BACKGROUND TO MANDATORY SENTENCING OF JUVENILE OFFENDERS: A Northern Territory perspective

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INTRODUCTION:
The draft *Juvenile Justice Amendment (No.2) Bill 1996* was tabled for discussion at the August 1996 sittings of the Northern Territory Legislative Assembly. The bill contained a proposed schedule of offences including car theft, criminal damage, breaking and entering, and stealing that would result in compulsory imprisonment for convicted adult and juvenile offenders. The bill calls for adult offenders to be given an automatic 14 day imprisonment term for the first offence, 90 days for a second and a minimum 12 month prison term for repeat offences. For juveniles a second conviction would result in a 28 day punitive work order or 28 days detention, with repeat offenders facing compulsory imprisonment at the discretion of the court.¹ Convicted juvenile offenders "shall, no later than 28 days after attaining the age of 17 years, be

transferred from the detention centre to a prison, within the meaning of the Prisons (Correctional Services) Act, to serve the remainder of the sentence.  

On August 20, 1996 the Attorney General, the Hon. Denis Burke MLA made a statement on the criminal justice system and the victims of crime. Within his statement Burke discussed a number of issues relevant to this paper concerning juvenile crime and punishment, including: punitive work orders, community service orders (CSO), repeat offenders, compulsory sentencing and prison populations. Neil Bell MLA (MacDonnell) responded for the Opposition saying that the Northern Territory Labor Party supported the proposals but highlighted that issues involved with crime prevention were missing from the statement.

This research paper will discuss issues involved with the juvenile justice system in Australia (with particular reference to repeat offender legislation in WA) and will incorporate a number of readings dealing with all of the above subjects, including prevention.

3. JUVENILE JUSTICE IN THE NORTHERN TERRITORY SINCE 1995:
(For an overview of Juvenile Justice in the Northern Territory up until 1995 please see the accompanying research paper no. 1)

Amendments to the Juvenile Justice Act 1993 (NT) were passed in May 1995 which included ensuring that juvenile offenders were to be transferred to prison within 28 days after turning the age of 17.

In June the 1995 Juvenile Crime Workshop was held in Katherine. The main foci of the two day workshop were: the effect of alcohol and drugs on Katherine youth,

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1 Northern Territory of Australia. “Clause 8. Division 3 - Repeat Offenders - Subdivision 1 - Compulsory Detention - 53AG Detention Under This Division”, Juvenile Justice Amendment Bill (No.2) 1996.
4 Poole, Eric. (Minister for Correctional Services) Media Release. 18.5.95. Ref: E-0308-95.
ascertaining what services the town had available for its youth and what was needed to address the issues surrounding offending youth. The Hon. Eric Poole MLA said that in the Katherine region government statistics showed that 75% of convicted offenders break the law while under the influence of alcohol. Poole, at the workshop, stated that Northern Territory (NT) Government initiatives had resulted in a 67% fall in the number of juveniles jailed since 1989, although a 2% increase had been recorded in the number of juveniles apprehended between 1993-1994. Poole believed that the reduction of detentions coincided with implementation of juvenile crime programs which begun in the NT in 1989.

Since the introduction of the *Juvenile Justice Act* there have been calls for changes in legislation to empower magistrates and law enforcement authorities to implement harsher sentencing of juvenile offenders. In December 1995 the Chief Minister, Shane Stone, called for the introduction of mandatory jail sentencing for housebreakers. In an article in the *NT News* on January 9, 1996, Karl Condon reported that members of the NT Police backed Stone’s call in a time (school holidays) when juvenile crime is historically high.

At the end of August 1996 the 6th annual NT Neighbourhood Watch conference was held under the theme of “Juvenile Crime and the Community” and was attended by 78 participants including police, politicians and magistrates. Emphasis was placed on the intended amendments to the Act, the role of the courts in lowering the incidence of juveniles re-offending and the role of the Surf Task Force in apprehending juvenile criminals.

(a) The Northern Territory Juvenile Justice Boards of Management

The 1995/96 *Northern Territory Annual Report* of the Juvenile Justice Board of Management (Northern Region) lists information provided to the Board during this time as:

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6 Poole, Eric. (Minister for Correctional Services) *Media Release. 7.6.95*. Ref: E-0365-95.
7 Warwick, Stanley. "NT 'Not Jailing as Many Kids'"*, *NT News*. 8.6.95.
9 "Groups Tackle Youth Crime", *NT News*. 1.9.96.
* 1995 Juvenile Crime Workshop Outcome Document;
* summary of the deliberations of the Working Group established in Katherine to consider the recommendations of the 1995 Juvenile Crime Workshop;
* overview of the role, history and procedures of the Katherine Community Aid Panel;
* overview of the diversionary conferencing project being trialed by police in Alice Springs and Yuendumu;
* overview of the Police and Ethnic Youth Summit held in Melbourne on July 7-9, 1995;
* Territory Status report prepared for the Australasian Juvenile Justice Administrators' Conference held on May 16, 1996;
* information regarding the department restructure (juvenile detention centres transferred from the Probation, Parole and Juvenile Justice division to the Institutions division), and an overview of each division's functions and programs;
* briefing on the NT Review of Forensic Mental Health Services;
* Amendments to the Juvenile Justice Act; and
* minutes of the meetings of the Southern Region Juvenile Justice Board of Management.\(^\text{10}\)

The Board listed its priorities for the 1996/97 period as:

* monitor current juvenile justice programs to ensure the range of sentencing alternatives continue to be available and properly administered;
* monitor statistics relating to juvenile justice programs, including length of detention sentences served. The Board was encouraged by the decreasing detention rates under the current regime, and wished to monitor any changes which may flow from the reported calls for harsher sentences;
* endorse and encourage community organisations which provide services to juvenile justice clients and their families or caregivers;

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\(^\text{10}\) Juvenile Justice Board of Management (Northern Region). 1995/96 Northern Territory Annual Report. part 3.
* explore ways of improving the Juvenile Offender Placement Program in the Darwin Region;
* examine pre and post release programs for juvenile detainees; and
* explore the range and availability of parent/carer support services in the region, and disseminate information on those services to people who would benefit from them.  

Graphs and statistics of probation orders, CSOs, juveniles held in detention and caseloads active from 1990-1996 in the Northern Region of the NT are available as reading No.1.

The *1995/96 Northern Territory Annual Report* of the Juvenile Justice Board of Management (Southern Region) lists information provided to the Board during this time as:

* receiving a copy of the Outcome Document of the 1995 Juvenile Crime Workshop, held in Katherine;
* the deliberations of the Juvenile Crime Working Party, established to consider the recommendations made at the 1995 Juvenile Crime Workshop;
* the Community Justice Programme, a trial Diversionary Conferencing project conducted by the NT Police, as an alternative to going to Court for young offenders;
* the Biennial Conference and Exposition of the Australian Crime Prevention Council held in Adelaide and Burra, South Australia (SA) from November 19-24, 1995;
* the establishment of Protocols between different agencies in relation to dealing with young offenders;
* amendments to the *Juvenile Justice Act*; and
* the activities of the Juvenile Justice Board of Management, Northern Region.  

The Board listed its priorities for the 1996/97 period as:

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* discussions are taking place to use Aranda House as a short term remand facility to avoid youth being held in prison cells;
* continue to monitor trends in juvenile crime patterns in the NT and the effects of any diversionary initiatives introduced;
* continuing to be advised on the range of rehabilitation programs available for young offenders from Non-Government Agencies; and
* continue to support Police Community Justice Programs and the police as an alternative to the criminal justice system for offenders who have committed less serious offences.  

Graphs and statistics of probation orders, CSOs and juveniles held in detention from 1990-1996 in the Southern Region of the NT are available as reading No.2.

4. THE JUVENILE JUSTICE AMENDMENT (NO.2) BILL 1996:
In August 1996 the Attorney General, the Hon. Denis Burke, MLA, tabled draft legislation for amendments to the Juvenile Justice Act which included automatic detention for second-time offenders between 15 and 17 years of age. Burke stated his Government does not:

...resolve from the basic tenet of our justice system that those who break the law must suffer the consequences and that those deserving of punishment will be punished.  

The *NT News* reported that the Australian Human Rights Commissioner, Chris Sidoti, believed that the NT “would be in breach of international conventions on children’s rights if it adopted mandatory sentencing proposals for juvenile offenders”. (see reading No.3 for United Nations children’s rights) The article also reported that the legislation had been criticised by legal, human rights and civil liberties groups.  

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15 “NT Jail Term For Teen Thieves ‘inhumane’”, *NT News*: 22.8.96.
(a) Community Service Orders
CSOs have been used in the Territory as a form of punishment for juvenile offenders, but have been perceived as not working effectively towards rehabilitation. Bell stated:

We support the introduction of stronger community service orders... We do not believe that the community service order system has worked effectively enough because the orders have been treated lightly by many involved in carrying them out. Worse still, they have been administered lightly by administration.  

The Juvenile Justice Advisory Council of NSW's publication *Aboriginal Over-Representation and Discretionary Decisions in the NSW Juvenile Justice System* (1995) showed that 65.9% of non-Aboriginal young people and 61.1% of Aboriginal young people (NSW) had not received a CSO prior to the imposition of a control order.  

Lack of successful use of CSOs has caused authorities to look at a number of other means of punishing juvenile offenders.

(b) Punitive Work Orders
Clause 8. Division 3 - Repeat Offenders - Subdivision 2 - Punitive Work Orders 53AH-AM in the proposed amendments to the *Juvenile Justice Bill* states: “The Minister may approve work as a project to be participated in under a punitive work order” which will last 224 hours for a 28 day order. Punitive Work Orders (PWO) will only be given to offenders deemed suitable to participate in an approved project. If conditions are broken the PWO can be revoked and a detention term implemented.  

Burke outlined his intentions to create a PWO regime in the NT:

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18* Northern Territory of Australia. *Juvenile Justice Amendment Bill (No.2) 1996.* p.4-7.
This will be over and above the community service order system that already exists. The punitive work order will be hard work. It will be for the benefit of the community and, most importantly, it will be public. Those serving a punitive work order will be clearly obvious to the rest of the community. They will be identifiable as punitive work order people, either by wearing a special uniform or some other label.  

Burke, like Bell, believes that in the past juvenile offenders have not taken their community service orders seriously and that the new legislation would enforce that:

...if the court orders the guilty party to do 200 hours work, then they will do it. There will be no turning up late, or turning up drunk, or loafing around. Any breach will result in the offender being back before the court, and the only alternative will be jail.

Bell questioned the use of a uniform as a means of identification of offenders to the public when he said:

We do not support chain gangs...putting punitive work order offenders in uniforms, highlighting their position, will not work in all instances. I think it is essential for this administration to realise that the wearing of a uniform is not seen, in some areas, as punishment, though I am aware that it may be in others.

(c) Repeat Offenders & Mandatory Sentencing

Clause 8. Division 3 - Repeat Offenders - Subdivision 1 - Compulsory Detention 53AE-AG of the amendments to the Juvenile Justice Act states that juvenile (persons between the ages of 15-17) found guilty:

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20 Ibid. p.5.
...a property offence and the juvenile has once or more before been found guilty of a property offence, the Court shall record a conviction and order the juvenile to be detained at a detention centre for not less than 28 days.  

Burke in his statement recalled that:

At the last election, the Country Liberal Party clearly indicated it would be introducing laws to jail repeat offenders for 28 days, and my department is preparing legislation to implement that election promise...It is a bill that lays down mandatory prison sentences for those who refuse to abide by society's laws.  

Neil Bell replied that the NT Labor Party supports:

...the introduction of mandatory goal sentences for the limited number of offences that the minister has named.  

Under the proposed draft bill juvenile offenders will be given a 'warning' on their first offence, but any subsequent findings of guilt of one of the scheduled offences will bring a minimum 28 days incarceration (a punitive work order or detention could be imposed). The amendments have been deliberately limited to offences of particular concern to the community and could be expanded, in the future, to include other offences.

The Western Australian Experience

The WA Criminal Law Amendment Bill 1992 and the Juvenile Crime (serious and repeat offenders) Sentencing Bill 1992, when introduced, sparked national debate over what to do with repeat juvenile offenders. The first offender sentenced under the new
Act was a juvenile Aborigine who was involved in a number of deaths resulting from a stolen car chase, on Christmas night, in 1991. (This specific offence is regularly referred to as precipitating public debate and the introduction of the legislation.) In 1993 when the University of Western Australia’s Crime Research Centre published *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia*, three juvenile offenders with three previous violent or six previous serious prescribed convictions had been sentenced under the Act. It is noted by the Crime Research Centre that the Act has failed to incapacitate more “hard core” offenders, as the definition of a ‘conviction appearance’ in the legislation has allowed room for manipulation.  

In the postscript written in the second edition (1995) Neil Morgan states that since the Act’s introduction six adults (including older Aboriginals from the north with a history of assaultive behaviour arising out of public order disputes) have been sentenced under the laws and only two juveniles.

For further reading on serious offenders, repeat offenders and detention see reading No.4, Cunneen Chris & Rob White *Juvenile Justice: An Australian Perspective.*

5. NT DETENTION CENTRES:

Burke in his statement made it clear the Government is aware that this new legislation may “initially swell prison numbers” and the number of placements available in juvenile detention centres must be considered. Places available at present include:

**King Valley Station** is a privately owned juvenile rehabilitation operation aided by Government funding since 1990. The station deals specifically with juveniles who have committed crimes because of alcohol.

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The Don Dale Detention Centre was opened in November 1991 to house about 30 juveniles, replacing the Malak and Giles Houses.  

Aranda House (formerly Giles House Detention Centre) was handed over to the Central Australian Child Care Agency in January 1994. The facility provides safe and secure residential accommodation for youth at risk, counselling, advice and support to Aboriginal youth. Also on offer is a residential placement for young offenders placed on bail supervision as an approved Juvenile Offender Placement, which is funded by the Department of Correctional Services on a fee for service basis. A Working Party during 1996 is considering the feasibility of using part of Aranda House as an alternative to the police cells for juveniles on short term remand orders.

6. WORK CAMPS:
As an alternative to detention centres some governments have chosen to introduce work camps. Work camps are often referred to as boot camps, which are operating in some states in America, and are "designed to reform hardened juveniles through demeaning militaristic bully tactics." In March 1995 the $176 million Kurri Murri work camp located 850km north-east of Perth was opened to enforce a work and exercise program to enhance self-esteem for 16-21 year olds. The program is highly structured and disciplines offenders. Due to over-representation of Aboriginal youth in detention this will include a disproportionate number of Aboriginals. The Australian Institute of Criminology in its Trends and Issues in Crime and Criminal Justice paper No.46 concluded:

Heavy handed control and standover tactics have not worked with Aboriginal people - nor are they likely to with most young people. Policy makers would beware revisiting them.

29 Manicaros, Ashley. "Facility Opens", NT News. 28.11.91.
Boot camps have not taken firm root in Australia. They do not have the public profile, or relentless momentum of the US example. In seeking better outcomes for young offenders, governments should resist any temptation to channel much needed resources through the medium of boot camps.  

7. JUVENILE ABORIGINAL OFFENDERS:

Young Aboriginal people are significantly over-represented in the juvenile justice system. The Juvenile Justice Advisory Council of NSW in its recent report *Aboriginal Over-Representation and Discretionary Decisions in the NSW Juvenile Justice System* identified three main factors which may contribute to the disproportionate number of Aboriginal youth in the justice system:

* extremely high apprehension rates;
* a relatively small but compounding bias against Aboriginal children in key police decisions; and
* a court sentencing structure which, while apparently equitable, reinforces previous systemic effects.

The report also provides a basis for development of strategies to reduce these levels. The three strategies proposed being:

* reduce the scope of the discretion afforded to police in the use of formal cautions and court attendance notices;
* monitor police decisions more closely, and utilise this information to improve the implementation of anti-discrimination measures; and

provide more appropriate diversionary and support services to assist police and to encourage the use of less punitive options for young Aboriginal offenders. 33 (see reading No.5 for more information)

8. ALTERNATIVE PROGRAMS TO DETENTION:
Bell, in response to Burke's statement, called for attention to be payed to prevention of juvenile crime through numerous programs. He stated:

Good policy requires being tough on crime and tough on the underlying causes of crime. Prevention programs will do exactly that. There is no increased support for Neighbourhood Watch...DARE programs, school-based constables and warden schemes...There is no support for home secure programs...no mention of programs to combat truancy...vandalism...road traffic measures and no real effort to address the drug problem in our community. 34

In March 1996 the Northern Territory Law Reform Committee produced Mediation and the Criminal Justice System: Final Report (Report No.17A), the first of four reports on alternative dispute resolution in the Northern Territory. There were in March 1996, 300 victim-offender mediation programs operating in Australia (Victoria and Western Australia) and overseas. 35 (summary of recommendations is available as reading No.6)

In March 1996 the Federal Attorney General and Minister for Justice, Peter Foss, launched the 5th Metropolitan Juvenile Justice Team which has been operating to divert young, early offenders away from being formally charged. In a Ministerial Media Statement Foss stated that the Teams had dealt with more than 4000 referrals since their inception. 36 (for media release see reading No.7)

36 Foss, Peter. (WA Attorney General; Minister for Justice) “Fifth Metropolitan Juvenile Team Launched” Ministerial Media Statement. 19.3.96.
(a) Community Justice/Aid Panels in the Northern Territory

The Katherine Community Aid Panel was established in Katherine in 1990 and is only available to juveniles and young adults who plead guilty. The Magistrate can then delay sentencing for 3 months and refer the case to the panel (consisting of voluntary professionals) who:

* meet with the young person after they have spoken to a youth worker within a week of the court appearance;
* the panel then decides on an appropriate process of counselling and can continue to meet on an “as required” basis;
* the panel reports the outcome to the court; and
* the panel’s report is taken into consideration in the sentencing process.\(^{37}\)

Community Justice Program (CJP) in Alice Springs and Yuendumu was a pilot project run from October 1, 1995 to March 1, 1996 by the NT Police in Alice Springs and Yuendumu. The CJP is a system that diverts offenders, who are mainly young and experimental and have admitted guilt, away from the Court system. By agreement, the offenders and victims meet to discuss and repair any damage caused by the offence facilitated by the presence of a police officer (on a rotational basis). Agreements can include an apology, restitution, enrolment in rehabilitation programs or work being undertaken by the offender.\(^{38}\)

(b) Community/Family Conferences

The Queensland Juvenile Justice Act Legislation Amendment Bill 1996 was introduced on July 11, 1996. One of the purposes of the Amendment Bill was to allow provisions to the Juvenile Justice Act 1992 which would create and regulate the holding of community conferences in Queensland. Community youth conferencing was seen by the Queensland Attorney General and Minister for Justice, Hon. DE Beanland MLA, as:


\(^{38}\) Ibid, p.15.
...a new process to divert children from the criminal justice system. This will add another layer above cautions and can be used instead of criminal process.

A community conference involves investigating the offence committed by a child (in Queensland a person who has not turned 17) who admits to the offence and determining an outcome that will repair the damage caused such as offering an apology, paying restitution or performing work such as community service to avoid a court appearance. South Australia has similar provisions in the Young Offenders Act 1993 although they are known as family conferences. In Western Australia, the Young Offenders Act 1994 provides for Juvenile Justice Teams to conduct community meetings.

For discussion of further Australian-based alternatives to detention such as: police cautions, panels, family group conferences, community corrections, post-release programs, probation, attendance centres, CSOs, conditional release orders and camps, see reading No.8

9. PREVENTION:
There have been many youth crime preventative programs and initiatives carried out nationally and internationally in an attempt to stop juveniles from becoming offenders or repeat offenders. Youth crime prevention and control measures include:

* social crime prevention programs - Headstart (US), Bonnemaison (France) and The Murchison Project (WA);
* situation crime prevention;
* police practices and policies;
* restorative justice models;

* preventative intervention - opportunity reduction, opportunity enhancement, social empowerment;
* restoration of self-esteem; and
* alternative juvenile programs.
(to read details of these measures see readings No.9)

In 1993 the University of Western Australia’s Crime Research Centre, published *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia*. This publication included the chapter “Opportunity Costs: Alternative Strategies for Prevention and Control of Juvenile Crime” exploring preventative methods for reducing juvenile crime. (see reading No.10)

10. CONCLUSION:
The many problems associated with juvenile crime prevention and detention of repeat offenders are currently under investigation throughout Australia. The introduction of the draft legislation for discussion by the Attorney General, the Hon. Denis Burke, will surely bring many of the issues regarding juvenile offenders and punishment into the public arena once again.
1990 - 1996
Caseload as at 30 June
Juvenile Justice - Northern Region
JUVENILE JUSTICE - NORTHERN REGION
Juveniles held in detention as at 30 June
1990 - 1996

Appendix 3
JUVENILE JUSTICE - NORTHERN REGION
Probation Orders active as at 30 June
1990 - 1996
JUVENILE JUSTICE - NORTHERN REGION
Community Service Orders active as at 30 June
1990 - 1996

Appendix 2
Juvenile Justice Statistics
Southern Region 1995/96

2. Juvenile Justice Board of Management (Southern Region).
Juvenile Probation Orders
Southern Region
Juvenile Pre-release Detainees
Southern Region

Appendix 4

- Line graph showing the number of juvenile pre-release detainees in the Southern Region from 1989/90 to 1995/96.
- The graph includes data for different years, with symbols indicating June.
Juvenile Community Service Orders
Southern Region

- 1989/90
- 1990/91
- 1991/92
- 1992/93
- 1993/94
- 1994/95
- 1995/96