



Western Australia

auditor general's report



PERFORMANCE EXAMINATION

**The Juvenile Justice  
System: Dealing with  
Young People under the  
Young Offenders Act 1994**

Serving the Public Interest

Report 4  
June 2008



**AUDITOR GENERAL  
FOR WESTERN AUSTRALIA**

**THE PRESIDENT  
LEGISLATIVE COUNCIL**

**THE SPEAKER  
LEGISLATIVE ASSEMBLY**

**PERFORMANCE EXAMINATION – THE JUVENILE JUSTICE SYSTEM: DEALING WITH  
YOUNG PEOPLE UNDER THE YOUNG OFFENDERS ACT 1994**

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance Examinations are an integral part of the overall Performance Auditing program and seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision-making to the benefit of all Western Australians.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY  
AUDITOR GENERAL  
18 June 2008

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# Auditor General's Overview

Maintaining law and order is one of our most fundamental expectations of government.

The *Young Offenders Act 1994* and its later amendments set out how government expects the justice system will deal with young people who have come into contact with the law.

The Act recognises that there should be special provisions for the fair treatment of young people. For this reason, the Act requires police to consider, under suitable circumstances, directing young people away from courts, by using cautions and referrals to juvenile justice teams. The Act also requires police to use detention on remand as a last resort, by releasing the young person on bail under the supervision of a suitable responsible adult.

After a good start and concerted efforts to implement the Act in its early years, the critical strategies have started to lose momentum. In recent years, fewer young people who have come into contact with police have been kept out of the court system, and this cannot be fully explained by trends in juvenile crime. Police referrals to juvenile justice teams, an important rehabilitation and restorative justice arrangement, have also been on the decline, along with the use of cautions. More young people are being held in detention on remand, partly because police are finding it difficult to locate responsible adults for a significant number of young people who they have taken into custody.

Indigenous young people continue to be vastly over-represented in the justice system, even though there has been a slight increase in the rate at which indigenous young people have been directed away from the justice system.

It is now time to take a fresh look at the main elements of the juvenile justice system, so that it better serves young people and their families, and inevitably the whole community.

The required changes will not be achieved if agencies take a narrow view of their roles in preventing and dealing with juvenile crime. They can only be successful if agencies work together and recognise their joint responsibility for young people who have entered the juvenile justice system.

## Executive Summary

A safe community is important to most Western Australians. The Government aims to ensure that people will be safe and their property secure. As part of achieving these aims, it operates a justice system.

Parliament has identified that this justice system will treat young people differently from adults. The *Young Offenders Act 1994* and its subsequent amendments (the YO Act) set out how young people will be dealt with in the justice system.

The YO Act recognises that the community must be protected from illegal behaviour. At the same time, when dealing with young people who have committed less serious (that is 'non scheduled') offences, the YO Act requires police and other agencies to:

- consider directing young people away from court (police cannot do this for more serious offences, as listed in Schedules 1 and 2 of the YO Act)
- detain young people in custody, including on remand, only as a last resort and for as short a time as necessary. We refer to these two aspects of the YO Act as redirection options
- encourage adults to fulfil their responsibility for the care and supervision of their young people, including by supervising their young people when they are on bail
- give victims of crime the opportunity to participate in the process of dealing with young people.

This examination found that application of the redirection options in the YO Act is declining. In particular, fewer young people are being directed away from court, more young people are being detained on remand, and police are having difficulty finding adults to supervise their young people while they are out on bail. The juvenile justice system is becoming less effective in achieving the objectives for the treatment of young people set out in the YO Act.

Our estimate is that this decline in redirection has also potentially cost the justice system \$6.6 million over the last five years. If this trend continues, in another seven years, all potential savings from the YO Act will have been eroded.

### Key findings

- Over 96 per cent of young people had little or no formal contact with police in the past five years.
- There has been a slight increase in the rate at which indigenous young people have been directed away from court, however they remain over-represented in the justice system by 10 times:
  - indigenous young people were slightly less likely to be granted bail, mainly on the grounds that they might breach bail. Ninety per cent of bail breaches were by indigenous young people.

- It is critical to address the core problems associated with repeated offending:
  - a small group of around one thousand young people came into contact with police and courts repeatedly over the last five years
  - indicative costs of dealing with 250 young people with the most expensive pathways in the justice system were estimated to be \$100 million over their juvenile years (that is, 10 to 17 years old). This cost includes periods of detention.
- There is no structure or process to ensure that mental health and substance abuse problems associated with repeated offending are identified and treated:
  - significant numbers of young people with high levels of offending have mental health or substance abuse problems.
- The rate at which police have directed young people away from court has declined by 13 per cent over the past five years, corresponding to 1 937 instances.
- The declining rate of redirection can largely be explained by the fact that certain road traffic offences were recently made scheduled offences, and in response to community concerns, police have focused on enforcing these.
- The declining rate of redirection is also because police have been referring fewer young people to juvenile justice teams, which are a key alternative to court under the YO Act.
- The decline in police referred juvenile justice teams has created juvenile justice system costs of an estimated \$1.5 million per year.
- The main features of juvenile justice teams are not working as intended:
  - juvenile justice teams have not been targeted to those young people they were intended for
  - the delay between a young person's referral to a juvenile justice team and the eventual meeting was too long to be effective
  - juvenile justice team action plans were not adequately monitored to ensure that they support the young person's rehabilitation and address the nature and causes of offending.
- Victims of crime were not always provided with the opportunity to participate meaningfully in juvenile justice team meetings, even though this is also an important feature of the YO Act.
- The rate at which police have been granting bail has declined from 82 per cent to 76 per cent of cases in which bail was considered, since November 2004. This means that more young people are held in detention:
  - police focus on enforcing bail conditions, in response to community concerns, and on prior breaches of bail, have been the main reasons for this decline.

- Another important reason that police did not grant bail was that they did not find a responsible adult to supervise the young person:
  - potential responsible adults often refuse to accept responsibility for supervising the young person
  - police generally make significant efforts to find a responsible adult
  - some children under the protection of the Department for Child Protection were not granted bail and were held in detention because no responsible adult was available.
- If technology issues were addressed, video conferencing could be used more to avoid transporting young people and reduce their time in custody:
  - the use of police officers to transport young people creates opportunity costs. Regional police spent the equivalent of 80 weeks of sworn officer time each year transporting young people, reducing coverage in their home districts.

## Recommendations

**It is recommended that:**

- **The Department of Corrective Services and Western Australia Police work together to establish strategies for young people who continually breach bail so that they do not return to environments in which they are not supervised effectively.**
- **Government agencies that have contact with young people in the justice system (that is, Department for Child Protection, Department of Corrective Services, Department of Health and Western Australia Police) work together to ensure that young people who offend repeatedly are identified and case managed until the mental health, substance abuse and other problems that are associated with their offending are successfully managed.**
- **Western Australia Police, Department of Corrective Services and Department of the Attorney General progressively improve the extent to which they record data on ethnicity and indigenous status to enable better monitoring and evaluation of the impact of initiatives on young people from diverse backgrounds.**
- **Western Australia Police ensure that officers consider redirection options in line with the YO Act, particularly by ensuring that officers:**
  - **use notices to attend (court) to direct young people towards court only when they have considered all redirection options**
  - **refer young people to juvenile justice teams where this is appropriate for the young person's offence and circumstance.**

- Western Australia Police ensure that officers fully apply the YO Act provisions which require them to usually refer young people who have not previously offended to juvenile justice teams.
- Department of Corrective Services improve the juvenile justice team program, by improving timeliness and ensuring that action plans support the young person's rehabilitation and address the nature and causes of their offending.
- Department of Corrective Services and Western Australia Police work together to establish clear responsibilities for ensuring that:
  - all victims of juvenile crime have the opportunity to become involved in juvenile justice teams, including participation which does not involve them appearing in person
  - these participants receive the support they need to meaningfully participate
  - the reasons why victims do not wish to become involved are evaluated and used for continuous improvement purposes
- Department of the Attorney General's Victim Support Service records assistance provided to victims of crime involved in juvenile justice teams, so that it can monitor and improve the support it provides to victims.
- Department of Corrective Services and Department for Child Protection work together to provide statewide alternatives to detention for young people who need supervision and accommodation while on bail.
- Department of Corrective Services and Western Australia Police explore further ways of locating responsible adults, including the use of non-sworn staff for this purpose.
- Department for Child Protection review their practices to ensure that no children under the protection of the Director General are refused bail on 'no responsible adult' grounds.
- Western Australia Police develop and apply protocols for young people's long distance transport arrangements, including choice of transport, journey preparation and contingency planning, prisoner risk assessment, notification of responsible adult, overnight stay accommodation and supervision of the young person.

## Responses from Agencies to the Report

Agency responses are provided below. Where necessary they have been summarised with greater detail shown on pages 52 to 54.

### Department of the Attorney General

The Department of the Attorney General welcomed the opportunity to participate in this performance examination. The Department supports the findings and is making sufficient investment in audio visual technology to limit time in custody and the need to transport young accused to court sittings.

### Department for Child Protection

The Department for Child Protection (DCP) supports the recommendations in the report that have specific implications for this Department.

In relation to young people on bail who are under the care of DCP, accommodation was not always available that could ensure all risks to the young person and the community could be managed.

### Department of Corrective Services

The Department of Corrective Services broadly supports the general thrust of the findings and recommendations. However, findings with regard to delay in processing juvenile justice team referrals and action plans not being adequately monitored need to be taken in context.

### Department of Health

The Department of Health (DoH) agrees with the findings of the examination. DoH notes that the recommendation about case managing young people with mental health, substance abuse and other problems is worthy but problematic in terms of achieving successful outcomes in all cases, and would entail significant resource implications.

### Drug and Alcohol Office

The Drug and Alcohol (DAO) office supports the findings, noting that there are resource implications for delivery. The development and implementation of a structure assessing and providing treatment for offenders' mental health and substance use issues would be beneficial. DAO notes that such an assessment structure is best aligned to the Department of Corrective Services and any subsequent treatment would require additional resourcing.

### Western Australia Police

The findings and recommendations are generally supported by Western Australia Police, with few exceptions. Although Western Australia Police will continue to assist those agencies with the legislative and core business responsibility in juvenile justice, the firmly held view is that these agencies need to take a leading and decisive role.

# Introduction

## **An effective juvenile justice system is an important part of creating a safe community**

A safe community is important to most Western Australians. The Government aims to ensure that people will be safe and their property secure. As part of achieving these aims, it operates a justice system comprising the police, courts, prisons and other organisations. The justice system includes specific institutions, legislation, policies, and practices for dealing with young people, collectively referred to as the juvenile justice system.

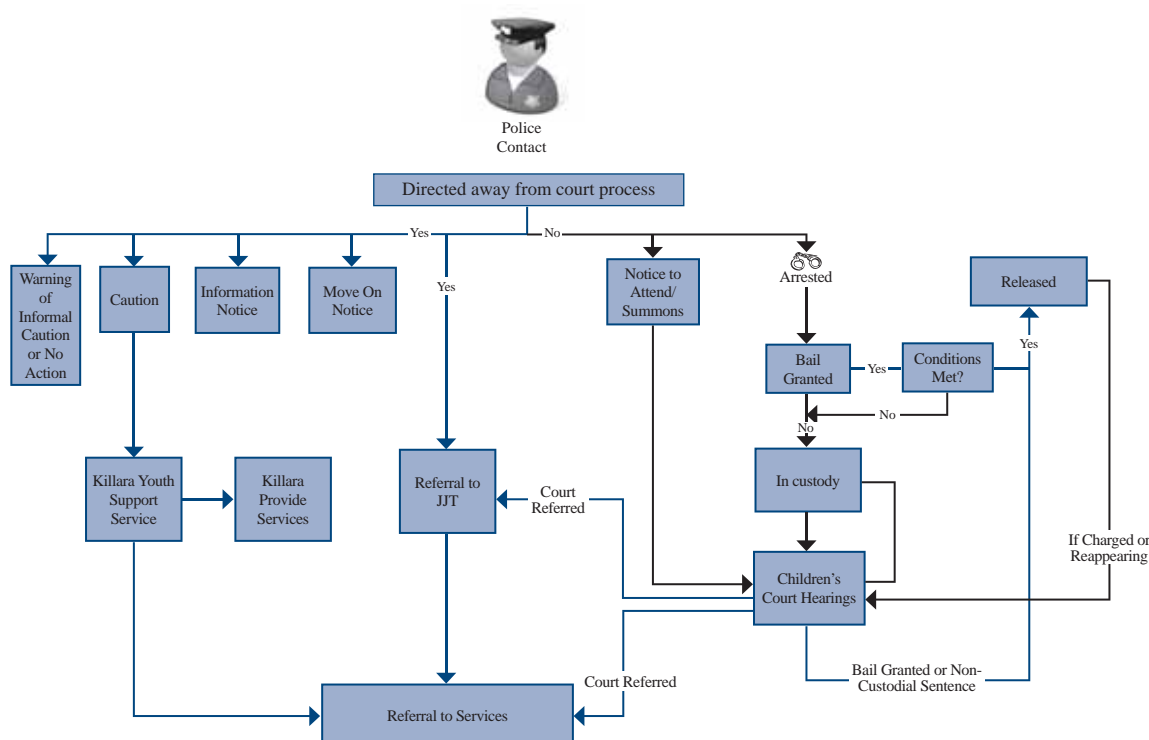
## **The Young Offenders Act intends that the justice system treats young people differently from adults**

Parliament has identified that the justice system will treat young people differently from adults. The *Young Offenders Act 1994* and its subsequent amendments set out how young people will be dealt with in the justice system. (The Act will be referred to as the *Young Offenders Act*, or YO Act, for the remainder of this report).

When dealing with young people who may have committed less serious offences, the YO Act requires government agencies to base their actions on the following principles:

- The community must be protected from illegal behaviour.
- Responsible adults should be encouraged to fulfill their responsibility for the care and supervision of young people.
- Consideration should be given to measures other than sending the young person to court, if the circumstances of the case and the background of the young person mean it is appropriate to do so, and it would not jeopardise the protection of the community.
- Young people should be detained in custody as a last resort and, if it is required, for as short a time as necessary.
- In dealing with a young person for an offence the age, maturity, and cultural background of the offender are to be considered.

These form part of the general principles of juvenile justice, which are set out in the YO Act. The YO Act establishes the pathways that young people will take through the justice system once they come into contact with police.



**Figure 1: Pathways through the justice system for young people**

Young people will take different pathways through the justice system depending on whether police direct them away from or towards court.

Source: OAG

### Victims are also meant to have an opportunity to participate in the justice system

The YO Act also intends that victims of offences committed by young people should be given the opportunity to participate in the process of dealing with them. This allows for victims to be involved in a restorative justice process. Restorative justice seeks to re-establish the victim’s feelings of security, self-respect, dignity and sense of control. It also seeks to ensure that offenders take responsibility for their offending and its consequences.

## The Young Offenders Act aims to keep many young people out of the court system: this also reduces the cost of the justice system

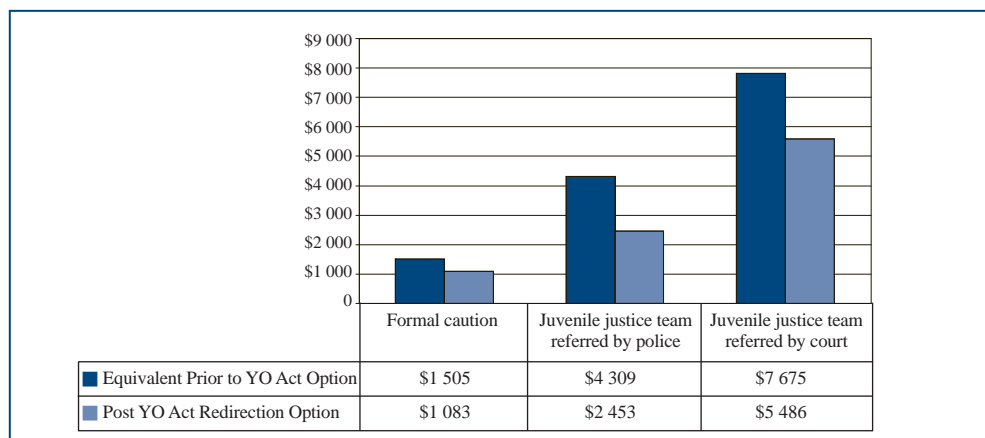
The concept of directing young people away from court, when appropriate, is embodied in the *Young Offenders Act 1994*. This practice not only keeps many young people out of the court system, it is also a lower cost option when dealing with young people who have committed less serious offences.

The Western Australian Government spends in excess of \$75 million per annum on the formal aspects of the juvenile justice system. This is mainly spread across Department of Corrective Services (which accounts for approximately 70 per cent of the total), Western Australia Police and the Department of the Attorney General.

Given the significant cost of the juvenile justice system and that the government agencies involved have not identified costs across the justice system we decided to conduct a cost-benefit analysis on the implementation of the YO Act. This enabled us to better understand the cost drivers of the system and to identify the costs or saving arising from the YO Act.

Our cost-benefit analysis shows that directing young people away from court and using detention as a last resort, costs government approximately \$8.7 million per annum (10.5 per cent per annum) less than sending all young people to court, as was the case prior to the introduction of the YO Act.

In each instance, the pathway for a young person prescribed in the YO Act costs less than the equivalent pathway that the young person would have taken before the YO Act was introduced. The estimation of these costs is explained further in *Volume 2 – Technical Report: A Cost-Benefit Analysis of Proactive Redirection Measures in the Juvenile Justice System*.



**Figure 2: Costs of options for dealing with young people under the YO Act and the equivalent pathway prior to the YO Act**

*The cost of options for dealing with young people, were less after the YO Act was introduced than the cost of the pathway that would have applied to that young person before the YO Act was introduced.*

Source: OAG, refer to Volume 2

## Responsibilities for implementing the Young Offenders Act

The principal government line agencies with responsibilities for implementing the YO Act are:

- Western Australia Police
- Department of Corrective Services
- Department of the Attorney General.

The effective operation of the YO Act also relies on:

- the cooperation of the young person
- the support of their parents or guardians, other family and community members
- the actions of other government agencies, such as the Department for Child Protection, Department of Health, and the Drug and Alcohol Office
- services and programs provided by non-government organisations.

## Examination focus and approach

### Focus

The focus of the examination was on whether Western Australia Police, Department of Corrective Services, and Department of the Attorney General are applying the general principles of juvenile justice, set out in the YO Act. In particular, we focused on:

- the profile of young people who come into contact with the justice system
- whether these young people were directed away from court, as set out in the YO Act
- whether juvenile justice teams, a critical alternative to court, were used effectively
- whether victims of crime have the opportunity to participate in juvenile justice teams
- whether young people were held in detention on remand only as a last resort
- whether, once a young person was taken into custody, police located a responsible adult to supervise the young person while they were on bail.

The scope of the examination included the pathway a young person may take from their first point of contact with the police, up to the young person's court appearance. Research shows that directing young people away from the justice system at the earliest opportunity is more effective in reducing crime than later redirection<sup>1</sup>. We have therefore not examined every aspect of the whole juvenile justice system. We have specifically excluded examining all decisions by courts, including court decisions to refer young people to juvenile justice teams.

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<sup>1</sup> Australian Institute of Health and Welfare August 2007, *AIHW 2006-07 Juvenile Justice in Australia*, Australian Institute of Health and Welfare, Canberra, p.xii.

In this report, the term ‘young people’ means people between the ages of 10 and 17 years, in line with the YO Act and *Criminal Code Act 1913*. Under this legislation, children under 10 years of age are not held criminally responsible for any act or omission.

## Approach

Our approach included:

- collection and analysis of data on juvenile contacts with police and offences from responsible agencies. We collected corporately held data and information from all metropolitan police districts and three regional police districts, totaling eight out of 14 police districts statewide. These eight districts have 85 per cent of all police contacts with young people. We primarily relied on Western Australia Police data on the basis of its comprehensiveness and reliability, however we have supplemented it with data from other sources where possible. This includes:
  - interviews with police involved in applying the YO Act
  - interviews with staff of other responsible agencies, and other stakeholders
  - cost-benefit analysis of pro-active redirection measures in the juvenile justice system
  - file reviews
  - review of interstate legislation and of international trends in juvenile justice.

## Most young people have little or no contact with police, however a small number have repeated contact

### Findings

- Over 96 per cent of young people had little or no formal contact with police in the past five years:
  - of young people who had formal contact with police, over three quarters had only one or two contacts
  - the more often a young person has formal contact with police, the more likely they are to end up in court
  - police also used approximately half a million informal warnings per year to deal with young people
  - there has been a slight increase in the rate at which indigenous young people have been directed away from court, however they remain over-represented in the justice system by 10 times
  - indigenous young people were slightly less likely to be granted bail, mainly on the grounds that they might breach bail. Ninety per cent of bail breaches were by indigenous young people
  - for half of the young people in contact with police, their ethnicity and indigenous status was not recorded. This makes it difficult to conduct a thorough analysis of indigenous young people and the juvenile justice system.
- It is critical to address the core problems associated with repeated offending:
  - a small group of around one thousand young people came into contact with police and courts repeatedly over the last five years
  - indicative costs to the justice system of dealing with 250 young people with the most expensive pathways in the justice system were estimated to be \$100 million over their juvenile years (that is, 10 to 17 years old). This cost includes periods of detention.
- There is no structure or process to ensure that mental health and substance abuse problems associated with repeated offending are identified and treated:
  - significant numbers of young people with high levels of offending have mental health or substance abuse problems
  - there is limited identification of young people with underlying mental health and substance abuse problems in the juvenile justice system
  - no agency takes responsibility for case managing these young people to ensure their mental health, substance abuse and other problems are managed.

## Recommendations

- The Department of Corrective Services and the Western Australia Police work together to establish strategies for young people who continually breach bail so that they do not return to environments in which they are not supervised effectively.
- Government agencies that have contact with young people in the justice system (that is, Department for Child Protection, Department of Corrective Services, Department of Health and Western Australia Police) work together to ensure that young people who offend repeatedly are identified and case managed until the mental health, substance abuse and other problems that are associated with their offending are successfully managed.
- Western Australia Police, Department of Corrective Services and Department of the Attorney General progressively improve the extent to which they record data on ethnicity and indigenous status to enable better monitoring and evaluation of the impact of initiatives on young people from diverse backgrounds.

## Over 96 per cent of young people had little or no formal contact with police in the past five years

Over the five year period 2002-03 to 2006-07, 80 per cent of young people in Western Australia had no formal contact with police, and 16 per cent had only one or two contacts.

Indigenous young people, who make up five per cent of all young people, had half of the formal contacts with police (where indigenous status was recorded). For 50 per cent of young people with police contact, indigenous status was not specified.

To put these figures in context, at census date 2006, there were 224 865 young people aged between 10 and 17 years in Western Australia, 11 158 (five per cent) were indigenous.

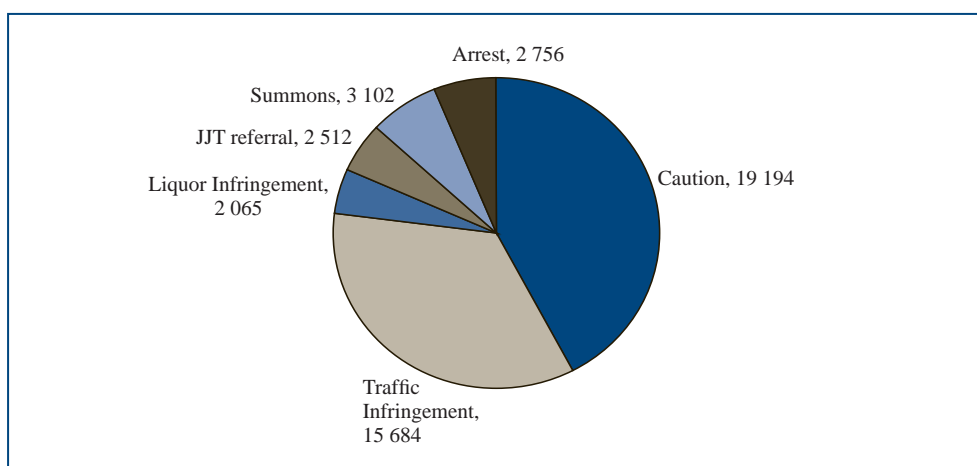
## Of young people who had formal contact with police, over three quarters had only one or two contacts

As identified above, 20 per cent of young people had some formal contact with police over the last five years. Over three quarters of these young people had only one or two formal contacts, most of which were cautions or infringements.

This finding is supported by long term studies, which show that around two-thirds of 10 to 17 year olds who had formal contact with police have only one or two contacts for minor matters and then no more contact with police<sup>2</sup>.

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<sup>2</sup> A Ferrante, N Loh and M Maller 2004, *Pathways through Justice: A Statistical Analysis of Offender Contact With the WA Juvenile Justice System*, University of Western Australia Crime Research Centre, Perth.



**Figure 3: Types of contact with police by young people with one or two formal contacts, 2002-03 to 2006-07**

Between 2002-03 and 2006-07, young people with one or two contacts were most frequently given cautions and traffic infringements.

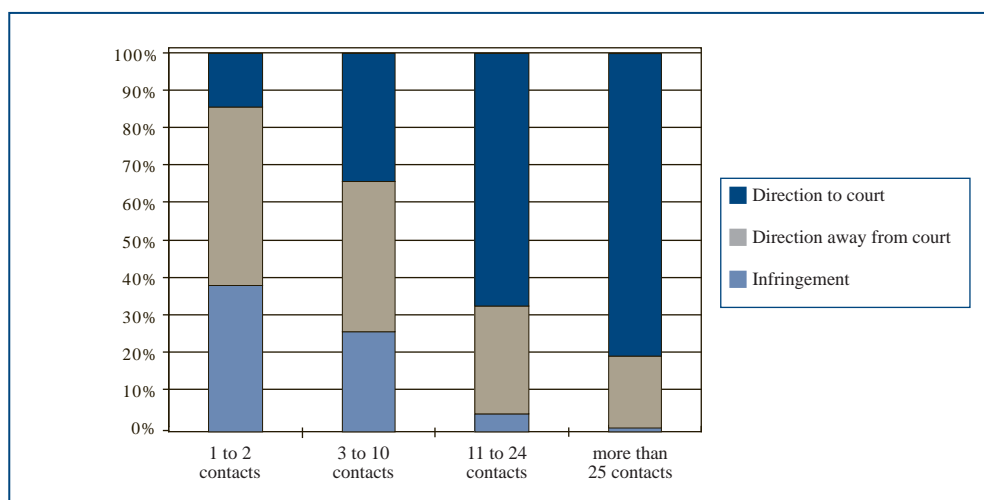
Source: WAPOL, OAG

### The more often a young person has formal contact with police, the more likely they are to end up in court

Once a young person had more than 10 formal contacts with police, they were more likely to be directed towards court as a consequence of that contact. For those young people with 10 or less formal contacts over five years, 22 per cent of contacts result in the young person being directed to court. Nearly 70 per cent of those young people with more than 10 formal contacts are directed to court.

Longer term research indicates that the more frequently a young person is in contact with the justice system and the more serious this contact is, the more likely they are to continue to offend into adulthood<sup>3</sup>. This is an important part of the rationale for directing young people away from court.

<sup>3</sup> S Chen, T Matruglio, D Weatherburn and J Hua 2005, *The transition from juvenile to adult careers*, New South Wales Bureau of Crime Statistics and Research, Crime and Justice Bulletin No 86, New South Wales.



**Figure 4: Types of formal police contact by frequency, 2002-03 to 2006-07**

*From 2002-03 to 2006-07, the more formal contact a young person had with police, the greater the proportion of summons and arrests they had.*

Source: WAPOL, OAG

### **Police also used approximately half a million informal warnings per year to deal with young people**

In addition to taking formal action, when dealing with young people who may have committed an offence, police also have the option of giving them an ‘informal warning.’ Given their volume, these actions are also an important way of directing young people away from court. Information on the number of informal warnings by police is not captured in police databases. However, we estimate from our fieldwork that police issue approximately half a million informal warnings per annum. The boxes below describe three examples in which police have issued informal warnings. In many instances, police used informal warnings to deal with anti social behaviour and minor misdemeanours.

**EXAMPLE:**

Police were requested to attend a disturbance where approximately 30 young people were drinking and yelling abuse. Upon police arrival, most of the group dispersed with a small group remaining. The police spoke to the remaining youths about their behaviour and issued one formal caution.

**EXAMPLE:**

On the Australia Day long weekend, police were informed of large groups drinking in public in the Scarborough Beach entertainment precinct. Police spoke to several groups of young people, one of whom was highly intoxicated and taken to hospital. This youth's mother was contacted and was interstate at the time but arranged for a friend to collect the young person.

**EXAMPLE:**

Police apprehended two young people after they broke into a community centre. The offenders were 10 and 11 years old. They were verbally cautioned and subsequently taken home and left with a responsible adult.

When using informal warnings, as well as cautions, police also encourage young people to participate in activities and programs designed to provide positive role models and foster better relations with police, such as 'midnight basketball', and the Police and Community Youth Centres (PCYC). These programs target young people who are already in contact with the justice system and those at risk of being so. The programs aim to build life skills, self esteem and address social interaction issues. An example is the Broome PCYC Marine Engineering program. Here, young people have been recruited into a skills training program that has been established in association with the local TAFE College to prepare young people to enter a Marine Engineering course and other studies.

**There has been a slight increase in the rate at which indigenous young people have been directed away from court, however they remain over-represented in the justice system by 10 times**

Indigenous young people make up five per cent of all young people but account for 50 per cent of formal police contacts.

Over the last five years, indigenous young people made up 35 per cent of all young people who had formal contact with police and for whom indigenous status was known. Indigenous status was unknown for half of the young people who had formal police contact.

## Indigenous young people are directed away from court at two-thirds the rate of non-indigenous young people

In the period 2002-03 to 2006-07, we estimate that police directed indigenous young people away from court in 41 per cent of instances in which indigenous young people had formal police contact. In the same period, police directed non-indigenous young people away from court in 64 per cent of instances in which they had formal contact with police.

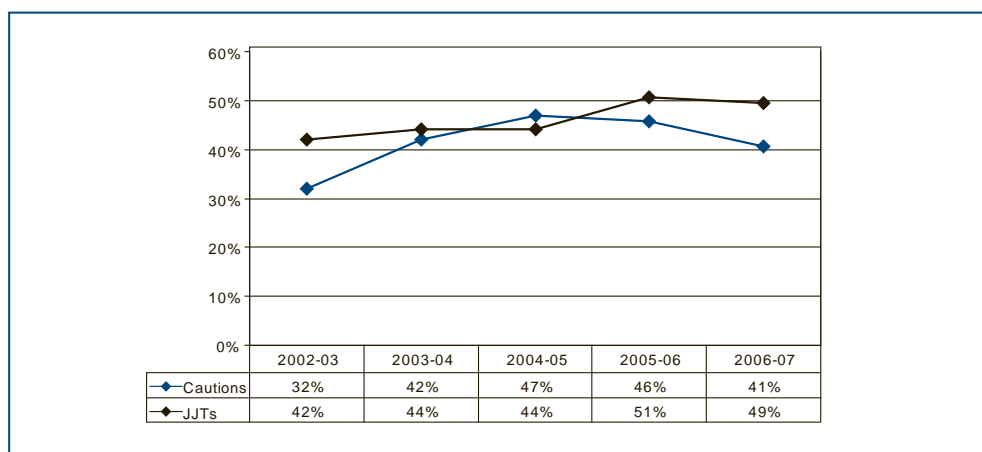
In the last five years, indigenous young people accounted for around 40 per cent of cautions and 45 per cent of police juvenile justice team referrals.

Over 35 per cent of the young people who have been directed away from court, through either cautions or juvenile justice team referrals do not have their indigenous status identified in Western Australia Police data. We have therefore used those young people with known indigenous status to analyse and identify these trends.

## The rate at which Indigenous young people are being directed away from court is increasing

The rates at which indigenous young people have been directed away from court through juvenile justice team referrals by police has been slightly increasing over the last five years, particularly in 2004-05 and 2005-06 (taking into account the small numbers in absolute terms). The number of indigenous young people who received cautions also increased over this period.

However, we identified that 27 per cent of indigenous young people aged 15 or less who have high levels of repeat offending have never been referred to a juvenile justice team by police.



**Figure 5: Proportion of cautions and juvenile justice team referrals received by indigenous young people 2002-03 to 2006-07**

*Over five years, the proportion of indigenous young people who have received cautions and juvenile justice team referrals has increased.*

Source: WAPOL, OAG

### **Indigenous young people are directed to court 59 per cent of the time**

In the period 2002-03 to 2006-07, 59 per cent of indigenous young people who had formal police contact, were directed towards court through summons and arrests.

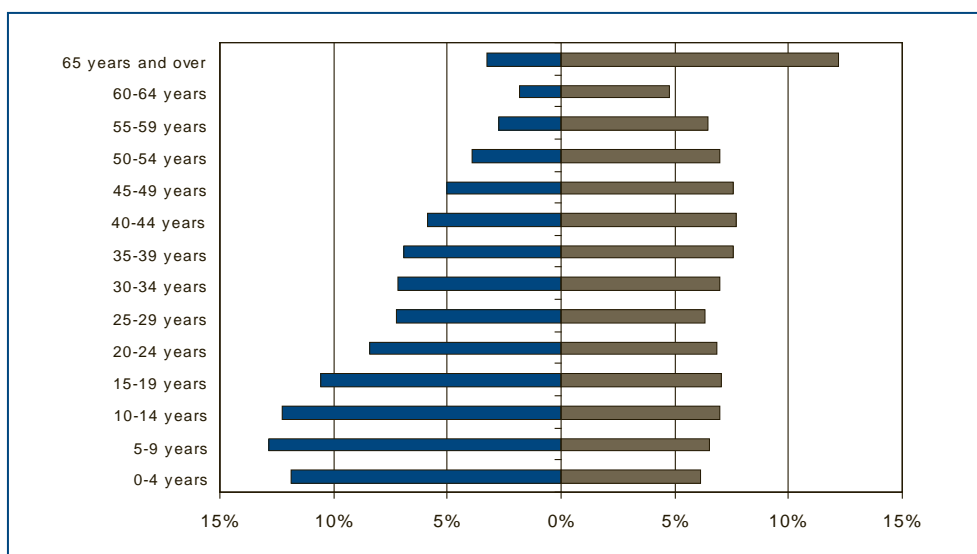
Nearly three quarters of all arrests over the period 2002-03 to 2006-07 were indigenous young people. A small group of 75 indigenous females and 290 indigenous males accounted for half of all the arrests of indigenous young people.

### **Indigenous young people were slightly less likely to be granted bail, mainly on the grounds that they might breach bail. Ninety per cent of bail breaches were by indigenous young people**

In 2006-07, indigenous young people were less likely to be granted bail than their non-indigenous counterparts. Twenty-one per cent of non-indigenous young people who were considered for bail were refused. In contrast, 26 per cent of indigenous young people were refused bail. While this is only a small variation, it accounts for 81 young people who were held in detention on remand. This variation was mainly due to the police officer's assessment that the young person in question was more likely to breach bail because they had a history of doing so.

Police records indicate that almost 90 per cent of bail breaches (449 out of 505) in 2006-07 were by indigenous young people. At present, there are no alternatives other than to send a young person who repeatedly breaches bail back to the same environment.

Population data shows that, in the next five years, there will be an increase in the number of indigenous young people who will reach the age of 10, the age at which young people are held criminally responsible if they commit an offence. If this group of young people offend and are directed towards court, through summons and arrests, at the same rate as indigenous young people are currently, another 237 young people will enter the juvenile justice system. The corresponding estimated increase in overall juvenile justice system costs will be \$2.8 million per year.



**Figure 6: Percentage of population in age categories by indigenous status**

2006 census information shows that there are a large number of indigenous children below 10 years old.

Source: ABS, OAG

## A small group of around one thousand young people came into contact with police and courts repeatedly over the last five years

One thousand and eighty-five young people each had more than 10 formal contacts with police over the last five years. Although this group only accounts for 0.5 per cent of the population of young people, they accounted for nearly 20 per cent of all formal police contacts. Over 80 per cent of these young people were male and 75 per cent were indigenous. Fifty-five per cent of these young people lived in regional Western Australia.

An even smaller group of 120 young people averaged 25 or more formal police contacts each over the last five years. These 120 young people were predominately male, indigenous and lived in regional Western Australia, particularly the Goldfields-Esperance, the Midwest-Gascoyne and the Pilbara regions. The majority of these young people entered the formal justice system as soon as they could be held criminally responsible for their actions at 10 years old and continued to commit offences at an accelerated rate.

**Indicative costs to the justice system of dealing with 250 young people with the most expensive pathways in the justice system was estimated to be \$100 million over their juvenile years (that is, 10 to 17 years old). This cost includes periods of detention**

As part of our cost-benefit analysis, using the pathways identified by the University of Western Australia Crime Research Centre (CRC)<sup>4</sup>, we calculated the cost to the justice system of dealing with young people who have committed a high number of offences. The justice system costs of dealing with young people with frequent, serious contact, including detention, with the police and courts can reach up to an estimated \$1 million per person over their juvenile years.

Using these CRC pathways, we estimate that the indicative total cost to the justice system of the 250 young people with the most serious offending patterns and the most costly pathways was approximately \$100 million over their juvenile years<sup>5</sup>. These costs are only those directly related to the justice system and do not take into account the cost to the community, the young person and their family.

**There is no structure or process to ensure that mental health and substance abuse problems associated with repeated offending are identified and treated**

**Significant numbers of young people with high levels of offending have mental health or substance abuse problems**

We examined the histories of 15 young people who had more than 20 contacts with police over the past five years. These 15 young people had recorded a total of 866 charges and 1 024 criminal court outcomes. Twelve of the sample had spent time in police custody. Of the five who received custodial sentences, the longest sentence was four months duration. Seven had not received a custodial sentence.

Of the 15 young people, seven had files with government agencies included in our examination and available for review. We found that all of these seven young people had problems with physical health, mental health, substance abuse and/or neglect or maltreatment:

- five suffered from physical and/or mental health problems
- six had substance abuse problems
- three had been neglected or maltreated
- one had an intellectual disability.

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4 A Ferrante, N Loh and M Maller 2004, *Pathways through Justice: A Statistical Analysis of Offender Contact With the WA Juvenile Justice System*, University of Western Australia Crime Research Centre, Perth.

5 Ibid. This discussion refers to a cohort of 250 young people identified by the CRC in 1995-02; this is a different group of young people to the 1 085 young people discussed in the previous section.

Our file examination is consistent with a broader 2006 review of young people with mental health issues<sup>6</sup>, which indicated that 26 per cent of young people in detention have a mental health issue. A 2006 survey of drug use patterns among young offenders identified that a higher rate of substance use was apparent in the detention population than in the 2005 Western Australian school population<sup>7</sup>. There is also a reported under-identification of young people with mild to moderate intellectual disability in detention<sup>8</sup>. These findings are supported by other current national and international research.

### **There is limited identification of young people with underlying mental health and substance abuse problems in the juvenile justice system**

At present, there is no comprehensive, regular assessment of the mental health and substance abuse issues of young people as they move through the juvenile justice system. Similarly, there are no comprehensive, routine assessments to identify an intellectual disability. We recognise that a young person's contact with the justice system may be of short duration and may need to be deliberately minimally intrusive. However, even repeated offending is not used as a trigger for agencies to assess the needs and circumstances of the young person so that intervention efforts can be made.

When a young person is admitted to Rangeview Detention Centre, they undergo a medical risk assessment by a general nurse. If police have identified 'at risk' behaviours or the person is known to have a condition, police may report this to centre staff. Further specialist physical and psychological assessment is only conducted on an as-needs basis.

The Department of Corrective Services is progressively introducing the Victorian Offending Needs Indicator for Youth assessment tool. This is a new assessment system for young people who have been sentenced to ensure that they receive a comprehensive mental health assessment. However, this will not apply to young people on remand or those who are sent to juvenile justice teams.

### **No agency takes responsibility for case managing these young people to ensure their mental health, substance abuse and other problems are managed**

There is currently no formal cross-agency structure or process for identifying and case managing young people with mental health or substance abuse issues coupled with repeated offending.

In the absence of such a structure or process, attempts to coordinate the services required to address the problems of young people who offend repeatedly mainly rely on the personal relationships between individuals working within the agencies.

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6 Department of Justice February 2006, *A review of the incidence of various mental health issues in the WA Justice System*, Department of Justice, Perth.

7 Drug and Alcohol Office of Western Australia 2005, *Summary of West Australian Results. Australian School Students Alcohol and Drug Survey*, Drug and Alcohol Office of Western Australia, Perth.

8 Department of Justice February 2006, *A review of the incidence of various mental health issues in the WA Justice System*, Department of Justice, Perth.

There were some regional examples of attempts to more formally case manage young people who have multiple problems and offend repeatedly. For example, in Kalgoorlie, agency representatives are working to establish a 'Children at Risk Multi-agency Group'. In Geraldton, under the leadership of the Department for Child Protection, agencies have established an Integrated Child Support Team, which considers the needs of young people in the 10 to 12 year age group. However, these initiatives are still in start-up phase and are not widespread.

There are also some intensive programs for young people who offend repeatedly, including the Intensive Supervision Program, the Caversham Technical Education Centre, (which have both been independently evaluated and shown to reduce offending), and the Broome Maritime and Hospitality Intervention programs. However, these initiatives can only cater for less than 150 young people in total at any one time.

The Department of Corrective Services has advised that the new Regional Youth Justice Strategy will begin to address these issues by drawing together preventive and diversion options and integrating services for young people, including those who offend repeatedly. This strategy is currently being introduced to Geraldton and Kalgoorlie, with plans to possibly extend the strategy to other regional centres following evaluation. This model is designed to foster closer working relationships between the Department of Corrective Services and other government departments to ensure that regional youth have access to strategies that address current offending and minimise the risk of future offending.

Several agencies advised that privacy and confidentiality restrictions impact their capacity to share information and therefore to coordinate services for young people with multiple problems. While agency specific legislation does in many cases restrict the release of information, two Acts do enable the release of information about young people who have come into contact with the justice system in the following circumstances:

- Under section 15A(1) of the YO Act, the Commissioner for the Department of Corrective Services is able to provide information for the purposes of protecting and assisting young people to the CEO of child welfare (that is, the Department for Child Protection).
- Under sections 16 and 17 of the YO Act, all agencies may disclose information if it is relevant to performing a function under the YO Act that requires the information to be divulged, or for the purposes of research.
- Under the *Children and Community Services Act 2004*, the CEO of child welfare (that is, the Department for Child Protection) may request and reveal information relevant to the well-being of a child or a class of children.

There is no current privacy law in Western Australia and the enactment of the *Information Privacy Bill 2007 (WA)* would increase the extent of information sharing permitted in appropriate circumstances. The *Commonwealth Privacy Act* does not apply to Western Australian State Government agencies.

Some agencies, who are legally able to share information, have shared appropriate and necessary information to good effect. For example, the South East Metropolitan police district's Family Protection Unit and the Department for Child Protection have overcome any obstacles to working together.

In addition, past attempts to identify and support young people across multiple agency data systems have reportedly been stymied by technical concerns about information technology system security.

## In recent years, police directed fewer young people away from court, mainly because of new policing practices

### Findings

- The rate at which police have directed young people away from court has declined significantly, by 13 per cent over the past five years, corresponding to 1 937 instances.
- The declining rate of redirection can largely be explained by the fact that certain road traffic offences were recently made scheduled offences, and in response to community concerns, police have focused on enforcing these.
- The declining rate of redirection is also because police have been referring fewer young people to juvenile justice teams, which are a key alternative to court under the YO Act.
- The decline in police referred juvenile justice teams has created juvenile justice system costs of an estimated \$1.5 million per year.
- Changes in the profile of offences and offenders have only slightly increased the rate at which young people have been directed towards court.

### Recommendations

- Western Australia Police ensure that officers consider redirection options in line with the YO Act, particularly by ensuring that officers:
  - use notices to attend to direct young people towards court only when they have considered all redirection options
  - refer young people to juvenile justice teams where this is appropriate for the young person's offence and circumstances.

### Police are required to consider directing young people away from court for all 'non-scheduled' offences

The YO Act requires police to *consider* directing young people away from the court process for all offences not listed in Schedules 1 and 2 of the YO Act. In practice, police have the range of options listed in Figure 7.

Circumstances	Options	Number of occasions police used option, 2006-07
When the offence <i>is not</i> listed in Schedule 1 or 2 of the YO Act (generally less serious offences)	● give the young person an informal warning or	500 000
	● issue a move-on notice or	2 000
	● issue a formal caution or	6 273
	● refer the young person to a juvenile justice team or	1 633 (police referrals only)
	● issue an infringement notice (for traffic or liquor offences)	4 984 (traffic) 610 (liquor)
When the offence <i>is</i> listed in Schedule 1 or 2 of the YO Act (generally more serious offences)	● issue a summons or notice to attend court or	3 105
	● arrest the young person	4 411

**Figure 7: Options available to police and the number of occasions they were used in 2006-07**

*Police have a range of options for dealing with young people, depending on the seriousness of the offence.*

Source: WAPOL, OAG

All formal cautions issued by police in the metropolitan area are also notified to the Killara Youth Support Service, run by the Department of Corrective Services. The Support Service contacts each identified responsible adult to offer them assistance with managing their young people. A similar service for Geraldton and Kalgoorlie is planned.

### **Police cannot direct young people away from court for more serious offences**

Police *cannot* consider directing the young person away from court for offences that are listed in Schedules 1 and 2 of the YO Act. They include for example:

- driving without the appropriate driver's license, reckless driving, and driving under the influence of alcohol, drugs, or both
- acts intended to cause grievous bodily harm or to resist or prevent arrest, and assault occasioning bodily harm
- robbery and assault intending to rob<sup>9</sup>.

<sup>9</sup> A full list of scheduled offences is included in the *Young Offenders Act 1994*.

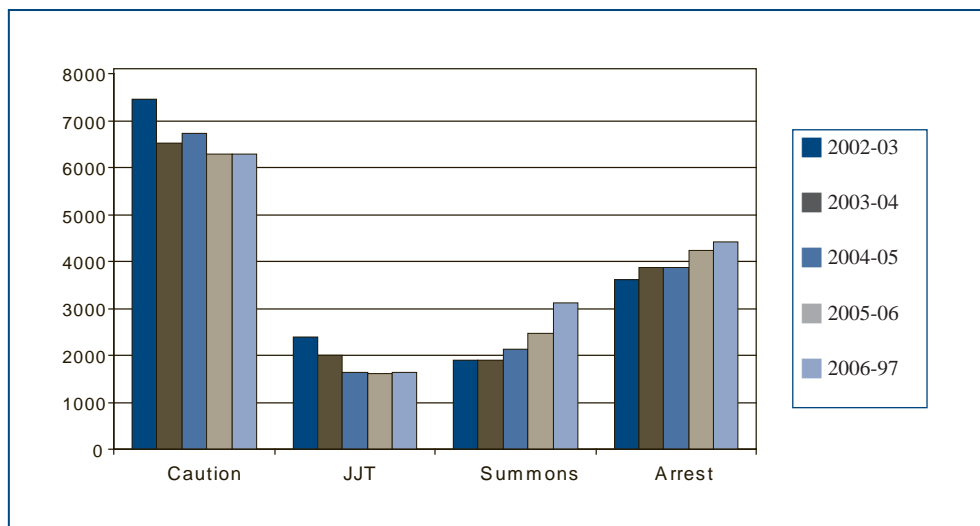
## The rate at which police have directed young people away from court has declined significantly, by 13 per cent over the past five years

The YO Act is silent about the required level of direction away from court. We have therefore focused on assessing redirection levels over time. The proportion of young people that police directed away from court, as a percentage of all young people who had formal contact with police, declined by 13 per cent over the last five years. This corresponds to 1 937 less instances in which young people were directed away from court.

In 2006-07, leaving aside infringement notices (which are not a redirection option), police directed 51 per cent of young people they had contact with away from court, by using cautions and juvenile justice team referrals. This rate was down from 64 per cent in 2002-03 (Figure 8)<sup>10</sup>.

This trend comprises a decrease in the number of young people cautioned and referred to juvenile justice teams, accompanied by a corresponding increase in the number of young people summonsed and arrested. In other words, the trend is the result of a change in the mix of strategies for dealing with young people, not an increase in the number of young people in contact with police.

While indigenous young people continued to be over-represented in the number of young people who were arrested, the recent increase in summons and arrests was also driven by an increase in the number of summonses of non-indigenous young men.



**Figure 8: Types of formal police contacts, 2002-03 to 2006-07**

*The number of cautions and juvenile justice team referrals has decreased over time, while summons and arrests increased.*

Source: OAG, WAPOL

<sup>10</sup> The impact of population growth on offence rates was not significant.

## **The cost of this changing trend is estimated at \$6.6 million over the last five years**

The effect of this changing trend is an estimated cost to the juvenile justice system of \$6.6 million over the last five years. This represents the additional costs associated with the yearly increase in direction towards court. Details of these costs are provided in Volume 2.

## **The declining rate of redirection can largely be explained by greater enforcement of road traffic acts**

### **Certain road traffic offences were recently made scheduled offences and, in response to community concerns, police have focused on enforcing these**

The increase in summons and arrests over the past five years was partly due to the interaction of a police focus on enforcing road traffic acts, combined with the fact that some road traffic offences have been added to the Schedules of the YO Act.

The listing of these road traffic offences in the Schedules in the YO Act means that police *must* direct a young person to court for these offences. An increase in enforcement of the traffic acts is therefore likely to decrease the number of young people directed away from court, particularly via cautions.

In five of the police districts examined, police reported that, in response to local community concerns, they have focused on curbing 'anti-social behaviour'. In these districts, police have focused on enforcing the *Road Traffic Act 1974* and the *Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2004* (the 'anti hoon' legislation) (as well as the *Liquor Control Act 1998*). The Western Australia Police's Traffic Enforcement Group, operating in the metropolitan area since 2005, also focused on enforcing the traffic Acts.

Police records show that the number of young people arrested for traffic offences has more than doubled over the five year period to 2006-07. This includes offences that are now listed in the Schedules in the YO Act.

### **The process for issuing summonses and notices to attend court has been simplified, making it easier for police to direct young people to court**

In 2006-07, over 3 100 summonses and notices to attend were issued to young people, approximately 25 per cent more than the prior year. Our fieldwork indicated that one reason for this increase is that a change in legislation has made it easier for police to direct young people towards court.

The YO Act enables police to use notices to attend court, or a summons (both of which are a type of court hearing notice) when they are directing young people to court. Court hearing notices do not require the young person to be detained in custody.

The *Criminal Procedure Act 2004* and its consequential amendments to the YO Act removed the requirement for a Justice of the Peace or prescribed court officer to sign summonses or notices to attend, unless an arrest warrant is being issued. The removal of this requirement has made it easier for police to direct young people towards court.

### **Police have also been referring fewer young people to juvenile justice teams**

Frontline police report that they have become less inclined to refer young people to juvenile justice teams. This reluctance is borne out by data, which shows that the number of juvenile justice team referrals by police has been steadily declining since the full maturity of the YO Act. Police referrals were at their height in 1998 when they referred young people around 2 650 times. This number has steadily declined to around 1 600 police referrals eight years later.

In 12 of 14 districts, police referrals to juvenile justice teams decreased over the last five years, with four districts reducing by more than half. In contrast, two districts have experienced consistent or increasing levels of police referral over the last five years. These districts have successfully implemented new initiatives to maintain or increase the number of referrals. For example, the South Metropolitan police district has increased its referrals from 136 in 2005-06 to 234 in 2006-07. The increases by these two districts have helped to stabilise the total police juvenile justice team referrals over the last two years.

Examination of training documentation shows that Western Australia Police is providing minimal training for new recruits on juvenile justice teams (two hours) and there is no follow-up training beyond the initial training.

### **In several districts, police were leaving it to the courts to refer young people to juvenile justice teams**

In several districts, frontline police reported that they are choosing to leave it to the courts to refer the young person to a juvenile justice team. This is supported by data which shows that court-referred juvenile justice teams have increased by an amount equivalent to the decrease in police referred juvenile justice teams, over the past five years.

Court-referred juvenile justice teams are more expensive than police-referred juvenile justice teams. Juvenile justice teams cost between an estimated \$2 453 (police-referred) and \$5 486 (court-referred) each to conduct. The difference in the cost of these pathways is that the police refer the young person directly to the juvenile justice team, whereas a court-referred juvenile justice team attracts the additional costs of a court appearance. Leaving it to the courts is therefore the most expensive way of using juvenile justice teams.

We estimate that the decline in police-referred juvenile justice teams has cost the justice system \$1.5 million per annum.

## **Changes in the nature of offences have only slightly increased the rate at which young people have been directed towards court**

### **The incidence of some serious offences is increasing however the numbers are very small**

Our analysis of the most serious charges applied to young people who were arrested over the two year period 2005-06 to 2006-07 shows small increases in the number of:

- charges of grievous bodily harm and wounding
- sexual offence charges (this is mainly due to increased reporting)
- charges involving weapons.

However, these charges represent less than two per cent of all serious charges against the person laid by police. They therefore had limited impact on the number of young people who were directed towards court. This is consistent with broader research about the incidence of crime. Australian Bureau of Statistics data<sup>11</sup>, for example, indicates that the overall rate for recorded crime in Western Australia has generally reduced, even though some crime categories showed an increase.

11 Australian Bureau of Statistics April 2005, Crime and Safety, Australian Bureau of Statistics, Canberra.

### **Police have been coming into contact with young people at earlier ages**

Young people have also been coming into contact with police at earlier ages. Research shows that this is due to a range of socio-economic changes in the community as a whole. Young people's earlier contact with police has had two impacts:

- having started earlier, these young people tend to commit more offences at earlier ages. The proportion of young people aged 13 years and under who have been arrested or summonsed has increased over the last five years from around 8.5 per cent to around 10 per cent of all contacts (this represents an extra 150 young people aged 13 years or less)
- by the time they reach age 10, the age at which they are criminally responsible, some young people are already well known to police. Some have come to the attention of police on more than 10 occasions before they reach this age. When considering how to deal with these young people, police therefore assess them to be a greater risk to the community, and are less likely to direct them away from court.

# Juvenile justice teams are a key alternative to court but their central features are not working well

## Findings

- The main features of juvenile justice teams are not working as intended:
  - juvenile justice teams have not been targeted to those young people they were intended for
  - the delay between a young person's referral to a juvenile justice team and the eventual meeting was too long to be effective
  - juvenile justice team action plans were not adequately monitored to ensure that they support the young person's rehabilitation and address the nature and causes of offending.
- Victims of crime were not always provided with the opportunity to participate meaningfully in juvenile justice team meetings, even though this is also an important feature of the YO Act.

## Recommendations

- Western Australia Police ensure that officers fully apply the YO Act provisions which require them to usually refer young people who have not previously offended to juvenile justice teams.
- Department of Corrective Services improve the juvenile justice team program, by improving timeliness, and ensuring that action plans support the young person's rehabilitation and address the nature and causes of their offending.
- Department of Corrective Services and Western Australia Police work together to establish clear responsibilities for ensuring that:
  - all victims of juvenile crime have the opportunity to become involved in juvenile justice teams, including participation which does not involve them appearing in person
  - these participants receive the support they need to meaningfully participate
  - the reasons why victims do not wish to become involved are evaluated and used for continuous improvement purposes.
- Department of the Attorney General's Victim Support Service records assistance provided to victims of crime involved in juvenile justice teams, so that it can monitor and improve the support it provides to victims.

## **Along with cautions, referral by police to a juvenile justice team is the main alternative to court for young people**

Juvenile justice teams aim to provide an alternative to court for young people who have committed a non-scheduled offence. Young people can be referred to juvenile justice teams by either the police or the courts. To reflect the YO Act, juvenile justice teams are based on the following principles:

- a young person should be held directly accountable for their behaviour to the people they have offended against or to the community
- juvenile justice processes should be culturally appropriate and sensitive
- responsible adults (parents, guardians, or carers) are entitled and required to be included in every aspect of the process
- juvenile justice teams seek to assist behavioural change by identifying services to deal with the young person's offending and to assist the responsible adult in a timely, meaningful, culturally appropriate and effective way
- the victim is of central importance to the process and victim participation is voluntary.

The juvenile justice team officers meet to determine whether a case is eligible. A juvenile justice team family group meeting is then held with the young person, their family, support people (where required), victims and government agency representatives. The purpose of this meeting is to obtain agreement by all parties to an action plan for the young person. The action plan should be appropriate to the offence, the age, culture, circumstances and ability of the young person and their responsible adult. Our file examinations indicated that the following requirements were typically included in the action plan:

- verbal or written apology to the injured party
- promise of good behaviour for a defined period
- undertaking voluntary work for a community agency as reparation to the community or the victim
- referral to law education lecture, alcohol counselling, drug counselling or other service
- reparation to the victim through restitution, compensation etc.

While seemingly simple remedies, these have been shown to have a powerful impact on both offenders and victims. The Department of Corrective Services Juvenile Justice Teams Practice Manual states that action plans should range from a few activities (for first time offenders) to more comprehensive programs for young people who offend repeatedly.

In 2006-07, 1 110 young people were referred to juvenile justice teams by police, totalling 1 633 referrals. In the period 2002-03 to 2006-07, police referred a total of 5 551 young people to juvenile justice teams. 3 744 of these young people were only referred on one occasion; however 38 young people were referred more than 10 times. While continued referral to juvenile justice teams is consistent with the YO Act they are also a relatively costly option at \$2 453 per referral. It is therefore important to ensure that they are effective in supporting rehabilitation.

## **The main features of juvenile justice teams are not working as intended**

### **Juvenile justice teams have not been targeted to those young people they were intended for**

Analysis of police juvenile justice team referrals showed that there were many instances in which young people had not been referred to a juvenile justice team for a first offence. The YO Act provides that police are to exercise discretion in favour of referring the matter to a juvenile justice team if the young person is a first time offender. The young people who were first offenders but not referred were predominantly indigenous young people, living in regional areas. One reason may have been that there was no responsible adult available to participate in the juvenile justice team, a necessary requirement.

### **The delay between a young person's referral to a juvenile justice team and the eventual meeting was too long to be effective**

The YO Act requires that referrals be acted on in an appropriate timeframe. An appropriate timeframe means that juvenile justice teams should occur soon enough after the offence so that the young person connects their behaviour with its consequences. Accordingly, the Department of Corrective Services aims to arrange juvenile justice team family group meeting within six weeks of referral.

Department of Corrective Services central office monitors time taken to act on juvenile justice team referrals and their progress. In the metropolitan area, 32 per cent of juvenile justice team meetings are conducted within six weeks of referral.

Information on time taken to act on juvenile justice team referrals is held in individual regional offices, and not collated centrally so that timeliness and progress can be monitored and delays addressed.

In our regional fieldwork, juvenile justice team officers advised that some cases had more than a six month delay between referral to a juvenile justice team and the Department of Corrective Services acting on this referral by organising a family group meeting.

The Department of Corrective Services has identified the main reasons for the delays are:

- in regional areas, juvenile justice team responsibilities are only part of the corrections officer's broader role, and juvenile justice team work will sometimes be allocated a lower priority than other tasks
- in some of the more remote regions, the Department has had problems filling positions. For example, the Kunnunurra position has just been filled after a two year delay.

The Department of Corrective Services has also advised that, at 9 January 2008, 65 per cent (373 of 570) of juvenile justice team referrals in all regional areas were classed as inactive, due to capping of staff workloads.

A recent departmental review has identified the staffing levels needed to clear the backlog of juvenile justice team referrals. The Department has advised that the regional component of juvenile justice team coordinators has increased from nil to eight positions in the past six months. A juvenile justice team is being created in the metropolitan area, which will provide seven additional officers, an increase of 30 per cent on current staffing levels. The Department is currently progressing the filling of these positions.

To compensate for the delays in juvenile justice teams, magistrates have advised that they are using section 68 of the YO Act to adjourn court proceedings, and requiring the young person to undertake a good behaviour period, then dismissing the case if that requirement is fulfilled.

### **Juvenile justice team action plans were not adequately monitored to ensure that they support the young person's rehabilitation and address the nature and causes of offending**

Juvenile justice teams are an intensive process designed to stimulate and support the young person's rehabilitation. Central to their success in rehabilitating the young person is developing an action plan that addresses the nature and causes of the young person's offending. Action plans may also assist the family or responsible adult with managing the young person. For this reason, action plans need to be tailored to the individual's characteristics, circumstances and needs.

The Department of Corrective Services undertakes some monitoring of action plans, but does not systematically monitor their quality, nor whether the young person satisfactorily completes any treatment programs or reparation. This monitoring of quality and satisfactory completion would ideally be undertaken by a party external to the juvenile justice team group. It is particularly important in regional areas, where there were few programs available to address the needs of young people.

## Victims of crime were not always provided with the opportunity to meaningfully participate in juvenile justice team meetings, even though this is also an important feature of the Young Offenders Act

The YO Act requires that victims of offences committed by young people should be given the opportunity to participate in the process of dealing with offenders to the extent that the law provides for them to do so. This requirement is also covered under the *Victims of Crime Act 1994*.

Victims of offences committed by young people have one way of participating in the process before a young person goes to court, that is, in a juvenile justice team family group meeting, where the young person is referred to a juvenile justice team. Victims of crime may participate in these meetings by attending in person or making submissions.

### Victims of crime were provided with opportunities to participate in juvenile justice team meetings, although this was very limited in regional areas

The YO Act requires that victims of offences should be given the opportunity to participate in the process of dealing with offenders.

We estimate that in the metropolitan area, victims participated in approximately 50 per cent of juvenile justice teams. In the regional areas for which we were able to obtain information, estimated participation varied between nil and 35 per cent, depending on the region.

The Department of Corrective Services does not monitor or evaluate this process. In particular, the Department does not keep records of instances where victims are *invited* to participate in juvenile justice team family group meetings or of the actual victim participation in juvenile justice teams in regional areas.

Victim participation	Metropolitan area	Non-metropolitan areas	Totals
Total referrals to JJT	1 361	736 (4 regions only)	2 097
Victim attended	474	102 (4 regions only)	576
Victimless offence	382	154 (4 regions only)	536
Victim did not attend	505	480	985

**Figure 9: Victim participation in juvenile justice teams, 2006-07**

*Victims participated in about half of juvenile justice teams during 2006-07, based on available data.*

Source: DCS, OAG

Some victims choose not to participate in justice processes because they do not want to confront the offender or relive the trauma. Our contact with some representatives of victims of crime indicates that more victims may wish to participate if the following barriers were overcome:

- they do not know the opportunity is available
- they lack confidence or feel they do not have the skills to participate
- agreement to participate depends on how they are asked
- they would like to be involved but in another way.

### **Support for victims who participated in juvenile justice team meetings could be extended**

The new Department of Corrective Services three-month entry program for juvenile justice officers, provided through its new training academy, will include victim support and communication. The Department currently has no provision for existing employees, who have previously been provided with shorter training, to be updated.

The Department of Corrective Services does not have a formal mechanism, such as exit interviews or periodic evaluations, to gauge how satisfied victims of crime are with their participation in juvenile justice team meetings, particularly whether they need more support.

Another form of support for victims of crime is potentially the Victim Support Service, a division of the Department of the Attorney General. The service's charter is to provide victims with support from the day an offence is logged throughout the justice process, including participation in juvenile justice teams.

The Victim Support Service does not keep separate data but estimates that they assist very few victims participating in juvenile justice team meetings (approximately three people) per year. Agencies have provided two explanations for this low rate of assistance for victims of juvenile crime. On the one hand, the Victim Support Service does not assist victims involved in juvenile justice teams because they are not referred, and juvenile justice teams do not refer victims here because they believe that the service is unable to meet the demand. The Department of the Attorney General has recently advised that the Victim Support Service has capacity to provide assistance to an increased number of victims in both metropolitan and regional areas by using trained volunteers under the supervision of professional councillors.

# More young people have been held on remand, due to greater enforcement of bail conditions and difficulties finding adults to supervise young people on bail

## Findings

- The rate at which police have been granting bail has declined from 82 per cent to 76 per cent of cases in which bail was considered, since November 2004. This means that more young people are held in detention:
  - police focus on enforcing bail conditions, in response to community concerns, and on prior breaches of bail, have been the main reasons for this decline.
- Another important reason that police did not grant bail was that they did not find a responsible adult to supervise the young person:
  - potential responsible adults often refuse to accept responsibility for supervising the young person
  - police generally make significant efforts to find a responsible adult
  - some children under the protection of the Department for Child Protection were not granted bail and were held in detention because no responsible adult was available.

## Recommendations

- Department of Corrective Services and Department for Child Protection work together to provide statewide alternatives to detention for young people who need supervision and accommodation while on bail.
- Department of Corrective Services and Western Australia Police explore further ways of locating responsible adults, including the use of non-sworn staff for this purpose.
- Department for Child Protection review their practices to ensure that no children under the protection of the Director General are refused bail on 'no responsible adult' grounds.

## Young people should only be held in detention on remand as a last resort

Where a young person is charged with a *non-scheduled* offence, police can determine whether bail will be offered. In these instances, three Acts govern their use of bail: the YO Act, the *Children and Community Services Act 2004* and the *Bail Act 1982*. The collective effect of these Acts is that:

- young people should be held in custody, including detention on remand, only as a last resort

- the amount of time that a young person can be held in custody should be for as short a time as necessary
- police need to find a responsible adult to supervise the young person before they can release them from custody
- young people must be held in detention on remand if they are a danger to the community and there is no responsible adult to supervise them.

Western Australia Police has instructed police officers to grant bail in all circumstances allowed by the three Acts, even if a responsible adult is yet to be found. These young people will stay in police custody or a detention centre until a responsible adult is found. Granting bail, subject to a responsible adult being found, makes it possible for the detention centre officers to continue the search for a responsible adult and then release the young person when a responsible adult is located.

The *Bail Act 1982* identifies a responsible adult as ‘a parent, relative, employer or other person who, in the opinion of the judicial officer or authorised officer, is in a position to both influence the conduct of the child and provide the child with support and direction.’ The *Bail Act 1982* also provides the police with the discretion to determine whether someone is suitable to be the responsible adult.

When a young person is arrested and charged with a *scheduled* offence, police do not have the authority to decide if bail will be granted. In this instance, or where police have the authority to grant bail but do not do so, a young person must appear before a magistrate (or sometimes a judge or a Justice of the Peace) who will determine whether bail will be granted. This young person will be held in a detention centre (in the metropolitan area) or in the police station lock-up (in regional areas) until they can appear before the magistrate for this purpose. Holding young people in detention costs approximately \$14 539 per contact.

In metropolitan areas, young people are detained in Rangeview and Banksia Hill Detention Centres. Since November 2007, there have been periods where the population of young people has exceeded the number of beds available in the detention centres. On these occasions, police are informed by the detention centres that no more young people will be admitted and police are required to make alternative arrangements, typically by keeping young people in custody in police stations. Holding young people in police station custody facilities creates additional risks as these facilities are not designed for the purpose of detaining young people.

## **The rate at which police have been granting bail has declined from 82 per cent to 76 per cent of cases in which bail was considered, since November 2004. This means that more young people are held in detention**

The YO Act and related policies are silent about any specific levels of detention on remand, only stating that it should be used as a last resort. We have therefore first examined the trends in the levels at which bail was granted. Later in this section we consider the reasons for not granting bail. Police are only able to consider granting bail for less serious offences (those that are not listed in Schedule 1 or 2 of the YO Act).

The rate at which police granted bail has decreased by approximately six per cent since November 2004. This corresponds to around 100 young people each year.

In 2006-07, police granted bail in 76 per cent of instances in which bail was considered (24 per cent of young people for whom bail was considered were not granted it).

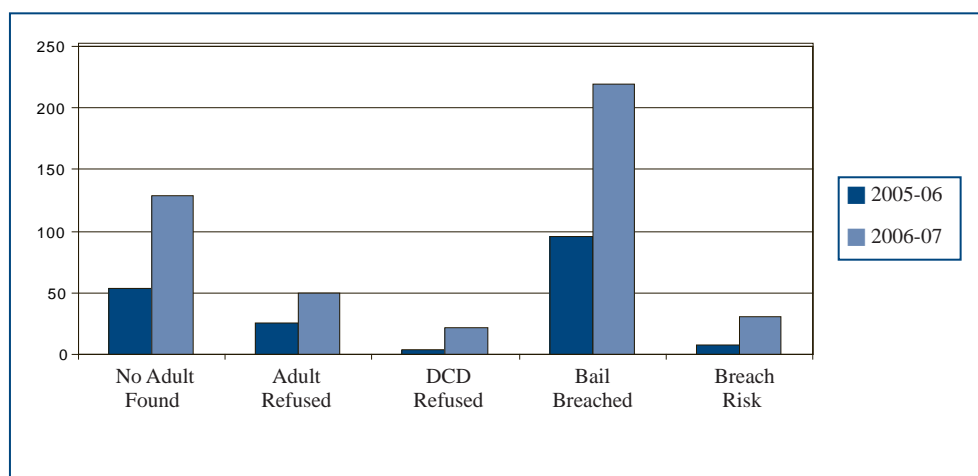
## **The main reason for the decline in granting bail is that in response to community concerns, police have focused on enforcing bail conditions**

Where police were able to consider bail, the largest single reason that police did not grant bail was that the young person was already on bail and had breached their bail conditions. Police were required to arrest these young people and send them to a detention centre awaiting court appearance.

This was the stated reason in 25 per cent (220 of 852) of cases in which police did not grant bail in 2006-07. In comparison this reason was given in 98 cases in 2005-06, although the proportion of young people refused bail for this reason has not changed significantly.

In several districts we examined, police had adopted a new practice focusing on enforcement of bail conditions, including curfew conditions, termed the Prolific Priority Offending Strategy. This has in part been a response to community concern that young people are committing offences such as burglaries while they are on bail. In each of these districts, police data showed that more young people were arrested for breaching their bail.

As Figure 10 shows, police may also refuse to grant bail on the basis that the young person has previously breached bail (breach risk).



**Figure 10: Significant police reasons for young people not being granted bail, where bail was considered, 2005-06 and 2006-07**

*Nearly all categories of reasons for not granting bail have doubled over two years.*

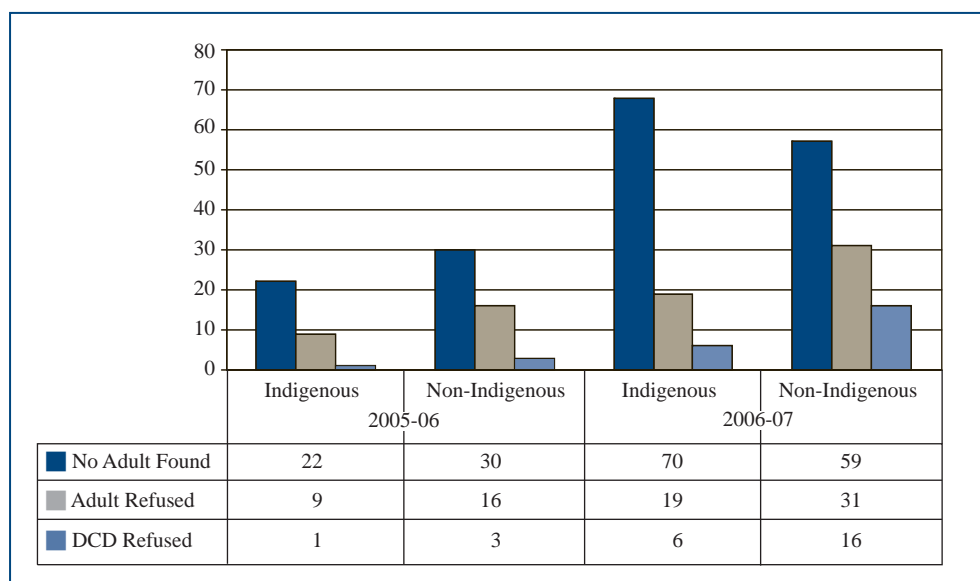
Source: WAPOL, OAG

## Another important reason that police did not grant bail was that they did not find a responsible adult to supervise the young person

Police records indicate that, during 2006-07, 'not being able to find a responsible adult' was a factor in 24 per cent of instances in which the young person was not released on bail (201 of 852 instances). This was more than double the number compared to the previous year.

In a significant number of cases (50 of 201), police found a potential responsible adult but this person refused to take responsibility for the young person. Police records indicated that this may be because the potential responsible adult:

- felt unable to exercise control over their child
- felt unable to accept bail conditions
- was unable to ensure the young person would attend court or comply with bail conditions
- had evicted the young person.



**Figure 11: No responsible adult found, 2005-06 and 2006-07 by indigenous status**

*During 2005-06 and 2006-07, a high proportion of young people were not released on bail because the police did not find a responsible adult to supervise them.*

Source: WAPOL, OAG

## Police generally make significant efforts to locate a responsible adult

During fieldwork, police reported having some difficulties locating a responsible adult in approximately half of all cases, and this is supported by other data.

Police cite this as a major impediment to implementing the YO Act. Police have difficulties finding responsible adults for young people of both genders, and for both non-indigenous and indigenous young people. They reported that these difficulties were much greater in the metropolitan than regional areas because, in the latter, police were more likely to be familiar with the young people's families. Police report spending between two and six hours locating a responsible adult.

Police perception of difficulties in locating responsible adults is supported by Rangeview Detention Centre data. Once a young person is admitted to the detention centre, officers here further attempt to locate a responsible adult so that they can release the young person on bail. Detention centre data shows that just over one per cent (24 of 2 082 clients admitted over a 15 month period) of young people were released within six hours of their admission, following a responsible adult being found.

To assist them to more efficiently locate responsible adults for young people who have come to their attention in Northbridge, police have established a Juvenile Aid Group. Police located in the Group office focus on finding responsible adults for young people who have been brought in. They may therefore locate responsible adults more quickly than the general case.

Another Australian state has introduced an after hours assessment and bail placement service, which uses trained staff to undertake an assessment of the young person's suitability for bail, and provide bail and court advice. This is a statewide after hours service available to young people aged between 10 and 18 years. The service provides a single point of contact for police in matters where police and/or a bail justice are considering remand of a young person outside business hours or where bail accommodation may be required.

### **Ten per cent of young people not granted bail on 'no responsible adult grounds' were children under the protection of the Department for Child Protection**

In another 11 per cent (22 of 201) of cases in which police were unable to locate a responsible adult, the young people in question were under the care of the Director General of the Department for Child Protection. In these instances, under the provisions of the YO Act, the Director General of the Department had parental responsibility and was therefore the 'responsible adult' for the young person in question. This means that no children under the care of the Director General should be refused bail on the grounds that a responsible adult was not available.

The Department for Child Protection explained that these were commonly instances in which there were no accommodation facilities that had the level of supervision required to accommodate and supervise a young person who is on bail.

### **Supervised bail is used as another option for young people without a responsible adult but it has significant disadvantages**

Where police could not find a responsible adult but could otherwise grant bail, supervised bail has been used. For the two years until November 2007, there were 1 072 instances where police or the courts decided that bail was appropriate but were not able to locate a responsible adult, and the young person was granted supervised bail from a detention centre. Of these young people, 85 per cent were from the metropolitan area.

Under the supervised bail arrangement, the young person is released from the detention centre on bail, and a Supervised Bail Coordinator, from the Department of Corrective Services is nominated as the 'responsible adult'.

While it does ensure that the young person is not held in detention, supervised bail has disadvantages because:

- the rate at which young people breach bail is higher for supervised bail at 49 per cent. This is almost double the overall rate of bail breached
- supervised bail can only be arranged once a young person has been admitted to a detention centre or after a court appearance. This practice therefore does not support the aim of using detention as a last resort.

The Regional Youth Justice Strategy developed by the Department of Corrective Services is currently being implemented in Geraldton and Kalgoorlie/Boulder. It is proposed to include:

- a family support service for youth at risk of offending and those that commit minor offences
- a bail service to help police locate suitable adults to provide bail for youths
- emergency short stay accommodation for youths who have been granted bail but have nowhere to go.

The Department of Corrective Services anticipates that the full implementation of this strategy will reduce detention in remand centres and improve the rate at which young people are managed within their community through responsible adults and supervised bail.

## There is scope for greater use of video conferencing, which would reduce the time that young people are held in custody and free up police resources

### Findings

- If technology issues were addressed, video conferencing could be used more to avoid transporting young people and reduce their time in custody:
  - the use of police officers to transport young people creates opportunity costs. Regional police spent the equivalent of 80 weeks of sworn officer time each year transporting young people, reducing coverage in their home districts.

### Recommendations

- Western Australia Police develop and apply protocols for young people's long distance transport arrangements, including choice of transport, journey preparation and contingency planning, prisoner risk assessment, notification of responsible adult, overnight stay accommodation and supervision of the young person.

### Young people are held in custody while they are transported between detention centres and regional courts

When a young person is arrested and charged with a *scheduled* offence, they must appear before a judicial officer who will determine whether bail will be offered. The young person is 'remanded in custody' until this judicial decision is made. Western Australia's two juvenile detention centres, Rangeview and Banksia Hill are in the metropolitan area.

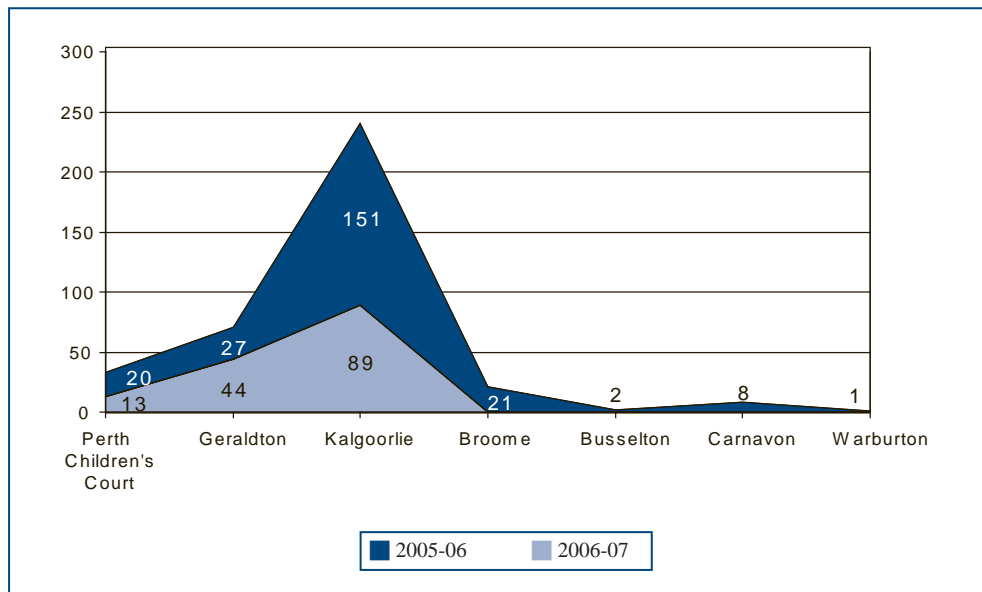
Police transport young people from these detention centres to regional courts, and back again, for bail hearings, and other court appearances. During this time, young people are still being held in custody.

Through the use of audio visual technology, a young person can appear in court from their remand location via video conference. This alleviates the need to transport the young person between courts and detention centres.

If video conferencing is not utilised, the young person is held in custody during transportation to and from their bail hearing. The use of video conferencing for this appearance type would facilitate an earlier appearance and lead to immediate release if bail is granted. This would result in less time spent in detention for a young person who has their application for bail granted, consistent with the YO Act.

## Video conferencing is currently used to avoid transporting young people for bail hearings and other court appearances

While data on video conferencing use by courts has been inadequate, available information indicates that it is used to some extent by all regions, and most frequently Kalgoorlie. The Department of the Attorney General recently advised that it has put in place measures to improve data collection on audio visual usage.



**Figure 12: Use of video conferencing for court proceedings 2005 to 2007**

*Video conferencing is being used in regional centers, mostly Kalgoorlie.*

Source: OAG, DotAG

## If technology issues were addressed, video conferencing could be used more to avoid transporting young people and reduce their time in custody

Magistrates may choose *not* to use video conferencing because:

- when dealing with some young people, the magistrate determines that it is better to have them face the magistrate and court so as to impress on them the seriousness of their behaviour and their court appearance
- it would be inappropriate for some stages of the court proceedings, depending on the characteristics of the offence and the young person.

In other instances, magistrates' use of video conferencing has been limited by technology constraints:

- in some places there are simply no facilities
- the quality of reception is poor in some areas, especially the Kimberley
- some centres have analogue technology, which does not communicate with the digital technology used by other centres
- some courts have low-end standalone video conference systems on a bandwidth that is insufficient for remote or far-end conferencing.

The Department of the Attorney General has estimated the total cost of upgrading and installing court video conferencing equipment across Western Australia at \$10.9 million. In 2006-07 the Department of the Attorney General reported expenditure on audio visual facilities was \$1.4 million. In 2007-08, the Department forecasts expenditure on audio visual facilities of \$2 million and plans to spend just over \$5 million in 2008-09, reducing to \$1.2 million per annum in out years. The Department has advised that it has already addressed the quality of reception, especially in the Kimberley, and the bandwidth available for standalone video conference systems, with remaining technology constraints to be addressed by the end of 2008.

The Department of the Attorney General has also committed to develop improved data on audio visual usage as part of its inter-agency working party which will review the transporting of prisoners.

## The use of police officers to transport young people creates opportunity costs

### Regional police spent the equivalent of 80 weeks of sworn officer time transporting young people, reducing coverage in their home districts

In the second half of 2007, police estimate that they spent 1 495 hours and \$218 240 to transport 208 young people between regional towns and Rangeview Detention Centre. This equates to around 80 weeks of sworn officer time each year, at a cost of around \$0.5 million.

The opportunity cost of using police officers to transport young people is that the officers involved are not available in their 'home' locations to undertake their frontline policing duties. Police officers could spend an entire shift, for example, transporting a young person from Kalgoorlie to Merredin, for transfer to Rangeview Detention Centre in Perth, and returning.

## **Where transporting young people is necessary, non-sworn officers could be used**

There are equivalent situations in which non-sworn officers are used for transporting people in custody:

- adult prisoners are transported by the security firm GSL, under contract to Department of Corrective Services
- Westrail Transit Security guards are non-sworn officers, established under the Rail Act to provide security services on trains. In the metropolitan area, these guards transport young people who are apprehended directly to Rangeview
- Department of Corrective Services detention centre staff transport young people in the situations listed earlier.

Using a similar arrangement in which non-sworn officers transport young people would release police for frontline duties in their home district.

An inter-agency working party is currently reviewing the transporting of people in custody (including young people). This will encompass use of video conferencing to minimise prisoner transport.

## **Transporting young people also creates risks as police vehicles do not meet standards for transporting prisoners**

The Office of the Inspector of Custodial Services (OICS) has developed and applied a set of standards for transporting prisoners. The Inspector found that the police vehicles do not meet these standards, and has reported this to Parliament<sup>12</sup>. Specific juvenile standards are not in place. In their absence, we selected and applied the OICS standards, which are relevant to the transporting of young people, particularly those being transported on longer journeys. We confirmed that the standard police vehicles used to transport young people do not meet selected OICS standards.

In addition, there are no police protocols for the choice of transport, journey preparation and contingency planning, prisoner risk assessment, notification of responsible adult, overnight stay accommodation and supervision of the young person.

Transporting young people between detention centres and metropolitan courts is the responsibility of the Department of Corrective Services. The Inspector of Custodial Services has found that the Department's vehicles do not meet the Inspector's standards<sup>13</sup>. In February 2008, the Department of Corrective Services review of prisoner transport services was tabled in Parliament. The Department of Corrective Services has committed to implementing recommendations from the review, which includes a recommendation that the OICS findings, mentioned above, are addressed.

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12 Office of the Inspector of Custodial Services, April 2007, *Code of Inspection Standards for Adult Custodial Services – Standards for the Transport of Prisoners (Adult)* and *Thematic Review of Custodial Transport Services in Western Australia, Report no 43, May 2007*.

13 Ibid.

## Full Agency Responses

### Department for Child Protection

Thank you for the opportunity to comment on your summary of findings for this performance examination. The Department for Child Protection supports the recommendations in the report that has specific implications for this Department.

The department believes that in relation to young people not granted bail on a no responsible adult available grounds be expanded to reflect that 'young people under the care of the department not granted bail on the basis of no responsible adult available grounds was mainly based on the department's duty of care to these young people and the community as in many cases the young people involved required a level of containment and supervision in accommodation that was not available to ensure all inherent risks could be managed'.

### Department of Corrective Services

The Department of Corrective Services (DCS) broadly supports the general thrust of the findings and recommendations. However, findings with regard to delay in processing Juvenile Justice Team (JJT) referrals and action plans not being adequately monitored need to be taken in context. The audit examined statewide data. In regional areas, JJTs have operated on a part-time basis in conjunction with other core duties and therefore there will be a divergence between results in regional and metropolitan areas. Furthermore at the time of auditing DCS was under an interim order from the Western Australian Industrial Relations Commission, which severely limited the caseload of JJT Officers and consequently skewed the findings.

DCS has established the Supervised Bail Programme to avoid unnecessary detention of juveniles in circumstances where they have been deemed suitable for bail but lack a responsible adult to sign the bail undertaking. The provision of Supported Accommodation has in principle support, however, there needs to be clear demarcation between justice, welfare, treatment and developmental issues.

While Rangeview has the mandate to arrange for Responsible Person Undertaking bail 24 hours a day the majority of new admissions are after hours which can limit the provision of bail services.

The new and innovative Regional Youth Justice Services (RYJS) based at Geraldton and Kalgoorlie, which commences in August and September 2008 respectively, will provide a comprehensive joined-up approach for services to young people. One aspect is to provide an extended hours family support service which will assist local police to locate responsible adults enabling young persons to be bailed and provided emergency accommodation. These measures will considerably reduce the number of young persons transported to Perth.

The RYJS will also include the award winning offending reduction Intensive Supervision Program which helps keep repeat offenders in their locality and provides considerable support to families.

On the matter of regional juvenile transport, these services are currently provided by WA Police and DCS is not in a position to assume this responsibility.

DCS supports maximising the use of Video Conferencing.

## **Department of Health**

The Department of Health (DoH) agrees with the findings set out in the report in so far as they relate to the juvenile justice system and health-related issues affecting young people in Western Australia. The DoH certainly considers this an area of unmet need.

While the DoH agrees with the thrust of the recommendation related to those findings, any attempt to achieve the outcome expressed in the recommendation (ie "... that young people who offend repeatedly are identified and case managed until the mental health, substance abuse and other problems that are associated with their offending are successfully addressed") is problematic, and would need to address the fact that many patients other than those 'formed' under the Mental Health Act are voluntary patients and the services provided by DoH rely on patient consent; that in many cases a young person's mental health or drug problem are long-term, often extending well into adulthood, and in some cases can never be 'successfully addressed'; and that the population under consideration is often itinerant or highly mobile, making delivery of care and case management difficult.

The DoH notes that there would be significant resource implications relating to achieving the recommendation about case managing young people with mental health, substance abuse and other problems, and considers a model of care established to achieve that objective would need to rely on joint funding and governance arrangements involving the DoH and the Department of Corrective Services, with clinical accountability ascribed to the DoH's Mental Health Service.

## **Western Australia Police**

Western Australian Police encouraged and supported the performance examination on juvenile justice because of a demonstrated need to fully examine the value and extent of effort by all government agencies, and because of real and perceived shortfalls in this regard. WA Police have committed significant resources to the performance examination, through making police officers available across the State, by interrogating systems and supplying information, data and statistics, and by making available resources to assist with the coordination of the examination with the agency.

The findings are generally supported with the exception of the one that claims police are directing more young people to court because the process of issuing summonses has been simplified. This finding will be examined internally. Likewise, the recommendations are also supported, with the exception of three. These include: those being relative to developing alternatives for young people who continually breach bail; improvement of juvenile justice team programs/ensure action plans support the young person's rehabilitation; and exploring further ways of locating responsible adults.

In explanation, modern policing requirements and grade of service standards, together with greater community and government expectations and funding constraints, place Western Australia Police in a position that requires Police to now focus primarily on core responsibility and functionality. Although Western Australia Police assist and will continue to assist all other government agencies where possible and necessary, the responsibility for progressing and achieving outcomes in the aforementioned recommendations, clearly rest with the Department of Corrective Services.

As an example, Western Australian Police contribute considerable resources and time to locate responsible persons and it would be difficult to make a further contribution in this regard without adversely impacting on frontline responsibilities and service delivery.

With respect to the escort and transport of youth offenders, Western Australia Police are firmly of the view that all prisoner transport is the responsibility of the Department of Corrective Services. Police vehicles are primarily utilised for tasking and response, with prisoner transport considered a requirement for short distances only with an average duration of 20 to 30 minutes (from scene to a police facility). It is impossible to achieve in the one police response vehicle design, specifications that will accommodate both tasking / urgent duty driving and the prisoner transport vehicle standards as recommended by the Office of the Inspector of Custodial Services.

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