Police Diversion of Young Offenders and Indigenous Over-Representation

Troy Allard, Anna Stewart, April Chrzanowski, James Ogilvie, Dan Birks and Simon Little

Contact Author: Troy Allard Telephone: (07) 3735 5649 email: <u>t.allard@griffith.edu.au</u>

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

Recently, 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 justice system, it typically involves pre-court processes such as police cautioning or conferencing (Polk, Adler, Muller & Rechtman, 2003). Cautioning and conferencing are typically available to first time and non-serious offenders, and for the processes to occur require sufficient evidence to establish that an offence occurred, an admission of guilt, and the young person's consent to engage in 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 transient in nature (Harrison, 1992; Potas, Vining, & Wilson, 1990; Wundersitz, 1997). They may also reduce the criminogenic effects of formal justice system contact which result from negative labelling and stigmatisation (Bernburg & Krohn, 2003; Dodge, Lansford, Burks et al., 2003; Leve & Chamberlain, 2005). Additionally, conferencing may be justified based on restorative ideals as 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, Barnes, Braithwaite, & Sherman, 1999).

Given the 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 (NSW), South Australia (SA), and Western Australia (WA) (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 recontact with the system than young people who have a court appearance (Cunningham, 2007; Dennison, Stewart & Hurren, 2006; Hayes & Daly, 2004; Stewart, Allard, Gray & Ogilvie, 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 recontact with the system (Dennison et al., 2006; Hayes & Daley, 2003; Luke & Lind, 2002).

Aims and Research Questions

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

RQ1: What proportion of Indigenous and non-Indigenous young people had contact with the juvenile justice system and what was the extent of this contact?

RQ2: What processes were used to respond to offending by Indigenous and non-Indigenous young people and was there disparity based on Indigenous status?

RQ3: What impact did police diversion have on recontact with the juvenile justice system for Indigenous and non-Indigenous young people?

Method

The project involved the creation and analyses of a Queensland based offender cohort including 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 (Table 1).

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

	lico coutio	nad		Police YJC	`	luvanila aquet				
Police cautioned				Police 13C	,	Juvenile court				
(n=7,169)				(n=762)		appearance (n=2,419) a				
	N	%		Ν	%		N	%		
Yes	7,169	87.04	Yes	564	6.85	Yes	296	3.59		
						No	268	3.25		
			No	6,605	80.20	Yes	1,212	14.72		
					00.20	No	5,393	65.48		
No	1,067	12.96	Yes	198	2.40	Yes	42	0.51		
					2.10	No	156	1.89		
			No	869	10.55	Yes	869	10.55		
Total	8,236	100								

^a Includes Indefinite Court Referrals and Pre-Sentence Court Referral Conferences

The longitudinal dataset was created by obtaining three separate datasets from the Queensland Police Service (QPS) and Department of Communities (DoC) and using identifying information (names and date of birth) to link within and between the datasets. Consistent with *Information Standard 42* (IS42), data linkage was carried out within government and only deidentified data were released to the researchers. Data cleaning was undertaken to ensure consistency within and between the datasets for the variables 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 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 (96.0%) missing values for Indigenous status related to cautioning events involving the cohort. System of first contact was determined by selecting the system with 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 in 2006 (ABS, 2008). There were 8,236 young people born in 1990 who 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% of all Queensland 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 an offending contact by age 17 compared to one in ten (n=3,611, 12.8%) non-Indigenous males and one in twenty (n=1,823, 6.9%) non-Indigenous females.

Two thirds (n=5,244, 63.7%) of young people who had contact with the juvenile justice system only had one contact. However, those who 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 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 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 at least one caution, 762 had at least one police referred

conference and 2,419 had at least one finalised court appearance. When system response was explored based on Indigenous status and sex, differences were found in the proportions who 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, 81.0%) and females (n=331, 77.2%) who 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%) with contact had at least one finalised court appearance compared to non-Indigenous males (n=1,248, 34.6%) and females (380, 20.8%). Similarly to young people cautioned, Indigenous males (M=4.44, SD=3.87) and females (M=3.87, SD=4.13) who 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 needed to be explored controlling for these factors. Number of previous contacts was controlled for by limiting analyses to first contacts. This was essential given that more serious dispositions (i.e.: 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 most serious outcome recorded as a supervised order (n=154). The remaining traffic offences (n=178) were also excluded because they were not eligible for diversion.

A multinominal regression was performed exploring the impact of Indigenous status, sex, most serious offence type, age at first contact and total number of offences (capped at 8+) on system of first contact. The overall model was

significant (X^2 (16) = 627.17, p<.001) and the parameter estimates and significance of factors impacting on system response are presented in Table 2. Sex 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, 2 times less likely to be conferenced by police compared to going to court, and 1.5 times less likely to be cautioned compared to being conferenced by police.

The third research question addressed was *What impact did police diversion have* on recontact 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 right censoring of data which occurred when young people turned 17 and left the juvenile justice system. The average length of time taken for young people to recontact was calculated (*M*=57.1 weeks, *SD*=58.4 weeks) and young people who were aged 16 and over (n=2,034) were excluded from these analyses.

A significant difference was found in recontact status based on system of first contact ($\chi 2(2)=55.165$, p<.001). Young people in the court comparison group were more likely to have recontact (61.3%) than young people who had a police referred conference (36.8%) or police caution (41.9%). When system of first contact was explored based on sex and Indigenous status, young people who had an 'unknown' Indigenous status tended to be cautioned and not to have recontact (Table 3). Whether the proportion of young people who had recontact varied based on system 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 additional contact based on system of contact ($\chi 2(2)=7.55$, p<0.05). Fewer female non-Indigenous young people who had a police conference or caution had recontact 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 recontact based on system of first contact.

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

	Odds	95% CI	95% CI
	Ratio	(Low)	(High)
Caution vs. Court Comparison Group			
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
Police Conferencing vs. Court Comparison Group			
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
Caution vs. Police Conferencing			
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: Percent with recontact by system of first contact, sex and Indigenous status

	Male						Female					Total			
	Indigenous		Non-Indigenous		Unknown		Indigenous		Non-Indigenous		Unknown		_ Total		
System of First															
Contact ^a	z	N % with Recontact		N % with Recontact		N % with Recontact		N % with Recontact		N % with Recontact		N % with Recontact		N % with Recontact	
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

Discussion

The findings provide further evidence that Indigenous people are grossly over-represented in the justice system. Two-thirds of Indigenous males and one-quarter of Indigenous females in the population had contact with the juvenile justice system while the proportion of non-Indigenous young people who 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 & Walsh, 2003; Washington State Institute for Public Policy, 2001, 2004, 2006). 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.

While Indigenous young people in the population were found to be 4.5 times more likely to have contact than non-Indigenous young people, they were 2.9 times less likely to be cautioned than appear in court, 2 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. This suggests that preventing initial contact by Indigenous young people is somewhat more important than addressing the issue of disparity. 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 that 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 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 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 recontact rates when compared to the court comparison group, the reduction in recontact 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 contact with the juvenile justice system had six or more contacts before they turned 17 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 recontact.

While no published evaluations focused on the prevention of recontact by Indigenous young people could be 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* (CRYPAR) 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 or who have previously served time in custody, such as the *Intensive Supervision Program* in Western Australia which is based on Multisystemic Therapy.

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 recontact could be due to selection bias. Second, the study was based on officially recorded contact that young people 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 at reducing recontact 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 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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