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Justice Reinvestment

Youth Action Policy Paper

YOUTH ACTION

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About Us

Youth Action is the peak organisation representing young people and youth services in NSW.

Youth Action works towards a society where all young people are supported, engaged and valued. To achieve this, it is the role of Youth Action to:

1. Respond to social and political agendas relating to young people and the youth services sector
 2. Provide proactive leadership and advocacy and shape the agenda on issues affecting young people and youth services
 3. Collaborate on issues that affect young people and youth workers
 4. Promote a positive profile in the media and the community of young people and youth services
 5. Build capacity for young people to speak out and take action on issues that affect them
 6. Enhance the capacity of the youth services sector to provide high quality services
 7. Ensure Youth Action's organisational development, efficiency, effectiveness and good governance.
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Recommendations

1. The Federal Government, in consultation with the NSW Government, should investigate the formation a centralised body to research and facilitate a Justice Reinvestment model.
2. Begin the research, data collection and analysis necessary to effectively implement the Justice Reinvestment approach.
3. Consult with communities to gauge their interest in being involved with the model
4. Evaluate currently operating projects and initiatives, providing increased funding to those whose objectives and outcomes are in line with the model
5. Advocate the reinvestment method to the public through bipartisan and positive media approaches.

1. Introduction

Calls from the community and politicians for culpability and punishment are a common accompaniment to the aftermath of a crime. However, one of the challenges any justice system must face is how to balance these demands with considerations of how best to serve the long-term prospects of the individual offenders and the community at large. This balancing becomes even more critical in the juvenile justice context because of the increased impact that interactions with the criminal justice system can have on young people, and on the communities that they come from. New South Wales' steady crime rates and increasing juvenile detention population suggests that our juvenile justice system has not yet achieved this balance.

A critical appraisal of the current juvenile justice system requires consideration of a number of factors. These include: public and political rhetoric about crime and the purpose of a juvenile justice system, the system's stated goals, its current ability to attain those goals, the overrepresentation within juvenile justice systems of young people from specific geographic areas and of Aboriginal young people, and the projected social and financial cost of maintaining the system as it stands. Many of these characteristics were examined in Noetic Solutions' 2010 Strategic Review of the New South Wales Juvenile Justice System¹ and the findings are detailed in the accompanying report (The Noetic Report). The Noetic Report advocates the adoption of a Justice Reinvestment (JR) model as an approach that has been proven to be extremely effective, both in terms of costs and outcomes, when implemented internationally.

This paper will provide an introduction and examination of the theory underpinning JR, as well as its history internationally, in Australia and in NSW;

¹ Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, 'Report for the Minister of Juvenile Justice' (NSW) [The Noetic Report], (2010).

a brief reiteration of The Noetic Report's findings regarding NSW's current juvenile justice system; and a consideration of how a JR model might be implemented in a NSW context.

2. Justice Reinvestment

2.1. What is justice reinvestment?

A Justice Reinvestment (JR) model is a major shift of resources away from traditional custodial services and into community-based initiatives such as healthcare, housing, education or job training within communities with a high concentration of offenders. Adopting a JR model means the diversion of funds and focus:

- From the consequences of crime to its underlying causes;
- From individual offenders to the vulnerable communities that a disproportionate number of them come from; and
- From reactive punishments to proactive early intervention and protection.

2.1.1. Justice reinvestment is: geographically targeted

JR is often described as a “place-based”² model, as it is based on a recognition that a large number of offenders come from a small number of communities. Having identified those communities, JR requires coordinated and cooperative efforts between justice and human services agencies (both government and non-government) and community members to determine the underlying causes of crime, and where funding diverted from custodial services could be best allocated to address those causes. Creating and resourcing these services and projects goes a great way in acknowledging and addressing the challenges faced by these socially isolated communities as they attempt to “socialise their youngsters to conventional norms and

² Justice Reinvestment Campaign for Aboriginal Young People, 'Policy Position' (Presentation to NSW Attorney-General Greg Smith SC MP and Minister for Aboriginal Affairs Victor Dominello MP, October 17th, 2012). [JRAYPC Presentation] Slide 17.

values” without the “economic or social foundations for effective social control”³.

2.1.2. Justice reinvestment is: a long-term investment

The focus on where to invest resources to allow for greatest returns is another defining feature of the JR model, making it an appealing model for most policy makers. There is a demonstrable return from resources allocated to community-based initiatives that focus on early intervention and prevention. This return comes in the form of savings from a reduced number of youth entering and returning to custodial justice centres⁴. Although it should be noted that the greatest return on an investment in a JR model would approximately occur over a 10-year timeframe, because of its nature of early intervention and focus on children, a longer lead time is required⁵. Conversely, imprisonment’s high costs and empirical failure to “rehabilitate, deter, meet public concerns [or] make communities safe”⁶ can be interpreted as not being ‘value for money’.

2.1.3. Justice reinvestment is: an investment in community

Investment into disadvantaged communities provides additional social returns as it minimises the “socially disruptive” effect that incarceration can have on vulnerable communities⁷. Dina Rose and Todd Clear argue that if offenders are recognised as “resources” within their communities, the effect of their imprisonment is a “depletion” where “every resource is vital” and a disruption of social bonds where the “linkages are already fragile”⁸. However, by keeping these people within the communities, and investing in them to minimise the

3 Todd Clear and Dina Rose, ‘Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory’ in Suzette Cote (ed) *Criminological Theories, Bringing the Past to the Future* (Sage Publications, 2002) 74, 81, citing William Wilson, *The Truly Disadvantaged: the Inner City, the Underclass and Public Policy* (University of Chicago Press, 1987).

4 Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System*, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 529

5 Ibid pg. 379

6 Australian Human Rights Commission (AHRC), *Social Justice Report*, 2009, pg 13.

7 Justice Reinvestment Campaign for Aboriginal Young People, ‘Policy Position’ (Presentation to NSW Attorney-General Greg Smith SC MP and Minister for Aboriginal Affairs Victor Dominello MP, October 17th 2012) [JRAYPC Presentation] Slide 8.

8 Todd Clear and Dina Rose, *op. cit.* pg. 81-83.

chances of removal, these marginalised people can go from “permanent consumers of correctional services” to “builders and restorers of healthy, safe communities”⁹. The Australian Human Rights Commission summarises this “mutually-reinforcing” cycle:

“Crime prevention decreases imprisonment; and community engagement strengthens the community so the preconditions for crime are reduced¹⁰.”

2.1.4. Justice reinvestment is not: a complete replacement for incarceration

Unfortunately, in the case of some young people and children, imprisonment is in the best interests of the community. However, proponents hold that, with the exception of these “high risk offenders”, the JR model provides more effective ways to address juvenile crime¹¹.

2.2. The four steps of a justice reinvestment model

Adopting a JR model would be a major reform to the current justice system, and as such it requires a disciplined and dedicated approach at all stages of its implementation. While each manifestation of JR is unique because of its focus on specific communities and their needs, the underlying principles and process remain the same. The Council of State Governments Justice Centre sets out the “strategy” for a JR Model in 3 steps¹². This paper has added an additional “Step 0” as there is currently no national or state equivalent of the Justice Centre, and has split the Justice Centre’s first step into 2 in recognition of the importance of each of them to the overall success of the model.

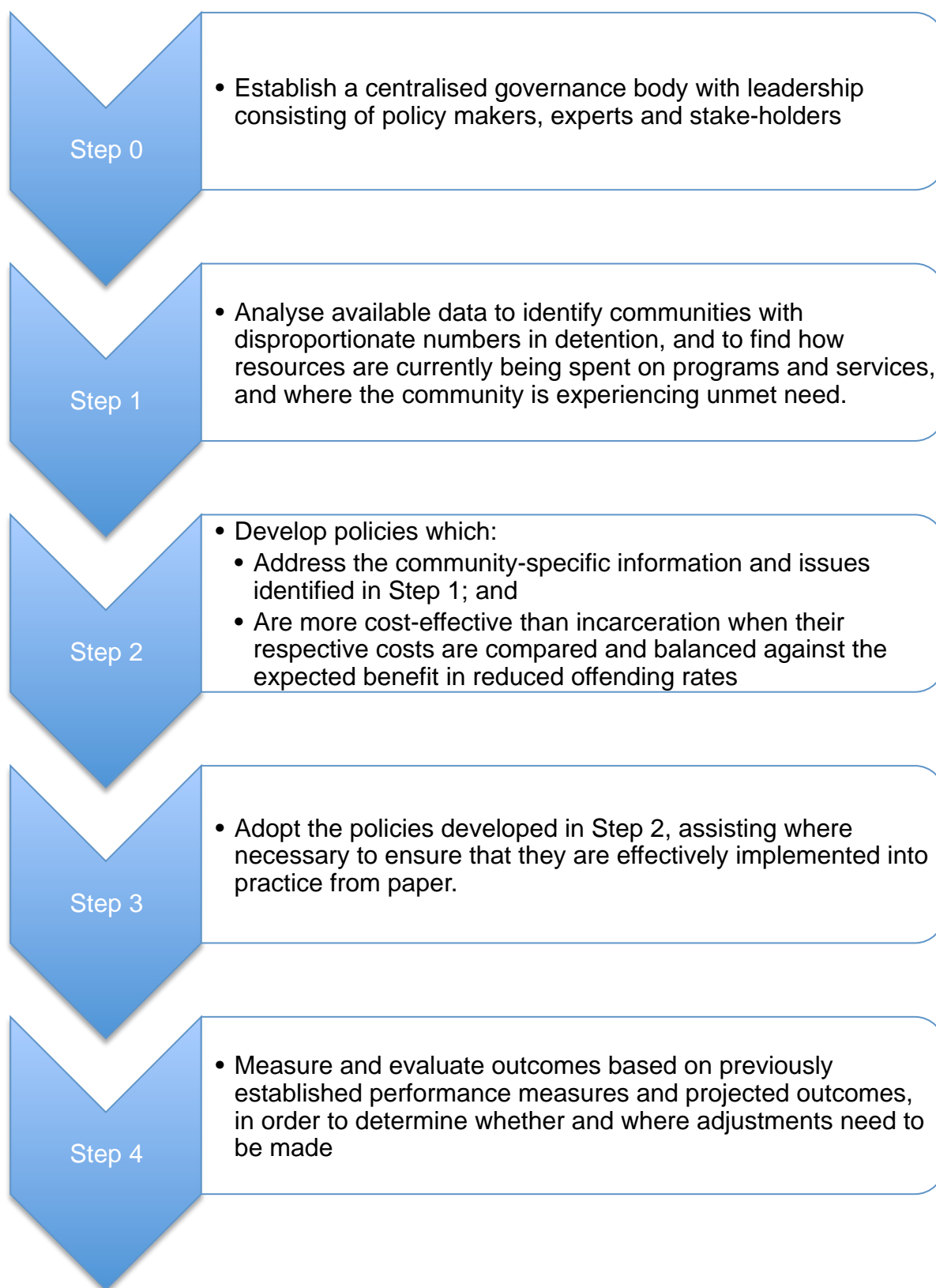
9 Eric Cadora and Susan B Tucker, ‘Justice Reinvestment’ (2003) 3(3) Ideas for an Open Society 2, pg. 5.

10 Australian Human Rights Commission (AHRC), Social Justice Report, 2009, pg. 42

11 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 373

12 Council of State Governments Justice Center, The Strategy: How Justice Reinvestment Works. Justice Reinvestment, <<http://www.justicereinvestment.org/strategy>>

Figure: The steps in the Justice Reinvestment process



2.2.1. Establishing the centralised governance body

The necessarily collaborative nature of JR development and implementation means this initial step is vital. The working group example that the Justice Centre showcases is made up of¹³:

- **Experts:** the Centre’s own “nationally recognised criminal justice policy experts”;
- **Policymakers:** “a small, high-level, interbranch, bicameral, and bipartisan team of elected and appointed officials”; and
- **Stakeholders:** a very broad range of people with an interest in the community. They may include:
“Prosecutors; public defenders; judges; corrections and law enforcement officials; service providers and community leaders; victims and their advocates; people who have been incarcerated; and health, housing, human service, education, and workforce professionals”.

The Justice Reinvestment for Aboriginal Young People Campaign advocates that the ‘expert’ group should be a statutory one, unlike the Council of State Governments Justice Centre, which is a not-for-profit organisation. They propose that a statutory model would be more constructive for a NSW context as it would ensure longevity and stability for “a small body with a focused agenda to work across departments and to monitor and quantify social and economic outcomes of JR initiatives”¹⁴. They emphasise, as does the Noetic Report¹⁵, the importance of a non-partisan approach.

2.2.2. Analysis and development

The Noetic Report cautions that if insufficient funds are provided to the necessary programs then it will result in larger long-term costs for the

13 Council of State Governments Justice Center, The Strategy: How Justice Reinvestment Works, Justice Reinvestment, <<http://www.justicereinvestment.org/strategy>>

14 Justice Reinvestment Campaign for Aboriginal Young People, ‘Policy Position’ (Presentation to NSW Attorney-General Greg Smith SC MP and Minister for Aboriginal Affairs Victor Dominello MP, October 17th 2012) [JRAYPC Presentation] Slide 22.

15 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010), pg 145

community. Allocating funds to misidentified communities or programs would result in similar outcomes. As such, both these steps are of great importance to successful justice reinvestment.

The Justice Centre provides a detailed list of the factors they consider during these steps:

Crime, arrest, conviction, jail, prison, and probation and parole supervision data provided by state and local agencies; map specific neighborhoods where large numbers of people under criminal justice supervision live and cross-reference this information with reports of criminal activity and the need for various services (including substance abuse and mental health treatment programs) and resources (such as unemployment or food stamp benefits); and assess available services critical to reducing recidivism¹⁶.

However, the importance of consultation with the community should not be underestimated, as one of JR's underlying principles is the devolving of accountability and capacity to local level, or the "[seeking] of community level solutions to community level problems"¹⁷.

2.2.3. Measurement and evaluation

To determine the success of the initiative and to identify any areas for improvement or adjustment, detailed evaluations are required throughout the process. The Noetic Report proposes that this is done through consideration of actual outcomes as assessed by some predetermined measures and projected outcomes, such as "costs saved or avoided, re-offending rates, and indicators of community capacity"¹⁸.

16 Council of State Governments Justice Center, The Strategy: How Justice Reinvestment Works, Justice Reinvestment, <<http://www.justicereinvestment.org/strategy>>

17 Eric Cadora and Susan B Tucker, 'Justice Reinvestment' (2003) 3(3) Ideas for an Open Society 2, pg. 5.

18 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, 'Report for the Minister of Juvenile Justice' (NSW) [The Noetic Report], (2010), pg 543

2.3 A history of justice reinvestment

2.3.1. *The international context*

Eric Cadora and Sophie B Tucker first coined the term ‘Justice Reinvestment’¹⁹ in their 2003 article of the same name. Since then, the term and the model have spread to 16 states in the United States²⁰, while the United Kingdom has implemented many aspects of the JR model through their policy frameworks for social inclusion²¹ and a new economic analysis model that considers the “Social Return on Investment”²². The international implementation of Justice Reinvestment have seen positive results²³, providing savings that are expected to continue to increase, and reductions in crime rates and reoffending rates²⁴.

19 Eric Cadora and Susan B Tucker, ‘Justice Reinvestment’ (2003) 3(3) Ideas for an Open Society 2

20 Council of State Governments Justice Centre, Work in the States, Justice Reinvestment <<http://www.justicereinvestment.org/states>>.

21 Australian Human Rights Commission (AHRC), Social Justice Report, 2009, pg 28.

22 Australian Human Rights Commission (AHRC), Social Justice Report, 2009, pg 13.

23 Council of State Governments Justice Center, Justice Reinvestment State Brief: Texas (2007), pg. 1.

24 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010), pg 139-140

An International example – Texas

Texas is the example most often used of JR success, perhaps because of the surprising contrast between their successful adoption of the model and their reputation for high incarceration rates. The Justice Centre has published a detailed “State Brief” on the Texan implementation of JR:

- The prison population in Texas was projected in 2007 to grow by more than 14,000 people over a five-year period, costing taxpayers an additional \$523 million for the construction and operation of new facilities in the 2008 and 2009 fiscal biennium.
- An analysis of the prison population identified high rates of failure on community supervision, limited in-prison and community-based program capacity, and inefficient use of parole as key factors driving the projected growth.
- To reduce recidivism rates and avert further growth in the prison population, state lawmakers enacted a package of criminal justice policies to improve success rates for people on community supervision, expand the capacity of treatment and diversion programs, and enhance the use of parole for low-risk offenders.
- To fund the package, policymakers reinvested \$241 million (which would have otherwise been appropriated for the construction and operation of new prisons) for additional treatment and diversion programs.
- By enacting these policies, the state saved \$210.5 million for the 2008–2009 fiscal biennium. If new treatment and diversion programs are successful and no additional prisons are constructed, the state will save an additional \$233 million.
- Policymakers also reinvested in the expansion of the Nurse-Family Partnerships Program, a nationally recognized model for improving outcomes for low-income families and reducing crime, to reach 2,000 families/children.

2.3.2. A national context

The concept is hardly unknown in the Australian context either, or even in NSW specifically. In 2009, while he was the Aboriginal Social Justice Commissioner, Dr Tom Calma touted the concept in the Social Justice Report, and has advocated it in many speeches since then. Subsequently, a number of State and Commonwealth reports have recommended the implementation of many of the principles of JR such as “greater priority to prevention and early intervention services such as education, information, advice and

advocacy”²⁵, or have even explicitly advocated for further research into the model²⁶. This has triggered a recently concluded Senate inquiry into “*The value of a justice reinvestment approach to criminal justice in Australia*”²⁷. Additionally, the Australian Greens Party has included JR implementation into their official Justice Policy platform since 2010²⁸.

2.3.3. The NSW context

Given the national increase in interest in the model, it is no surprise that there is a corresponding interest in the state and territory governments, as well as within community groups²⁹. In NSW the *Justice Reinvestment for Aboriginal Young People Campaign* does valuable work raising awareness of the model and advocating for its implementation amongst both the community and policy makers. At a government level, Graham West commissioned the Noetic Report while he was the Minister for Juvenile Justice. Despite the report’s emphatic recommendations for JR’s implementation, West’s move to act on the recommendation was met with resistance in the NSW Cabinet. This was one of the precursors to West’s resignation of his portfolio and non-contest of his seat³⁰. It should be noted though that in the Government’s response to the

25 Access to Justice Taskforce, Attorney-General’s Department (Commonwealth), *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009), pg. 144.

26 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system* (2011) pg. 321

27 Australian Senate Committee, *Inquiry into the value of a justice reinvestment approach to criminal justice in Australia – Information about the Inquiry*, Parliament of Australia-Senate http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/justice_reinvestment/info.htm

28 The Australian Greens Party, *Access to Justice A Right for All Australians: Justice Reinvestment for Australia* (August 2010).

29 See, for example: Smart Justice, *Justice Reinvestment*, Smart Justice, http://www.smartjustice.org.au/cb_pages/justice_reinvestment.php; Paul Papalia, *Justice Reinvestment – an option for Western Australia?* (2010); Australian Government, *Government Response to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report* (2011), pg. 43.

30 See, eg, Alicia Wood, ‘A Stolen Generation of Our Young in Detention’, *The Sydney Morning Herald* (Sydney) August 22, 2010; Thalia Anthony, ‘MP’s Resignation a Selfless Act’, *The Age* (Melbourne) June 10 2010.

report, they emphasised their “significant”, cross-portfolio investment of “effort and resources in prevention and early intervention services and programs”³¹.

3. What are the issues?

The immediate issue facing the NSW Juvenile Justice System is obvious: the steadily increasing numbers of young people in custodial justice centres.

However, there are a number of other issues that are closely associated with this and deserve separate consideration. They include:

1. The overrepresentation of Aboriginal young people and of young people from specific geographic areas;
2. The costs associated with the custodial justice system, which are rising in parallel to the detention population;
3. The system’s failure to achieve promised outcomes;
4. The adverse effect on communities; and
5. The detrimental impact of current political rhetoric.

This is hardly an exhaustive list, but these 5 issues are so closely intertwined that often causality is difficult to determine, and so a holistic approach is vital.

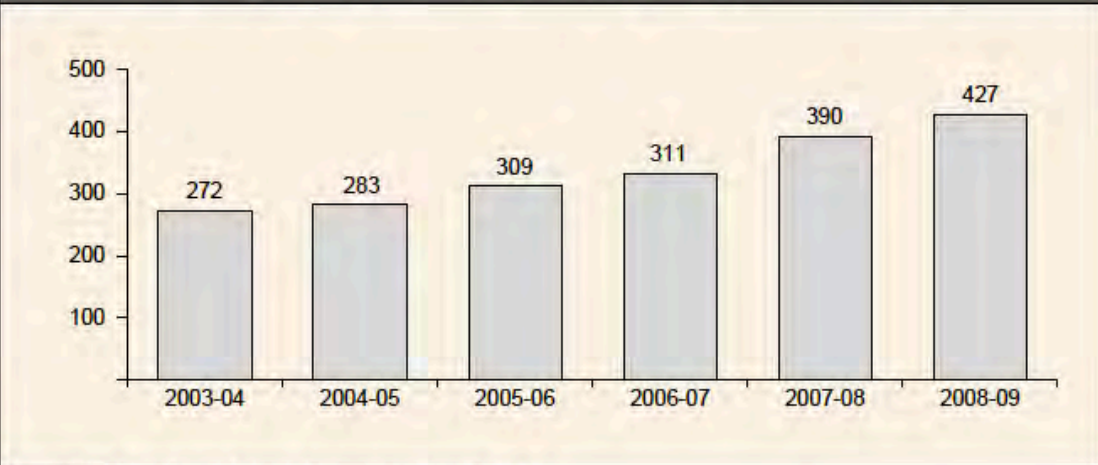
3.1. Increasing numbers of young people in the juvenile justice centres

The *Noetic Report* found that the average daily number of young people in detention had risen consistently in the 5 years before their review. In 2008-09 the average daily number of young people was 427, an increase of over 50% since 2003-4. The table below graphs these figures³².

31 NSW Government, Government Response to NSW Juvenile Justice Review (2010), pg. 21.

32 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010), pg 67

Figure 9: Average Daily Number of Young People in Custody

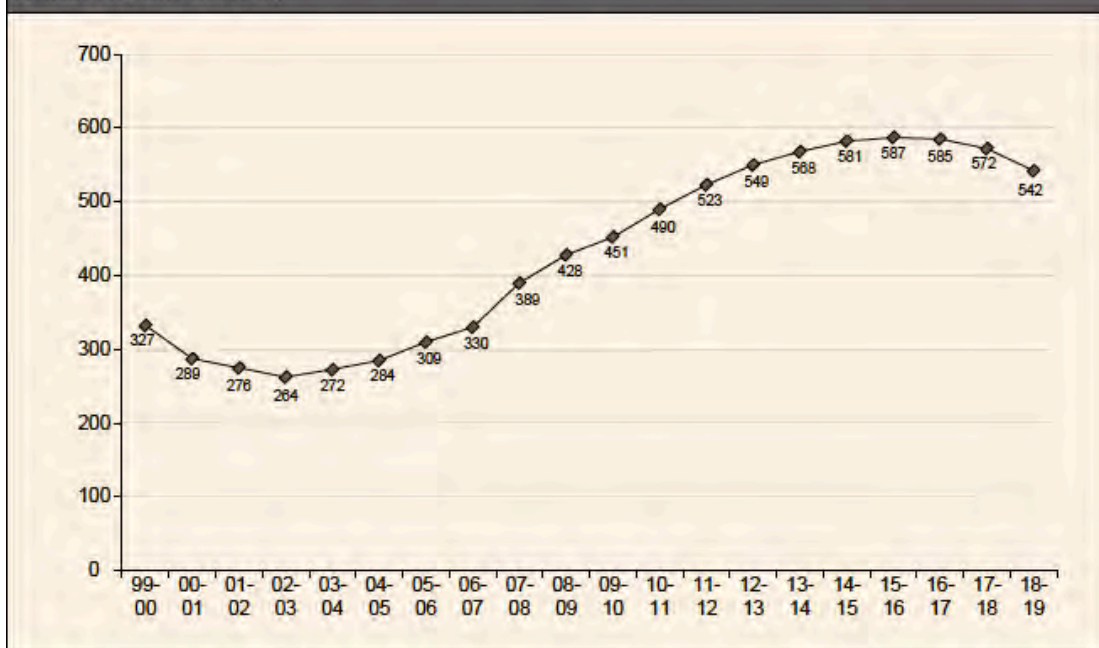


Source: NSW Department of Juvenile Justice Annual Report 2008/09

The average daily number of young people in custody in 2011-12 had actually dropped to 353³³, but the *Noetic Report's* projection for the average daily number of young people in custody remains a concerning one. Even if the exact projections are not so accurate, little has been done since the report to address the underlying causes for the increase.

33. NSW Department of Juvenile Justice, Annual Report 2011/2012, 2012.

Figure 19: Ten Year Projection of Young People in Custody – Average Daily Number (June 2009)



Source: 1999-2008 DJJ RPE Standard Statistical Reporting Database. 2008-09 DJJ RPE Live Database. Figures are taken from a live database and are subject to change.

1. Based on 2008-09 estimate figures and selected regression analysis of 1999-2009 data.

2. Length of Stay on Remand reduces to 16.3 days, and Length of Stay on Control rises to 93.5 days by 2018-19.

3. Projected trend curve of Custodial Stays on Remand peaking at 4498 in 2013-4 and then falling to 3274 by 2018-19, and Control peaking at 1560 in 2017-18 and falling to 1546 in 2018-19

3.1.1. Effect of recent bail legislation

Reforms to *The Bail Act 1978* (NSW) over the past 5 years have had a significant impact on young people. It has been subject to much criticism and has led to a detailed Review by the NSW Law Reform Commission, and so will not be addressed at length in this paper. However, a brief summary shows that conditions intended to minimise applications without merit and repeated or unnecessary applications for bail are in fact making it much more difficult for children and young people to apply for bail. When combined with strict police enforcement of often onerous bail conditions, it results in increases in the remand population of the juvenile justice centres³⁴. On any given day around 50% of a NSW juvenile justice centre population will be on remand,

³⁴ NSW Law Reform Commission, *Bail* (Report 133) (April, 2012), pg. 55-56.

but only 18.3% of those young people on remand will go on to receive custodial sentences³⁵.

3.1.2. Overrepresentation of young people from specific geographic areas

One trend noted in the *Noetic Report*, which has not reversed in the intervening period, is the disproportionate number of young people in detention who are from specific geographic areas. The communities that these young offenders come from are characterised by high levels of socio-economic stress, and inter-generational cycles of imprisonment³⁶. Examples of these communities are Mt Druitt, Dubbo, Kempsey, Bourke and Wagga Wagga, all of which have high levels of Indigenous detention and of detention generally of young people and children³⁷. The table below shows a number of risk factors for detention, many of which contribute to “negative social norms” which only serve to exacerbate the issue, and to prolong the vicious cycles of their existence, such as parental imprisonment and low education attainment rates³⁸.

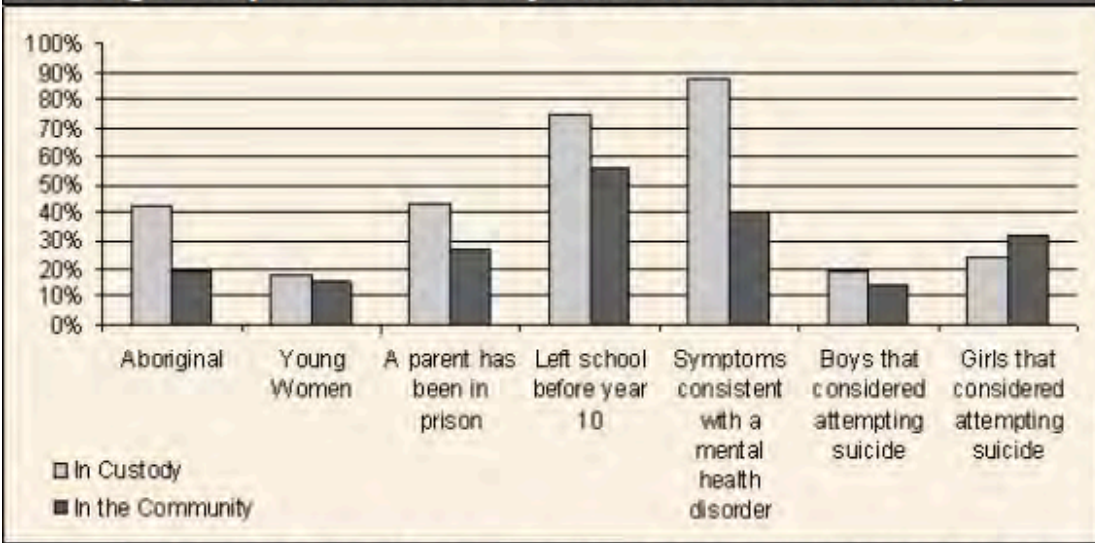
35 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 67

36 *ibid*, pg. 316

37 *ibid*, pg. 541

38 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time for Doing: Indigenous youth in the criminal justice system* (2011) pg. 42

Figure 16: Health Characteristics of Children and Young People in Custody and the Community



Source: NSW Young People in Custody Health Survey 2003 and NSW Young People on Community Orders Health Survey 2003-2006

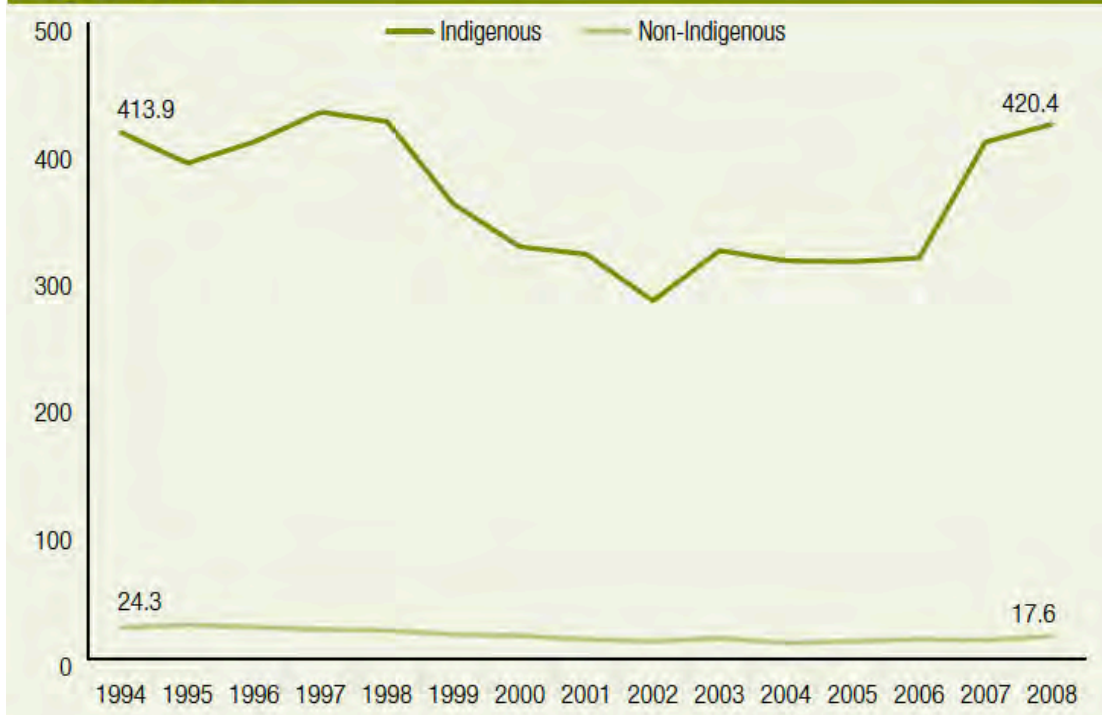
3.1.2. Overrepresentation of Aboriginal young people

The table above demonstrates the risk factor for incarceration Aboriginality is for young Australian people. This disproportionate representation was described multiple times as “shameful” in *Doing Time – Time for Doing*, the 2011 report on Indigenous youth in the criminal justice system. Consider that in NSW Aboriginal young people make up only 2.2% of the general population, but over 50% of the juvenile detention population³⁹. Aboriginal young people are almost 24 times more likely to be imprisoned than their non-indigenous counterparts. The table below tracks the rates of indigenous people in juvenile justice centres per 100,000 people as compared to non-indigenous people⁴⁰.

39 Justice Reinvestment for Aboriginal Young People Working Group, *The Facts* (Retrieved 08/01/2013) Justice Reinvestment Campaign for Aboriginal Young People [JCRAYP Website] <http://justicereinvestmentnow.net.au/about-the-campaign/>

40 Kelly Richards, Australian Institute of Criminology, *Trends and Issues in Crimes and Criminal Justice*, (May 2011), pg. 6.

Figure 9 Rate of juveniles in detention per 100,000 population at 30 June, 1994–2008, by Indigenous status



3.1.3. Operational capacity limitations

Capacity is an issue resulting directly from the increasing numbers of incarcerated young people. At the time of the *Noetic Report* the average daily number of young people in juvenile justice centres was 428, despite NSW only having capacity for 424. One of the solutions to this was to transfer some young people to adult prisons, an extremely undesirable strategy. According to their projections, current capacity will be exceeded by 309 by 2015/16 if the rate of increasing detention population continued. This would require the construction of new facilities, at great cost, to be discussed below.

3.2. Increasing costs

It seems a fairly obvious case of cause and effect that as the numbers of young people within the juvenile justice centres increase, the total costs associated with their care and supervision will rise in tandem. Additionally, the construction and running costs of new facilities only add to the total cost of the current system.

3.2.1. Running costs

At the time of the *Noetic Report*, NSW was spending an average of \$566 per young person in custody⁴¹, and this figure had increased to \$652 in 2011⁴². This came to a total of \$103 million in 2007/08⁴³. In 2011 the Juvenile Justice division was transferred to the Department of Attorney General and Justice, so the auditor general no longer provides an individual figure for the cost of juvenile custodial services⁴⁴.

3.2.2. Costs of increasing operational capacities

Increasing the capacity of juvenile justice centres is necessary if they are to accommodate the increasing detention population. The *Noetic Report* criticised the short-term solution of putting some young people into adult prisons when juvenile justice system centres were over capacity, although the Director General of the Department of Juvenile Justice does have broad discretionary power⁴⁵ to direct an older detainee [over 16 years of age] from a detention centre to a correctional centre under s28 of *Children (Detention Centres) Act 1987 (NSW)*⁴⁶. However, a number of other alternatives are available, for example, in 2010 bunk beds were added to two facilities to meet the demand for beds. Additionally, two new 15-bed facilities were opened in 2010 with a third planned for 2013⁴⁷. These expansions mean an increased running cost, simply by virtue of the increased number of juveniles requiring supervision and care. There is an additional outlay though for the actual construction of the new or expanded facilities. The *Noetic Report* estimated that a new 15-bed facility would involve capital costs \$8.5 million, and \$2.8

41 Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System*, 'Report for the Minister of Juvenile Justice' (NSW) [The Noetic Report], (2010).pg 376

42 NSW Auditor-General, Department of Attorney General and Justice Auditor-General's Report (2011) Vol. 7, pg 32.

43 Ibid. pg. 32

44 Ibid. pg. 32

45 This power is tempered somewhat by the Children (Detention Centres) Act itself at ss 2, 2A and by Johnson J's decision in *ID, PF and DV v Director General, Dept of Juvenile Justice* [2008] NSW 966 at [189], a decision made with a focus on procedural fairness rather than the adverse effects of adult prisons on juveniles.

46 Children (Detention Centres) Act 1987 (NSW) s 28.

47 NSW Auditor-General, Department of Human Services Auditor-General's Report (2010) Vol. 6, pg. 64.

million in recurring costs⁴⁸.

3.2.3. Social costs

A UK publication estimated that over a 20-year period not addressing social problems and vulnerabilities would cost the UK government almost £4 trillion⁴⁹. The social problems they enumerated were the same ones linked to communities with high numbers of young people within the juvenile justice system – issues such as crime, mental illness, family dysfunction and breakdown, drug abuse and obesity. They estimated that a transition to an approach of targeted prevention and intervention could minimise these costs and provide returns: “Analysis demonstrated that for every £1 invested annually in targeted early intervention and prevention services, society benefits by between £7.60 and £9.20”⁵⁰. These types of costs are more difficult to quantify and calculate, but there is little doubt that in NSW’s current situation and approach, the potential benefits would be comparable⁵¹.

3.3. Failure to achieve aims

The Department of Juvenile Justice’s statement of purpose is:

*To provide services to young offenders to decrease their reoffending and increase their capacity to successfully reintegrate into their communities*⁵².

An additional aim for the juvenile justice system is to increase community safety. However, statistics and research show that the current system of incarceration does not effectively achieve these goals.

3.3.1. Crime rates and community safety

The increased rates of incarceration seem have had a minimal impact on juvenile crime rates. In the five years from January 2007 to December 2011

48 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 377

49 The Economics Foundation, Action for Children, Backing the Future: Why Investing in Children is Good for us all (2009).

50 Noetic Solutions, op. cit. pg. 377

51 ibid. pg. 511

52 Department of Juvenile Justice, Corporate Plan 2010-2013 (2010), pg. 1

NSW police reported that proceedings against juveniles “fell for eight major categories, rose for one and remained stable for the other seven categories”⁵³.

These rates, and the corresponding stability of community safety, are in line with research findings discussed below which showed no specific deterrent effect was gained through imprisonment. The *Noetic Report* state simply: “greater use of detention is not making NSW a safer place”⁵⁴

3.3.2. Rates of reoffending

The *Noetic Report* noted that over two-thirds of young people who receive a control order will re-offend within two years⁵⁵, while a recent study found that young offenders who receive a custodial penalty are no less likely to re-offend than those who do not (a different result to previous surveys which found they were actually more likely to re-offend)⁵⁶.

3.3.3. Ineffective reintegration

A 2009 study attributed re-offending rates in part to issues which relate to incompletely realised reintegration efforts, such as the unmitigated effect of a prison environment that is “conducive to acquisition of new criminal skills, the stigmatisation effect on offenders and ... the offender’s [reduced] capacity to obtain income by legitimate means”⁵⁷. Additional effects of incarceration on young offenders include a lack of social skill development, decreased likelihood of succeeding in education or employment, or of naturally ‘aging out’ of criminal behaviours, and the increased likelihood of suffering from mental illness⁵⁸.

53 Bureau of Crime Statistics and Research, Crime Fast Fact 03: Is juvenile crime increasing? (26/04/2012)

http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_fastfact_03

54 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 18

55 Ibid, pg. 376-377

56 NSW Bureau of Crime Statistics and Research, ‘The specific deterrent effect of custodial penalties on juvenile re- offending’ (2009), pg. 10.

57 Ibid, pg. 2.

58 Noetic Report, op. cit. pg. 374

3.4. Negative impact on communities

As discussed above, a disproportionate percentage of these young people come from a small number of already disadvantaged or marginalised communities. Taking young people out of their communities and then sending them back, whilst suffering the long-term adverse effects of imprisonment (discussed above in s 3.3.3), does not aid their ability to break out of the disadvantage cycle.

3.4.1. Social disruption

The socially disruptive effect of incarceration is discussed above in 2.1.3. and will only be briefly elaborated on here. This concept of the socially disruptive effect of juvenile imprisonment requires serious consideration.

Characteristically, Tom Calma got to the heart of the matter in a 2009 speech, stating that, “you can’t have a constant drain of people and not expect those left behind to feel the strain in terms of cultural, family and other responsibilities”⁵⁹.

The social bonding theory is complex with its own field of study, but a brief summary is that without the elements of social bonding anti-social behaviour is more likely. Examples of social bonds include:

“attachment to families and peers, commitment to social norms and institutions (school, employment), involvement in activities, and the belief that these things are important”⁶⁰.

Under normal circumstances these bonds are the underlying reason that individuals do not transgress their community’s norms – shared values, attachments and beliefs mean that the desire to deviate is easier to overcome. However, when young people are removed from these supports, the bonds are weakened or ruptured, so that when the young person returns after release, the community’s ability to exert this informal control is

59 Tom Calma, ‘Investing in Indigenous youth and communities to prevent crime’ (Speech Delivered at Indigenous young people, crime and justice conference, Australian Institute of Criminology, 31 August 2009).

60 Travis Hirschi, *Causes of Delinquency* (2009, University of California Press), pg. 16

diminished. This effect is only magnified when one considers the adverse effects described in s3.3.3. When this occurs on a large scale, as a “constant drain”, as is happening in these communities, then community-wide bonds are detrimentally affected too. A vicious cycle begins in which traditionally deviant behaviours are adopted and copied as the new norms. In this way, an inter-generational, community-wide cycle of incarceration and social marginalisation can begin.

3.4.2. *Poor economic prospects*

One of the undesirable norms that can become entrenched in this way is disengagement with education and employment. The interrupted education outcomes and long-term poor employment prospects of young people who have served custodial sentences cannot be underestimated in any consideration of these problems within the communities that so many of them come from.

3.5. Unhelpful political narrative

The final issue to be discussed here is the detrimental effect of current focus on punishment rather than rehabilitation and community safety. Political and media commentary on juvenile crime, and crime generally, and how to deal with it, focus on retribution and as such create an environment that is inhospitable to any attempts to advocate for or accept any model other than our current ‘lock ‘em up’ attitude.

3.5.1. *‘Tough on Crime’ rhetoric*

Paul Papalia notes that in absence of a correlation between crime rates and increasing prison populations, a connection might be drawn instead to the increased use and implementation of ‘tough on crime’ catch phrases and policies⁶¹. While this “popular punitivism” is now widely lauded, a NSW government move in late 2011 to review sentencing with a view towards more non-custodial sentences received an accusation of being ‘soft on crime’ that,

61. Paul Papalia, *Justice Reinvestment – an option for Western Australia?* (2010), pg. 2

perhaps more tellingly, was considered worthy of a response and justification⁶².

3.5.2. Impact on public perceptions

The ‘popular punitivism’ approach is so widespread in part because it appeals to community concerns about crime and juvenile crime. Yet these concerns are usually not founded on an evidentiary base, but through the emotive and occasionally inflammatory political dialogue and media coverage of these issues. One report found that young people were more vulnerable to public judgement because of “their visibility, their occupation of public space, and their tendency to congregate in groups”. It also noted that the perception that they are often targeted by police is “both a symptom of this and feeds that judgment”⁶³. The image of simultaneous symptom and cause can be applied just as accurately to the relationship between public perception and policy creation.

4. What are the solutions?

Considered holistically, the NSW juvenile justice system’s current situation bears a clear resemblance the one in Texas just before they became the original implementers of the JR model: the prisons were filling, costs were mounting, and their tough stance on crime was producing ineffective results. With such a close parallel between that situation and the one currently faced by the NSW juvenile justice system, adopting a JR model is an empirically viable solution. The recommendations below are only the most immediate steps; a more detailed, long-term implementation guide is included in the *Noetic Report*⁶⁴.

62 AAP, NSW Govt Not Soft on Crime: Smith, Sydney Morning Herald (Sydney) 23 January, 2012.

63 NSW Law Reform Commission, Report 104: Young Offenders (2005), pg. 10.

64 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010), pg 192-207.

4.1. Form a centralised body

The Justice Centre’s expertise and experience adds efficiency to their work in assisting policy-makers and stakeholders in developing and implementing policies. To achieve similarly positive results an analogous group ought to be established here.

Research should be conducted to determine the best practice model for the group in terms of whether its nature should be statutory or otherwise, but it is vital that it is non-partisan and has the authority and ability to work cross-departmentally and across sectors in order to facilitate cooperation and marshal resources during the next steps of implementation.

4.2. Begin research and data collection

The government may choose to implement the model through “spiral development”, involving an initial pilot in a trial area before a gradual rollout, or through “immediate implementation”, a single, state-wide reform⁶⁵. Whichever route is chosen though the data-based principles of JR require that the communities chosen must be identified through detailed research.

A common theme in the literature surrounding JR in the Australian context is that demographic/geographic mapping and data is scarce in most jurisdictions. The *Noetic Report* suggests reviewing detention admission data “to determine what is driving increases in the population” and using geographic analysis to “identify communities that have disproportionate numbers in detention, and how money is being spent on programs and services”⁶⁶. This is certainly a good starting point but continued research to the point that the same amount of data as is listed in s2.2.2. is available would be desirable.

65 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 526
66. *ibid.*, pg 543.a.

4.3. Undertake community consultation

JR's fundamentally collaborative nature means that community involvement and goodwill are essential for its success. As discussed above, this involves the sharing of community views on underlying issues and their potential solutions. First though, the communities identified in the research and analysis phase must actually communicate a desire to be a part of the process⁶⁷.

4.4. Evaluate current initiatives

It is important to note that there are already many programs, run by non-government organisations (NGOs) and by government departments, which are working to achieve goals that are in line with the JR principles. These goals may include prevention, early intervention and lessened disadvantage through improved health or education outcomes. As part of the *Noetic Report a Review of Effective Practice in Juvenile Justice*⁶⁸ was included as an enclosure. The review evaluates many programs that are currently running in NSW according to their long-term outcomes and their cost-effectiveness. The results do not need to be repeated here, but the summary of effective practice is useful as an evaluative guide, and has been included below⁶⁹. Additionally, an evaluation of currently effective programs can give guidance on future initiatives and directions.

67 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, 'Report for the Minister of Juvenile Justice' (NSW) [The Noetic Report], (2010).pg 543,

68 Noetic Solutions, Review of Effective Practice in Juvenile Justice 'Report for the Minister of Juvenile Justice (NSW)' (2010).

69. Ibid, v-vi.

Effective Practice Summary from the Noetic Report.

[The] report identifies six key principles to support the implementation of effective practice in juvenile justice:

- **Evidence-based policy formulation.** Policy makers need to take into account the empirical evidence concerning ‘what works’ and what does not work. While ‘get tough’ approaches may be politically attractive, evidence indicates they are not effective. Hence, effective juvenile justice systems are those that ensure policy is guided by scientific research and cost-benefit analyses rather than by political convenience.
- **Avoidance of youth incarcerations wherever possible.** Evidence suggests that the majority of incarcerated juvenile offenders could be treated safely and more effectively outside of custody. Therefore, tertiary responses to youth offending should emphasise community-based programs rather than incarceration. Effective juvenile justice systems should set guidelines to reduce the population of juveniles in custody.
- **Comprehensive and complementary programming.** This requires a suite of primary, secondary and tertiary risk-based programs to address delinquency across the entire developmental lifecycle. Emphasis should be placed on delinquency prevention through early-age intervention, school, family and community-based prevention programs. Where custody is required, appropriate institutional and post-release therapy must also be provided in order to effectively reduce recidivism.
- **Tailored strategies for Indigenous and other culturally diverse groups.** Disproportionate minority contact with the juvenile justice system can only be reduced through tailored strategies that address the unique risk-factors associated with each minority group. For Indigenous Australians for example, this may involve increasing access to alcohol and substance abuse programs and ensuring culturally relevant programming through encouragement of Indigenous participation in juvenile justice and human service initiatives.
- **Whole-of-government collaboration.** Integration of the juvenile justice and welfare/human services systems with police, courts, education and health authorities is crucial. Measures should be taken to maximise stakeholder buy-in and strengthen multi-agency collaboration in all areas, including policy formulation, information sharing, and personnel training.
- **Whole-of-community collaboration.** Effective juvenile justice systems address risk-factors in all facets of the environments of young people through collaboration with a range of community agents including schools, Indigenous and other minority communities and non-government organisations. Government effort is required to encourage community participation in program design and delivery.

4.4.1. Increase funding and support for programs that implement effective JR practices

Having used the effective practice guidelines set out above as an evaluative guide, the model suggests a diversion of a proportion of JR funds to those extant programs which already achieve JR goals, especially those in the communities to be targeted. This is for three reasons: it is more economically sound to fund an existing and effective program than to build one from the ground up; effective programs will already have a deal of social capital which the JR program can build on and from; increasing funding for existing NGOs particularly will improve their capacity more than increasing competition for funding. Consider the *Noetic Report's* observation on NGOs in the juvenile justice sector:

“As a general observation, the NGO sector has a shared vision, but not always a shared response. Limited Government funding, reduced donations and more tender processes have resulted in an increasingly competitive environment between NGOs⁷⁰.”

4.5. Advocate the approach to the public through the media

In order to address the misinformation that has been spread to the community through inflamed political discourse and media coverage, strategies must be employed to broadcast the policy shift from retribution to rehabilitation. This new focus should also be characterised by a bipartisan discourse, much like Victoria's on this topic, so that the focus is on “evidence based policy, rather than ‘scoring political points’ by criticising the opposing party's stance on juvenile justice issues”⁷¹. An effective way to signal this united shift, and to responsibly inform the community of the reasons behind it, would be through the same media outlets that have contributed to the current imbalance in

70 Noetic Report, Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, ‘Report for the Minister of Juvenile Justice’ (NSW) [The Noetic Report], (2010).pg 280

71 Ibid, 148

public opinion⁷².

6. Conclusion

The current situation in juvenile justice in NSW is one that must change. Increasing populations in juvenile justice centres are creating poor outcomes for the young people that Youth Action represents, for the communities that they come from and for community at large. Vast expenditure with little return is not financially viable, and the detrimental social impact on communities and individuals only make an appraisal of the current system only supports this.

Youth Action recommends further research into the Justice Reinvestment model, resulting in the introduction of this model in NSW. NSW's juvenile justice system so closely corresponds to that of other jurisdictions where Justice Reinvestment have effectively implemented this model, therefore Youth Action believes it would be equally effective in a NSW context. We recommend taking the steps outlined throughout this paper and in the *Noetic Report* in order to achieve a better return on investment for juvenile justice, and more positive outcomes for young people and their communities, especially those who are of Aboriginal descent or groups that are vulnerable due to the current system.

72 Noetic Solutions, A Strategic Review of the New South Wales Juvenile Justice System, 'Report for the Minister of Juvenile Justice' (NSW) [The Noetic Report], (2010), pg 158-159

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