During the course of the present study, the treatment of children in custody has again been the subject of further controversy in Victoria, with the behaviour of a small group of children in youth justice custodial facilities resulting in their being transferred to the adult prison system. The current reforms and challenges in youth justice custodial environments, and the significant exposure to remand of a small group of Victorian children, make it necessary to reconsider the overall approach taken to children in custody in Victoria.

The reforms to youth justice custody in the American state of Missouri provide an example of how youth custody can be transformed to produce safer custodial environments and better outcomes for children. Three decades ago, Missouri reformed its youth justice custodial services and moved from large correctional institutions to local small-sized residential facilities, with a focus on rehabilitating children through a highly-structured approach that supports children in changing attitudes, beliefs and behaviours. The approach moves away from a punitive model of youth custody:

> instead of standard-fare correctional supervision, Missouri offers a demanding, carefully crafted, multi-layered treatment experience designed to challenge troubled teens and to help them make lasting behavioural changes and prepare for successful transitions back to the community (Mendel, 2010, p. 9).

The results have been impressive with children released from Missouri youth justice facilities much less likely to re-offend and return to custody than in similar systems in America. In addition, the system has a strong record for staff safety and a low number of critical incidents involving detained children. A notable feature of this reform process has been the fact that it occurred without placing a significant additional burden on taxpayers, with per-head spending lower than other jurisdictions which take a far more punitive approach to custody. At the heart of the Missouri approach is a philosophy that moves away from punishing and coercing children to one that focuses on helping children succeed by supporting and challenging their existing behaviours and attitude (Mendel, 2010). A significant aspect is its focus on building positive relationships between staff and the children. This is achieved through highly trained staff mentors who work with children in educational and group counselling sessions. Inclusive restorative justice practices are employed when children in custody misbehave.

The Missouri custody model challenges existing approaches to custody in Victoria and in many other jurisdictions. From research and interviews with young people conducted as part of this study, it is clear that there is significant room for reform in this area. As one young person interviewed said, *"It's shit in there. You aren't treated well, the facilities are unhygienic and there isn't anything to do".* Clearly, reform to custodial environments is not a straightforward task and takes time. In Missouri, reform took many years to implement and refine. An improved treatment approach could utilise the existing custodial estate, with different units within the custodial estate used for different levels of intensity in supervision, interaction between children in custody, staff and the community. These reforms could link into a longer-term project to comprehensively reform youth justice custody in Victoria.

Enhancing links with the child welfare system

The current study has shown that there is a clear need to enhance integration and coordination between youth justice services and child welfare services. This was made evident in the finding of our data analysis that 40 of the 51 children in youth justice in 2010 who had contact with the justice system before the age of 12 were also known to child protection. In addition, all 27 children who had been remanded at the age of 12 or under were known to child protection. There are two major implications from these findings. The first is that, consistent with other recommendations made throughout this report, a greater emphasis and understanding of youth justice issues is required within the child protection system. This must extend to efforts to enhance support and services to children within the system to prevent them from 'crossing over' into the youth justice system. The second implication is that, where prevention fails and children do cross over, there must be a more effective response that draws on resources and the expertise that exists within both the child protection and youth justice systems.

In the United States, the problems of children crossing over from child protection to the youth justice system have been identified and efforts to address systemic and practice issues have been implemented. At a broader systemic level, the Systems Integration Initiative has focused on developing a multi-system approach to policy and services for children involved in both youth justice and child protection systems (Herz et al. 2012). Mechanisms to achieve this goal include inter-agency agreements to institutionalise collaboration (Victoria has a similar protocol between youth justice and child protection services), integrated information systems, blended funding, flexible programming, integrating service outcome measures, and tying funding to the ability of services to meet these measures. On a practice level, the Crossover Youth Practice Model (CYPM), which is linked to the Systems Integration Initiative, provides a framework for working with children involved in both systems (Herz et al. 2012). It involves reforms to practices in child welfare to reduce the likelihood of contact with the criminal justice system, changes to police charging processes to incorporate consideration of

child protection history, consolidation and coordination of case planning, and coordinated case supervision.

In Victoria, efforts to enhance coordination and integration of youth justice and child protection services are evident in a strengthened youth justice child protection protocol, and the piloting of *Service Connect*, an integrated service model for the Department of Human Services. However, there remains a need for more effective responses to children in child protection to prevent their crossing over into the youth justice system. A particular area of concern is residential care and the problem of children in residential care being remanded as a result of alleged offending in residential units. Renewed investment in intensive models of therapeutic residential care, which is taking place as part of the response to the PVVCI, will offer one solution to this issue. Other reforms that should be explored are the protocols for dealing with the problematic behaviour of children in residential care, in particular around the involvement of police and the pressing of charges. The feasibility of a time-out unit or time-out places within the residential care system should also be explored. A short-term, intensive response to issues with children in residential care would prevent their ending up on remand. The need for a coordinated response for child protection clients who enter the youth justice system should be supported by reforms to the data system to allow youth justice decision makers access to child protection information, and there needs to be clearer responsibilities for assessment and coordination. Services for children on remand who are also child protection clients should be able to draw down on funding from the child protection system to provide comprehensive services to children.

Recommended actions

1. Provide an intensive, multi-layered, community-based service that engages with children and their families on a voluntary basis either in custody or in the community. This would:
    - be activated through the assessment and coordination outlined in recommendation 5.4
    - be *independent* of, but collaborating with, other services at all stages of the criminal justice system including police, courts, custody and youth justice. The service will continue for a period commensurate to need, not dictated by a child's length of involvement in the justice system
    - ensure a 'docket system' in court so matters are returned to the same magistrate and the benefits of therapeutic jurisprudence can work in tandem with relationship-based voluntary engagement.
2. Strengthen coordination between youth justice and child protection where children are involved in both systems and prevent cross over between the two systems. This includes:
    - to better manage anti-social behaviour of children in out-of-home care through the use of alternative strategies, such as group conferencing, time-out residential services, and revised protocols regarding police involvement
    - access to information regarding the child protection status of children in court for support services and decision makers in the Criminal Division of the Children's Court
    - joint responsibility and collaboration, with clear accountability, between the two systems to ensure that the needs of child protection clients who cross over into youth justice are addressed
    - flexibility in eligibility criteria and referral pathways into youth justice and child protection services with cross-over children given priority access to interventions.
3. A therapeutic approach to working with children should be formally adopted across the entire youth justice system. This approach should be adhered to in community services, in the practice of the Children's Court, and in custodial environments.

7.7 Develop infrastructure to build evidence

Comprehensive and reliable data provides an evidence base through which trends and issues within the youth justice system can be identified. It also allows for the evaluation of responses to trends and issues and for a better understanding of whether the system as a whole, as well as particular interventions, are achieving their intended outcomes. Throughout this report we have spoken of the need to better integrate and coordinate services, policies, and evidence so that the youth justice system more efficiently and effectively delivers on its intended outcomes. For this to become a reality, the same level of integration and coordination is required with respect to the core data that describes the characteristics of the children and children who make up the youth justice population, the key measures of the system's performance, and its outcomes. Combined with qualitative data, practice wisdom and consumer feedback, this data informs the research, policy and ultimately the legislative frameworks that support workers in their key activities of working with children and young people to effect change and improve their life opportunities.

In recent years, there has been an increased focus on measuring the outcomes of youth justice interventions in the United Kingdom, the United States, and some Australian states. This focus has been linked into innovative funding and governance models which fund services on the level of the outcomes they achieve. One example of this approach is *justice reinvestment* which seeks to identify parts of the youth justice system that are not working efficiently and which redirects funding to areas believed to provide better outcomes (Dwyer, Neusteter & Lachman, 2012).Examples of this approach, such as the Justice Reinvestment Pathfinders in the United Kingdom, have involved reinvesting funds from expensive and ineffective custodial services to early intervention and intensive community-based responses (North East London Partnership, 2012). Evidence regarding the costs and effectiveness of interventions is combined with measurement of outcomes to determine the savings that can be made by reinvesting money in different parts of the system. Social Impact Bonds are another innovation that focuses on delivering more efficient and effective outcomes. Private sector investors provide the capital to fund youth justice interventions, with a guaranteed return should the interventions succeed in meeting particular outcomes (Aylott & Shelupanov, 2011). Governments fund the return to investors from the projected cost savings which result from a more efficient and effective youth justice system. Further evidence is still required to demonstrate the effectiveness of such approaches in achieving their promised outcomes. If such evidence does become available, replication of these approaches in Victoria will require reforms to data and information systems.

In the present study, it has been possible to show how the costs of remand can be estimated in dollar terms using figures put forward by the government. This includes incarcerations costs for children and young people first remanded as children under 12 years of age, the total cost of days spent in custody for all children and young people remanded in 2010, and the subgroup remanded for one to seven days. There is potential to reduce some of these costs by investing in alternative practices to reduce the total number of episodes, their length, and the numbers of children experiencing repeat episodes of remand. However, it must be noted that the estimated costs put forward in this study are limited; in particular the fact that per-head costs include expenses that would be incurred if there were one or 12 children on remand. Nonetheless, it is clear that custodial services (including remand) are usually the most costly aspect of youth justice systems and that reducing the reliance on custody would lead to more efficient and effective systems. Increasingly, this is being achieved through outcome-focused service delivery and funding models that are underpinned by high quality research, evaluation and dissemination of best practice. This is evident with the Youth Justice Pathfinders in the United Kingdom which dedicate resources towards effective data collection, identifying best practice in meeting outcomes and which put in place mechanisms to disseminate this learning (North East London Partnership 2012).For these types of approaches to be utilised in Victoria, the clarity of underlying data needs to be improved.

Connect and deepen the data

This study has been at times constrained by a number of limitations regarding the quality and type of available data on the characteristics and experiences of children and young people within the Victorian youth justice system. Moreover, the lack of capacity to link data across the various youth justice data sets—police, children's court, and Department of Human Services' supervised orders—or to link youth justice to adult justice data, means that children and young people's involvement across the justice system cannot be systematically tracked. Inferences can be made about the general population or cohorts from one data set to another, but an integrated, continuous picture of an individual's experience across the system cannot be known.

This same limitation is noted in other justice research, most notably the recent Sentencing Advisory Council report on sentencing outcomes of the Melbourne Children's Court (Little, H. & Karp, T. 2012), and our own previous research about young adults' experience of remand. The conclusion of the previous Jesuit Social Services remand report remains unaddressed and is valid here:

> Victoria's data system has consistently been criticised by academics, program evaluators and the Victorian Auditor-General alike. The consequences of insufficient integration of statistics and [program evaluation is that evidence-based policy making is severely restricted, and this reduces public accountability of policy makers. Improvements to Victoria's public safety and criminal justice data system are a necessary administrative component of remand reform. Most importantly, the establishment of a Victorian bureau of crime statistics with responsibility for integrating and reporting is an essential reform that can be easily implemented on the NSW model. Consideration could also be given to the more recent Scottish reforms which improved integration of data transfer between stakeholders (Ericson & Vinson, 2010, p. 72).

In addition to the overarching issue of the capacity to integrate data from different parts of the service system, further limitations were found regarding the availability and quality of data within the respective police and Department of Human Services' data sets. In the police data the principle gaps include: failure of police to collect data about informal cautions, which means that conclusions cannot be drawn about the full scope of police diversion practice; a lack of capacity for police to report on arrest outcomes, specifically bail or not, due to inconsistency in data collection practices; and a high rate of unknown responses regarding a child's Aboriginal status. This last issue may relate as much to a practice as a data-recording issue. In the Department of Human Services' data, a significant issue with respect to the interpretability of the data was the lack of capacity to track orders relating to an initiating crime and, compounding this, recording quality and consistency issues with respect to attributed order outcomes (expiry of order was used instead of sentenced or bailed on different occasions). This meant that it was not possible to readily track outcomes of deferral of sentence orders, or to track returns or recidivism within the data. The issues with the consistency of data entry are perpetual across large databases with multiple users. Developing data dictionaries to enable workers to be clear about the meaning of data fields and labels, and providing regular refresher training, would help, together with a systematic approach to data monitoring and cleansing. Consideration should be given to moving towards a single point of data entry with respect to Children's Court appearances and outcomes. Ideally this should be the Court Link system which is on site at the Children's Court and contains all appearances, including pre-convictions, while the Department of Human Services' system only includes supervised orders. Relevant data could then be uploaded to the department's database ensuring consistency at both ends.

As described previously in this report, perhaps the most serious limitation in the Department of Human Services' data is the lack of reporting capacity regarding the critical characteristic data relating to children's developmental and risk history. This includes lack of data relating to:

- child protection status
- disability status

- mental health status
- drug and alcohol use
- health
- education participation and achievement
- homelessness.

Data is not collected on these variables, despite the fact that the VONIY collects highly pertinent information relating to offending profile, family circumstance, accommodation and finance, substance use, education, training and employment, peer relationships, community linkages, and attitudes and behaviours. The Department of Human Services is currently working with Deakin University on a next version of the VONIY, known as the Integrated Youth Justice Client Assessment Tool, which will incorporate a stronger outcomes focus. The intention is that this tool should include provision for data fields that will be incorporated with CRIS to enable collection of key characteristic data about the health and welfare status of youth justice clients. This work is to be commended, although given the likely time lag to finalisation and implementation, the earlier installation within CRIS of the identified data fields is advocated.

Data is collected in CRIS on child protection and disability status but is not regarded as reliable as it depends on workers' entries rather than on the capacity to match information directly across the different programs data sets. The Department of Human Services therefore relies on annual snapshots, most predominantly that published in the annual report of the Victorian Youth Parole and Residential Board as to the health and welfare profiles of young offenders in detention. This snapshot does not include children on community-based orders. Thus, a similar annual census snapshot process is recommended to gather this core characteristic data about the community order cohort.

Addressing these data limitations is an essential part of building the infrastructure for evidence-based outcomes.

Recommended actions

1. Create an independent statutory body which has the capacity to collate and analyse data across the justice system. This should be modelled on BOCSAR in New South Wales. The bureau should additionally have responsibility for coordinating and disseminating a research agenda across youth justice to inform evidence-based practice and evaluation.
2. Commission youth justice services based on their ability to engage effectively with the target group, be innovative and use evidence based interventions to meet defined outcomes.
3. Resolve limitations identified in this study with the police and Department of Human Services' data sets in the following ways:
    - build capacity to directly link de-identified data between the youth justice, child protection and disability data sets
    - tag linked orders relating to the same initiating incidents as 'events' within the data set, enabling the better tracking of returns and recidivism
    - initiate training and quality improvement measures to improve the consistency of recording and reliability of data within the Department of Human Services' youth justice data set
    - incorporate key child characteristic data within CRIS as a matter of urgency
    - explore the possibility of maintaining a single set of court administrative data via the Court Link system that is subject to quality control measures and share this openly with Department of Human Services to ensure integrity and comprehensiveness of court data.

7.8 Towards a reformed service system

This study provides a comprehensive overview of key policy, legislation, theory and practice impacting on children's pathways to, and experiences of, remand. We have purposefully used *children* where appropriate throughout as this is who they are by law - children, 10 to 17 years of age.

By extending findings of previous research that highlight the powerful role of structural disadvantage in the life course of children who come into contact with the justice system, we have identified several key factors which influence the pathways that children take through remand. Critical issues that arose include:

- children who come into first contact with police or courts at a young age have the poorest trajectories
- the adverse influences of early childhood experiences and socio-economic disadvantage
- over-representation of, and worse outcomes for, Aboriginal children
- high rates of cross over between the child protection and youth justice systems
- increases in violence reported to police and the primary reason for the remand of children.

In the context of a two-thirds increase in the per-night average in numbers of children on remand in Victoria between 2007 and 2010, key systems issues identified by this study include:

- current legislation determining the age of criminal responsibility at 10 years of age
- police trends toward arrest and away from summons and caution, especially for the youngest children
- lack of a legislative framework for diversion
- very high rates of arrest after business hours when least supports are available
- high levels of short-stay remands that result in bail, particularly over the weekend
- children exposed to multiple remand admissions and, for a troubling minority, lengthy stays
- the need for greater continuity between custodial and community services.

In grappling with responses to these issues, we have also sought to take into account the complexity of the children involved in the youth justice system and the complexity of the system itself. In doing so we have addressed:

- the tensions between justice and welfare approaches to youth justice
- the substantial numbers of children in youth justice who are known to child protection, and issues with coordinating appropriate responses where children cross over from child protection to youth justice
- the background of disadvantage which defines the youth justice population, especially for the younger children and Aboriginal children.

These factors are often more acute in the context of remand because the uncertainty of the legal status of vulnerable and disadvantaged young children means it is often not possible to provide appropriate support to meet their wide range of needs.

On this basis, Jesuit Social Services calls for government and community reform to prevent children's involvement in the youth justice system and in remand in particular. Where this is not possible, there is a need for sweeping reforms to the approach taken to children in custody, with a focus on ensuring that holistic, relationship-based care is provided for children on remand and that there is a seamless continuity when they move from custody into the community.

Calls for reform – Legislation and policy

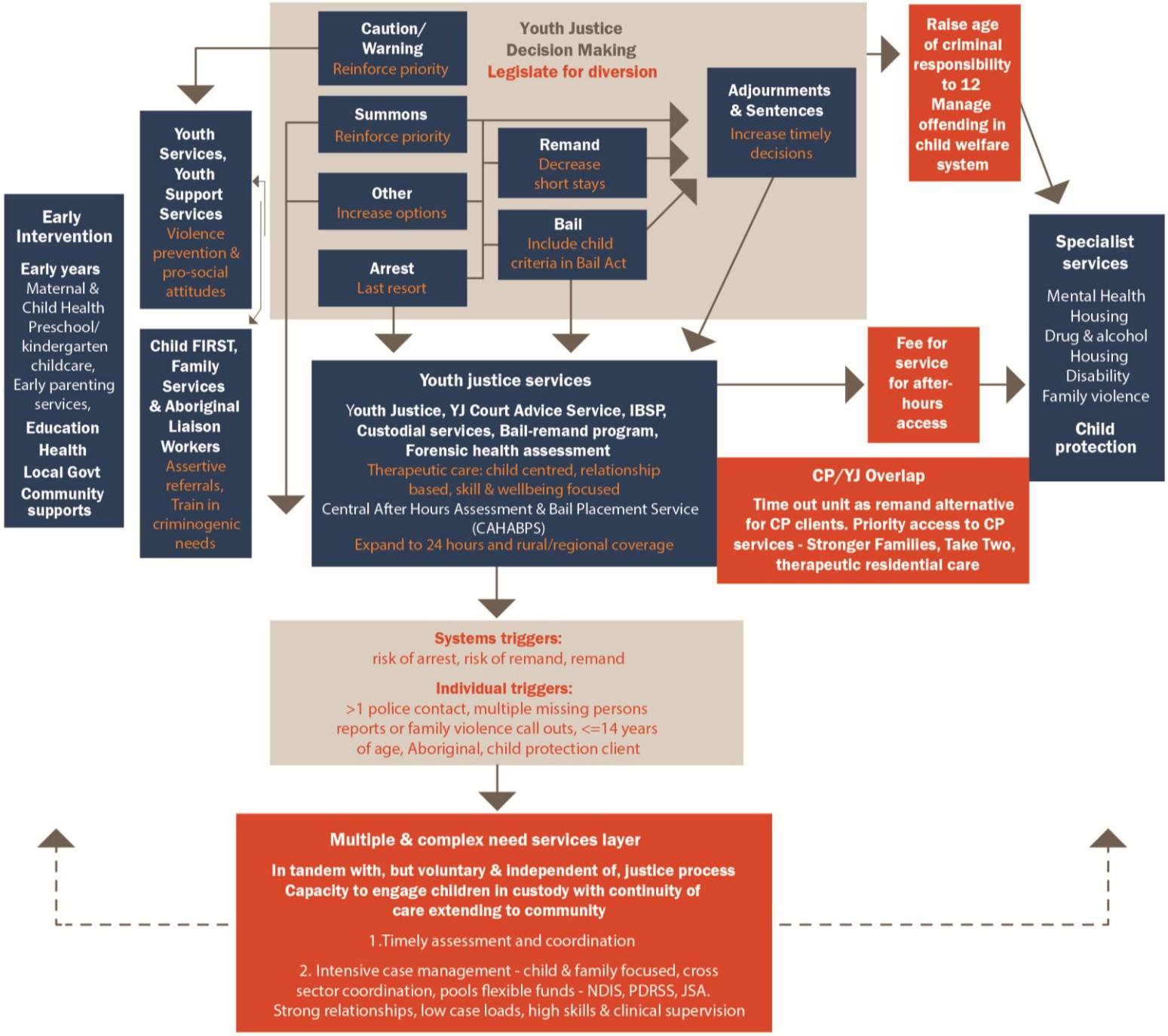
- At state and federal levels, policy initiatives which intervene earlier in children's lives, prevent crime and violence, and reduce Aboriginal over-representation often fail to consider the needs of children at risk of involvement with youth justice. Initiatives such as the whole-of-government Vulnerable Children and Families Strategy and the Aboriginal Justice Agreement need to articulate the means to promote protective factors that will reduce the likelihood of involvement in the youth justice system.
- The age of criminal responsibility must be raised to 12 to ensure welfare, not justice, responses to primary school-aged children.
- A formal legislative framework for diversion should encourage the consistent diversion of children from youth justice involvement, and reinforce the preference for caution and summons as opposed to arrest.
- The *Bail Act 1977* should be amended to ensure that child-specific criteria are considered in bail and remand decision making.
- Efforts must be made to better integrate youth justice and child protection services.

Calls for reform – Services and practice

- Services that reduce the likelihood of involvement in the youth justice system through strengthening protective factors should better integrate evidence-based approaches that have been demonstrated to reduce the risk of offending. This should include early childhood and families services and services within Aboriginal communities.
- After-hours services must be strengthened to meet the demands of high numbers of children coming into contact with police during these hours.
- Improved data systems and linkages must be developed across the youth justice system to support innovations in service delivery.
- A therapeutic, relationship-based approach must be taken to children in custody. Services in custody must be reformed to reflect this approach and have as their primary focus the development of the skills and wellbeing of children in custody.
- An intensive and multi-layered support service that is independent of the justice process is required so that the most at-risk children are provided with a deeper layer of support. This service should include timely assessment at identified trigger points and intensive case management that coordinates care across multiple sectors. It should aim to build close relationships with the child and with his or her family.

The wide range of reforms outlined above will reduce the use of remand by addressing some of the root causes of offending by children and strengthening the youth justice system's approach to diversion. They will also provide enhanced support for children who are on remand, or at risk of being on remand, through the provision of alternatives to remand (particularly after hours) and through more intensive support for children with high levels of risk. Many of these reforms are relatively straightforward and unlikely to be costly. However, some of the more substantial reforms, such as the age of criminal responsibility and an intensive support service to operate across the justice system, are more substantial and will require an investment of resources and community goodwill to become a reality. These investments will be justified by the potential for longer-term reductions in the use of remand which will have significant economic and social costs. Most importantly, these reforms will provide children in the youth justice system with a greater opportunity to reach their potential and become productive and engaged members of our community.

Reformed Justice-Remand system map



Appendix A

Schedule of interview for young people

Please tell us what you can remember about:

1. How many times have you been remanded and how long each time?

2. What time of the day were you admitted? Weekday/Weekend?

3. Was it for arrest or breach? (Note details of crime are not to be included)

4. How old were you when you were remanded/first remanded?

5. What was remand like for you at the age when you were admitted/first admitted? (If multiple admissions)
    a. What was it like the last time?
    b. Have you noticed any changes in the system over this time?

6. How did your parents react to you being remanded? (probe relationship if appropriate)

7. Have you ever been involved with child protection?

8. Tell us about how you've been going at school?
    a. Do you attend now?
    b. What was the impact of remand, if any, on your education?

9. What could have been done differently so that you weren't remanded? E.g. by police, family, services, or by you.

10. If young people do get remanded, what would make it a better experience for them?

Appendix B

Report on four-day observation of Children's Court proceedings

The work of the Children's Court

A variety of different matters came before the Children's Court during our four-day observation. These ranged from minor mention hearings, lasting no more than a few minutes, to substantial and complex bail hearings, or sentencing hearings for convicted young offenders. A substantial number of mentions in the Children's Court are of an administrative nature and relate to the processing of criminal matters. These include issuing warrants for breaches of order or failures to appear, issuing orders consolidating multiple criminal matters, and adjournments so that evidence can be obtained. Thirty of the 58 matters observed during the week fell into this category.

Four of the 58 matters were bail applications or remand hearings, and there also one sentencing hearing for a child on remand. Additionally, a significant number of young people who came to court during the week were on bail (22) or some other form of community-based order (6).

One of the clear patterns observed during the week was the focus of the Children's Court on diverting young people away from the justice system. Six matters resulted in referrals to the ROPES program and the children who received these referrals tended to be younger and without substantial offending histories. During the week, seven young people who had been convicted of offences received sentence deferral orders from the court. These orders were made to allow for sentencing reports to be prepared and to allow young people who were engaged with interventions for issues such as drug and alcohol abuse or mental illness to continue to participate in these interventions.

The young people who appeared before the Children's Court had personal issues and circumstances which related to their offending. Due to the varied nature of court hearings, not all of these issues were addressed or disclosed in each hearing, but there were some common factors which were disclosed to the court. In hearings for 10 of the young people, child protection involvement or a history of involvement was disclosed, with the same number disclosing alcohol and drug issues. Prior episodes of remand were disclosed, with two children having experienced remand episodes totalling 116 and 72 days respectively. It is likely, given the serious nature of charges and chaotic circumstances of many of the young people, that they may have been remanded but this was not disclosed to the court in the hearings that were observed.

Children on remand

As noted above, during the week of Children's Court observations, five children on remand appeared in court. This reflects the relatively low numbers of Victorian children who end up on remand, relative to both the youth justice population and the wider population as a whole. From our observations it was clear that the young people who ended up on remand had committed serious, and often, multiple offences and had a range of other issues that affected them. Two of the children on remand were there as a result of breaches; one for breaching the conditions of their bail and the other for breaching a probation order. The other three children who appeared had been remanded in custody after being arrested for alleged offending. The amount of time spent on remand varied, with the child who had been remanded for breach of bail being remanded for two nights, and two of the other children remanded for periods of around three weeks.

All of the children on remand who appeared in court were male and aged 15 or older. However, it is important to note that some of the alleged offending which the court was dealing with had taken place when these children were at younger ages. From our observations, it became clear that at least three of the five children on remand who appeared in court had multiple and complex needs that contributed to chaotic lifestyles and which related to their offending. Two of the young people on remand were child protection clients who lived in residential care. It was disclosed that both had problems with residential care, including alleged offending in the care environment. Problems with maintaining accommodation were disclosed in the hearings for three of the young people. Of these three, two were living with friends and one had been in and out of different residential care units. Alcohol and drug use was another major issue for the children on remand, with four of them disclosing drug or alcohol use which was linked to their alleged criminal behaviour. There was very limited discussion in court of levels of involvement in school and education; this was only discussed in two of the matters (both sentencing) where the young males expressed a desire to find employment. It was notable that, despite the multiple and complex issues facing these young people, four of them had support, including parents, in court.

Unnecessary after-hours remand

A 15 year old male appeared before the court on a bail hearing. He had been arrested by Police after-hours in the Melbourne CBD under the influence of alcohol. He had previously been charged with a property offence. He was remanded for two nights then re-released on bail by the court.

Serious Violent Offending

A 16 year old male on remand appeared before the court and was convicted for a serious assault. The assault was a violent group attack that resulted in serious head injuries to the victim. The offender had been drinking when the assault occurred. He had previously been convicted of a similar offence and a robbery committed in a group situation.

Although the nature of alleged offences resulting in remand varied, it was evident during the hearings that four of the five had been charged with a range of serious offences, and often multiple offences in a short period of time. These offences included both offences against the person as well as serious property offences including robbery. The young people on remand had extensive youth justice records. When their offending histories were discussed, multiple episodes of remand were disclosed.

The outcomes of remand hearings varied, with two young people being released from custody, two re-remanded in custody, and one sentenced to custody. Of the two young people who were released from custody, one was re-released on bail and the other was released after being sentenced to a youth supervision order. Of the two young people who had their remands extended, one was convicted and remanded for

Multiple and complex needs children on remand

A 16 year old male on remand appeared in the Children's Court for a sentencing hearing. This child's involvement in the youth justice system stretched back over two years. He had engaged in multiple episodes of offending involving theft, criminal damage, driving offences, and assault and drug possession. In sentencing submissions the chaotic circumstances of this child's life were discussed, including problems with out-of-home residential care, drug and alcohol use, and mental health issues. It was noted that while he had sought assistance, often the necessary level of support was unavailable. It was also disclosed that he found life in custody difficult. Now that he had pleaded guilty, a range of services were being put in place to support his rehabilitation.

the completion of a pre-sentence report, and the other was remanded until a further hearing date as they had several matters before the court which were consolidated. Finally, the young male who was sentenced to custody was given a three-month sentence with time served on remand deducted from the time to be served.

Appendix C

Additional data for section 6 - Research methodology and data overview

Table A1: Total order types by year of issue for all young people with at least one order in 2010

Order classification	Order Type	Order Issue Date			Grand Total
		Pre 2010	2010	Post 2010	
Adjournment	Adjournment/Section 49 Magistrates Court Act	5	3	7	15
	Deferral of Sentence	1,072	1,077	369	2,518
	Adjournment sub total	**1077**	**1080**	**376**	**2533 (16%)**
Bail	Supervised Bail	173	382	167	722
	Bail sub total	**173**	**382**	**167**	**722 (4%)**
Community	Interstate Community	10	15	1	26
	Probation	1,108	1,196	411	2,715
	Youth Attendance Order	129	125	98	352
	Youth Supervision Order	670	529	456	1,655
	Youth Parole Order	183	245	258	686
	Community sub total	**2,100**	**2,110**	**1,224**	**5,434 (33%)**
Remand	Remand	1,244	755	458	2,457
	Re-remand	1,104	775	643	2,522
	Remand sub total	**2,348**	**1,530**	**1,101**	**4,979 (30%)**
Sentenced Detention	Interstate Custody Order		4		4
	Imprisonment	10	44	31	85
	Youth Justice Centre Order	699	690	636	2,025
	Youth Residential Order	109	32	15	156
	Youth Residential Parole	25	5	11	41
	Youth Training Centre	38	2		40
	Cancellation of Parole	97	93	102	292
	Sentenced Custody sub	**978**	**870**	**795**	**2643 (16%)**
	Blank	8	6	0	14
	Grand Total	**6,684**	**5,978**	**3,663**	**16,325**

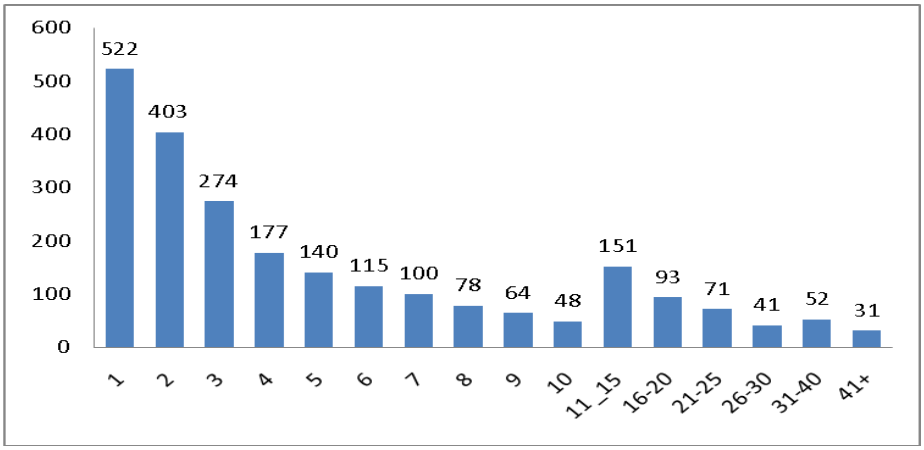
Table A2: Percentage distribution of all orders ever for young people with an order in 2010

No. orders ever	Per cent of all orders
1	22%
2	17%
3	12%
Total <=3	51%
Total<=10	81.5%
Total > 10	18.5%

Table A3: Order group for young people with only one order ever (the 2010 order)

Order Group	Total
Probation	261
Deferral of Sentence	162
Supervised Bail	36
Youth Supervision Order	34
Remand	12
Interstate Community Order	10
Youth Justice Centre Order	7
Grand Total	**522**

Figure A1: Range of total orders ever for children or young people with an order in 2010



Appendix D

Additional data for section 7 - Themes for remand reform

Appendix D1: Intervene early and locally

Box A1: Significant correlations between locations: Socio-Economic Index for Areas (SEIFA) and age at first order for children and young people with a youth justice order in 2010

- *Highly significant correlation between a young person's SEIFA rank by local government area and their age at first order (r = .082, p = <.000).*
    - *That is, young people from an LGA in the lowest socio economic SIEFA quintile had a younger average age at first order*
- *Effects are more pronounced for SIEFA postcodes for entire 2010 cohort, and even more so for young people 14 years or younger (r=0.089 & 0.164 respectively, p=<.000 for both)*

Box A2: Significant correlations between locations: compliance rates of Maternal and Child Health Ages and Stages consultations and age at first order, for children youngest at first order

The Maternal and Child Health (MCH) Service offers 10 free Key Ages and Stages consultations: Home Consultation; 2 Weeks 4 Weeks 8 Weeks 4 Months 8 Months 12 Months 18 Months 2 Years 3.5 Years

- For young people 14 years or younger at first order, LGAs with lower rates of completion of the last five MCH consultations (at 8, 12, 18, 24 months and 3.5yrs) significantly correlate with a younger age of receiving a first court order
- Significant correlation for whole 2010 cohort (10 to 17 years) with first home consultation - believed to be false positive caused by over utilisation of services in some LGAs (i.e. >100%).

Source: Maternal & Child Health Services Annual Report 2010-2011. Table- Participation Rates for Key Ages & Stages *http://www.education.vic.gov.au/ecsmanagement/matchildhealth/annualdata/archive.htm*

Table 7 shows the non-parametric correlations between the 2010-11 maternal child health completion rates by LGA in relation to the age at first order of the 2010 cohort. When all young people who received an order in 2010 are included, only the initial home consultation completion rates have a statistically significant correlation (rho = .074, p = <.000). This is believed to be an anomaly caused through the over 100% uptake of first consultations in high SEIFA LGAs.

However, when only those young people aged less than 15 years are included (N=477), a distinct pattern of correlation emerges. Specifically, lower rates of completion of the last five health consultations are correlated with a younger age of receiving a first order. For the group of young people aged under 15 years, the correlations are: rho = 121, p = .008 for the 8 month consultation; rho = .118, p = .010 for the 12 month consultation; rho = .145, p = .001 for the 18 month consultation; rho = .099, p = .030 for the 2 year consultation; and rho = .127, p = .006 for the 3.5 year consultation.

Table A4: Age at first order and maternal and child health completion rates by LGA (Spearman)

	home consultation	2 week	4 week	8 week	4 month	8 month	12 month	18 month	2 year	3.5 year
age at first order[a]	**.074****	.020	.024	.009	.037	.005	-.030	-.029	-.025	-.029
age at first order <15)[b]	.040	.017	.065	.072	.072	**.121****	**.118***	**.145****	**.099***	**.127****

a: N = 2303; b: N = 477

Box A3: Significant correlations between locations - Australian Early Development Index (AEDI) vulnerability and children aged 14 years and younger at first order.

AEDI quintiles represent percentage of children developmentally vulnerable on two or more domains.

AEDI LGA rates of children per Victorian LGA developmentally vulnerable on two or more domains taken from Appendix B, pp. 24–26, Jeanette Pope, Policy and Strategy, Department of Planning and Community Development (DPCD) 'Change and disadvantage in regional Victoria: an overview May 2011. *Note that the reported association is for the local government area, not for same children.*

The youngest children at first order are associated with LGAs with the greatest proportion of children developmentally vulnerable on two or more AEDI domains. That is, for young people 14 years or younger at first order, there is a statistically significant correlation between age at first order and LGA AEDI results (r = .112, p = .015) . This effect is not found for the entire 2010 order cohort.

Specifically, for the 488 young people aged under 15 years at their first order, the average age at first order is 13.36 years. The average age for young people from the lowest quintile of AEDI LGAs is 13.31 years, while the average age of those from the highest ranked quintile is 13.6 years. The difference is statistically significant (r = .112, p = .015).

Figure A2: Distinct offenders under 18 years of age 2010/11, age in 2010/11 and age at first offence

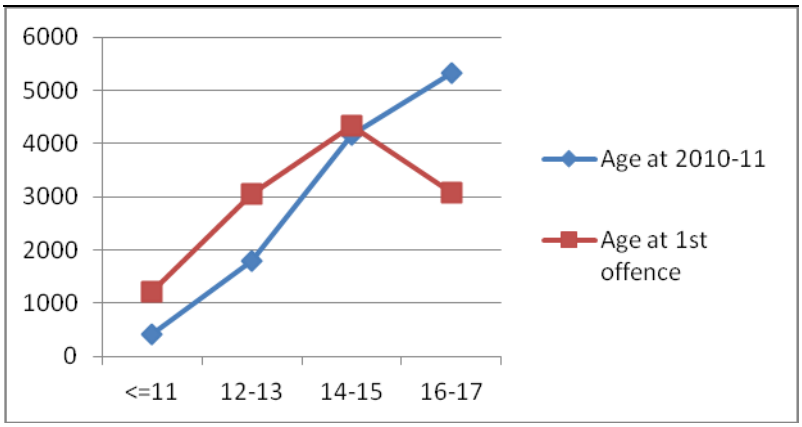


Figure A3: Distinct Aboriginal offenders under 18 years of age2010/11, age 2010/11 and at first offence

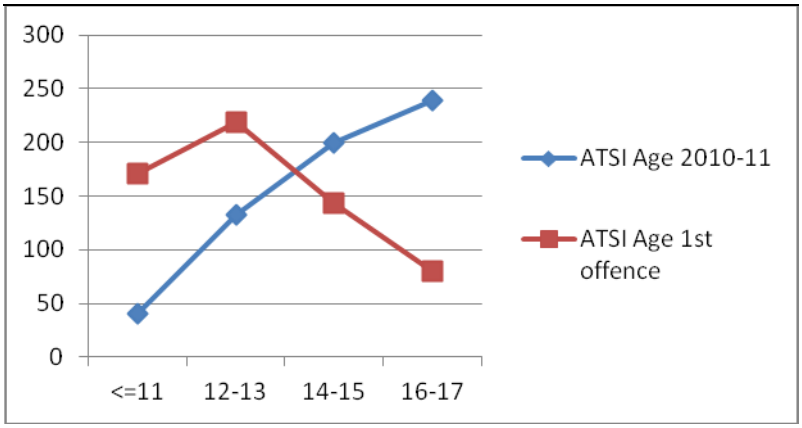


Figure A4: Alleged offenders under 18 years of age: age in 2010/11 and age at first offence

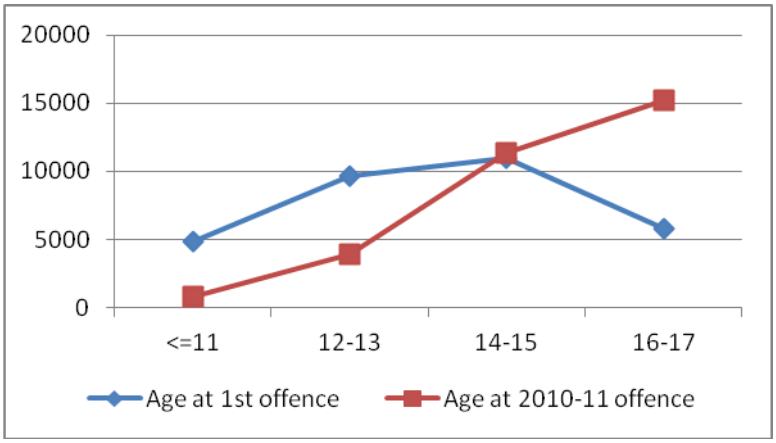


Table A5: Age of first offence by processing type for each alleged offender processed in 2010/11

	Arrest	Summons	Caution	Other	Total
<=11	2,174	1,741	619	348	4,882
12-13	3,545	3,478	1,954	665	9,642
<=13	5,719	5,219	2,573	1,013	14,524
%<=13	57%	47%	34%	40%	46%
14-15	3,167	3,960	2,913	970	11,010
16-17	1,134	1,961	2,147	577	5,819
%14-17	43%	53%	66%	60%	54%
Grand Total	10,020	11,140	7,633	2,560	31,353

Table A6: Aboriginal status *alleged offenders* under 18 in 2010/11: Age in 2010/11 and at first offence

	Alleged offenders			
	Age 2010-11			Age 1st offence*
	ATSI	Not ATSI	Total	
<=11	84	559	797	4,882
12-13	378	2,832	3,923	9,642
Total<=13	462	3,391	4,720	14,524
Total < 18	2,163	22,772	31,353	31,353
%<=13	21%	15%	15%	46%

*Aboriginal status was not requested from police for age of first offence for alleged offenders

Table A7: age in 2010 (age is at first order if multiple orders in 2010)

Age at Order	Frequency	Percent
10	1	0
11	6	0.3%
12	24	1.0%
13	78	3.3%
14	165	7%
14 & under sub	274	12%
15	323	14%
16	468	20%
17	544	23%
Under 18 sub total	1609	68%
18	382	16%
19	213	9%
20	127	5%
21	25	1.1%
22	1	0
23	1	0
Total	2,358	100%
Mean	16.7	

Table A8: age at first order ever by Aboriginal status

	Not Aboriginal		Aboriginal		Total	
Age	**N**	**%**	**N**	**%**	**N**	**%**
<=11	16	0.8%	6	2%	22	0.9%
12	42	2%	19	6%	61	3%
13	127	6%	40	13%	167	7%
14	269	13%	59	19%	328	14%
14 or	454	22%	124	41%	578	25%
15	360	18%	63	21%	423	18%
16	440	22%	57	19%	497	21%
17	376	18%	33	11%	409	17%
Under 18	1,630	80%	277	91%	1,907	81%
>=18	407	20%	26	9%	433	19%
Total	2,037	100	303	100	2340	100

Table A9: Per cent 14 or under at first order ever by order type* in 2010

	All orders	Remand	Sentenced Custody	All custody	Community orders
Non-Aboriginal	22% 454	36% 103	17% 27	29% 130	20% 324
Aboriginal	41% 124	51% 29	57% 13	52.5% 42	37% 82
All chn & yp	25% 578	38% 132	22% 40	33% 172	22% 406

*first order in 2010 if more than one

Appendix D2: Prevent Crime and Violence

Table A10: 10 year numbers and per cent change Crimes against the Person by region

	Crimes Against Person				
	East	**North West Metro**	**South**	**West**	**Total Victoria^**
2001-02	1,172	1,556	1,083	762	4,587
2002-03	1,186	1,467	970	823	4,453
2003-04	1,354	1,414	889	824	4,483
2004-05	1,472	1,416	1,130	784	4,804
2005-06	1,420	1,434	1,041	888	4,787
2006-07	1,309	1,795	1,352	960	5,421
2007-08	1,589	2,437	1,460	1,148	6,638
2008-09	1,548	2,070	1,497	1,325	6,446
2009-10	1,616	2,319	1,620	1,312	6,872
2010-11	1,608	2,275	1,654	1,307	6,865
10 year change	37%	46%	53%	72%	50%

Table A11: Most Serious Alleged Offence ('MSAO') by Age Category by year

	Crimes Against Property				**Drugs**				**Other**			
	<=11	**12-13**	**14-15**	**16-17**	**<=11**	**12-13**	**14-15**	**16-17**	**<=11**	**12-13**	**14-15**	**16-17**
2001-02	842	3,450	8,418	10,385	4	47	274	751	67	409	1,982	3.051
2002-03	786	3,392	7,977	9,340	1.5	49	275	644	102	426	2,035	3.118
2003-04	708	2,925	7,360	8,740	7	35	243	695	82	499	1,902	3.059
2004-05	630	2,463	6,342	8,127	1.5	27	154	611	85	449	1,738	2.905
2005-06	564	2,569	6,860	8,839	1.5	33	183	484	83	376	1,530	2.806
2006-07	616	3,083	7,785	8,205	1.5	24	179	461	60	434	1,609	2.820
2007-08	715	3,433	8,773	9,106	0	30	149	474	94	450	1,627	2.444
2008-09	676	3,363	9,180	10,339	1.5	24	188	482	101	488	1,741	2.923
2009-10	572	3,183	8,980	10,274	8	32	238	569	77	500	1,684	2.911
2010-11	551	2,759	7,405	8,661	1.5	37	198	558	94	361	1,411	2.451
10 yr change	-35%	-20%	-12%	-17%	-63%	-21%	-28%	-26%	40%	-12%	-29%	-20%

Figure A5: Crime against the person by age category

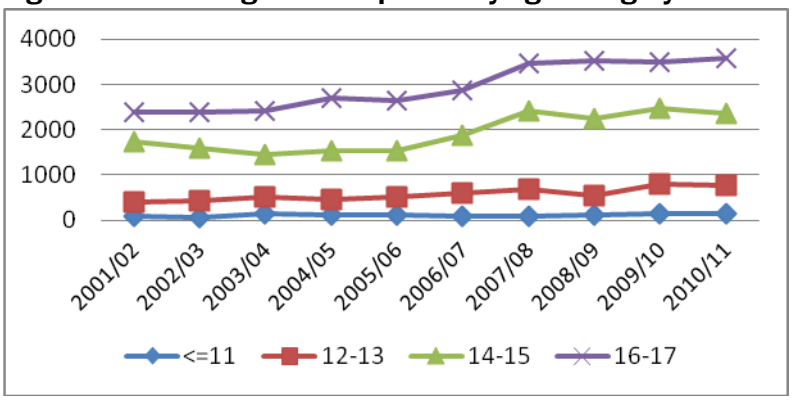


Figure A6: Drug offences by age category

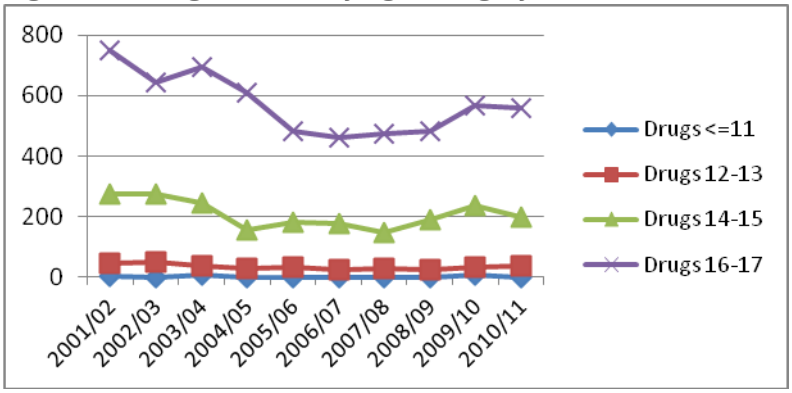


Figure A7: Crime against property by age category

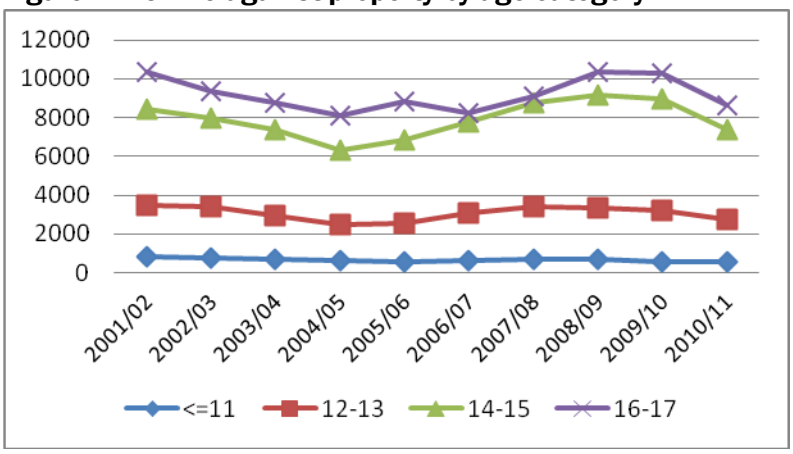


Figure A8: Other crime by age category

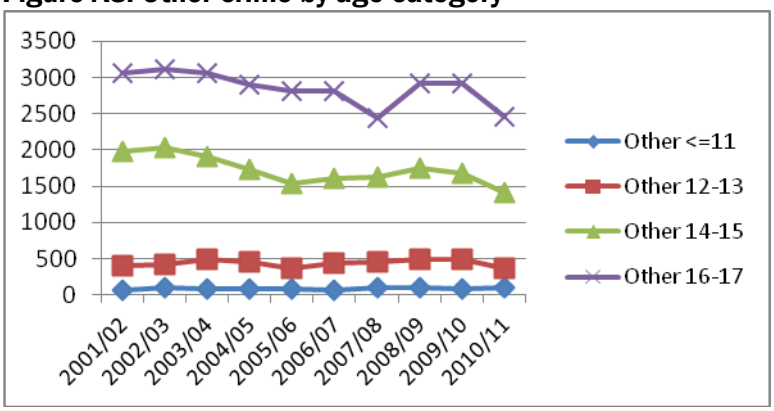


Table A12: Most serious offence for young people with a first order of remand in 2010

	Total	Per cent (total cases)	Valid Per cent (cases for which crime specified)
Crime against the person			
Assault	82	24%	27%
Robbery	38	11%	13%
Sexual Assault	11	3%	4%
Other Dangerous or Negligent Acts Endangering Persons	8	2%	3%
Attempts to murder	3	1%	1%
Non-Assaultive Sexual Offences	2	1%	1%
Murder	1	0%	0%
Sub-Total: Crime against the person	145	42%	48%
Crime against property			
Unlawful Entry with Intent/Burglary, Break And Enter	43	12%	14%
Theft (Except Motor Vehicles)	25	7%	8%
Motor Vehicle Theft And Related Offences	13	4%	4%
Property Damage	10	3%	3%
Receive Or Handle Proceeds Of Crime	3	1%	1%
Sub-Total: Crime against property	94	27%	31%
Drugs			
Deal or Traffic in Illicit Drugs	6	2%	2%
Manufacture or Cultivate Illicit Drugs	2	1%	1%
Sub-Total Drugs	8	3%	3%
Other crime			
Harassment And Threatening Behaviour	8	2%	3%
Dangerous or Negligent Operation of a Vehicle	6	2%	2%
Regulated Weapons/Explosives Offences	4	1%	1%
Driver Licence Offences	1	0%	0%
Disorderly Conduct	1	0%	0%
Prohibited Weapons/Explosives Offences	1	0%	0%
Justice procedures	34	10%	11%
Breach of Custodial Order Offences	30	9%	10%
Breach of Community-Based Order	4	1%	1%
Sub-Total: Other crime	55	16%	18%
Missing	43	12%	NA

Table A13: Country of birth by per cent police method of processing of alleged offenders (2010/11)

Country of Birth	Arrest	Caution	Summons	Other	Total AO
Australia	33%	24%	36%	8%	27574
New Zealand	39%	17%	38%	6%	807
Unknown/Not Stated	31%	23%	38%	8%	781
Unspecified	4%	70%	11%	15%	647
Other	21%	25%	46%	7%	547
Sudan/Somalia	25%	21%	44%	9%	480
Samoa	36%	11%	50%	4%	76
U.K. & Ireland	34%	41%	23%	2%	64
Afghanistan	7%	43%	37%	13%	46

Note these groups represent 99 per cent of all alleged offenders in 2010/11

Appendix D3: Reduce Aboriginal Over-representation

Table A14: 10 year trends in Aboriginal status for alleged offenders (AO)

	Non-Aboriginal		Aboriginal		Unknown	
	No.	% all AO	No.	% all AO	No.	% all AO
2001-02	23,018	67%	2,216	6%	9,032	26%
2002-03	22,060	68%	2,321	7%	8,213	25%
2003-04	22,051	72%	2,484	8%	6,199	20%
2004-05	23,699	84%	2,445	9%	2,189	8%
2005-06	24,805	85%	2,647	9%	1,661	6%
2006-07	25,881	84%	2,565	8%	2,249	7%
2007-08	28,098	83%	3,057	9%	2,771	8%
2008-09	27,815	77%	2,794	8%	5,339	15%
2009-10	27,230	76%	2,669	7%	5,995	17%
2010-11	22,770	73%	2,162	7%	6,416	20%
10 yr change**	-1%	+6%	-2%	+1%	-29%	-6%

Table A15: 10 year trends in gender and Aboriginal status (known Aboriginal status only)

	Female				Male				Grand total known ATSI status
	ATSI	% AO	Non ATSI	% AO	ATSI	% AO	Non ATSI	% AO	
2001-02	415	1.6%	3,450	13.7%	1,801	7.1%	19,568	78%	25,234
2002-03	402	1.6%	3,454	14.2%	1,919	7.9%	18,603	76%	24,381
2003-04	538	2.2%	3,335	13.6%	1,946	7.9%	18,716	76%	24,535
2004-05	577	2.2%	4,766	18.2%	1,868	7.1%	18,933	72%	26,144
2005-06	581	2.1%	4,636	16.9%	2,066	7.5%	20,169	73%	27,452
2006-07	611	2.1%	5,239	18.4%	1,954	6.9%	20,639	73%	28,446
2007-08	554	1.8%	5,133	16.5%	2,503	8.0%	22,965	74%	31,155
2008-09	590	1.9%	5,562	18.2%	2,204	7.2%	22,253	73%	30,609
2009-10	640	2.1%	5,939	19.9%	2,029	6.8%	21,273	71%	29,899
2010-11	613	2.5%	4,984	20.0%	1,549	6.2%	17,762	71%	24,932
	48%	+0.9%	44%	+6.3%	-14%	-0.9%	-9%	-7%	-1%

Table A16: Age at first order ever by Aboriginal status

	Not Aboriginal		Aboriginal		Total	
Age	N	%	N	%	N	%
<=11	16	0.8	6	2	22	0.9
12	42	2	19	6	61	3
13	127	6	40	13	167	7
14	269	13	59	19	328	14
14 or under	454	22	124	41	578	25
15	360	18	63	21	423	18
16	440	22	57	19	497	21
17	376	18	33	11	409	17
Under 18	1,630	80%	277	91%	1,907	81%
>=18	407	20	26	9	433	19
Total	2,037	100	303	100	2,340	100

Table A17: Distribution of the 10 to 19 age group among those in the 2010 cohort by Aboriginal status and gender (total population N = 2358).

	Male		Female		Total*	
ATSI status	N	% total pop	N	% total pop	N	% total pop
ATSI	239	10.14	58	2.46	297	12.60
Non-ATSI	1,633	69.25	272	11.54	1,905	80.79
Total	1,872	79.39	330	13.99	2,204	93.47

* Excludes young people older than 19 with core order in 2010

Table A18: Distribution of the 10 to 19 age group among Victorians (total population 10-19 N = 684,766).

	Male		Female		Total	
ATSI status	N	% total pop	N	% total pop	N	% total pop
ATSI	3,572	0.52	3,445	0.50	7,017	1.02
Non-ATSI	347,895	50.81	329,854	48.17	677,749	98.98
Total	351,467	51.33	333,299	48.67	684,766	100

Table A19: Rate and ratios of involvement in the youth justice system among Victorians aged 10 to 19 (total population 10-19 N = 684,766)

	Ratio			%		
	Male	Female	Total	Male	Female	Total
ATSI	14.95	59.40	23.63	6.69	1.68	4.23
Non-ATSI	213.04	1212.70	355.77	0.47	0.08	0.28
Total	187.75	1010.00	310.69	0.53	0.10	0.32

Appendix D4: Strengthen legislative protections for children

Table A20: 10 year arrest trends by age categories

A20a:-Nos alleged offenders arrested by age category category arrested

	Arrest				
	<=11	12-13	14-15	16-17	Total
2001-02	31	682	2,934	5,919	9,566
2002-03	34	521	2,901	5,235	8,691
2003-04	69	541	2,444	4,834	7,888
2004-05	43	471	2,013	4,580	7,107
2005-06	79	590	2,261	4,322	7,252
2006-07	47	751	2,615	3,936	7,349
2007-08	136	918	3,384	4,987	9,425
2008-09	129	956	3,682	5,699	10,466
2009-10	99	1,140	4,106	6,283	11,628
2010-11	134	890	3,588	5,409	10,021
10 year change	332%	30%	22%	-9%	5%

10 year change is per cent difference at 2010/11 of the 2001/02 level

A20b: Per cent of age

	Arrest				
	<=11	12-13	14-15	16-17	Total
2001-02	3%	16%	24%	36%	28%
2002-03	4%	12%	24%	34%	27%
2003-04	7%	14%	22%	32%	26%
2004-05	5%	14%	21%	32%	25%
2005-06	10%	17%	22%	29%	25%
2006-07	6%	18%	23%	27%	24%
2007-08	15%	20%	26%	32%	28%
2008-09	14%	22%	28%	33%	29%
2009-10	13%	25%	31%	36%	32%
2010-11	17%	23%	32%	35%	32%
10 year change	+14%	+7%	+8%	-1%	+4%

Per cent is of total alleged offenders of that age in that year

Table A21: 10 year caution trends by age categories:

A21a -No alleged offenders cautioned by age category cautioned

	Caution				
	<=11	**12-13**	**14-15**	**16-17**	**Total**
2001-02	636	1,944	3,601	2,281	8,462
2002-03	611	1,933	3,538	2,242	8,324
2003-04	558	1,868	3,157	2,028	7,611
2004-05	476	1,511	2,712	1,985	6,684
2005-06	416	1,447	3,062	2,630	7,555
2006-07	502	1,844	3,725	3,218	9,289
2007-08	508	1,943	4,003	3,276	9,730
2008-09	439	1,816	4,047	3,405	9,707
2009-10	404	1,795	3,721	3,124	9,044
2010-11	371	1,576	2,964	2,726	7,637
10 year change *	-42%	-19%	-18%	20%	-10%

A21b Per cent of age category cautioned

	Caution				
	<=11	**12-13**	**14-15**	**16-17**	**Total**
2001-02	64%	45%	29%	14%	25%
2002-03	64%	45%	30%	14%	26%
2003-04	60%	47%	29%	14%	25%
2004-05	58%	45%	28%	14%	24%
2005-06	55%	41%	30%	18%	26%
2006-07	65%	44%	33%	22%	30%
2007-08	57%	42%	31%	21%	29%
2008-09	48%	41%	30%	20%	27%
2009-10	51%	40%	28%	18%	25%
2010-11	47%	40%	26%	18%	24%
10 year change	-17%	-5%	-3%	+4%	-1%

*10 year change in numbers is per cent difference at 2010/11 of the 2001/02 level

Table A22: 10 year summons trends by age categories

A22a:-No alleged offenders summonsed by age category summonsed

	Summons				
	<=11	**12-13**	**14-15**	**16-17**	**Total**
2001/02	176	1,274	4,564	6,777	12,791
2002/03	171	1,427	4,317	6,395	12,310
2003/04	167	1,193	4,275	6,463	12,098
2004/05	171	1,109	3,981	6,186	11,447
2005/06	161	1,092	3,620	5,932	10,805
2006/07	137	1,186	3,921	5,374	10,618
2007/08	129	1,288	4,290	5,456	11,163
2008/09	229	1,349	4,292	6,123	11,993
2009/10	186	1,167	4,249	5,914	11,516
2010/11	204	1,175	3,971	5,783	11,133
10 year Change	16%	-8%	-13%	-15%	-13%

A22b: Per cent of age category

	Summons				
	<=11	**12-13**	**14-15**	**16-17**	**Total**
2001/02	18%	30%	37%	41%	37%
2002/03	18%	33%	36%	41%	38%
2003/04	18%	30%	39%	43%	39%
2004/05	21%	33%	41%	43%	40%
2005/06	21%	31%	36%	40%	37%
2006/07	18%	29%	34%	37%	35%
2007/08	14%	28%	33%	35%	33%
2008/09	25%	30%	32%	35%	33%
2009/10	24%	26%	32%	34%	32%
2010/11	26%	30%	35%	38%	36%
10 year Change	8%	0%	-2%	-3%	-2%

Police region

Table A23: 10 year changes in alleged offenders processed by police region

	Total				
	East	North West Metro	South	West	Total Victoria^
2001-02	9,456	9,962	7,834	6,918	34,267
2002-03	9,173	9,346	7,308	6,716	32,598
2003-04	9,202	7,896	6,838	6,760	30,738
2004-05	8,746	7,732	6,053	5,787	28,337
2005-06	8,841	7,739	6,592	5,876	29,116
2006-07	8,215	8,665	6,883	6,910	30,699
2007-08	9,493	9,223	7,617	7,483	33,933
2008-09	9,816	9,354	9,023	7,717	35,952
2009-10	9,393	9,395	8,627	8,443	35,900
2010-11	8,571	8,426	7,052	7,215	31,353
10 yr change	-9%	-15%	-10%	4%	-9%

Table A24: Per cent method of processing by region in 2010/11

	Arrest	Caution	Summons	Other
East	33%	25%	34%	8%
North West Metro	27%	23%	40%	9%
South	31%	27%	33%	9%
West	37%	22%	34%	7%
Victoria	32%	24%	36%	8%

Table A25: Most Serious Alleged Offence of alleged offenders in 2010/11 by police region

	Crimes Against Person	Crimes Against Property	Drugs	Other	Total
East	1,608	5,507	177	1,279	8,571
	19%	64%	2%	15%	100%
North West Metro	2,275	4,743	251	1,157	8,426
	27%	56%	3%	14%	100%
South	1,654	4,383	213	802	7,052
	23%	62%	3%	11%	100%
West	1,307	4,686	152	1,070	7,215
	18%	65%	2%	15%	100%
Victoria	**6,865**	**19,376**	**795**	**4,317**	**31,353**

Table A26: Range and variation in method of processing rates by police region: 2001/02 – 2010/11

Method of processing		East	NW	South	West
Arrest	Max Year*	33% 2010/11	30% 2008/09	35% 2009/10	38% 2009/10
	Min Year	22% 2006/07	22% 2003/04	24% 2006/07	26% 2004/05
	10 yr variation	12%	8%	11%	12%
Summons	Max Year*	42% 2004/05	40% 2010/11	39% 2004/05	42% 2004/5
	Min Year*	34% 20010/11	32% 2008/09	31% 2009/10	29% 2009/10
	10 yr variation	9%	9%	8%	13%
Caution	Max Year*	30% 2006/07	32% 2006/07	32% 2006/07	27% 2007/08
	Min Year	21% 2004/05	23% 2010/11	24% 2009/10	22% 2010/11
	10 yr variation	9%	9%	8%	6%
Other	Max Year*	12% 2006/07	13% 2007/08	14% 2005/06	10% 2008/09
	Min Year*	8% 2010/11	9% 2010/11	9% 2010/11	7% 2010/11
	10 yr variation	4%	3%	5%	4%

* Most recent year if multiple occurrences

Appendix D5 Maximise diversion from remand

Table A27: Weekday and weekend admissions by exit reasons

	Weekday		Weekend			
Exit Reason	N admissions	% admissions	N admissions	% admissions	Total N admissions	Total % admissions
Released on bail	309	55%	105	66%	414	58%
Expiry of order	124	22%	37	23%	161	22%
Sentenced	104	19%	13	8%	117	16%
Sub total	537	96%	155	97%	692	96%
Grand Total	558	100%	160	100%	718	100%

Table A28: Length of remand by exit reason

Exit Reason	1-3 days	4-7 days	8-21 days	<=21 days	22-42 days	43-63 days	64-180 days	180+ days	>21 days	Grand Total
Released on bail	140 77%	60 59%	109 60%	309 67%	60 50%	23 34%	21 34%	1 14%	105 41%%	414 58%
Expiry of order	34 19%	28 28%	43 24%	105 23%	31 26%	17 25%	7 11%	1 14%	56 22%	161 22%
Sentenced	3 2%	8 8%	25 14%	36 8%	24 20%	25 37%	27 44%	5 71%	81 32%	117 16%
Sub total	177 98%	96 95%	177 98%	450 97%	115 97%	65 97%	55 89%	7 100%	242 95%	692 96%
Total N admissions	181	101	181	463	119	67	62	7	255	718

Table A29: Detailed breakdown of remand admissions

					N admissions					
	N Individuals	Sum remand admission	Sum days on remand	Average days on remand	< 7 days	8 - ≤21 days	22 - ≤42 days	43 - ≤63 days	64 - ≤180 days	>180 days
Pre 2010	445	1258	29,432	66.14	480	345	232	96	96	9
2010	444	718	17,763	40.01	282	181	119	67	62	7
Post 2010	235	416	10,765	45.81	136	106	103	26	44	1
Total	806	2392	57,960	51.57	898	632	454	189	202	17

Table A30: Per cent and cumulative per cent of remand admissions 2010

	N admissions					
	< 7 days	8 - ≤21 days	22 - ≤42 days	43 -≤63 days	64 - ≤180	>180 days
2010 N	282	181	119	67	62	7
Per cent	39%	26%	17%	9%	9%	1%
Cumulative per	39%	65%	81%	90%	99%	100%

Appendix D6: Care for the most vulnerable

Table A31: Percentage distribution of total numbers of remand admissions ever

No. admissions	N young people	Per cent young people	Cumulative per cent
1	327	41%	41%
2	150	19%	60%
3	89	11%	70% (rounding)
4-6	164	20%	90%
7-9	53	7%	97%
10-24	23	3%	100%
2392	806	100%	

Table A32: VONIY level by remand admission length in 2010

	Only 21 day or under admission in 2010		21 day or under PLUS over 21 days admission in 2010		Total all 21 day admissions	
VONIY 2010	N	Per cent	N	Per cent	Total N	Total Per cent
Low	5	5%	3	4%	8	5%
Medium	38	39%	14	19%	52	30%
High	46	47%	35	47%	81	47%
Intensive	9	9%	22	30%	31	18%
Grand Total	98	100%	74	100%	172	100%

Table A33: VONIY level in 2010 and age at first order (1298 recorded levels only, 1060 missing)

Age at first Order ever	VONIY classification level 2010								Total N	Total Per cent
	Low		Medium		High		Intensive			
	N	Per cent	N	Per cent	N	Per cent	N	Per cent		
10		0%		0%	1	33%	2	67%	3	100%
11		0%		0%	3	38%	5	63%	8	100%
12		0%	5	14%	19	51%	13	35%	37	100%
13		0%	17	16%	62	58%	28	26%	107	100%
14	6	3%	54	28%	95	49%	37	19%	192	100%
14 and under	6	1.7%	76	22%	180	52%	85	24%	347	100%
15	29	12%	85	34%	117	47%	16	6%	247	100%
16	81	27%	133	44%	75	25%	13	4%	302	100%
17	88	37%	103	43%	43	18%	4	2%	238	100%
18	46	46%	35	35%	13	13%	7	7%	101	100%
15-18	244	27%	356	40%	248	28%	40	5%	888	100%
19	14	31%	14	31%	13	29%	4	9%	45	100%
20	7	39%	3	17%	7	39%	1	6%	18	100%
Grand Total	271	21%	449	35%	448	35%	130	10%	1298	100%

Appendix E

List of Meetings

Research Project Taskforce Meetings

30th March 2012	Attended by representatives from: Department of Human Services (Victoria), Sentencing Advisory Council, Youthlaw, Brosnan Services, Dowling McGregor, Victorian Aboriginal Legal Services (VALS), Australian Institute of Criminology
8th August 2012	Attended by representatives from: Department of Human Services, Youth Parole and Residential Board, Victoria Police, Children's Court of Victoria, Legal Aid Victoria, Youthlaw, Youth Affairs Council of Victoria (YACVic), Brosnan Services, Effective Change
17th October 2012	Attended by representatives from: Victoria Police, Legal Aid Victoria, Youthlaw, YACVic, VALS, Brosnan Services, Effective Change

Individual Meetings

Organisation	Date	Attendees
Children's Court of Victoria	16/12/2011	His Honor Judge Grant
	29/10/2012	His Honor Judge Grant
Child Safety Commissioner of Victoria	24/10/2012	Bernie Geary OAM
Department of Education and Early Childhood Development (Victoria)	24/10/2012	David Murray
Victorian Aboriginal Legal Services	20/4/2012	Wayne Muir, Jenny Logan
Department of Human Services (Victoria)	19/12/2011	Kathryn Anderson
	27/2/2012	Rebecca Fitzsimons, Mark Oirbans
	8/5/2012	Ian Lanyon (Director, Youth Justice Custodial Services)
	15/5/2012	Nathan Chapman (Manager, CAHABPS)
	31/8/2012	Kathryn Anderson, Rebecca Fitzsimons
	1/11/2012	Rebecca Fitzsimons
Victoria Legal Aid	18/7/2012	Jeremy Cass, David Benady
Victoria Police	16/12/2011	Uma Rao
	23/4/2012	Catherine Bennett
	17/5/2012	Uma Rao, Catherine Bennett
	26/7/2012	Uma Rao, Catherine Bennett, Senior Sergeant Tim Hardiman
Victoria University	27/4/2012	Sue Marshall, Heather McLean

Appendix F

Key definitions and terms

Aboriginal – 'Aboriginal' is used throughout the project to refer to people of Aboriginal and/or Torres Strait Islander backgrounds.

Alleged Offenders – The method of collecting data used by Victoria Police which provides a snapshot of volume of offending. It refers to persons who have allegedly committed a criminal offence and have been processed for that offence between 1 July 2010 and 30 June 2011. Persons are counted on each occasion they are processed and for each offence counted in recorded offences (e.g. a person processed on three occasions will be counted three times). Only the offence in recorded offences for which the offenders has been processed is included.

Bail – The right to be released from custody which is granted to a person who has been arrested and charged with a criminal offence on the condition that they return to court at a specified time, together with any other conditions considered appropriate. It may be granted or refused by a court, a bail justice or a police officer (Department of Justice Victoria, 2012).

Children and young people - For the purposes of this report, 'child' or 'children' is used to refer to children and young people aged between 10 and 17 years as defined within the *Children Youth and Families Act 2005*. 'Young people' is used in addition when referring to 18-20 year olds subject to youth justice orders through the dual track system in Victoria.

Distinct Offenders – The method of collecting data used by Victoria Police which provides a snapshot of individuals who have been processed for offending at any point throughout the year. It refers to the number of distinct individual offenders processed for the commission of an offence between 1 July 2010 and 30 June 2011.

Diversion – Diversion refers to programs, interventions, and processes that divert children from entering into or continuing their involvement in the criminal justice system. It includes processes whereby children are dealt with informally by police as well as interventions at later stages of criminal proceedings that minimise penetration into the justice system (Chrzanowski, Wallis 2011).

Doli Incapax – A rebuttable presumption that a person aged 13 or under is incapable of committing a crime. It operates in all Australian jurisdictions.

Minimum intervention – A concept from youth justice and child protection systems that seeks to limit the risks of stigmatisation that might result from involvement in the criminal justice and welfare systems. This is achieved through minimising the use of invasive sanctions and interventions (Cavadino, Dignan 2006).

Protective factors– Protective factors are supports that safeguard children against the risks to which they are exposed. The presence of protective factors may be why some children who are exposed to a range of risk factors do not engage in anti-social behaviour or commit criminal offences (Australian Capital Territory Government 2012).

Remand– A person who is arrested and charged with a criminal offence but not released on bail is said to be 'remanded in custody'. A child is considered to be on remand when they are

detained in a Youth Justice Centre but have not yet been sentenced (Department of Justice Victoria, 2012).

Risk Factors– Risk factors can be defined in a variety of ways. Most pertinent in this study are the individual and social factors in children's lives that increase the likelihood of their coming into contact with the criminal justice system (Australian Capital Territory Government 2012).

Appendix G

Relevant features of the Youth Justice System

Bail Justices

Bail Justices are a unique feature of the Victorian justice system. Bail justices are volunteers from the community who conduct bail hearings at police stations, effectively reviewing police decisions to refuse bail (Victorian Law Reform Commission 2005).

CAYPINS

CAYPINS is an alternative system to the traditional open-court summons process for dealing with children and young people who fail to pay on-the-spot and other penalties issued to them by Victoria Police and the Department of Transport. These matters are dealt with by Children's Court registrars instead of by magistrates.

Central After Hours Assessment and Bail Placement Service (CAHABPS)

Operates outside of business hours (Monday–Friday, 5pm–3.00am; Saturday-Sunday, 9.30 am–3.00 am) and provides a single point of contact for police in matters where police and/or a bail justice are considering remand of a child. CAHABPS' workers undertake assessments of children's suitability for bail placement and provide a bail-facilitation role.

Children's Koori Court

The Children's Koori Court is attached to the Children's Court in five locations. It involves the Koori community in the court process through the participation of elders and respected persons in the court process. All parties to a matter sit around a common table and children have the opportunity to speak for themselves.

Children's Court

The Children's Court operates out of a purpose-built facility in the City of Melbourne and at local magistrates' courts in metropolitan and regional areas. The Children's Koori Court and the Neighbourhood Justice Centre, which is located in Collingwood and which has jurisdiction to hear criminal matters, sit within the Children's Court structure.

Intensive Bail Supervision Program (IBSP)

Operates in the North and West and Southern Metropolitan Regions and provides support to young people on bail who are assessed as being at high risk of remand or re-remand. IBSP Case Managers help young people on bail to address needs and issues relating to accommodation, education and training, employment, health and development and family.

Police

The police are commonly understood as the 'gatekeepers' to the youth justice system. They detect and respond to allegations of offending by young people and make decisions on how to proceed in processing young people who offend.

Police Cautions

Cautioning is used by police for less serious and confined instances of offending (incidents where there are a small number of offences and victims). The use of cautioning is a diversionary practice; however the offender must admit the offence. Cautions may include referral to youth support programs and services.

Police Youth Bail Engagement program

This police initiative operates in the Southern Metropolitan Region and involves a proactive approach to enforcing bail conditions.

Koori Cautioning and Youth Diversion Pilot Project

A pilot project in Mildura and the La Trobe Valley which developed protocols and processes for cautioning young people, including a 'failure to caution' notice to be completed by police when they do not caution (Victorian Aboriginal Legal Service 2008). A review of this pilot program found that it lead to increases in first-time cautioning and a drop in the re-offending rate of participants.

Victorian Offending Needs Indicator for Youth (VONIY)

VONIY is an assessment measure used by Youth Justice. It is a structured and risk-based approach to assessing children's levels of risk and exposure to identified criminogenic influences.

Youth Justice

The Department of Human Services' Youth Services and Youth Justice Branch has overarching policy and program responsibility for youth justice services. This includes Youth Justice Units which provide supervision to young people on community sentences, court-based support services, and bail services. DHS contracts services out to community sector organisations who deliver programs, including youth justice group conferencing and Youth Justice Community Support Services (YJCSS).

Youth Justice Children's Koori Program

Youth Justice Children's Koori Program operates in the community with Koori Youth Justice workers, bail support, school, employment, and pre- and post-release programs.

Youth Justice Court Advice Service (YJCAS)

All children appearing at courts can access YJCAS. This service provides information to children, lawyers and the Children's Court on community-based options including diversion, bail, and community services.

Youth Justice Custodial Services

Youth Justice Custodial Services within DHS administer Victoria's custodial facilities for young people, including facilities at Parkville and the Malmsbury Youth Justice Centre.

Youth Justice Group Conferencing (YJGC)

A court ordered meeting when a Probation or Youth Supervision Order is being considered to raise the child or young person's understanding of the impact of their offending and to make reparation. Based on restorative justice principles, a YJGC brings together the child/young person and their family, the victim/s or their representative/s, the police and the child/young person's legal representative (Department of Justice Victoria, 2012).

Bibliography

Alder, C & Wundersitz, J (Eds) 1994, *Family Conferencing and Juvenile Justice: The Way Forward Or Misplaced Optimism?* Australian Institute of Criminology, Canberra.

Allard, T, Stewart, A, Chrzanowski, A, Ogilvie, J, Birks, D & Little, S 2010, 'Police diversion of young offenders and Indigenous over-representation'. *Trends and Issues in Crime and Criminal Justice,* no. 390, Australian Institute of Criminology, Canberra.

Allard, T 2011, 'Indigenous Young People and the Justice System: Establishing an Evidence Base'. in Stewart, A, Allard, T and Dennison, S (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Allard, T, Chrzanowski, A & Stewart, A 2012 'Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders'. *Trends and Issues in Crime and Criminal Justice,* no. 445, Australian Institute of Criminology, Canberra.

Australian Bureau of Statistics 2012, *Australian Demographic Statistics – March 2012*, ABS release 3101, Table 52, Commonwealth of Australia, Canberra.

Australian Bureau of Statistics 2012, 'State and Territory Statistical Indicators 2012', ABS Release 1367.0, Commonwealth of Australia, Canberra.

Australian Capital Territory Government 2012, *Blueprint for Youth Justice in the ACT,* 2012-2022.

Australian Institute of Health and Welfare 2011, 'Juvenile detention population in Australia 2011'. *Juvenile justice series* no. 9. JUV 9, AIHW, Canberra.

Australian Institute of Health and Welfare 2012, 'Juvenile Justice in Australia 2010-11'. *Juvenile justice series* no. 10, JUV 10, AIHW, Canberra.

Australian Institute of Health and Welfare 2012, 'Juvenile Justice in Australia 2010-11'. *Juvenile justice series* no. 10, JUV 10, Tables D31, E3a & b, Table 6.3, p. 68, Table 7.3, p. 97, AIHW, Canberra.

Aylott, M & Shelupanov, A 2011, 'Social Impact Bonds in Criminal Justice: Interesting Idea to Business as Usual'. *Prison Service Journal,* Issue 195, pp. 3-8, Centre for Crime and Justice Studies, United Kingdom.

Baldry, E & Vinson, T 2000, 'New South Wales Women INC (Incarcerated)'. Paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide.

Bayley, DH 1989, 'Community policing in Australia: An appraisal', in Chappell D and Wilson P (Eds), *Australian policing contemporary issues, pp. 63-82*, Butterworths, Sydney.

Bradley, L 2003, 'The Age of Criminal Responsibility Revisited', *Deakin Law Review,* 8 (1), pp. 86-89, Deakin University, Victoria.

Bullis, M, Yovanoff, P, Mueller, G & Havel, E 2002, 'Life on the "outs." Examination of the facility-to-community transition of incarcerated youth', *Exceptional Children, 69,* pp. 7-22, Council for Exceptional Children, Vancouver.

Bullis, M & Yovanoff, P 2006, 'Idle Hands: Community Employment Experiences of Formerly Incarcerated Youth,' *Journal of Emotional and Behavioural Disorders,* 14 (2), Summer, pp. 71-85.

Burch, J 2012, 'After Hours Bail Support Service an early success'. Media release from ACT Minister for Community Services, Canberra.

Caritas New Zealand 2009, 'Restorative Justice at St Thomas of Canterbury College Christchurch', http://www.caritas.org.nz/sites/default/files/Case%20study%20St%20Thomas%20of%20Canterbury.pdf

Catch 22 2012, 'Realising Ambition – Prospectus', http://www.catch-22.org.uk/Files/Realising-Ambition-prospectus_final-for-web.pdf?id=0d6bb341-3405-4647-8bdd-a04e0124bdcb

Cavadino, M & Dignan, J 2006, *Penal Systems: A Comparative Approach,* Sage Publications, United Kingdom.

Children's Court of Victoria 2011, *Annual Report–2010-11,* p. 13. Department of Justice, Victorian Government, Melbourne.

Children's Court of Victoria, 'Criminal Division – Custody and Bail', Department of Justice, Victorian Government, Melbourne.

Children's Court of Victoria, 'Police Cautioning Programme as a means of diversion from court, Criminal Division–General', Victorian Government, Melbourne.

Chrzanowski, A & Wallis, R 2011, 'Understanding the Youth Justice System', in Stewart, A, Allard, T and Dennison, S (Eds), *Evidence Based Policy and Practice in Youth Justice*, The Federation Press, Sydney.

Clark, M 2001, 'Influencing Positive Behavior Change: Increasing the Therapeutic Approach of Juvenile Courts, 65 Fed. Probation 18, School of Child and Youth Care, University of Victoria, Canada.

Commonwealth of Australia 2011, *Doing Time–Time for Doing: Indigenous youth in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, Canberra.

Dennison, S, Stewart, A & Hurren, E 2006, 'Police cautioning in Queensland: The impact on juvenile offending pathways', *Trends and Issues in Crime and Criminal Justice*, 306, pp. 3-6, Australian Institute of Criminology, Canberra.

Dennison, S 2011, 'Developmental and Life-Course Criminology – Theories, Research and Policy Implications'. In Stewart, A., Allard, T. and Dennison, S. (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Department of Human Services Victoria 2011, *Annual Report 2010-11*, Victorian Government, Melbourne.
Department of Human Services Victoria 2012, Youth Justice Remand Strategy (unpublished).

Department of Human Services 2012, *Victoria's Action Plan to Address Violence against Women and Children 2012–2015 – Everyone has a Responsibility to Act*, Victorian Government, Melbourne.

Department of Justice Victoria 2010, *Bail Amendment Act 2010* Fact Sheet 1: New Bail Justice System', Victorian Government, Melbourne.

Department of Justice Victoria 2012, *Practical Lessons, Fair Consequences: improving diversion for young people in Victoria*, Victorian Government, Melbourne.

Department of Premier and Cabinet 2012, *Protecting Victoria's Vulnerable Children Inquiry Report*, Victorian Government, Melbourne.

Dowsley, A & Hurley, D 2011, 'Night curfews in Victoria to drive down crime', Herald Sun, News Limited, Melbourne.

Dworkin, R 1986, *Law's Empire',* Hart Publishing, Oxford, United Kingdom.

Dwyer, A, Neusteter, SR & Lachman, P 2012, 'Data-Driven Decisionmaking for Strategic Justice Reinvestment'. *Justice Involvement at the Local Level,* Brief 2, Justice Policy Center, Urban Institute, United States Department of Justice, Washington.

Eddy, M, Whaley, R & Chamberlain, P 2004, 'The Prevention of Violent Behavior by Chronic and Serious Male Juvenile Offenders: A 2-Year Follow-up of a Randomized Clinical Trial'. *Journal of Emotional and Behavioral Disorders,"* 12.1 (Spring), pp. 2-8.

Edmund Rice International 2010, 'Restorative Justice in Schools', http://www.edmundriceinternational.org/2010/08/restorative-justice-in-schools

Ericson, M & Vinson, T 2010, *Young people on remand in Victoria.*

Balancing individual and community interests, Jesuit Social Services, Richmond.

Freiberg, A & Morgan, N 2004, 'Between Bail and Sentence: the conflation of dispositional options'. *Current Issues Criminal Justice*, 15, pp. 220-236.

Freiberg, K & Homel, R 2011, 'Preventing the Onset of Offending' in Stewart, A., Allard, T. and Dennison, S. (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Gelb, K 2011, 'Alternatives to Imprisonment: Community Views in Victoria', Sentencing Advisory Council, Melbourne.

Goldson, B 2001, cited by Youth Justice Board for England and Wales 2010, 'Evaluation of Resettlement and Aftercare Provision', p.21.

Halsey, M 2007, 'Assembling Recidivism: The Promise and Contingencies of Post-Release Life', *Journal of Criminal Law and Criminology,* Vol. 97, 4, Summer, pp. 1209-1260.

Harker, H 2012, 'The Youth Justice Journey Continues in WA', presentation at the 3rd Annual National Juvenile Justice Summit, March 2012, Melbourne.

Hazel, N 2008, 'Cross-national comparison of youth justice', Youth Justice Board for England and Wales, United Kingdom.

Heller, E & Mathis, M 2012, 'Breaching Bail – A young person's perspective'. Presentation from Juvenile Justice, Department of Attorney General and Justice NSW, at the Doing Justice for Young People – Issues and Challenges for Judicial Administration in Australia and New Zealand conference, August 2012, Brisbane.

Hemphill, S & Smith, R 2010, 'Preventing Youth Violence – What does and doesn't work and why? – An overview of the evidence on approaches and programs', Australian Research Alliance for Children and Youth, Canberra.

Henggeler, SW & Schaeffer, C 2010, 'Treating Serious Antisocial Behaviour Using Multisystemic Therapy', in Weisz, JR and Kazdin, AE (Eds), *Evidence-Based Psychotherapies for Children and Adolescents*, 2nd edition, Guilford Press, New York.

Henry, DA 1999, 'Reducing Unnecessary Delay – Innovations in Case Processing'. *Pathways to Juvenile Detention Reform*, 5, p. 32, Annie E. Casey Foundation, Baltimore, USA.

Herz, D, Lee, P, Lutz, L, Stewart, M, Tuell, J & Wiig, J 2012, 'Addressing the Needs of Multi-System Youth: Strengthening the Connection Between Child Welfare and Juvenile Justice', Centre for Juvenile Justice Reform, Georgetown Public Policy Institute, USA.

King, S, Bamford, D & Sarre, R 2005, *Factors that influence remand in custody: final report to the Criminology Research Council*, Australian Institute of Criminology, Canberra.

Little, S & Allard, T 2011, 'Responding to Offending – Youth Justice System Responses' in Stewart, A, Allard, T and Dennison, S. (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Little, H & Karp, T 2012, 'Sentencing Children and Young People in Victoria', Sentencing Advisory Council, Melbourne.

Lindstrom, P & Leijonram, E 2008, 'The Swedish Prison System', International Penal and Penitentiary, Ministry of Justice, web, *www.germanic.illinois.edu/.../Illinois_Viking_1.4_April_2011.pd*

Lipsey, M, Howell, J, Kelly, M, Chapman, G & Carver, D 2010, 'Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice'. Center for Juvenile Justice Reform, Georgetown Public Policy Institute, Georgetown University, Washington.

Mendel, RA 2009, 'Two Decades of JDAI – From Demonstration Project to National Standard – A Progress Report', The Annie E. Casey Foundation, Baltimore, USA.

Mendel, R A 2010, 'The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders', 44, pp. 15-18, The Annie E. Casey Foundation, Baltimore, USA.

Miller, R 2007, *Cumulative Harm: a conceptual overview,* Victorian Government Department of Human Services, Melbourne.

Mawuli, V 2012, 'Children in Detention Advocacy Project', presentation made to the National Juvenile Justice Summit, March 2012, Melbourne.

Ministry of Justice, Japan 2009, 'White Paper on Crime', *hakusyo1.moj.go.jp/en/58/nfm/n_58_1_1_0_0_0.html*

Muir, K, Katz, I, Edwards, B, Gray, M, Wise, S & Hayes, A 2010, 'The national evaluation of the Communities for Children initiative', *Family Matters*, 84, pp.35-42.

NACRO 2004, *Youth Crime Briefing – Remand Fostering*, Nacro Youth Crime, London.

New South Wales Law Reform Commission 2005, *Report 104 – Young Offenders*, Department of Attorney General and Justice, NSW Government, Sydney.

New South Wales Law Reform Commission 2012, *Report 133 – Bail*, Department of Attorney General and Justice, NSW Government, Sydney.

North East London Partnership 2012, 'North East London Partnership – Youth Justice Reinvestment Pathfinder', presentation (www.londoncouncils.gov.uk/London20%councils/NELPpresentationsectorledconferenceMarch2012.pdf

Nous Group 2012, *Evaluation of the Aboriginal Justice Agreement – Phase 2, Final Report*, commissioned by the Department of Justice, Victorian Government, Melbourne.

Office for Youth 2012, *Youth Statement: Engage, Involve, Create*, Victorian Government, Melbourne.

Ogilvie, J & Allard T 2011, 'Preventing Reoffending' in Stewart, A., Allard, T. and Dennison, S. (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Omaji, P 1992, 'Schools and Juvenile Crime Prevention', paper presented at the National Conference on Juvenile Justice.

Orlando, F 1999, 'Controlling the Front Gates – Effective Admissions Policies and Practices', USA, Annie E. Casey Foundation. Productivity Commission (2012) 'Report on Government Services 2012', Police Services (chapter 6), Table 6A. 39, Productivity Commission, Australian Government, Canberra.

Richards, K 2011, 'What makes juvenile offenders different from adult offenders?' *Trends and Issues in Crime and Criminal Justice,* no. 409, Australian Institute of Criminology, Canberra.

Richards, K, Rosevear, L & Gilbert, R 2011, 'Promising interventions for preventing Indigenous juvenile offending', Standing Committee of Attorneys-General, Australian Institute of Criminology, Canberra.

Robinson, G, Silburn, SR, Arney, F 2011, 'The value of investment in the early years: Balancing the costs of childhood services' Early Childhood Series No. 4. 2011, Northern Territory Government, Darwin.

Sentencing Advisory Council 2012, *Sentencing Children and Young People in Victoria*, Sentencing Advisory Council, Melbourne.

Shonkoff, JP and Phillips, DA (Eds) 2000, *From Neurons to Neighbourhoods: The Science of Early Childhood Development,* The Science of Early Childhood Development Committee on Integrating the Science of Early Childhood Development, Board on Children, Youth and Families, National Academy Press, Washington, USA.

Snow, P & Powell, M 2012, 'Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence', *Trends .and Issues in Crime and Criminal Justice,* no. 355, Australian Institute of Criminology, Canberra.

Snowball, L 2008, 'Diversion of Indigenous Juvenile Offenders', *Trends and Issues in Crime and Criminal Justice,* no. 445, Australian Institute of Criminology, Canberra.

Solomon, E & Allen, R 2009, 'Out of Trouble: Reducing child imprisonment in England and Wales – lessons from abroad', Prison Reform Trust, London.

Storgaard, A 2004, '*Juvenile Justice in Scandinavia',* Journal of Scandinavian Studies in Criminology and Crime Prevention, 5, pp. 188–204.

Studt, E 1977, 'Crime and Delinquency: Institutions' in National Association of Social Workers, *Encyclopedia of Social Work.* 208-213, Washington, USA.

Takahashi, M 2008, 'Assessment of Juvenile Offenders at Juvenile Classification Homes in Japan, Resource Material Series no. 78, Tokyo, UNAFEI (The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders).

Toumbourou, J 1999, 'Implementing Communities That Care in Australia: A Community Mobilisation Approach to Crime Prevention, *Trends and Issues* no. 122, Australian Institute of Criminology, Canberra. See also

http://www.rch.org.au/uploadedFiles/Main/Content/ctc/Communities_That_Care_Introduction.pdf

Urbas, G 2000, 'The Age of Criminal Responsibility', *Trends and Issues in Crime and Criminal Justice,* no. 181, Australian Institute of Criminology, Canberra.

United Nations 1985, 'Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules*), General Assembly resolution 40/33 of 29 November 1985, 4.1.

UnitingCare Burnside 2009, 'Locked into remand: Children and young people on remand in New South Wales, Background Paper, Parramatta NSW, UnitingCare Burnside.

Varma, K N 2002, 'Exploring Youth in Court: An Analysis of Decision Making in Youth Court Bail Hearings', *Canadian Journal of Criminology,* 44, pp. 143-164.

Victoria Police 2009, *Child and Youth Strategy, 2009-2013*, Victoria Police, Victorian Government, Melbourne.

Victoria Police 2011, *Crime Statistics – 2010-11*, p.36, Victoria Police, Victorian Government, Melbourne.

Victoria Police, *Victoria Police Manual,* Operations 113-6, Bail and Remand Victoria Police, Victorian Government, Melbourne.

Victorian Aboriginal Legal Service 2008, 'Submission to the Drugs and Crime Prevention Committee in response to the *Inquiry into strategies to prevent high volume offending by young people* discussion paper', Fitzroy, Victoria.

Victorian Association of Restorative Justice, 'Schools – Restorative Justice',

http://www.varj.asn.au/schools

Victorian Law Reform Commission 2005, 'Review of the Bail Act: Consultation Paper', Victorian Law Reform Commission, Melbourne.

Victorian Law Reform Commission 2007, *Review of the Bail Act: Final Report*, Victorian Law Reform Commission, Melbourne.

Victorian Ombudsman 2009, *Whistleblowers Protection Act 2001,* Ombudsman's Guidelines, Victorian Ombudsman, Melbourne.

Victorian Ombudsman 2010, *Whistleblowers Protection Act 2001,* Investigation into conditions at the Melbourne Youth Justice Precinct, Victorian Ombudsman, Melbourne.

Vignaendra, S, Moffat, S, Weatherburn, D & Heller, E 2009, 'Recent trends in legal proceedings for breach of bail, juvenile remand and crime', published by the NSW Bureau of Crime Statistics and Research, https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=251174.

Vinson, T 2004, *Community Adversity and Resilience: The distribution of social disadvantage in Victoria and New South Wales and the mediating role of social cohesion,* Jesuit Social Services, Richmond.

Vinson, T 2007, *Dropping off the edge: the distribution of disadvantage in Australia,* Jesuit Social Services/Catholic Social Services Australia.

Vinson, T 2012, 'Juvenile justice: background to review of bail and custodial remand in Victoria'. Unpublished.

Weatherburn, D, Lind, B with assistance from Simon Ku 1997, 'Social and economic stress, child neglect and juvenile delinquency', NSW Bureau of Crime Statistics and Research, Sydney.

Weatherburn, D 2001, 'What Causes Crime?' *Crime and Justice Bulletin,* no. 54, NSW Bureau of Crime Statistics and Research, Sydney.

Weatherburn, D 2011, 'Crime-prone Communities'. In Stewart, A, Allard, T and Dennison, S (Eds), *Evidence Based Policy and Practice in Youth Justice,* The Federation Press, Sydney.

Williams, H 2012, *Repairing Shattered Lives: Brain Injury and its Implications for Criminal Justice*, Barrow Cadbury Trust, United Kingdom.

Wyvekens, A 2008, 'The French Juvenile Justice System' in Junger-Tas J and Decker SH (Eds), *International Handbook of Juvenile Justice,* Springer Publishing, USA.

Youth Affairs Council of Victoria and Centre for Multicultural Youth 2012, 'Consultation in response to practical lessons, fair consequences: improving diversion for young people in Victoria' (unpublished).

Youth Justice Board for England and Wales 2006, *Suitable, Sustainable, Supported: A strategy to ensure provision of accommodation for children and young people who offend*, Department of Justice, United Kingdom.

Youthlaw 2012, ‘Smart Justice for Young People’s Response to Diversion Discussion Paper’, Practical Lessons, Fair Consequences: Improving Diversion for Young People in Victoria, Youthlaw, Melbourne.