

# The Use of Diversion in Juvenile Justice Settings in Australia: with particular focus on the state of Victoria

Jessica Dean



INSTITUTE FOR  
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Author :

**Jessica Dean**

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Editor :

**Erasmus A. T. Napitupulu**

**Adhigama A. Budiman**

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**Maidina Rahmawati**

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Jakarta Selatan 12510

Phone/Fax : +6221 7981190

icjr.or.id | @icjrid | infoicjr@icjr.or.id | t.me/ICJRID | fb.me/ICJRID

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## **Foreword**

This research is the result of law internship program hosted by Institute for Criminal Justice Reform (ICJR) and facilitated by Australian Consortium for 'In-Country' Indonesian Studies (ACICIS). This partnership aimed to increase students' awareness of legal issues that are being discussed in the host country, Indonesia, through a comparative approach with the best practice in Australia.

Focusing on Diversion in the Juvenile Justice System, Indonesian law No. 11 of 2012 on Juvenile Criminal Justice System came into effect in 2014. However, there are several duties that the State are yet to fulfil, for instance the Government Regulations on the Guidelines for the Implementation, Procedures and Coordination of Diversion Programs.

This research shows the best practice of the implementation of diversion programs in Juvenile Justice System in Australia, more specific in the State of Victoria, as Victoria is believed to have the best diversion programs. Drawing on the practice undertaken in Australia, this research can be used as a reference point on Diversion programs by Indonesia, who is working to implement better diversion programs.

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# **Chapter 1**

## **The Use of Diversion in Juvenile Justice**

### **1.1. Introduction**

The importance of taking a different approach to youth crime, as opposed to offences committed by adults, is well recognised in international human rights jurisprudence. It is also well recognised that this different approach should focus on rehabilitation, restoration and diversion away from the mainstream justice system as much as possible.

This report provides an overview of the approach taken in Australia towards juvenile justice, particularly diversion programs. Juvenile justice in Australia is legislated by the states and territories rather than by the federal government therefore the report will focus primarily on Victoria as it is argued to be the best provider of juvenile justice programs in Australia.

For the purposes of this report, to make it as useful as possible for the Indonesian context, 'diversion' has been taken in its broadest sense, to include alternative sentencing and bail programs rather than just preventative diversion.

Australia is far from the perfect example, however there are many things that can be learnt from the Australian experience; particularly the success in diverting many young people to community based orders rather than entering prisons and detentions centres.

## 1.2. International Conventions on Children in Juvenile Justice System

The importance of taking a different approach to youth crime is well recognised in international human rights jurisprudence. Children's rights are specifically and comprehensively dealt with by the UN Convention of the Rights of the Child (The Convention), it aims to ensure that each State that ratified the Convention will take seriously their responsibility to ensure children are protected from harm, and grow up, as much as possible, in a 'family environment, in an atmosphere of happiness, love and understanding.'<sup>1</sup>

Additionally it acknowledges that, children, by reason of their physical and mental immaturity, need "special safeguards and care, including appropriate legal protection".<sup>2</sup>

The Convention was ratified by Australia in December 1990 and became binding in 1991.<sup>3</sup> The Convention includes a number of principles that are relevant to young offenders and also supports the establishment of diversion programs. Article 40.3 (b)<sup>4</sup> states that, '*whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*'

The Convention also states the following principles relevant to juvenile justice:

- children's wellbeing should be a primary focus in decision making;<sup>5</sup>
- a minimum age established for criminal responsibility;<sup>6</sup>
- children are giving a number of guarantees including:<sup>7</sup>
  - Legal assistance<sup>8</sup>
  - The matter to be determined without delay<sup>9</sup>
  - Not be compelled to provide testimony or confess guilt;<sup>10</sup>
- imprisonment should be used as a last resort and for minimal time;<sup>11</sup>
- proportionate sentencing.<sup>12</sup>

The other key international standards are 'The Beijing Rules', or UN Standard Minimum rules for the Administration of Juvenile Justice, The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty, or JDL Rules.

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<sup>1</sup> *International Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) preamble.

<sup>2</sup> Ibid.

<sup>3</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, adopted by the General Assembly 29 November 1985.

<sup>4</sup> *International Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>5</sup> Ibid art 40.4.

<sup>6</sup> Ibid art 40.3(a).

<sup>7</sup> Ibid art 40.2.

<sup>8</sup> Ibid art 40.2(iii).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid art 40.2 (iv).

<sup>11</sup> Ibid art 37(b).

<sup>12</sup> Ibid art 40.4.

The UN General Assembly adopted 'The Beijing Rules' on November 25<sup>th</sup> 1985. While they are not binding, many of the principles were imbedded into The Convention and are therefore binding. The Beijing Rules are divided into 6 parts and cover, fundamental principles, investigation and prosecution, adjudication and disposition, non-institutional treatment, and, research, planning, policy formation and evaluation.<sup>13</sup> A full copy of the Rules can be found in Appendix 1.

Article 11 talks specifically about Diversion and states the following;

*11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1<sup>14</sup> below.*

*11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.*

*11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.*

*11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.*

The Riyadh Guidelines were adopted one year after The Convention was adopted by the General Assembly and are considered to be supplementary to the Convention.<sup>15</sup> These guidelines recognised that prevention is the first phrase in the child justice system, also that diversion programs alone are not able to prevent high rates of recidivism. These guidelines recognise, and reiterate:

- that the child's well being must be central;
- institutionalisation should be a last resort and for the shortest time possible;<sup>16</sup>
- a multi-disciplinary approach should be used;<sup>17</sup>
- training for law enforcement officers is essential;<sup>18</sup>
- the participating of young people in the process is fundamental, and;<sup>19</sup>

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<sup>13</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, adopted by the General Assembly 29 November 1985.

<sup>14</sup> Rule 14.1 states – 'where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.'

<sup>15</sup> Heather Stewart, 'with children in conflict with the law' (A summary booklet for professionals in the child justice system in the eastern Caribbean, UNICEF, Barbados, 2009) 10.

<sup>16</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines")*, adopted by the General Assembly 14 December 1990, art 46.

<sup>17</sup> *Ibid* art 50.

<sup>18</sup> *Ibid* art 58.



- continuous monitoring and information sharing should be prioritised.<sup>20</sup>

The JDL Rules are less relevant for this report as they are focused on the treatment of those young people who have been deprived of their liberty because of being held in custody. However these Rules are still essential for any juvenile justice system and cover:

- children under arrest or awaiting trial, and;
- management of juvenile facilities, particularly:
  - hygiene and proper conditions of cells;
  - facilitating continuation of education, particularly in the community, where possible;
  - need for qualified personal and specialists working at the facilities where children are being held.<sup>21</sup>

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<sup>19</sup> Ibid art 3.

<sup>20</sup> Ibid sect VII.

<sup>21</sup> *United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines")*, adopted by the General Assembly 14 December 1990.

## Chapter 2

### Juvenile Justice in Australian Domestic Laws

Australia is a signatory to the UN Convention on the Rights of the Child, and it became binding in 1991.<sup>22</sup> The notion that young people should be placed in detention as a last resort is one of the key principles upon which the Australian juvenile justice system is based.

Juvenile justice is not legislated at a national level in Australia. Instead it is legislated by each State and Territory. While each State and Territory's legislation and service delivery is slightly different, they are all based on the same general principles and processes regarding how young people are charged and sentenced, and the types of legal orders available.

Given Australia does not have any national legislation to provide as an example, Victorian state legislation will be used instead. Victoria is often acknowledged as the leading state in terms of its approach to youth justice due to its significantly lower rates of young people on remand or serving custodial sentences.<sup>23</sup> Additionally, Victoria also has the lowest rate of recidivism among the young people who are put on a supervision order. Further break down on statistics will be provided in the next section.

The Victorian juvenile justice laws can be found in the *Children, Youth and Families Act 2005* (Vic). Chapter 7 provides for the constitution of the Children's Court of Victoria, s362(1) provides requirements the Court must have regard for when sentencing, part 5.1 provides the criminal responsibility of children and s360(1) provides 10 sentencing orders available when a child is found guilty of an offence.

To provide an example of the intention laid out in the Victorian legislation, section 362<sup>24</sup> states that in determining which sentence to impose on a child the court is required to consider the following factors: the need to strengthen and preserve the relationship between the child and the child's family; the desirability of allowing the child to live at home and continue with education, training or employment; the need to minimise stigma to the child; and the suitability of the sentence to the child. It is consistent with well-established legal principle that rehabilitation is the overarching or core principle in the Children's Court.

The Children's Court hears most matters relating to child offenders, and will also

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<sup>22</sup> Australian Human Rights Commission, *Australian's commitment to children's rights and reporting to the UN* (October 2007) <<https://www.humanrights.gov.au/publications/australias-commitment-childrens-rights-and-reporting-un>>.

<sup>23</sup> Helen Fatouros, 'Is Our Youth Justice System Really Broken' (Paper presented at Castan Centre for Human Rights Law Conference, Melbourne, 22 July 2016) 15; Judge Paul Grant, Youth Justice: getting the early years right < <http://vcoss.org.au/documents/2013/06/Insight.PaulGrant.pdf>>

<sup>24</sup> *Children, Youth and Families Act 2005* (Vic).

usually hear cases if the young person was under 18 when they committed the offence and is yet to turn 19 when the case comes to court.

Furthermore, former President of the Children's Court, Judge Grant, in *Herald and Weekly Times Pty Ltd v AB*<sup>25</sup> stated: 'It has been said often enough that one of the great aims of the criminal law is the rehabilitation of the young offender. That is generally the focus of orders in the Children's Court.'<sup>26</sup>

Just recently however, the Victorian Government has introduced new legislation, amending part of the *Children, Youth and Families Act 2005*, aimed at 'tackling youth crime'. The new act, *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017*, will come into effect on June 1<sup>st</sup> 2018.<sup>27</sup>

This reform will do the following:

- increase the maximum period of detention from three years to four;
- establish a new Youth Control Order, available to the Children's Court (details of the program will be provided below);
- set up an Intensive Monitoring and Control Bail Supervision Scheme (details also provided below);
- increase punishment for young people involved in critical incidents while in detention;
- extend the Youth Justice Bail Supervision scheme to the entire state;
- expand the After Hours Assessment and Bail Placement Service.<sup>28</sup>

In the past couple of years, the Victorian Government has received a lot of criticism over its management of the juvenile justice system. The latest reforms and announcement of additional funding have been in response to this criticism and increasing public pressure. As can be seen from the summary above, most of this 'reform' introduces more punitive responses to youth crime. There has been mixed responses to the reforms<sup>29</sup> but it is too soon to analyse the impact of these changes.

Victoria also has the *Charter of Human Rights and Responsibilities Act 2006* (Vic) that provides protections for the rights of accused children. Australia does not

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<sup>25</sup> [2008] VChC 3.

<sup>26</sup> Ibid 24.

<sup>27</sup> *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* s2.

<sup>28</sup> Department of Justice and Regulation, Victorian State Government, *Criminal Law* <<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/>>.

<sup>29</sup> Law Institute of Victoria, *Mixed responses to crack down on youth crime* (1 February 2017) <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/Jan-Feb-2017/Mixed-response-to-Crackdown-on-youth-crime>>; Law Institute of Victoria, *LIV welcomes youth crime reforms* (6 December 2016) <<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/November-2016/LIV-welcomes-youth-crime-reforms>>.

have a national bill of rights, and The Australian Capital Territory (ACT) is the only other state or territory other than Victoria to have one at state level.<sup>30</sup>

The minimum age of criminal responsibility in all Australian states and territories is 10 years of age. Notably, this is not in line with the UN recommended minimum age of 12.<sup>31</sup> According to section 344 of the *Child, Youth and Families Act 2005* (Vic), it is conclusively presumed that children under the statutory threshold of 10 years of age are unable to commit a criminal law offence, as they are unable to form the requisite criminal intent. While children above the age of 10 are capable of being charged in Victoria, there is a rebuttable presumption at common law in Victoria that a child aged under 14 is 'incapable of crime' (*doli incapax*),<sup>32</sup> and therefore will only be charged if the prosecution can prove that the child was capable of forming a criminal intention.<sup>33</sup>

Below is a graph outlining the MACR across the globe.

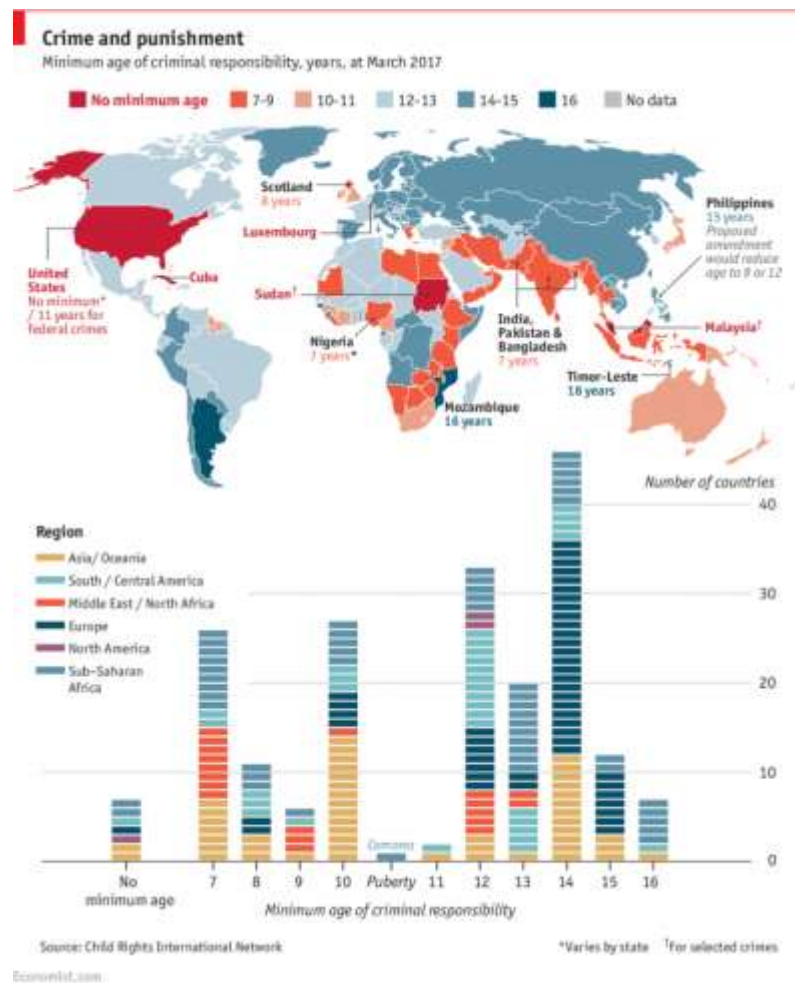
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<sup>30</sup> Victorian Equal Opportunity & Human Rights Commission, *Australia's Human Rights Framework* <<https://www.humanrightscommission.vic.gov.au/human-rights/the-charter/australian-human-rights-framework>>.

<sup>31</sup> Committee on the Rights of the Child, *General Comments No 10: Children's Rights in Juvenile Justice*, 45<sup>th</sup> sess, UN Doc CRC/C/GC/10 (25 April 2007).

<sup>32</sup> Caitlin Grover, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017) 4.

<sup>33</sup> Sentencing Advisory Council, *Sentencing Youth People* (last updated 17 January 2018) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people>>.



Oversight and accountability of the Victorian Youth Justice system is carried out largely by a number of independent organisations including: Commission for Children and Young People; the Victoria Ombudsman; the Victorian Equal Opportunity and Human Rights Commission; the Victorian Auditor General; and the State Coroner.<sup>34</sup>

In the 2015/2016 financial year Victoria spent \$161.4 million on juvenile justice. The break down of that spending was as follows:

- 1% is spent on early intervention programs – Community Based Koori Youth Justice Program and Youth Support Services
- 3% on diversion and restorative justice – Children’s Court Pre-Plea Diversion Program and Youth Justice Group Conferencing
- 5% on the Youth Health and Rehabilitation Service (YHaRS) delivered by a consortium of community-based organisations and a public hospital.
- 26% on community based supervision
- 58% on custodial supervision

In the 2016/2017 budget the Victoria Government committed \$6.7 million to early intervention programs, including \$5.6 million over two years to support

<sup>34</sup> Penny Armytage & Professor James Ogloff AM, ‘Meeting needs and reducing offending’, (Victorian State Government, July 2017) 6.

the state wide diversion program, after a successful 12 month pilot was completed. Also \$1 million has been committed over 2 years to expand the Youth Justice Bail Supervision Program.<sup>35</sup> Details on these programs are provided in the next section.

At the end of 2017, the Victorian Government announced that an addition \$23.9 million was going to be invested in the Children's Court to implement key youth justice reforms outlined in the *Children and Justice Legislation (Youth Justice Reform) Act 2017*.<sup>36</sup> The funding will assist in the delivery of new Youth Control Orders, and the Intensive Monitoring and Control Bail Supervision Scheme.

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<sup>35</sup> Victorian State Government, *Reducing Youth Offending by Early Intervention* (24 April 2016) <<https://www.premier.vic.gov.au/reducing-youth-offending-by-intervening-early/>>.

<sup>36</sup> Victoria State Government, *Getting it done: Implementing Key Youth Justice Reforms* (8 December 2018) <<https://www.premier.vic.gov.au/wp-content/uploads/2017/12/171208-Getting-It-Done-Implementing-Key-Youth-Justice-Reforms.pdf>>.

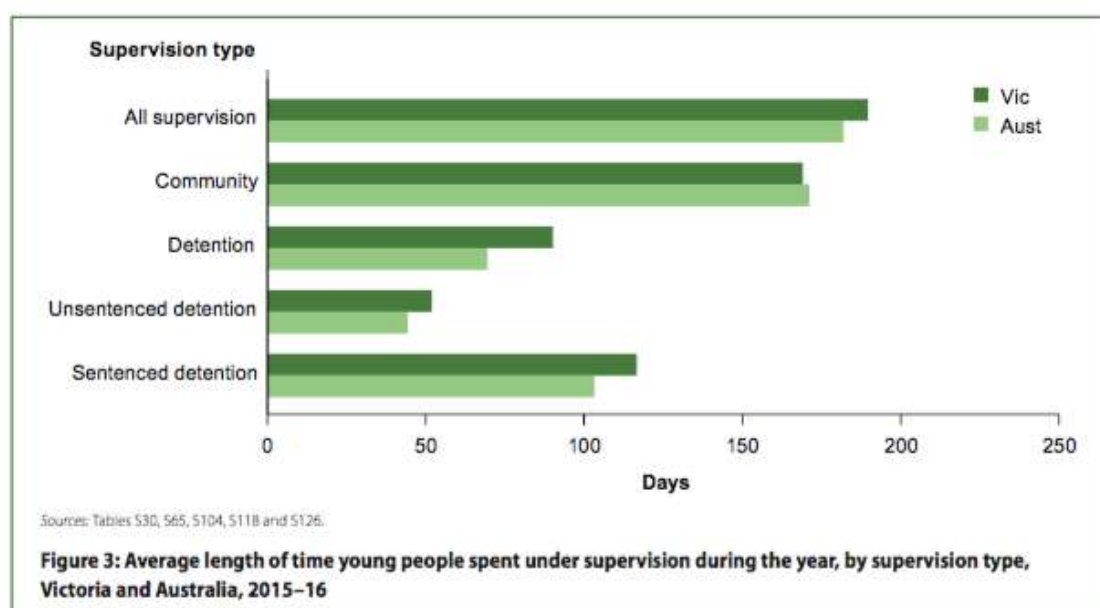
## 2.1. Victorian Juvenile Justice Statistics

The statistics below (other than sentencing) are for the period of the financial year 2015/2016 and are provided by the Australian Institute for Health and Welfare.<sup>37</sup>

On an average day during this period, there were 1084 young people under youth supervision in Victoria. This was the lowest rate of all the states and territories in Australia, at 14 per 10,000. Most of these young people were being supervised in the community (85%, or 921 young people) and the remaining 15% (168 young people) were in detention. This was similar to the proportion of young people under community-based supervision nationally, which was 84%.

The majority of young people under supervision are male (86%), which is also fairly consistent with the national result of 82%.

The median duration of time spent under supervision was 184 days, or around 26 weeks. This is longer than the national median, which is 123 days. The average amount of time spent under supervision was dependent on the supervision type. See below graph for details.



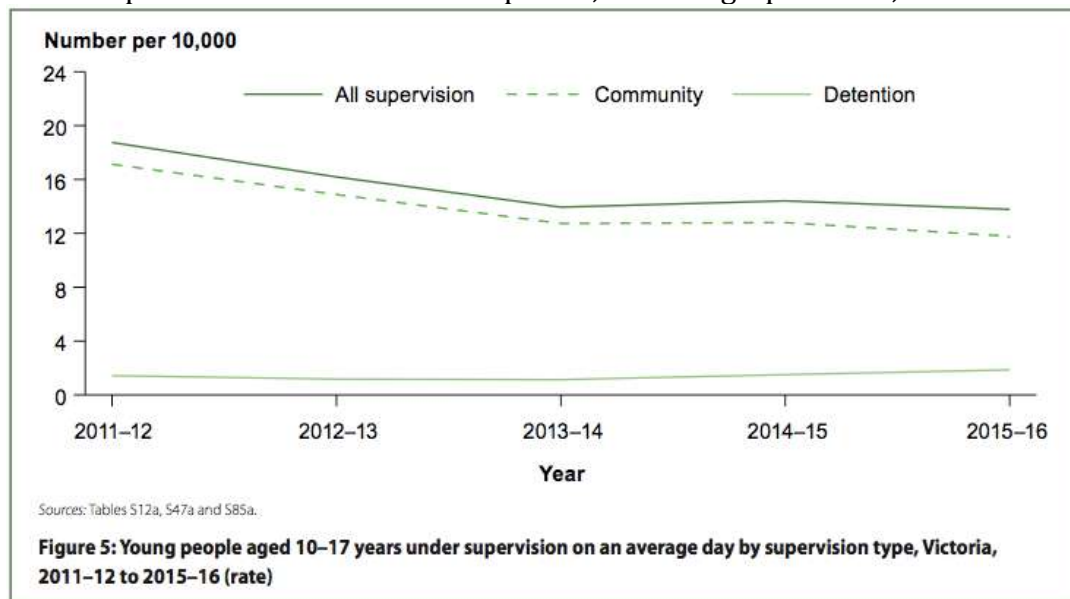
Indigenous young people made up 2% of the state's population during this period, however they made up 18% of the young people being supervised on an average day. This is substantially lower than the national results of 48%, however Victoria does have a smaller indigenous population than some other states and territories. As a comparison:

- In the Northern Territory 45% of their young people were indigenous but made up 95% of the young people under supervision;<sup>38</sup>

<sup>37</sup> Australian Institute of Health and Welfare, Australian Government, *Youth Justice in Australia 2015-2016* (Released 31 March 2017) < <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/australian-capital-territory>>.

- In Queensland 8% of their young people were indigenous but made up 55% of young people under supervision;<sup>39</sup>
- In Western Australia 6% of their young people were indigenous but made up 66% of young people under supervision;<sup>40</sup> and
- In NSW 5% of their young people were indigenous but made up 47% of young people under supervision.<sup>41</sup>

The trend in Victoria over the past 5 years has been an overall drop in the number of young people under any type of supervision, (both the total number as well as the percentage). The rate of young people in detention remained steady during this period however the rate for young people in community-based supervision fell from 17 to 12 per 10,000. See graph below;



In the 2016-2017 financial year the Children's Court of Victoria sentenced 4,191 cases, which was an increase on the year before when the court sentenced 3,853.

<sup>38</sup> Australian Institute of Health and Welfare, Australian Government, *Northern Territory: youth justice supervision in 2015-2016* (Release date 31 March 2017) <<https://www.aihw.gov.au/getmedia/ff88a3b4-d9a6-4fb3-add2-82fd9799b55a/YJA-2015-16-NT.pdf.aspx>>.

<sup>39</sup> Australian Institute of Health and Welfare, Australian Government, *Queensland: youth justice supervision in 2015-2016* (Release date 31 March 2017) <https://www.aihw.gov.au/getmedia/44965476-f6ef-4b30-8f3f-24e585e1d67d/YJA-2015-16-QLD.pdf.aspx>

<sup>40</sup> Australian Institute of Health and Welfare, Australian Government, *Western Australia: youth justice supervision in 2015-2016* (Release date 31 March 2017) <https://www.aihw.gov.au/getmedia/c17b4c5c-9296-4780-8d47-f3525d5546d0/YJA-2015-16-WA.pdf.aspx>

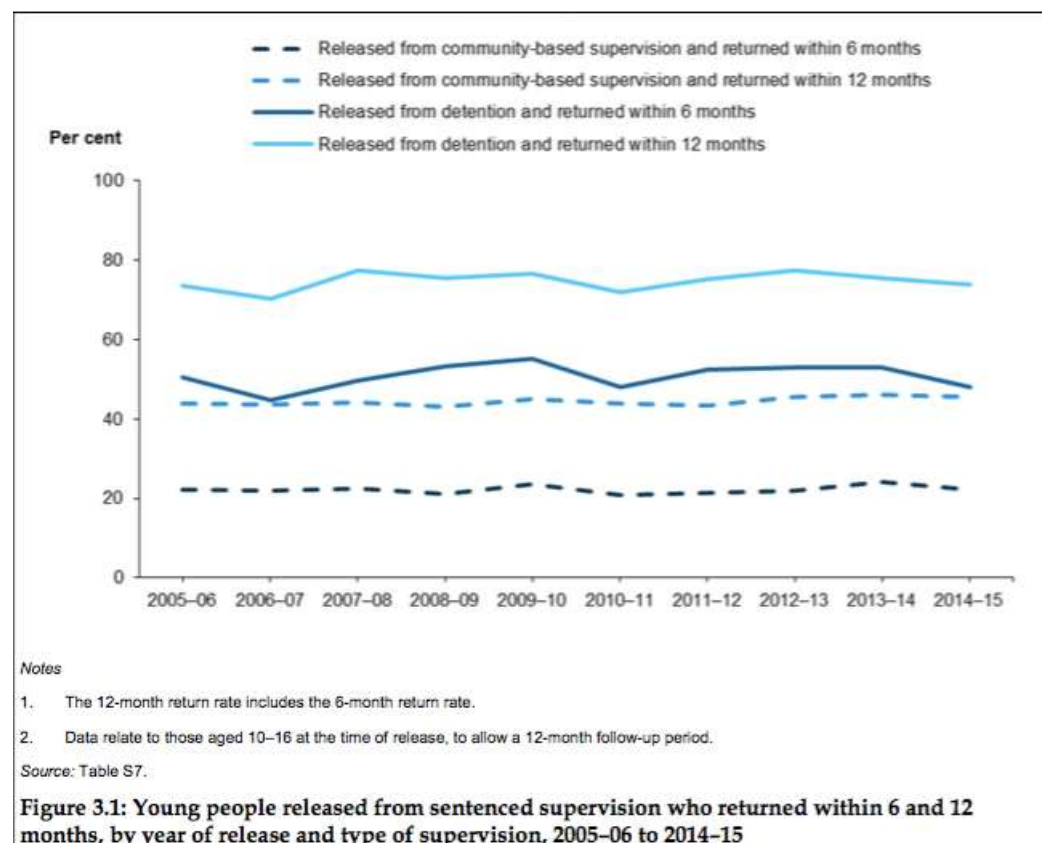
<sup>41</sup> Australian Institute of Health and Welfare, Australian Government, *New South Wales: youth justice supervision in 2015-2016* (Release date 31 March 2017) <https://www.aihw.gov.au/getmedia/4446f4d0-2eb6-4fa2-9c84-17e70bc710ce/YJA-2015-16-NSW.pdf.aspx>



This increase has been put down to the increase in youth diversion from 25 cases in 2014-2015 to 1,120 in 2016-2017.<sup>42</sup>

In 2016-2017, the most used sentences were youth diversions (29.1% of cases), followed by good behaviour bonds (22.9%) and fines (13.3%). 11.2% were sentenced to probation and 11.1% a youth attendance order or youth supervision order. Only 3.7% of cases received a custodial sentence.<sup>43</sup>

Another interesting statistic to include is the rate of reoffending, particularly to note the difference between those who received a community-based order compared with those who served time in detention.



Sourced from the Australian Institute for Health and Welfare (AIHW)

<sup>42</sup> Sentencing Advisory Council, *Cases Sentences in the Children's Court* (Last updated 1 February 2018) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/people-sentenced-childrens-court>>.

<sup>43</sup> Sentencing Advisory Council, *Sentencing Outcomes in the Children's Court* (Last updated 1 February 2018) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-childrens-court>>.

## 2.2. Program Examples from the Victorian Juvenile Justice System

Victoria has made a number of positive steps in the right direction, and its legislation provides a clear intention to continue to move towards diversion as a priority despite the introduction of the recent Act.<sup>44</sup> Additionally, Victoria has been very successful in the implementation of community-based orders as an alternative to detention for young people. While this is not providing diversion from the criminal justice system entirely, it is certainly reducing the long-term impact on young people who have committed crimes in Victoria.

The latest statistics from the Australian Institute of Health and Welfare show that Victoria has the lowest rate of recidivism in Australia for first time offenders.<sup>45</sup> Only 33% of young offenders who serve supervision orders in Victoria return to the criminal justice system.<sup>46</sup> Again, this number is higher than desired but comparatively, Victoria is doing better than all other Australian states.

Below is an overview of programs run in Victoria that provide pathways for young people to be diverted away from the criminal justice system all together, or reprimanded in the least damaging way to hopefully guide them away from a life long involvement in the system.

### 2.2.1. State-wide Court Diversion Program

In 2015 the Victorian State Government provided the Children's Court of Victoria with funding to establish a Youth Diversion Pilot Program. The program commenced on June 1<sup>st</sup> 2015 and ran as a pilot until December 2016. For most of 2016 an independent evaluation of the program took place. The pilot was given a very positive evaluation. Magistrates agreed that it gave them an important addition to their decision-making options and all other stakeholders and young people agreed commenting on what a positive alternative the program offered.<sup>47</sup> The pilot found that 90% of the 270 participants successfully completed the program, and that their involvement had positive impacts on their engagement with education and specialist services.<sup>48</sup>

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<sup>44</sup> *Children and Justice Legislation (Youth Justice Reform) Act 2017* (Vic)

<sup>45</sup> Australian Institute for Health and Welfare, Australian Government, *Youth people returning to sentenced youth justice supervision 2015-2016* (Juvenile Justice Series No. 21, 2017) <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-youth-justice-supervision-2015-16/contents/table-of-contents>>.

<sup>46</sup> Ibid.

<sup>47</sup> Professor Stuart Thomas, Dr Marg Liddell and Dr Diana Johns, Justice and Legal Studies RMIT University, Melbourne, *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3)* (16<sup>th</sup> December 2016) 4.

<sup>48</sup> Jesuit Social Services, *Youth diversion helps young people avoid lifetime involvement with the justice system* (26 April 2016) <<http://jss.org.au/youth-diversion-helps-young-people-avoid-lifetime-involvement-with-the-justice-system/>>.

The evaluation report included an overview of findings from a literature review identifying seven core principles of effective diversion:

- matching risk level to diversion option;
- the diversion operates according to evidence based frameworks and protocols;
- the diversion address multiple needs;
- the diversion provides tailored interventions;
- the diversion plan includes the family;
- the diversion program is staffed by highly qualified and well-trained staff
- it incorporates ongoing evaluation.<sup>49</sup>

The evaluation concluded that the Victorian pilot performed well against all seven principles, and that this was a key reason for its success.<sup>50</sup>

The report also noted that most international literature suggests that diversion is not for everyone, particularly not cases of more serious offences. While the Victorian program did primarily focus on first time low-level offenders, the inclusion criteria were broadened to include young people who had committed more serious offences, with success.<sup>51</sup> Decisions around diversion length, scope and activities, were focused on core considerations of the complexity of the young person's presentation and age. Interestingly, the report noted that the nature of the young persons' offending was often seen as symptomatic of their complexity, rather than being seen as the central problem in the young person's life.<sup>52</sup>

Based on this positive evaluation, the Victorian State Government committed \$5.6 million over 2 years for the continuation of the program, commencing in January 2017.

The program is now known as the Children's Court Youth Diversion service (CCYD) and operates in all Children's Courts across Victoria, facilitated by the Department of Health and Human Services. CCYD targets young people charged with a low level offences with little or no criminal history who would otherwise have been sentenced to an outcome not involving supervision with the youth justice service.

CCYD Coordinators attend all scheduled sittings of the Criminal Division of the Children's Court so they are available to conduct same-day assessments following a Magistrate's referral. In completing these assessments that CCYD Coordinator will consult with the young person, their family (or carer), Victorian

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<sup>49</sup> Professor Stuart Thomas, Dr Marg Liddell and Dr Diana Johns, Justice and Legal Studies RMIT University, Melbourne, *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3)* (16<sup>th</sup> December 2016) 5.

<sup>50</sup> Ibid.

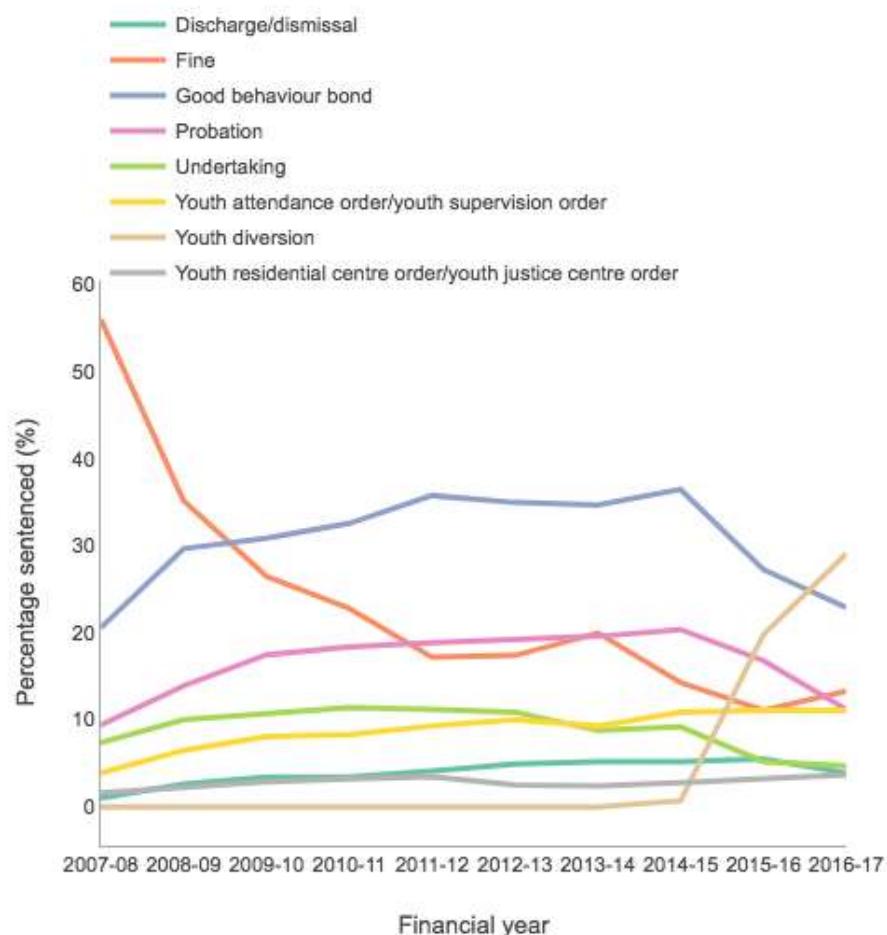
<sup>51</sup> Ibid 5-6.

<sup>52</sup> Ibid 6.

Police Prosecutor and legal representatives. They will then advise the court of the suitability of the young person for the diversion program.<sup>53</sup>

A diversion order may contain a range of conditions for the young person to adhere to, however they will always be underpinned by the principles of diversion and always targeted to promote reparation of harm caused by the offences. The order may also contain interventions aimed at building on and strengthening the young person's existing relationships and interests. To assist in this process the CCYD Coordinator will also conduct a risk assessment and engage appropriate support services to assist the young person in successfully completing the diversion order.<sup>54</sup>

The statistics demonstrate a huge uptake in the diversion program by Judges and Magistrates in the Children's Court with an increase from 0.7% of cases referred in 2014/2015 to 29.1% in 2016/2017. The graph below provides a demonstration of the impact the introduction of the diversion program has had.



Sourced from the Sentencing Advisory Council<sup>55</sup>

<sup>53</sup> Children's Court of Victoria, *Youth Diversion* (last updated 14<sup>th</sup> February 2018) <<http://www.childrenscourt.vic.gov.au/jurisdictions/criminal/youth-diversion>>.

<sup>54</sup> Ibid.

<sup>55</sup> Sentencing Advisory Council, *Sentencing Outcomes in the Children's Court* (Last updated 1 February 2018) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-childrens-court>>.

### 2.2.2. Dual Track Sentencing

The dual track sentencing system is unique to Victoria; it allows some young people aged over 18 and under 21 who are convicted of serious offences to be detained in a youth justice system instead of an adult prison.<sup>56</sup> If the court believes that the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or is likely to be subject to undesirable influences in an adult prison, then the judge will make this recommendation.<sup>57</sup> The option allows young people to be diverted from a potentially more harmful justice experience and therefore hopefully decrease the impact of their time in the system.

### 2.2.3. Police Cautioning

Victorian Police can issue a caution to young people as an alternative to going to court. The Police will consider the following factors in making their decision:<sup>58</sup>

- the seriousness of the crime;
- the circumstances of the young offender and the victim;
- the extent of damage or injury caused;
- whether a caution would effectively deter a young offender from re-offending;
- the number of people affected by the crime; and
- whether a caution has previously been issued.

Victoria Police have reported that one year after the cautioning, 80% of young people have not reoffended, and after 3 years 65% have not reoffended.<sup>59</sup>

While these results are positive and indicate cautioning is a successful strategy, Victoria has been criticised for not underpinning police cautioning with legislation. Instead the process is outlined in the Police Operating Procedures.<sup>60</sup> This has led to inconsistent implementation of cautioning by Victoria Police. There is research that indicates that at times cautioning is being used in discriminatory ways, particularly towards homeless young people and young people from refugee and migrant backgrounds.<sup>61</sup> Legislation has been recommended because in other jurisdictions it has led to:

- creating consistency in implementation;
- avoidance of the targeting of minorities;

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<sup>56</sup> *Sentencing Act 1991* (Vic) s3 & s32.

<sup>57</sup> Department of Health and Human Services (2015) *Youth Justice Group Conferencing: Fact Sheet*, DHHS, Melbourne, 2; *Sentencing Act 1991* (Vic) s 32.

<sup>58</sup> Grover, C, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017).

<sup>59</sup> Victoria Police (2010) *Child and Youth Strategy 2009-13*, Victoria Police, Melbourne

<sup>60</sup> Drug and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to prevent high volume offending and recidivism by young people* (2009) 186.

<sup>61</sup> Grover, C, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017) 9.

- increased the number of young offenders being diverted from the criminal justice system.<sup>62</sup>

#### **2.2.4. Drug diversion program**

Young people apprehended by police for use or possession of illicit drugs, other than cannabis, can participate in the Drug Diversion Program if they meet the following criteria:

- over the age of 10;
- have been arrested for the use and/or possession of a small (non-trafficable)<sup>63</sup> amount of illicit drugs, other than cannabis;
- admit to the offence; and
- not have received any more than one previous caution notice.<sup>64</sup>

Young people caught with a small amount of cannabis, as long as they admit to owning it, can receive a police caution as per the process outlined above.

#### **2.2.5. ROPES program**

The ROPES program is a court diversion program involving Victoria Police, the Children's Court and youth workers. It is aimed at first-time offenders who have committed minor offences. The young person participates in a program where they undertake rock climbing or a ropes course as well as educational sessions about the implications of a criminal record and how to avoid future antisocial behaviour.

To be eligible the young person must meet the following criteria:

- the young person must be under the age of 18 when the offence occurred;
- the offence must be triable summarily;
- the young person must admit to the offence and have only received cautions in the past or be appearing in the Children's Court for the first time
- the young person must not have participated in the ROPES program before;
- the young person must agree to participate and their parents/guardian must also agree;
- the young person must be considered suitable.<sup>65 66</sup>

Once the young person has completed the course, the police recommend to the court that the charge is struck out and as a result there is no finding of guilt and no sentencing order.

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<sup>62</sup> Ibid.

<sup>63</sup> Cocaine – less than 300g; Heroin – less than 300g; Ecstasy/MDMA – less than 0.75g; Ice/Speed – less than 300g.

<sup>64</sup> Victorian State Government, *Forensic Services*, (2018)

<<https://www2.health.vic.gov.au/alcohol-and-drugs/aod-treatment-services/forensic-aod-services>>.

<sup>65</sup> Grover, C, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017) 10.

<sup>66</sup> Suitability as deemed by the Police Informant

An independent report completed by KPMG found that the ROPES program was not likely to bring about sustainable change among those most likely to offend,<sup>67</sup> however the report also found that 88% of those who participated in the program did not reoffend.<sup>68</sup> The report was particularly critical of the lack of guidelines around who is deemed suitable, leaving a lot of discretion with the police informant.<sup>69</sup>

### **2.2.6. Right Step**

Right Step is a more intensive diversion program for young people aged 10-17 who have engaged in more serious offending. It aims to address the causes of the young person's offending by matching them with a case manager who designs an individual plan tailored to the individual's circumstances. This may include addressing mental illness, substance abuse, family breakdown, homelessness or unstable housing, disengagement from education or employment, or lack of social connection.

The young person must meet with the case manager every week for 8 weeks, and at the end of that time the case manager submits a report to the magistrate on the young person's progress. If it is deemed that the young person has successfully completed the program the charges will be dismissed.

Currently this program is not funding by the Victoria Government, and has only been running out of one Magistrate Court in metropolitan Melbourne but has been very successful due to its underlying principle that young people deserve a second chance. An independent review found that 75% of young people who completed the program did not re-offend within 6 months, and 66% had not reoffended after 12 months. This data came from 100 participants in the program with an additional 5 young people referred but deemed unsuitable for the program by the court.<sup>70</sup>

### **2.2.7. Youth Justice Group Conferencing**

Youth Justice Group Conferencing is based on restorative justice principles and aims to balance the needs of young offenders, victims and the community by encouraging dialogue between the offender, their victims and anyone else affected by the offence. The program also aims to develop the young person's understanding of the impact of their offending on the victim, their family and the community and therefore reduce the frequency and seriousness of reoffending. Additionally it aims to:

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<sup>67</sup> Ibid.

<sup>68</sup> Smart Justice, 'Youth Diversion Makes Sense' 8.

<[http://www.smartjustice.org.au/cb\\_pages/files/Diversion%20paper\(3\).pdf](http://www.smartjustice.org.au/cb_pages/files/Diversion%20paper(3).pdf)>.

<sup>69</sup> KPMG (2010) *Evaluation of the Ropes Program*, prepared for Victoria Police, Melbourne, p. 53 cited in Grover, C, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017) 10.

<sup>70</sup> Youth Connect & Right Step, *A Step in the Right Direction: Diverting Young People from the Victorian Justice System – Pilot Evaluation Report*, (October 2012) 9.

- improve the young person's connection to family/significant others and their integration into the community;
- negotiate a plan that sets out what the young person will do to make amends for their offending (this must be agreed to by all parties);
- increase victim satisfaction with the criminal justice process;
- divert the young person from a more intensive sentence.<sup>71</sup>

Youth conferencing is available in circumstances where the court is considering imposing probation or a youth supervision order. According to the KPMG evaluation of this program, over 80% of young people who participated in the program had not re-offended 2 years later compared with 57% who were placed on Probation or a Youth Supervision Order.<sup>72</sup>

### **2.2.8. Youth Justice Bail Supervision Program**

The Justice Bail Supervision Program is available to young people who are at risk of being remanded or re-remanded. The program offers case management support to these young people to reduce the risk of re-offending while on bail and assisting them to comply with bail conditions. The program helps with a range of issues that the young person may be facing including accommodation, education and training, employment, health and development, family and any other factors at play. The program is voluntary.<sup>73</sup>

### **2.2.9. Intensive Monitoring and Control Bail Supervision Scheme**

This program will introduce a mandatory version of the above program, with some stricter conditions and consequences for non-compliance. Offenders will need to comply with education, training or work requirements.<sup>74</sup>

In addition to the above programs, courts in Victoria can also issue the following orders as an alternative to detention for the young person. As mentioned above, these are not technically diverting young people away from the criminal justice system entirely. However, for crimes that require a charge and some sort of punishment handed down these options provide alternatives that significantly reduce the chances of young people reoffending compared with those who are sentenced to time in detention.<sup>75</sup>

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<sup>71</sup> Grover, C, 'Youth Justice in Victoria' (Research Paper No.2, Parliamentary Library & Information Services, Parliament of Victoria, 2017) 12.

<sup>72</sup> Smart Justice, 'Youth Diversion Makes Sense' 8.  
<[http://www.smartjustice.org.au/cb\\_pages/files/Diversion%20paper\(3\).pdf](http://www.smartjustice.org.au/cb_pages/files/Diversion%20paper(3).pdf)>.

<sup>73</sup> Australian Indigenous Health Info Net, *Youth Justice Intensive Bail Supervision Programs* (2015) <<http://healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=2059>>.

<sup>74</sup> Law Institute of Victoria, *LIV welcomes youth crime reforms* (6 December 2016)  
<<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/November-2016/LIV-welcomes-youth-crime-reforms>>.

<sup>75</sup> Australian Institute for Health and Welfare, Australian Government, *Youth people returning to sentenced youth justice supervision 2015-2016* (Juvenile Justice Series No. 21, 2017)  
<<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-youth-justice-supervision-2015-16/contents/table-of-contents>>.



### **2.2.10. Youth Attendance Order**

A youth attendance order is an alternative to detention for children aged 15 and over at the time of sentencing. It is the most intensive community-based supervision order under the *Children, Youth and Families Act 2005*.

The child will be ordered to attend the youth justice unit for a maximum of 12 months. The unit will specify the number of hours per week the child must attend the unit (maximum of 10 per week); the dates and times of attendance; and the program content.<sup>76</sup>

As part of the order the young person must also: not re-offend; if directed, complete up to four hours of community service per week; report any changes to address, education or employment details; and comply with any special conditions set out by the Children's Court.<sup>77</sup>

### **2.2.11. Youth Supervision Order**

A youth supervision order is similar to the attendance order outlined above, just with slightly less supervision. Unlike the attendance order, the supervision order does not require young people to attend the youth justice unit for a certain number of hours each week, rather they only need to report to personnel from the unit.

The mandatory conditions on this order are: not reoffending; reporting to the youth justice unit as required; obeying the instructions of a youth justice worker; attending places specified in the youth supervision order (for example community service); reporting any changes to address, school or employment details; and not leaving Victoria without permission.<sup>78</sup>

### **2.2.12. Probation Order**

A probation order is the least intensive of the community based supervision orders. The probation order is usually 12 months, but can be up to 18 months if the offence is punishable by imprisonment of more than 10 years, or the young person has committed more than one offence.

This order has no requirements for the young person to have contact with the youth justice unit, however they must report to 'relevant personnel' - usually a youth justice worker. Generally there is no community service however the other

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<sup>76</sup> Sentencing Advisory Council, *Youth Attendance Order* (last updated 17 January 2017) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/youth-attendance-order>>.

<sup>77</sup> Ibid.

<sup>78</sup> Sentencing Advisory Council, *Youth Supervision Order* (last updated 17 January 2017) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/youth-supervision-order>>.

requirements remain the same: not reoffending; obeying instructions of the youth justice worker; reporting any changes to address, school or employment details; and not leaving Victoria without permission.<sup>79</sup>

### **2.2.13. Good Behaviour Bond**

A court may adjourn proceedings against a young person, without conviction, under a good behaviour bond. A good behaviour bond usually lasts for 12 months and during that period the young person must comply with the following conditions:

- be of good behaviour;
- pay a bond
- appear before the court if required;
- and comply with any special conditions set by the court.

If the young person complies with the conditions for the period prescribed then their bond will be returned to them and no conviction will be recorded.

According to s 367 of the *Children, Youth and Families Act 2005* (Vic), the bond requested can be no more than half of the maximum fine that could be imposed on the young person under s 373 of the same act.

### **2.2.14. Youth Control Order**

As of 1 June 2018, there will be a new order available to the courts, the Youth Control Order. It will be the most intensive supervision of all of the options the court has available. The Order can include curfews, restrictions on who the young person can associate with, and also require the young person to comply with an education, training or employment plan.<sup>80</sup>

### **2.2.15. Fines**

The Children's Court can also impose a monetary penalty on a young person found guilty of a crime. As with the adult system in Australia, the maximum amount a fine can be is described in penalty units. The parliament set the amount of money a unit is worth, and it increases each year. Currently in Victoria one penalty unit is \$158.57 (1,690,556,00 IDR).<sup>81</sup>

If an offender is under 15 years of age, the maximum fine is one penalty unit for one offence and two penalty units for multiple offences. If the offender is 15

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<sup>79</sup> Sentencing Advisory Council, *Probation Order* (17 January 2017) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-young-people/probation-order>>.

<sup>80</sup> Law Institute of Victoria, *LIV welcomes youth crime reforms* (6 December 2016) <<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/November-2016/LIV-welcomes-youth-crime-reforms>>.

<sup>81</sup> Victorian Legal Aid, *Penalty Units* (last updated 29 December 2017) <<https://www.legalaid.vic.gov.au/find-legal-answers/fines-and-infringements/penalty-units>>.

years of age or over, the maximum fine for one offence is five penalty units. For multiple offences the maximum is ten penalty units.

In addition to the above information there are also a number of other services and programs that have been established to deliver justice differently for young offenders.

### **2.2.16. Children's Koori Courts**

In 2005 Victoria established the Children's Koori Court to address the over representation of Koori (indigenous) young people in the criminal justice system. The sentencing outcome is the same as in the mainstream Children's Court however the court process is different.<sup>82</sup>

There is no pluralism in Australian law as there is in Indonesia. Indigenous people come under the same laws as all other Australians therefore this Court does not provide an alternative legal system to be sentenced under. What it does do, however, is try to make the process more culturally appropriate. In three Australian jurisdictions legislation specifically states that consideration must be given to the offender's cultural background. Victoria, however, is not one of these jurisdictions.<sup>83</sup> Further detail will be provided about this in the next section.

The Koori Court aims to reduce the number of young Koori people being sentenced to periods of detention by involving members of the Koori community in the court process. An Elder or Respected Person from the community sits on either side of the Judge or Magistrate to provide cultural advice related to the young person's situation. The Elder or Respected Person does not make a decision about the outcome. Only the Judge or Magistrate is authorised to make a sentencing decision but their presence and advice has proven to be invaluable in the process.

These sessions take place around an oval table rather than in the traditional courtroom setting.<sup>84</sup> Other people who will often participate in the discussion are: a family member or support person of the young person; a police prosecutor; the young person's lawyer; a Youth Justice representative; and the Children's Koori Court officer.<sup>85</sup>

Young people are eligible to have their case dealt with in the Koori Court if they meet the following criteria:

- are Aboriginal or Torres Strait Islander;
- want to go to the Koori Court;

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<sup>82</sup> Children's Court of Victoria, Koori Court (last updated 14 February 2018) <<http://www.childrenscourt.vic.gov.au/jurisdictions/koori-court>>.

<sup>83</sup> Thalia Anthony, *Sentencing Indigenous Offenders* (March 2010) Brief 7 Indigenous Justice Clearinghouse 1.

<sup>84</sup> Children's Court of Victoria, Koori Court (last updated 14 February 2018) <<http://www.childrenscourt.vic.gov.au/jurisdictions/koori-court>>.

<sup>85</sup> Ibid.

- have not been charged with a sex offence; and
- plead guilty to the offence, or have been found guilty of the offence.<sup>86</sup>

Other Koori specific programs have been developed to assist in addressing the over representation of koori young people in the juvenile justice system.

### **I. Koori Youth Justice Program**

This program was developed in 1992 in response to a Royal Commission into Aboriginal Deaths in Custody. The program facilitates the placement of Koori youth justice workers throughout Victoria who provide support to young Aboriginal people who are at risk of offending or are on a community based order from the court. The workers assist in providing access to appropriate role models, culturally sensitive support, advocacy and casework.<sup>87</sup>

### **II. Koori Intensive Bail Support Program**

The KISP works to reduce the number of young Aboriginal people who are detained prior to sentencing and provides intensive outreach support to help young people comply with bail conditions. The program also provides assistance to young people to integrate into their communities.<sup>88</sup>

### **III. Koori Intensive Pre- and Post-release Program**

The program is designed to assist young Koori people to make a successful transition from custody back into the community but promoting personal growth, skill development, and behavioural and attitudinal change. The program provides intensive, culturally appropriate case management as well as regular Koori programs in the detention centres.<sup>89</sup>

### **2.2.17. Male Adolescent Program for Positive Sexuality (MAPPS)**

MAPPS is a program designed for young people aged 10-21 years of age, who have been found guilty of a sexual offence. The program is based on a cognitive-behavioural model and aims to assisting the young person to increase their

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<sup>86</sup> Ibid.

<sup>87</sup> Department of Justice and Regulation, Victorian State Government, *Koori Youth Justice Programs* (last updated 15 September 2017) <http://www.justice.vic.gov.au/home/justice+system/youth+justice/koori+youth+justice+programs>.

<sup>88</sup> Ibid.

<sup>89</sup> Australian Institute of Health and Welfare, Australian Government, *Youth Justice in Australia 2015-2016* (Released 31 March 2017) < <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/australian-capital-territory>>.

understanding of themselves and other, take responsibility for their actions and choices, develop an understanding of the deliberate pattern of their offending, develop victim awareness and create a positive lifestyle.<sup>90</sup>

The program typically occurs over a 12 month period and involves 5 stages:

- assessment (8 weeks);
- basic group (once per week for an average of 4 months);
- transition program (three-day camp);
- advanced group (once per week for an average of 3 months); and
- follow-up and discharge.<sup>91</sup>

All youth people on youth justice orders who have been found guilty of committing a sexual offence will be referred to MAPPS.<sup>92</sup>

The most recent evaluation I could find for this program was from 1998, four and a half years after the program began. This independent review found that the program did significantly reduce the rate of sexual recidivism in young people convicted of sexual crimes. Of the 138 offenders who participated in the program between 1993 & 1998, 5% committed further sexual offences.<sup>93</sup>

These results provide an encouraging picture of the effectiveness of the program, however without further evaluation, particularly over a longer period of time, the value of this program is still hard to assess.

### **2.2.18. Police Accountability Project**

The Police Accountability Project is a 'unique social-legal advocacy program' run by a not for profit legal practice located within the Flemington and Kensington Community Legal Service.<sup>94</sup> The team provides specialist and public interest casework, test cases and legal action for victims of Police abuse.

The project aims to raise awareness in the community of police misconduct (particularly related to racial profiling) as well as provide information and legal recourse for young people impacted by police brutality.<sup>95</sup> They aim to achieve these things through research, advocacy and strategic litigation.

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<sup>90</sup> Department of Human Services, Victorian State Government, *Youth Justice Community Practice Manual – Male Adolescent Program for Positive Sexuality (MAPPS)* (last updated 23 January 2018) <<https://www.yjcommunitypracticemanual.vic.gov.au/working-with-other-services/working-with-other-professionals-and-disciplines/male-adolescent>>.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Australian Institute of Family Studies, Australian Government, *Sexual Violence Offenders: Prevention and intervention approaches* (June 2006) <<https://aifs.gov.au/publications/sexual-violence-offenders/response-sexual-violence>>.

<sup>94</sup> Police Accountability Project, Flemington & Kensington Community Legal Centre, *How we work* (last updated 2018) <<http://www.policeaccountability.org.au/about/who-how/>>.

<sup>95</sup> Ibid.

Further details on the work they do can be found at their website – [www.policeaccountability.org.au](http://www.policeaccountability.org.au).

#### **2.2.19. Parkville College**

Parkville College was founded after a Victorian Ombudsman report in October 2012 made a number of recommendations to improve conditions in the state's youth custodial system, particularly in relation to access to education.

The school now operates in 7 locations across the state and provides tailored education plans for each young person in detention.

As this is slightly beyond the scope of this report, no further information will be provided, however detailed information can be found at - <http://parkvillecollege.vic.edu.au/>

### **3. Sentencing Distribution by Offence Category in Victoria**

A lot of discretion is given to Judges in the Victorian Children's Court to ensure that, when sentencing young people, the principles of diversion, restoration and rehabilitation are at the centre. The below data was collected during 2015, and will help to paint a picture of when the above sentences are used by the Court. It is important to note that this information was collected before the Court Diversion Program was implemented, and as has been demonstrated above it is now the most common order given by the Children's Court. Nevertheless, this data will still give a sense of the kinds of orders Victorian Children's Court Judges give for what crimes.

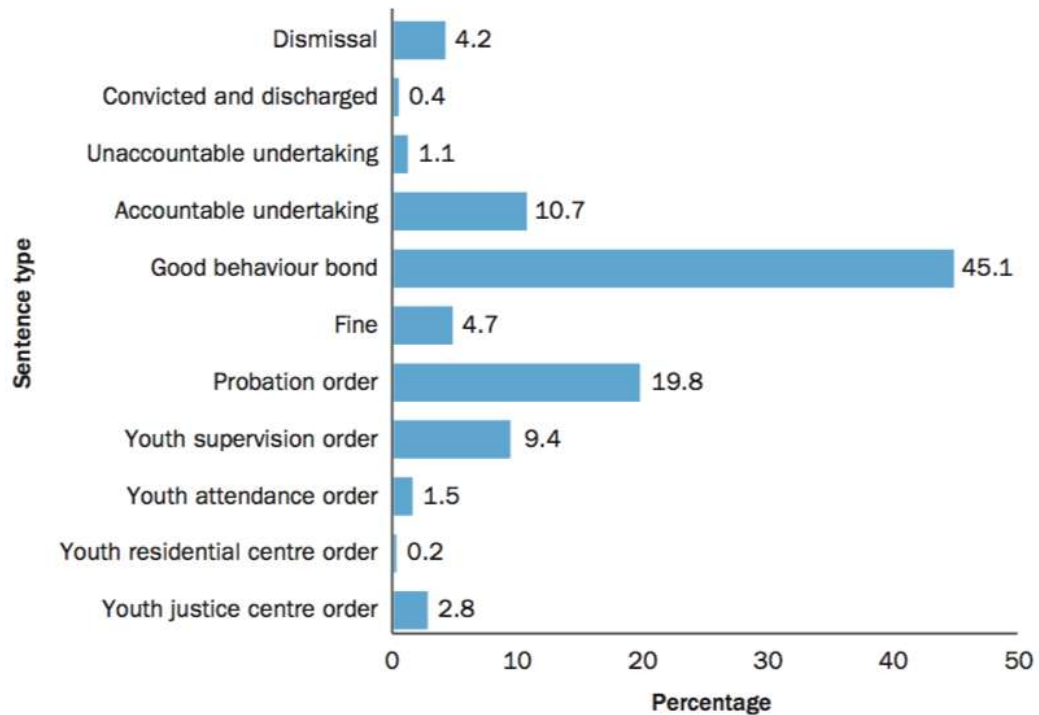
These statistics are all drawn from Sentencing Children in Victoria: Data Update Report.<sup>96</sup>

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<sup>96</sup> Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (July 2016).

## Sentences given for offences against property:

Figure 11: Sentence distribution for principal offences against property, Children's Court, 2015



## Top offences against property sentenced by the Children's Court:

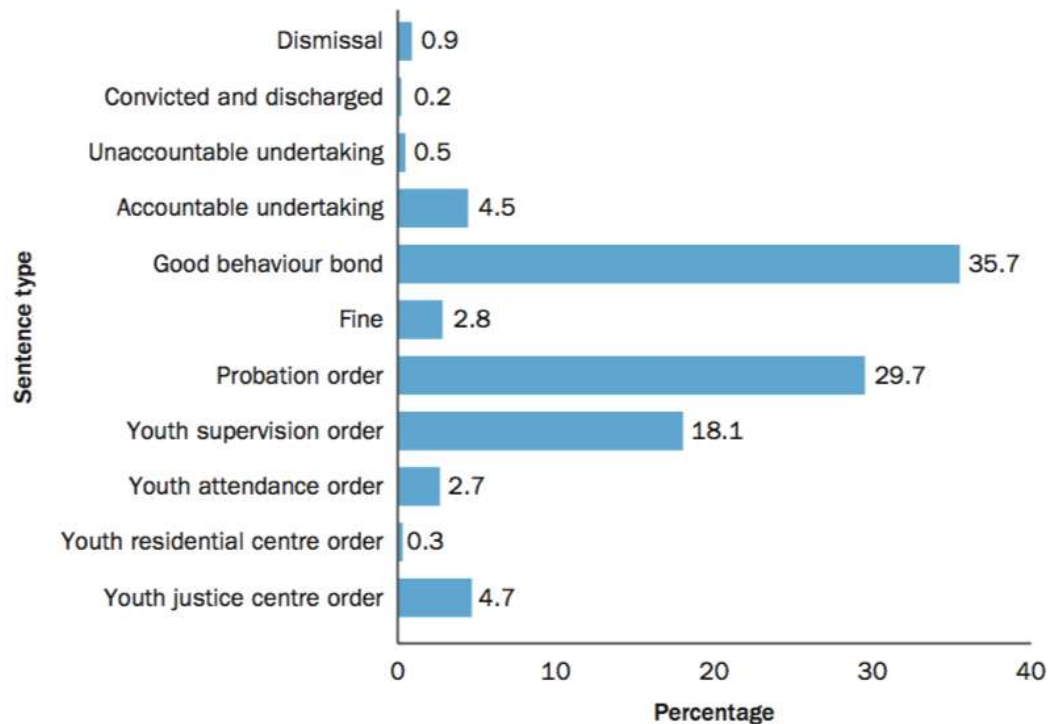
Table 4: Top 10 most common principal offences against property sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Burglary	<i>Crimes Act 1958</i> (Vic) s 76(1)	219
2	Theft from a shop (shop theft)	<i>Crimes Act 1958</i> (Vic) s 74	184
3	Criminal damage	<i>Crimes Act 1958</i> (Vic) s 197(1)	164
4	Theft of a motor vehicle	<i>Crimes Act 1958</i> (Vic) s 74	132
5	Theft	<i>Crimes Act 1958</i> (Vic) s 74	99
6	Obtain property by deception	<i>Crimes Act 1958</i> (Vic) s 81(1)	58
7	Handling stolen goods	<i>Crimes Act 1958</i> (Vic) s 88(1)	42
8	Wilfully damage property valued less than \$5,000	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(c)	37
9	Criminal damage by fire (arson)	<i>Crimes Act 1958</i> (Vic) s 197(6)	22
10	Wilfully enter private property without authorisation or lawful excuse	<i>Summary Offences Act 1966</i> (Vic) s 9(1)(e)	15



## Sentences given for non-sexual offences against the person:

Figure 13: Sentence distribution for principal offences against the person (non-sexual), Children's Court, 2015



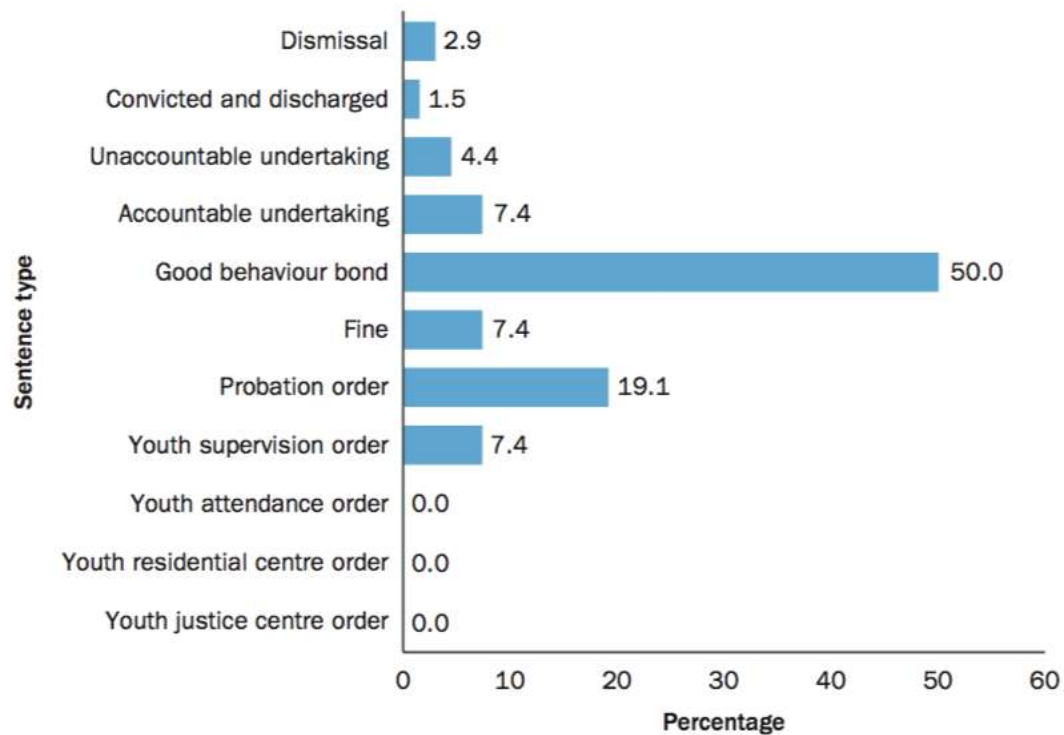
## Top non-sexual offences against a person sentenced by the Children's Court:

Table 6: Top 10 most common principal offences against the person (non-sexual) sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Unlawful assault	Summary Offences Act 1966 (Vic) s 23	323
2	Recklessly causing injury	Crimes Act 1958 (Vic) s 18	273
3	Intentionally causing injury	Crimes Act 1958 (Vic) s 18	76
4	Aggravated assault (with weapon)	Summary Offences Act 1966 (Vic) s 24(2)	68
5	Robbery	Crimes Act 1958 (Vic) s 75	68
6	Armed robbery	Crimes Act 1958 (Vic) s 75A	61
7	Assault emergency worker (including police) on duty	Summary Offences Act 1966 (Vic) ss 51(2); 52(1) (repealed)	53
8	Aggravated assault (by kicking)	Summary Offences Act 1966 (Vic) s 24(2)	41
9	Aggravated assault (in company)	Summary Offences Act 1966 (Vic) s 24(2)	37
10	Make threat to kill	Crimes Act 1958 (Vic) s 20	29

## Sentences given for drug offences:

Figure 16: Sentence distribution for principal drug offences, Children's Court, 2015



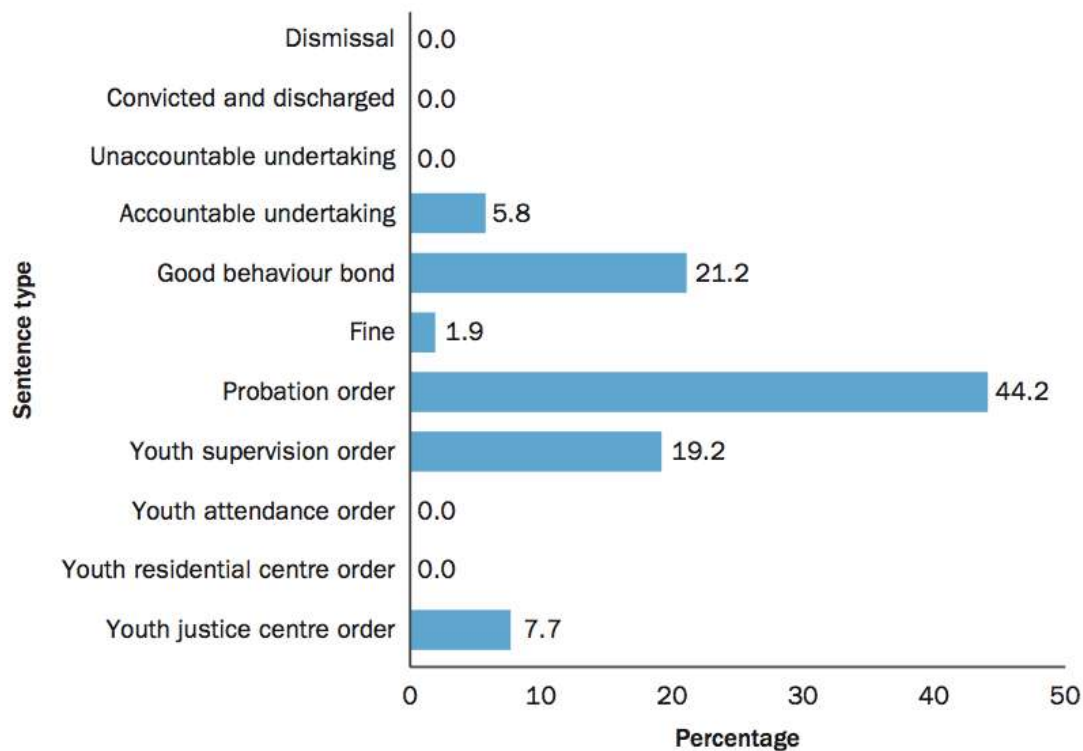
## Top drug offences sentenced by the Children's Court:

Table 9: Most common principal drug offences sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Possessing a drug of dependence (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	36
2	Trafficking in a drug of dependence (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	16
3	Cultivating a narcotic plant (cannabis)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 72B</i>	5
4	Possessing a drug of dependence (methamphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	2
Equal 5	Trafficking in a drug of dependence (drug not specified)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Trafficking in a drug of dependence (ecstasy)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Trafficking in a drug of dependence (methamphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 71AC</i>	1
Equal 5	Possessing a drug of dependence (amphetamine)	<i>Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)</i>	1

## Sentences given for sexual offences:

Figure 17: Sentence distribution for principal sexual offences against the person, Children's Court, 2015



## Top sexual offences sentences by the Children's Court:

Table 10: Most common principal sexual offences sentenced in the Children's Court, 2015

Rank	Offence description	Act and section	Total
1	Indecent act with a child under 16	<i>Crimes Act 1958</i> (Vic) s 47(1)	17
2	Indecent assault	<i>Crimes Act 1958</i> (Vic) s 39(1) (repealed)	11
3	Sexual penetration with a child under 16	<i>Crimes Act 1958</i> (Vic) s 45(1)	9
4	Rape	<i>Crimes Act 1958</i> (Vic) s 38(1)	7
5	Knowingly possess child pornography	<i>Crimes Act 1958</i> (Vic) s 70(1)	4
Equal 6	Incest – sibling or half-sibling	<i>Crimes Act 1958</i> (Vic) s 44(4)	1
Equal 6	Causes a minor to be concerned in making or production of child pornography	<i>Crimes Act 1958</i> (Vic) s 69(1)(c)	1
Equal 6	Publication or transmission of child pornography	<i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i> (Vic) s 57A	1
Equal 6	Using a carriage service to access child pornography material	<i>Criminal Code Act 1995</i> (Cth) s 474.19(1)	1

## 4. A note about indigenous Australians

The history of Australia and its indigenous people is a complex and, in the most part, sad story. Unfortunately, detailing this history is beyond the scope of this report, however it is important to acknowledge because its impact is etched all over many of the social and legislative challenges Australia faces today in relation to indigenous crime rates.

As mentioned previously, Australia does not have a plural legal system therefore Indigenous customs and laws do not exist as a formal part of the legal system. However, because indigenous people have long been over-represented in the justice system across Australia, states and territories have had to develop various programs aimed reducing the number of indigenous people in the justice system.

The ACT, Queensland and the Northern Territory all have legislation that specifically states that consideration must be given to an offender's cultural background. ACT legislation specifies that the court must consider whether the cultural background of the offender is relevant.<sup>97</sup> In Queensland, when courts are sentencing an Aboriginal or Torres Strait Islander they must have regard to submissions made by a representative of the community justice group of the offender's community.<sup>98</sup> In the Northern Territory the court may receive information about an aspect of Indigenous customary law, or the views of members of an indigenous community, but only when certain procedural criteria is met.<sup>99</sup>

In some courts in Australia, particularly in the Northern Territory, punishment under indigenous law has been considered a mitigating factor and sentences have been discounted when the offender has undergone, or will undergo, a traditional punishment involving shaming, exile, compensation and spearing.<sup>100</sup> Courts have noted that a 'proper sentence of justice' must still take place regardless of the views, wishes and needs of the community.

The approach also recognises the collective responsibility that indigenous community accepts for offences and the need to atone to the indigenous communities.

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<sup>97</sup> *Crimes (Sentencing) Act 2005* (ACT) s33(m).

<sup>98</sup> *Penalties and Sentencing Act 1992* (Qld) s9(2)(p).

<sup>99</sup> *Sentencing Act 1995* (NT) s104A.

<sup>100</sup> Thalia Anthony, *Sentencing Indigenous Offenders* (March 2010) Brief 7 Indigenous Justice Clearinghouse 4.

## 5. Observations and Recommendations

- Good data is key. In Australia it is easy to get reliable data, which makes advocating so much easier.
- Police Force play a huge role in shifting the experience of youth in trouble with the law.
- For diversion programs and processes to work effectively there needs to be good assessment tools and people who are skilled in making those assessments. Training for staff working in juvenile justice is really important, particularly in doing risk assessments. Trauma informed practice would also hugely benefit staff and young people.
- Introduction of community based orders and parole would make a huge difference to the number of young Indonesian's in the prison system.
- The nature of civil society in Australia and Indonesia will mean that different strategies will be needed. The presence of community leaders, family heads and other prominent and respected people in Indonesian communities along side the cultural expectation of not losing face perhaps creates a more natural fit for diversion and restorative justice if resources and time can be provided for implementation of new ways to deal with youth offending.
- Interestingly, for young people, particularly under the age of 14, short period of diversion do not seem to be as affective as longer one where they have time to fully engage with the supports.

## **About the Author**

Jessica Dean is an Australian human rights activist, joining Institute for Criminal Justice Reform as part of The Australian Consortium for 'In-Country' Indonesian Studies (ACICIS) – Law Professional Practicum (LPP). Jessica Dean currently works for Australian Red Cross in the Migrant Support Programs, supporting people seeking asylum and people affected by human trafficking. Jessica has volunteered in a number of community organisations, some of which are Telecross, Youth Empowerment Against HIV/AIDS (YEAH), and Asha Global.

## **About the Institute for Criminal Justice Reform**

Institute for Criminal Justice Reform or ICJR, is an independent research institution on criminal law reform, criminal justice reform, and general law reform in Indonesia. One of the crucial challenges that Indonesia has to encounter during its transition era is reforming the law and criminal justice in line with the democratic direction of the nation. In the past, criminal law and criminal justice had been the supporting tools of authoritarian rule, and also utilized in the interest of social engineering. Now, it is time to change the orientation and instrument of criminal law as tools of authoritarian power, to supporting tools for the democratic political system and for the protection of fundamental human rights. These are the challenges in reforming the criminal law and criminal justice during the current transition stage.

Therefore, to respond to the aforementioned challenges, Indonesia needs well-planned and systematic reform efforts. A grand design of reform in criminal justice and law in general should be initiated. The criminal justice system has been a strategic key point in establishing the Rule of Law framework and respect for human rights. Furthermore, to have a proper functioning democracy, the concept of the Rule of Law must be institutionalized. Thus, the reform of criminal justice system to orient it towards human rights protection is the “*conditio sine quo non*” along with the process of institutionalized democratic reform of the transition era.

Steps in transforming law and criminal justice system to be more effective is currently in progress. However, such measure must be supported with wider involvement. Institute for Criminal Justice Reform (ICJR) is taking the initiative to support those measures. Provide support to establish a recognition towards Rule of Law and simultaneously preserve the human rights culture within the criminal justice system. These are the reason of existence of ICJR.

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