



**COMMISSIONER FOR CHILDREN'S OFFICE
MEMORANDUM**

TO: HON JACQUIE PETRUSMA, MINISTER FOR HUMAN SERVICES
FROM: COMMISSIONER FOR CHILDREN MARK MORRISSEY
SUBJECT: A THERAPEUTIC APPROACH TO YOUTH JUSTICE DETENTION
DATE: 4 FEBRUARY 2016

A Therapeutic Approach to Youth Justice Detention

Background

The *Convention on the Rights of the Child* and UN rules on the administration of youth justice (*Havana Rules, 1990; Beijing Rules, 1985*) state that the aim of the youth justice system is to promote the well-being and best interests of the child.¹ As children differ from adults in their physical and psychological development, and emotional and educational needs, they require a different and appropriate response when in conflict with the law. This may mean that the traditional objectives of criminal justice, such as repression/retribution, give way to principles of rehabilitation and restorative justice when dealing with child offenders.²

The *Youth Justice Act 1997* is based on a restorative youth justice model premised on a belief that young people who offend should be accountable and accept responsibility for their actions, whilst recognising that they are children and therefore should have the maximum opportunity for rehabilitation. Consistent with the objectives and principles of the Act, where a child or young person is sentenced to a period of detention, their health, well-being and rehabilitation are all primary considerations in the administration of their detention. It is also important to note that the *Youth Justice Act 1997* also states that a young person in detention is not to be treated more severely than an adult.³

The Act therefore recognises that the two main functions of youth justice detention are preventative and therapeutic; and both need attention and resources to ensure a holistic and effective approach. The primary goal of preventative detention is to provide protection to the community and ensure public safety, noting that detention is to be used as a last resort.

¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985), General Principle 1.1; *Committee on the Rights of the Child*, General Comment No. 10 (2007) Children's rights in juvenile justice, para. 10; United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules" (1990)), Fundamental Perspectives 1.

² *Committee on the Rights of the Child*, General Comment No. 10 (2007) Children's rights in juvenile justice, para. 10.

³ *Youth Justice Act 1997* section 5(1)(b)

Whereas the goal of therapeutic detention is to examine what detention can do to assist the young person to begin the rehabilitation process. These goals are not necessarily mutually exclusive; however the difficulty is integrating both into the daily practice of managing a youth justice detention facility.

In addition there are differing approaches on the most appropriate way to meet these goals, and how the detention process is conceived. Youth justice detention can be conceived as a “place” or a “process”, or a combination of the two.⁴ Detention as a “place” focuses on the physical structure of detention including the buildings, bed capacity, security hardware, and square meterage, as well as the development of administrative and operational policies and procedures,⁵ all of which are essential to the day-to-day running of a facility. Detention as a “process” is equally, if not more important, as it focuses on the “how” of detention and the quality of the services, care, and relationships which are provided. The focus on both place and process is essential to the achievement of therapeutic detention.

What is a therapeutic approach to youth justice detention?

A therapeutic approach recognises the need to bring about behaviour change by facilitating and promoting personal development of young people in detention. It is not achieved by providing a standalone therapeutic program or programs, but is rather an approach to all aspects of the detention facility. This includes staff, the physical environment, policies and practices, and programs (education, recreation, counselling etc.). The environment in detention should be replicative of a family, as far as practicably possible, where the young person is provided with guidance and support, a sense of self, and with safety and security to encourage growth and development.⁶ The following are examples of how a therapeutic approach can be implemented across different aspects of a youth justice detention facility:

- ***Staffing:*** The most critical element in providing successful therapeutic detention is the quality of staff. This does not only refer to professional qualifications but also to their personal qualities and attitudes. Some of these qualities include; the ability to relate well to young people, a caring attitude, empathetic approach, professionalism, patience, and treating young people with respect and dignity. These qualities should apply to **all** staff in the facility, as all interactions between young people and staff can be an opportunity to build a therapeutic relationship.
- ***Professional Development:*** The professionalism and commitment of staff is essential to creating and maintaining a therapeutic and supportive environment for young people. Staff should be provided with ongoing personal and professional development and support, to ensure the maintenance of a quality service and to increase staff motivation. All staff should be trained in how to support and communicate with young people, particularly young people with a history of trauma. Clinical interventions should be based on best practice and staff should have the option to be provided with professional supervision and support, due to the nature of the work.
- ***Assessment:*** To ensure a thorough understanding of a young person’s needs, a detailed assessment should be undertaken when a young person enters detention. The aim of the assessment is to comprehensively assess their physical and psychological well-being and identify areas where further attention may be required. This assessment should capture both the strengths of the young person, as well as the challenges they face, and identify clearly their aspirations and goals for the future.

⁴ Roush, D. W. (1996). Desktop guide to good juvenile detention practice: A research report. *Office of Juvenile Justice and Delinquency Prevention*.

⁵ Ibid.

⁶ Bowles, J. (2014). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness* The Winston Churchill Memorial Trust of Australia

- *Physical Environment*: Whilst it is fully appreciated that a detention facility needs to be externally secure, the inside of a detention facility can be therapeutic by providing an environment which is homely and inviting. The physical layout can facilitate a community feel by incorporating lounges and communal areas which replicate a home, and provide an environment where young people feel comfortable and safe. This can be achieved without compromising the safety and security of everyone at the facility.
- *Community*: Fostering a sense of a therapeutic community in detention can provide young people with the opportunity to develop open and trusting relationships with staff and other young people, which can be beneficial to changing behaviour. The attitudes and behaviour of the staff should encourage openness and honesty, as young people will quickly identify whether staff are genuine and committed. Shift changes between staff should be as non-disruptive as possible (rolling shift changes) to emulate the consistency of a home environment.
- *Participation*: Detention facilities need rules which are developed and imposed by the management, however this does not mean that young people cannot make suggestions or contributions to improve centre operation. Young people can be involved in centre management through regular meetings with staff, through youth representatives, or through regular feedback mechanisms. Young people should be aware of the rules, be able to input or take part in disciplinary discussions, and have access to an advocate at all reasonable times, and on a confidential basis. Young people should also be involved in all planning regarding their release. Participation should not be seen as tokenistic, and participation in daily activities such as making beds, cleaning their rooms/communal areas can prepare young people for life upon release.
- *Education*: Education in detention is not restricted to formal schooling. All adults who are connected with youth justice detention and who have contact with youth are involved in some aspect of education, and should therefore lead by example. Education should promote prosocial behaviour, through formal or informal instruction, including daily learning such as following rules, social skills and appropriate behaviour. Young people need to be given the opportunity to continue their education, ensuring it is relevant to their needs and abilities. The education options provided should be designed to prepare young people for their return to society, including vocational training which is relevant to future employment. Education activities should not be withdrawn as punishment, as this suggests education is a privilege, when it is a right.
- *Accountability*: Youth justice detention facilities need to be transparent and accountable, and young people in detention should be aware of their rights to contact regulatory agencies and independent authorities, such as the Ombudsman. Detention facilities need to be open to monitoring by external agencies, to ensure that young people's welfare in detention is maintained and monitored.
- *Complaints Mechanism*: Young people in detention should be aware and have access to a complaints mechanism. Complaints procedures should be discussed with young people upon arrival, including who to contact and how. Youth detention staff should ensure young people in detention maintain an awareness of complaints management processes, should promote access to these mechanisms, and assist young people to make a complaint to an external agency if they wish. It is important for young people to be advised of the outcome of their complaint.
- *Access*: Young people need to have access to correspondence and visits from family, friends and support organisations, and as much as possible maintain contact with their community whilst in detention. This contact is essential to prepare young people for their return to society following detention. Ideally, young people should be allowed

day release from detention to visit family and friends, or participate in educational, vocational or other activities. Visits from family and friends should not be fraught with concerns about strip-searching and should occur in a welcoming environment.

- *Programs*: The provision of well-run programs in detention (recreational, educational, vocational, counselling, therapy etc.) provides an opportunity for young people to participate, discover hidden abilities, release emotional and physical tension, keep busy and engaged, develop healthy habits and physique, develop new skills, and build self-confidence and rapport with staff. Recreation activities, in particular, have the greatest potential to increase self-esteem and enhance relationships between staff and young people, however they can also have the greatest negative effects if they are not well executed. Therapeutic recreation activities should be offered seven days a week and ideally include non-competitive activities, daily physical exercise, and constructive leisure time. Provision of recreation programs should be accompanied by a healthy and nutritious diet to promote good health and wellbeing.

Child safe

A young person in detention has a legitimate expectation of safety from abuse and neglect and to recourse to processes for expressing concern about inappropriate or abusive behaviour. The creation of an organisational culture which promotes safety and wellbeing – a child safe organisation- and operates in accordance with child safe principles – is essential.

All of these measures are consistent with the Australian Children's Commissioners and Guardians *Model Charter of Rights of Children and Young People Detained in Youth Justice Facilities*.

What are the outcomes of utilising a therapeutic approach?

A large scale meta-analysis (548 studies spanning 1958-2002) of the effects of youth justice approaches found that the therapeutic approach to youth justice (restorative justice, skill building, counselling etc.) was more effective in reducing recidivism rates than a punitive or control approach (deterrence, surveillance, discipline).⁷ Within therapeutic interventions, the interventions with the largest mean recidivism effects were mentoring, group counselling, cognitive-behavioural and behavioural skill building. Quality of implementation was also a key factor in the magnitude of the effects experienced, and factors such as high staff turnover, poorly trained personnel, and incomplete service delivery were associated with reduced outcomes.

Best Practice Examples

Outlined below is a number of best practice examples of therapeutic approaches to detention adopted internationally.

Missouri, United States

The Missouri model has been widely referenced for its success in implementing a therapeutic treatment model for youth corrections. Developed over a number of years, the model encompasses six core characteristics:

- Small facilities located near the young people's homes and families, rather than incarcerating youth in large, far-away, prison-like training schools.
- Young people are placed in small, closely supervised, groups which receive a rigorous group treatment process, which offers extensive and ongoing individual attention.

⁷ Lipsey et al. (2010). *Improving the effectiveness of juvenile justice programs: A new perspective on evidence-based practice*. Centre for Juvenile Justice Reform.

- Greater emphasis on keeping young people safe from physical and emotional abuse whilst in detention, through constant staff supervision and supportive peer relationships, rather than through coercion.
- Allowing young people to develop academic, pre-vocational and communication skills that increase their ability to succeed upon release. This includes investigation of the root causes of their delinquent behaviour and new competencies to acknowledge and solve problems.
- Involving family members in the treatment process and using them as allies in planning for success upon release, rather than keeping families at a distance and treating them as a source of the young person's problems.
- Intensive support and supervision for young people transitioning out of detention, including aftercare planning prior to release and ongoing monitoring and support in the weeks post release.⁸

The outcomes of the program illustrate significant gains in improving safety for young people in detention, increasing educational achievements, increasing positive reintegration back into the community, reducing recidivism rates, and achieving all of these outcomes at a relatively low cost.

*Juvenile Detention Alternatives Initiative (JDAI), California, United States*⁹

In 1992, the Annie E. Casey Foundation launched a multi-year, multi-site project entitled the Juvenile Detention Alternatives Initiative (JDAI) with the aim of demonstrating that jurisdictions could establish more effective and efficient systems to accomplish the purposes of youth justice detention.

When the JDAI began, the Sacramento facility was using pepper spray to intervene in behavioural incidents, reflecting a climate in which staff felt unsafe and overwhelmed about dealing with aggressive or "acting out" youth. During the course of the program, through determined administrative leadership, staff received additional training on de-escalation techniques and communication skills. They reviewed incident reports with the faculty psychiatrist and discussed different methods for avoiding crises or responding in a better way. A new behaviour management system was implemented that focused on rewarding positive behaviour instead of punishment. Staff learned that they could prevent violent incidents and effectively intervene without pepper spray. The administrator then eliminated the use of pepper spray in the detention centre. Through conscious efforts to change attitudes and provide staff with the skills needed to succeed, Sacramento adopted much more humane behaviour intervention techniques.

New Zealand

Similar to the approach taken in Tasmania, the New Zealand youth justice system emphasises diversion from courts and custody, and holding young persons accountable. The system aims to facilitate rehabilitation and reintegration of young people, provide support for their families and serve the needs of victims. The most serious order for youth persons which can be imposed in New Zealand is a supervision with residence order, which is a detention order to be served in a secure youth justice centre. The minimum sentence of detention is 3 months and the maximum is 6 months.

In one youth detention centre in New Zealand (Te Puna Wai), young people have the opportunity to provide input into the everyday life of the centre through regular youth council meetings.¹⁰ Two youth representatives then attend a meeting with management to discuss the youth council decisions and concerns.¹¹ The young people in the detention centre

⁸ The Annie E. Casey Foundation, (2010). *The Missouri Model: Reinventing the practice of rehabilitating youthful offenders*.

⁹ The Annie E. Casey Foundation, (1999). *Improving conditions of confinement in secure juvenile detention centres*.

¹⁰ Bowles, J. (2014). *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness* The Winston Churchill Memorial Trust of Australia

¹¹ Ibid.

decided to raise money for local charities and were able to make jewellery and artwork to sell, so that the money raised could be donated. Young people have also made suggestions to management on improving the procedure on admission which was then acted upon by detention centre management.¹²

Conclusion

As a result of observations I have made over the 12 months period I have been performing my role of Advocate for young people detained at Ashley, I am firmly of the view that it is now timely to reconsider implementing evidence informed policies and processes for young people at Ashley. Adoption of a therapeutic approach to youth detention as described in this Memorandum has the potential to improve the outcomes for young detainees upon their release. There is no doubt that policies and procedures which are not informed by the therapeutic approach described have the capacity to entrench anti-social behaviour and do nothing to reduce recidivism.

I trust that the issues addressed in the memorandum will be of assistance.

Mark Morrissey
Commissioner for Children

¹² Ibid.