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# Trends & issues

in crime and criminal justice



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**Foreword** | *Indigenous over-representation in the justice system is a challenge facing Australian society. Recently, it has been suggested that increased use of diversionary processes could reduce Indigenous over-representation. Reported in this paper are the findings of a project examining the 1990 offender cohorts' contact with the Queensland juvenile justice system. The project focused on the extent of Indigenous over-representation, evidence of disparity in how Indigenous and non-Indigenous young people were processed and the impact of diversion on re-contact with the juvenile system. Findings indicated that Indigenous young people were more likely than non-Indigenous young people to have had greater levels of contact with the juvenile justice system. Furthermore, Indigenous young people were more likely than non-Indigenous young people to appear in court for their first offence. However, while young people who were diverted for their first offence were less likely than those who appeared in court to have further contact, this reduction only held for female non-Indigenous young people. The authors conclude that to reduce youth offending, programs need to be designed and implemented that address the complex needs of persistent young offenders.*

Adam Tomison  
Director

## *Police diversion of young offenders and Indigenous over-representation*

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Indigenous over-representation in the criminal justice system is recognised as an important social policy issue and 'closing the gap' is a key priority for the sector, promoted through the National Indigenous Law and Justice Framework (SCAG 2009) and in Aboriginal and Torres Strait Islander justice agreements and plans that exist in every jurisdiction (ie NSW Aboriginal Justice Advisory Council 2003; Queensland Government 2001a; WA Department of Justice 2004). Evidence suggests that over-representation increases with each successive discretionary stage in the criminal justice system, resulting in higher levels of over-representation in the more serious processes and outcomes (Gale, Bailey-Harris & Wundersitz 1990; Luke & Cunneen 1995).

It has been suggested that Indigenous over-representation could be reduced through increased use of diversion (Cunneen, Collings & Ralph 2005; Luke & Cunneen 1995). While diversion involves any process that prevents young people from entering or continuing in the formal criminal justice system, it typically involves pre-court processes such as police cautioning or conferencing (Joudo 2008; Polk et al. 2003). Cautioning and conferencing are typically available to first time and non-serious offenders. For these to occur requires sufficient evidence to establish that an offence took place, an admission of guilt and the young person's consent to engage in the cautioning or conferencing process (Hedderman & Hough 2006; Polk et al. 2003).

Police cautioning and conferencing processes are advocated because they are viewed as a swift and economically efficient response to offending, which is often non-serious and transient in nature (Harrison 1992; Potas, Vining & Wilson 1990; Wundersitz 1997). They may also reduce the criminogenic effects of formal justice system contact as a result of negative labelling and stigmatisation (Bernburg & Krohn 2003; Dodge et al. 2003; Leve & Chamberlain 2005).



Additionally, studies assessing whether conferencing is restorative have consistently found that victims are satisfied with the process (73–79%), believe it is fair for offenders (97–98%) and are satisfied with outcomes (80–97%; Daly 2001; Hayes, Prenzler & Wortley 1998; Palk, Hayes & Prenzler 1998; Strang et al. 1999).

Given these benefits of diversion and the suggestion that such processes could be used to reduce Indigenous over-representation, it is important to understand how diversion is used to respond to offending and its impact on reoffending. A recent study explored whether there was disparity in the use of diversion as a response to offending by Indigenous and non-Indigenous young people in New South Wales, South Australia and Western Australia (Snowball 2008a, 2008b). Findings indicated that Indigenous young people were less likely to be diverted in all three jurisdictions, even after controlling for the effects of age, sex, offence type and prior history. Findings from several studies indicate that young people who are diverted through cautioning or conferencing are less likely to have re-contact with the criminal justice system than are young people who have a court appearance (Cunningham 2007; Dennison, Stewart & Hurren 2006; Hayes & Daly 2004; Stewart et al. 2007; Vignaendra & Fitzgerald 2006). However, evidence indicates that regardless of the nature of the contact (caution, conference, or court), Indigenous young people are more likely than non-Indigenous young people to

have re-contact with the system (Dennison et al. 2006; Hayes & Daly 2003; Luke & Lind 2002).

## Aims and research questions

This study aimed to contribute to the emerging literature examining disparity in the use of police diversion and whether the impact of police diversion on re-contact varies based on Indigenous status. The study addressed three research questions:

- What proportion of Indigenous and non-Indigenous young people had contact with the juvenile justice system and what was the extent of this contact?
- What processes were used to respond to offending by Indigenous and non-Indigenous young people and was there disparity based on Indigenous status?
- What impact did police diversion have on re-contact with the juvenile justice system for Indigenous and non-Indigenous young people?

## Method

The project involved creating and analysing a Queensland-based offender cohort of young people born in 1990 and their contacts for formal police cautioning, police-referred conferencing and finalised juvenile court appearance events. The research sample included 8,236 young people who had contact with the Queensland juvenile justice system between 2000 and 2007 when aged 10 to 16 years

(Table 1). In Queensland, 17 year old offenders are considered adults and were therefore not included in the current study.

The longitudinal dataset was created by obtaining three separate datasets from the Queensland Police Service and Department of Communities and using identifying information (names and dates of birth) to link within and between the datasets. Consistent with Information Standard 42 (IS42), data linkage was carried out within government and only de-identified data were released to the researchers (Queensland Government 2001b). Data cleaning was undertaken to ensure consistency within and between the datasets for the variables of *date of birth*, *sex* and *Indigenous status*. Discrepancies were resolved based on the balance of probabilities. Missing values were propagated using information from additional contacts that young people had had with the system. After propagating values, sex was missing for 38 (0.5%) young people and *Indigenous status* was missing for 1,413 (17.2%) young people. All missing values for *sex* and 1,357 (96%) missing values for *Indigenous status* related to cautioning events involving the cohort. Nature of first contact (caution, conference or court) was determined by selecting the earliest event date; either the date of the caution event, conference event, or finalised court appearance event.

## Results

The first research question addressed was *What proportion of Indigenous and non-Indigenous young people had contact with the juvenile justice system and what was the extent of this contact?* To address this question, proportions and rates were calculated using population statistics relating to the number of Indigenous males (n=1,491) and females (n=1,543), and non-Indigenous males (28,320) and females (26,600), who were aged 16 years in 2006 (ABS 2009, 2008). There were 8,236 young people born in 1990 who had had contact with the juvenile justice system. These young people were responsible for 17,242 contacts with the system for 45,519 offences. This represents 14 percent of all Queensland

**Table 1** Distinct young people attending a caution, police referred conference and/or finalised juvenile court appearance for an offence

	Police caution (n=7,169)		Police youth justice conference (n=762)		Juvenile court appearance (n=2,419) <sup>a</sup>			
	n	%	n	%	n	%		
Yes	7,169	87.04	Yes	564	6.85	Yes	296	3.59
			No	6,605	80.20	No	268	3.25
No	1,067	12.96	Yes	198	2.40	Yes	42	0.51
			No	869	10.55	No	156	1.89
Total	8,236	100.00				Yes	869	10.55

a: Includes indefinite court referrals and pre-sentence court referral conferences

17 year olds having at least one contact with the juvenile justice system. However, when gender and Indigenous status were examined it was found that two in three (n=934, 62.6%) of all Indigenous males and one in four (n=429, 27.8%) Indigenous females had had an offending contact by the age of 17 years compared to one in 10 (n=3,611, 12.8%) non-Indigenous males and one in 20 (n=1,823, 6.9%) non-Indigenous females.

Two-thirds (n=5,244, 63.7%) of young people who had had contact with the juvenile justice system had only one contact. However, those who had had more than one contact (n=2,992, 36.3%) accounted for two-thirds of all contacts (n=11,998, 69.6%). Of young people who had had contact with the juvenile justice system, one-quarter (n=232, 24.9%) of Indigenous

males and one-fifth of Indigenous females (n=71, 16.6%) had six or more contacts. A smaller proportion of non-Indigenous males (n=211, 5.8%) and females (n=41, 2.3%) who had had contact with the juvenile justice system had six or more contacts.

The second research question addressed was *What processes were used to respond to offending by Indigenous and non-Indigenous young people and was there disparity based on Indigenous status?* Of the 8,236 young people in the cohort, 7,169 had had at least one caution, 762 had had at least one police-referred conference and 2,419 had had at least one finalised court appearance. When the response of the criminal justice system was explored based on Indigenous status and sex, differences were found in the proportions who had had at least one caution and court appearance

and in the average number of cautions and court appearances. No differences were found in the proportions who had at least one police-referred conference, or in the average number of conferences held based on sex and Indigenous status.

A smaller proportion of Indigenous males (n=757, 81%) and females (n=331, 77.2%) who had had contact with the juvenile justice system had at least one caution, compared to non-Indigenous males (n=3,074, 85.1%) and females (n=1,624, 89.1%). However, Indigenous males (M=1.81, SD=1.15) and females (M=1.60, SD=1.22) who were cautioned were more likely to be cautioned a greater number of times than non-Indigenous males (M=1.37, SD=0.69) and females (M=1.21, SD=0.50; F(3)=113.54, p<.001). Conversely, a larger proportion of Indigenous males (n=558, 59.7%) and females (n=212, 49.4%) who had had contact with the criminal justice system had at least one finalised court appearance, compared to non-Indigenous males (n=1,248, 34.6%) and females (380, 20.8%). Similar to young people cautioned, Indigenous males (M=4.44, SD=3.87) and females (M=3.87, SD=4.13) who had had a finalised court appearance had a larger number of finalised court appearances than non-Indigenous males (M=2.27, SD=2.48) and females (M=1.86, SD=1.80).

Given that offending history and offence seriousness impact on the use of police diversion, whether there was disparity based on Indigenous status was explored, controlling for these factors. The number of previous contacts was controlled for by limiting analyses to first contacts only. This was essential given that more serious dispositions (ie court) tended to be used for young people who had a greater number of contacts with the system. Offence seriousness was controlled for by excluding all finalised court appearances that had a supervised order recorded as the most serious outcome (n=154). The remaining traffic offences (n=178) were also excluded because they were not eligible for diversion.

A multinomial logistic regression was performed exploring the impact of Indigenous status, sex, most serious offence

**Table 2** Parameter estimates and significance of factors impacting on system response

	Odds ratio	95% CI (Low)	95% CI (High)
<b>Caution vs court comparison group</b>			
Age at first contact	0.67***	0.63	0.72
Total number of offences	0.75***	0.71	0.79
Indigenous vs non-Indigenous	0.34***	0.28	0.41
Male vs female	1.04	0.87	1.25
Offences against the person vs other offences	1.55**	1.15	2.07
Drug offences vs other offences	3.67***	2.31	5.86
Property offences vs other offences	2.66***	2.13	3.31
Public order offences vs other offences	1.09	0.84	1.41
<b>Police conferencing vs court comparison group</b>			
Age at first contact	1.00	0.88	1.13
Total number of offences	1.06	0.98	1.15
Indigenous vs non-Indigenous	0.51***	0.34	0.77
Male vs female	1.27	0.87	1.84
Offences against the person vs other offences	3.07***	1.81	5.20
Drug offences vs other offences	0.50	0.11	2.24
Property offences vs other offences	2.05**	1.30	3.24
Public order offences vs other offences	0.27**	0.11	0.67
<b>Caution vs police conferencing</b>			
Age at first contact	0.67***	0.60	0.75
Total number of offences	0.71***	0.65	0.76
Indigenous vs non-Indigenous	0.66*	0.45	0.96
Male vs female	0.82	0.58	1.16
Offences against the person vs other offences	0.50**	0.31	0.81
Drug offences vs other offences	7.31**	1.74	30.70
Property offences vs other offences	1.29	0.85	1.97
Public order offences vs other offences	3.99**	1.65	9.63

\* p<.05, \*\* p<.01, \*\*\* p<.001

**Table 3** Re-contact by system of first contact, by sex and Indigenous status (%)

System of first contact <sup>a</sup>	Male						Female						Total	
	Indigenous		Non-Indigenous		Unknown		Indigenous		Non-Indigenous		Unknown			
	n	% with re-contact	n	% with re-contact	n	% with re-contact	n	% with re-contact	n	% with re-contact	n	% with re-contact	n	% with re-contact
Caution	628	73.4	2,153	52.8	661	8.0	268	63.1	1,233	32.2	388	6.7	5,367	41.9
Police conference	19	52.6	54	51.9	22	0.0	14	50.0	17	29.4	10	0.0	136	36.8
Court	95	73.7	136	58.1	2	0.0	56	71.4	76	47.4	2	0.0	367	61.3
Total	742	72.9	2,343	53.1	685	7.7	338	63.9	1,326	33.0	400	6.5	5,870	43.0

a: Controlling for right censoring by excluding young people aged 16 and above

type, age at first contact and total number of offences (capped at 8+) on nature of first contact (caution, conference or court). The overall model was significant ( $\chi^2(16)=627.17$ ,  $p<.001$ ) and the parameter estimates and significance of factors impacting on the response of the criminal justice system are presented in Table 2. The sex of the young person was the only variable that was not significant in the overall model. After controlling for all the factors in the model, Indigenous young people were 2.9 times less likely than non-Indigenous young people to be cautioned compared to going to court, two times less likely to undergo conferencing with police compared to going to court and 1.5 times less likely to be cautioned compared to undergoing police referred conferencing.

The third research question addressed was *What impact did police diversion have on re-contact with the juvenile justice system for Indigenous and non-Indigenous young people?* In addition to controlling for number of previous contacts and offence seriousness, it was necessary to control for the censoring of data which occurs when young people turn 17 years of age and leave the juvenile justice system. The average length of time taken for young people to re-contact was calculated ( $M=57.1$  weeks,  $SD=58.4$  weeks) and young people who were aged 16 years and over ( $n=2,034$ ) were excluded from these analyses.

A significant difference was found in re-contact status based on whether a young person was cautioned, conferenced or appeared in court for their first contact ( $\chi^2(2)=55.165$ ,  $p<.001$ ). Young people in the court comparison group were more likely to

have re-contact (61.3%) than young people who had a police-referred conference (36.8%) or police caution (41.9%). When nature of first contact (caution, conference or court) was explored based on sex and Indigenous status, young people who had an 'unknown' Indigenous status tended to be cautioned and not have re-contact (Table 3). Whether the proportion of young people who had had re-contact varied based on nature of first contact was then explored for each demographic group. There was a significant difference in the proportion of female non-Indigenous young people who had had additional contact based on nature of contact ( $\chi^2(2)=7.55$ ,  $p<0.05$ ). Fewer female non-Indigenous young people who had had a police conference or caution had re-contact compared to female non-Indigenous young people who appeared in court. There were no significant differences in the proportion of Indigenous and non-Indigenous males and Indigenous females who had had re-contact based on nature of first contact.

## Discussion

The findings provide further evidence that Indigenous people are over-represented in the criminal justice system. Two-thirds of Indigenous males and one-quarter of Indigenous females in the general population had had contact with the juvenile justice system, while the proportion of non-Indigenous young people who had had contact was much lower. The high rates of Indigenous contact highlight the need for early intervention programs to prevent Indigenous people having initial contact with the system. While no published studies could be located evaluating the effectiveness

of early intervention programs at reducing offending by Indigenous young people, when targeted in the general population, such programs have proven to be a cost-effective method of preventing offending (Allard, Ogilvie & Stewart 2007; Farrington & Welsh 2003; Washington State Institute for Public Policy 2006, 2004, 2001). Such programs include Multi-Systemic Therapy (MST), parental training programs, home visiting programs, day-care or preschool programs and home or community programs. There is clearly a need to develop, implement and evaluate early intervention programs to reduce Indigenous over-representation in the criminal justice system.

While Indigenous young people in the general population were found to be 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2.9 times less likely to be cautioned than they were to appear in court, two times less likely to have a police conference than appear in court and 1.5 times less likely to be cautioned than attend a conference for their first contact with the system. This suggests that preventing initial contact for Indigenous young people is somewhat more important for 'closing the gap' than addressing the issue of disparity in the use of diversionary processes. Nevertheless, the reasons for this disparity need to be understood to ensure an equitable system. One interpretation of disparity in the use of diversion between Indigenous and non-Indigenous young people is that it reflects racial bias (Cunneen 2006). However, a range of alternative explanations for the disparity exist. One explanation

is that there are differences between Indigenous and non-Indigenous young people in the proportion who plead guilty and are therefore eligible for diversion (Snowball 2008a). Anecdotal evidence suggests that Indigenous young people in Queensland may be receiving legal advice not to plead guilty. The disparity may also be related to the availability of trained officers in rural and remote regions and/or the availability of the young person's guardian.

Another possible explanation for the disparity is that Indigenous young people may have more informal contact with police than non-Indigenous young people. Further, there may be differences in the attitudes and demeanours of young people and the particular circumstances as well as seriousness of offences. Future research is required to improve understanding about the causes of disparity, which may assist in formulating policy to reduce the disparity and ensure an equitable system.

While police diversion appears to be a cost-effective response (as two-thirds of young people only have one contact and diversion was related to lower re-contact rates when compared to the court comparison group), the reduction in re-contact was for young people whose Indigenous status was 'unknown' and for non-Indigenous females. The offending profiles of many Indigenous young people are such that diversionary programs designed for first-time and non-serious offenders are not viable options. About one-quarter of Indigenous males and one-fifth of Indigenous females who had had contact with the juvenile justice system had six or more contacts before they turned 17 years of age and left the Queensland juvenile justice system. The high proportion of Indigenous young people with repeat contact highlights the existence of an opportunity for targeted welfare-orientated interventions to address the criminogenic risks and needs of Indigenous young people to reduce re-contact.

While no published evaluations have focused on the prevention of re-contact by Indigenous young people were identified, several frameworks exist that incorporate police referral to treatment interventions. These frameworks could be more widely adopted to target interventions towards Indigenous young people at risk of chronic offending and include Coordinated Response to Young People at Risk in Queensland, Targeted Programming which operates in New South Wales and the Youth Assist Program in Victoria. Other programs target more serious young offenders who are at risk of serving, or who have previously served, time in custody, such as the Intensive Supervision Program in Western Australia which is based on MST.

The findings of the current study should be interpreted in light of four main limitations. First, despite attempts to construct an appropriate court comparison group controlling for offending history, offence seriousness and right censoring, any differences in disparity or re-contact could be due to selection bias. Second, the study was based on officially recorded contact that young people had had with the system, which underestimates the extent of offending. Third, about one-fifth of young people did not have an Indigenous status indicator and most people without an indicator were cautioned. These young people represent less serious offenders and whether the effectiveness of cautioning in reducing re-contact for Indigenous and non-Indigenous young people would change if these data were not missing is open to debate. Finally, the current study did not explore whether there was disparity in police diversion or whether the impact varied for subsequent contacts or based on how the caution or conference was administered. Despite these limitations, the current study provides additional support to the vast literature highlighting the need to develop, implement and evaluate appropriate programs to reduce initiation of offending and reoffending by Indigenous young people.

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