

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 17 March 2017

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Ms Lisa Ward, deputy chair, Sentencing Advisory Council.

The CHAIR — I would like to welcome everyone who is present this afternoon for this hearing. The committee is hearing evidence today in relation to the inquiry into youth justice centres in Victoria, and the evidence is being recorded. Welcome to this hearing today. All evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, these comments may not be protected by this privilege. I would invite you to address the committee. We are suggesting to people that they keep their remarks to 5 to 10 minutes and then open it up for questions and discussion, but I will be guided by you on that. Thank you and welcome.

Ms WARD — Thank you. Thanks for the opportunity to talk about the Sentencing Advisory Council's work. Building on our previous research in this area, in the past two years the Sentencing Advisory Council has produced three reports regarding the sentencing of children and young adults in Victoria. These reports have been made available to the committee in advance of today's hearing, and we will not make a separate submission to the process. The council's research in this area sheds light on the trajectories of young people as they move through the criminal justice system and sometimes into the adult system and the risk factors associated with those trajectories. In these opening remarks I will look to consolidate and overview our three very detailed research reports to give you a sense of the overriding trends affecting the sentencing of children and young people.

The Children, Youth and Family Act sets out the principles that the Children's Court must take into account when sentencing kids. These include the need to strengthen and preserve family ties; continue education and employment; minimise stigma; and, if appropriate, ensure that the child is held responsible and the community is protected. These sentencing principles really reflect the commitment to crime prevention through rehabilitation that is at the heart of our very specialist youth justice system. The rationale behind the specialist approach to sentencing is that young people share particular developmental characteristics that affect their impulsivity and their cognition.

The Victorian courts have taken a view that the developmental characteristics of children impact sentencing in a number of key and distinct ways. First of all, the young offender's immaturity is seen as markedly reducing their culpability for their actions. Secondly, custody is seen as particularly criminogenic — particularly harmful — for young people, whose brains are still developing. Thirdly, the very fact that development and maturation is underway is seen as an opportunity for the criminal justice system to intervene to halt the trajectory into the adult justice system.

Young adults aged 18 to 20 are dealt with in the adult system under the Sentencing Act. The courts have recognised that in many cases rehabilitation of the young offender is the most important of the sentencing purposes that are articulated in the Sentencing Act, recognising that behavioural change is still possible and in the community's long-term interests. The Victorian Court of Appeal recently noted the centrality of rehabilitation to sentencing young adults in their guideline judgement on community correction orders, and I will talk a bit more about the trends in those orders in just a second.

Looking at the data, both youth offending and the number of children sentenced in the Children's Court have decreased substantially in recent years. Between 2010 and 2015, which is the reference period for this data, the number of cases sentenced in the Children's Court decreased by 43 per cent, so a really significant decrease. In the same period the number of charges sentenced declined by 20 per cent.

However, while there are fewer young offenders and young people committing a smaller proportion of all crime in the community, those that are doing it are doing it at a higher rate than before. Since 2013 there has been an increase in the number of charges per case, and this effect applies even when we remove the impact of the bail-related offences that were introduced in 2013 and repealed in 2016. So while those changes to the law resulted in an increase in the number of charges per case, when you strip that effect out there is still an increase.

The other significant change that has occurred has been an increase in the use of remand. So despite the reduction in youth offending overall, between 2010 and 2015 the number of children held in remand in Victoria increased by 25 per cent, and we are aware that since the end of our study period that trend has continued. As our primary focus as a council is on sentencing in Victoria, we have not devoted considerable resources to unpacking the reasons behind the increase in the unsentenced population; we are really pushing against our remit in that space. However, we are aware of Victorian research indicating that children remanded at a very early age — between 10 and 12 — are almost always known to the child protection system and suggest that this would appear a worthy avenue of investigation in the future.

Turning briefly now to the sentencing of young adults — the 18 to 20-year-olds — council's research shows a 26 per cent decline in overall offending in that cohort over our study period. Exploring the possible explanations for that decrease in sentenced offending by young offenders, it seems that demographic factors do not explain it, and nor does any increased use in diversion by the courts in the criminal justice diversion program explain the increase.

One of the possible contributors that we have identified is the decreased use of alcohol among young people. Findings from the National Drug Strategy demonstrate that there is a substantial nationwide decline in risky alcohol consumption among young people and that that misuse of alcohol has not been substituted with the misuse of other drugs.

Ms PATTEN — Did you say it has not?

Ms WARD — Has not; that is right. So given the link between alcohol use and offending, that is one possible explanation for the decline that we are observing. The other contributor appears to be an increased use of cautions by Victoria Police. In the reference period that we looked at, cautions of young adults increased by 30 per cent, meaning that a larger cohort of young people are being diverted away from the justice system.

Another key shift in the sentencing of young adults that is worth bringing to your attention is the increased use of community orders and a decrease in the absolute number of young people being sentenced to the dual-track system. This trend coincided with the introduction of the new community correction order and suggests that the courts really are utilising that community-based sanction to respond to offending that in the past might have attracted a custodial sentence. It is an interesting trend over that period of time.

Turning now to the reoffending data, which is really some of the most critical data in looking at that trajectory — that movement — although there has been a dramatic reduction in overall offending, the reoffending rates of children sentenced in the Children's Court have remained virtually unchanged, so we are talking here again about the younger population, the 10 to 17-year-olds. Of all the young people sentenced in the Children's Court in our index year, which was the financial year 2009, 61 per cent reoffended within six years of their sentence, so a significant reoffending rate; 44 per cent reoffended more than once; and 15 per cent reoffended on five or more occasions within that six-year follow-up period. Of all the children and young people sentenced in the Children's Court in that year, 52 per cent went on to have contact with the adult criminal jurisdiction — so significant figures.

I am aware that the committee is particularly interested in reoffending rates following a period of custody. Of all the children sentenced to a youth justice centre in our index year, 82 per cent reoffended within six years, 70 per cent reoffended at least once with an offence against a person, 77 per cent progressed into the adult criminal jurisdiction and 57 per cent attracted an immediate sentence of imprisonment.

Ms SYMES — Is there any way to work out whether the length of sentence has an impact?

Ms PATTEN — So the longer they are in, the more likely they are to — —

Ms WARD — The recidivism rate?

Ms SYMES — Yes.

Ms WARD — We have not looked in this study at the impact of length of sentence. Certainly the idea that those very serious offences attract longer terms would suggest that the chance of reoffending would be higher.

The important thing with this cohort of course is that the factors that lead them to get a custodial sentence in the first place — the seriousness of the offence and their number of priors — means that already they are more likely to reoffend, if that makes sense, so you are already talking about a cohort that is at the very pointy end of the system by virtue of their behaviour.

Ms SYMES — Yes. I guess I was just looking at teasing out whether the short term scared them into looking at perhaps getting onto a better path versus a longer time actually having enough time for staff to have an intensive program applied to a young person.

Ms WARD — Certainly our research does not look at that particular impact. There is other research that looks at the use of short, sharp terms of incarceration, and my understanding of that research is that it is not seen as an effective intervention with young people, so that disruption to prosocial connections within the community that occurs through a very short period of incarceration is less likely to be effective than programs that are about connecting kids to community.

Those really high reoffending rates that are associated with periods in custody must be seen of course in terms of the nature of the population that are in custody in the first instance. So this group is most likely to have been victims of crime themselves; most likely to have been subject to early childhood trauma, abuse, neglect; most likely to have a mental illness, cognitive impairment and potentially substance abuse issues. We are talking about a group of people in custody who have very complex multiple needs in any case, so the reoffending rates have to be viewed in that light.

Nevertheless the rates are really concerning. They make it clear that incarceration has a limited deterrent effect in respect of young people, and this is probably not surprising given that the concept of deterrence is based on the understanding, the assumption, that offenders make a rational choice whether or not to offend and it is this very capacity for rational consequential thinking that is undeveloped in adolescence. The high rates of reoffending following custody may also point to the criminogenic nature of the custodial experience itself.

The other key finding that has come out of our reoffending research is that the age at first sentence is clearly the most important risk factor for further offending. The younger that children are at their first sentence, the more likely they are to reoffend generally, to reoffend violently, to reoffend in a way that takes them into the criminal jurisdiction and to reoffend in a way that leads to a term of imprisonment before their 22nd birthday. So after accounting for all other factors associated with offending, each additional year in age at entry into the criminal justice system is associated with an 18 per cent decline in the likelihood of reoffending.

Other risk factors for reoffending include gender, with young males significantly more likely to reoffend than their female counterparts; the presence of prior convictions; and the presence of specific offence types, including offences against the person, property damage and theft.

Drawing some of that together, two key observations may be most helpful to you in your work. The first is that as concern around youth crime increases, policy responses really need to take a very differentiated approach and target the small cohort of persistent repeat offenders who are responsible for a disproportionate amount of crime. There is no evidence of a broad-based increase in youth offending. In fact the reverse is clearly true. While youth offending overall is declining, our data shows that young people with 10 or more sentenced events in the 11-year study comprise only 7 per cent of the population but are generating 32 per cent of all crimes committed. I think we have seen this number cut in various ways in different datasets, but the message is the persistent one that we have a small cohort of serious repeat offenders who warrant attention.

The second key finding from our research is that it really demonstrates the need for early and enhanced intervention and resources that target very young offenders. The key to reduced offending by young people really is to interrupt that trajectory, to look at a whole lot of waypoints in that trajectory to intervene and stop the movement through into the adult criminal justice system. These early intervention responses are obviously likely to be located outside the justice system in partnership with schools, primary health, Child FIRST, child protection.

And of course the other issue that flows through from our data is the need to really look at the increased use of remand. It is obviously a pressing point for concerted policy intervention to avert that stigmatisation and try to halt the penetration of children into the adult criminal justice system. They are the headline findings of our three separate reports. I am happy now to talk about any of those in more detail or to take questions.

Ms PATTEN — There have been some recommendations from other organisations — Berry Street, for example — that suggest that we should increase the age around criminal liability from 10 to 12. Does your organisation have any comment on that? Given what you have been saying — that the younger they come into the system, the more likely they are to offend — do you think that recommendation of increasing that criminal culpability has merit?

Ms WARD — Certainly the Sentencing Advisory Council has not done work in this space in the past. I am certainly aware of arguments in favour of that increase in the age jurisdiction. It would be consistent with some

of the international trends that are occurring in the UK and Europe. I suspect one of the most important aspects is: how are children younger than 10 dealt with in terms of community support services? Again, it is about how we as a society respond to those very intensive needs of children and young people, and if the responses can be provided in the child and family system as opposed to the justice system, I think there is a sort of inherent logic in that.

While you are talking about the increases in age jurisdiction, the other international trend that we are noting is arguments towards increasing the jurisdiction of the Children's Court at the upper end. This is really being informed by research in developmental psychology and neurobiology that is showing that the brains of young adults really have more in common with the brains of children than they do with adults. Impulsivity, cognition, risk-taking behaviour are all more similar with that group of 18 to 20-year-olds, and certainly in some jurisdictions there have been arguments to increase the age jurisdiction there. Interestingly the existence of Victoria's dual-track system may well be seen to be ahead of the science in that regard in that it provides a response to children and recognises that development is not even across the cohort — some are more vulnerable and immature than others.

Ms SYMES — I note it might not have been able to be examined as closely because of the duration, but what is the relationship between reoffending and the completion of the CCO?

Ms WARD — That was not a factor that we looked at in terms of the report. Is it a protective factor, if you like, if someone gets through —

Ms SYMES — Just that the rates of reoffending after incarceration are so incredibly high. I was just interested to compare that with the rates of reoffending after the completion of an alternative to incarceration.

Ms WARD — Yes, the rates are much lower. The rates are around the 50 per cent mark for a community correction order. For a youth attendance order, they are much higher and more like the rates associated with a custodial sentence. But with both youth supervision orders and probation, they are much lower again. And that again is perhaps unsurprising. We need to be a bit cautious about drawing conclusions about the effectiveness of particular orders based on that data, because the cohort of people attracting those orders are quite different. But nevertheless there are lower rates. As you move through the system, through the sentencing hierarchy, the rates of reoffending become higher.

The CHAIR — This is related to your area, but it might be a bit of a tangent. One issue that has come up a number of times is the gap between sentencing consequences and the action that led to those consequences, and it has been put to me by a number of people involved in the system that that gap is part of the problem. There is often a consequence but it comes many months later, and a number of charges that may have originated from circumstances on different days get rolled up together. Then you have quite a young person being told months later, often when they have been incarcerated for some of that time, 'Here are the consequences', and it just does not connect, it has been put to me. Do you have thoughts on that?

Ms WARD — Again this is not an area that the council has specifically looked at, but my understanding of adolescent psychology and the consequential thinking of adolescence is that the closer the consequence for poor conduct occurs to the event, the better. We also know that with adolescent time frames, you know what feels like a year to an adult feels like three years to a teenager. So that effect is arguably, taking a commonsense view, even exacerbated for adolescents. The argument for really time-efficient consequences linked directly to the offending is a fairly strong one.

Ms SYMES — I am interested in any observations of other jurisdictions mainly within Australia and how we compare in relation to the statistics.

Ms WARD — Juvenile justice in Victoria has been regarded historically as one of the better performing jurisdictions. Certainly our rates of incarceration remain comparatively low compared to other jurisdictions, and our capacity to divert remains relatively high. One of the measures that is often used to assess the success of a youth justice system is its capacity to divert away and only target the most high-risk, high-need offenders within a custodial setting. In that respect Victoria has historically been seen to do well. My understanding is that the increase in remand figures really are becoming a bit of a blot on Victoria's copybook. So the fact that our remand figures have increased so dramatically in recent times is seen as problematic.

Ms SYMES — Have our diversion rates changed?

Ms WARD — We do not think so. From the work that the council has done, there is no indication. What we are really seeing is that the overall offending has changed, so we are seeing fewer orders at the low end. Over the last period, fines and probation numbers have reduced, and we are expecting that is more to do with the overall reduction in offending rather than any shift in diversion. Certainly there has been strong support when we talk to stakeholder groups around the Youth Diversion Pilot, which I understand is being extended. We have not looked at that project. I understand that is being evaluated independently and separately. The Sentencing Advisory Council has not looked at that project, but for some time there was strong support from people in the field that we spoke to for a statewide across-the-board consistent diversion program. Until then there have been a number of small pilots that have covered the state. When we consult with stakeholders around developments in youth justice, those developments are considered really positively/

Ms SPRINGLE — I am not quite sure if it is something you are going to be able to answer, but I am going to ask it anyway. We hear a lot about the shift in the nature of offending — I guess that pointy end that you were talking about before. Has the council any thought as to why that shift has occurred and what the contributing factors to that are?

Ms WARD — In a word, no, the council has not. Indeed in the most recent research that we have done, which ended in a study period in 2015, still at that point in time the data was not showing significant shifts in overall violent offending by young people. So one of the questions we have is: is a reduction overall in offending masking an increase in offending by a small cohort? Overall, up until the end of 2015, there was no significant increase in sentenced violent offending. It is really trying to unpack whether fewer people are doing it more often and others are doing it less, which means that the overall numbers are the same. When I talk to people anecdotally about the cohort of people who are in the youth justice system at the moment, the sense is that it is a slightly different cohort with more complex needs.

Ms SPRINGLE — Different to what would traditionally be — —

Ms WARD — Yes, that is the anecdotal story, but that is not revealed in the council's data to date. It was very interesting that up until the end of 2015, that offence profile was pretty much unchanged.

Ms SPRINGLE — It is a very fast change. It is a very quick trajectory to a different dynamic.

Ms WARD — And again that is an anecdotal report. I think the other thing that we have to remember is that the kids in youth justice are a series of different cohorts.

Ms SPRINGLE — Yes, of course.

Ms WARD — While 50 per cent of young people who are in youth justice will go on to the adult criminal justice system, the other 50 per cent will be limited to adolescent offending only. That is a really important point, because what we know from the 'What Works' literature in youth justice is that if we over intervene in the lives of children who are at low risk of reoffending into adulthood, not only do we dilute the effort of rehabilitation but we potentially can cause them to reoffend at higher rates.

Ms SPRINGLE — So what would be classified as a low risk of reoffending into adulthood?

The CHAIR — What does that look like?

Ms SPRINGLE — Yes, what does that look like?

Ms WARD — One cohort is a cohort of a young person who may commit their first offence at 16 or 17. It is a very serious offence, and for that reason it attracts a custodial sentence straightaway, but there is not a prior history of offending. There may well be some reasonable prosocial supports in the person's life — they may have protective factors, they may have connections to the school community — but the offending is so significant that it attracts a custodial sentence. That type of pattern is what we would call a late starter/early finisher, a desister, and would have statistically a much smaller chance of reoffending into adulthood. So if the youth justice system treats everyone the same, there is the risk that you really will be mistargeting the intervention.

Ms SPRINGLE — What you are describing I have heard before. Am I right in saying that that particular cohort does not necessarily have links to or a history with the child protection system?

Ms WARD — Potentially they are much less likely to. Again we know that the children who come to the attention of the youth justice system very early are much more likely to have connections with child protection. That was the point I was making around the remand population. Some of the research that Jesuit Social Services have done in Victoria was quite telling in that it indicated that of that small number of young people who are remanded at the age of 10 to 12, all of them had child protection contact. And that group who had contact with the justice system at such an early age are the same group who were likely to penetrate into the adult justice system, so they are a glaring target for intervention.

The CHAIR — You mentioned earlier a significant increase in the number of young people who are given cautions in recent years, saying that it went up by about 30 per cent, which is a big increase. Can you give us some insight into what have been the outcomes for those people who have received a caution rather than some other form of intervention? Has it been positive? Have they been seen again, do we know?

Ms WARD — I am afraid we do not know. We cannot track the outcome of that cohort, so we really only have that data from police sources and we have no capacity to track what has happened — whether they been into the system subsequently, we really do not know.

The CHAIR — I imagine it is something we would need to check with Victoria Police if we wanted to.

Ms WARD — Yes. I am not aware of a mechanism for linking police caution outcomes to the court system. There would need to be an identifier that linked those two groups.

The CHAIR — Yes, it is a tough one.

Ms WARD — It would be worth asking the question, but I would be surprised if we could find that out.

The CHAIR — You have explained it all very thoroughly. Unless there is anything else that you would like to share with us, I will thank you for the time you have taken to come today and the information you have provided, which has been very, very useful, and let you know that you will receive a transcript within the next few weeks for checking. Thank you.

Ms WARD — Great.

Witness withdrew.