CUSTODIAL PROGRAMS
AND TRANSITION INTO THE COMMUNITY:
A REVIEW OF POLICY AND PROGRAM REFORMS IN
AUSTRALIA AND NEW ZEALAND[*]

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The gravity of the present situation for young people entering detention in New South Wales has been reflected in media reports of the last eighteen months which have highlighted:

• increased numbers of young people being sentenced to detention;

• increased numbers of young people being transferred to adult prisons;

• the risk to community safety and waste of government funds resulting from the poor management of transportation of juveniles between courts, detention centres, and prisons;

• deaths of boys held in detention centres and prisons;

• deaths of six girls shortly after being held in custody; and

• evidence given by the Ombudsman, to the NSW Parliamentary Inquiry into Juvenile Justice, which disclosed that neither that office, nor the Department of Family and Community Services, provides satisfactory mechanisms for hearing or investigating complaints made by young people in detention.

Administrative reforms introduced in the last three years have resulted in increased levels of security, isolation, deprivation and punishment for young people in detention centres. A report of the Judicial Commission of NSW released in April 1990 attributed the greater use of custodial sentences for juveniles to the belief held by some magistrates that detention serves a rehabilitative purpose. Clearly it is time to review custodial programs and devise alternative models.

The terms of reference of the Juvenile Justice Inquiry currently being conducted by the NSW Parliament Legislative Council Standing Committee on Social Issues do not include a review of custodial programs. Forums such as this should provide new ideas about strategies through which custodial programs can fulfil their security and retributive functions, without compromising the safety and future development of young people.

During the 1970s and 1980s reforms were introduced in juvenile justice jurisdictions of many English speaking western countries. Common to these reforms are:

- the departure from interventions based on welfare concerns, purported by authorities to be "in the interests of the young person", regardless of the extent and severity of the young person's offending career; and

- an increased emphasis, in juvenile justice interventions, on the offending of young people, and the adoption of one or more features of a justice model of intervention.[1]

In the course of a recent overseas study tour[2] the author was able to observe the way in which these reforms had both increased the range of community-based programs available to sentencing authorities, and led to policy and structural change in custodial programs.

As the wave of legislative reform throughout Australia and New Zealand nears completion, it will be important to examine its influence on policy and program directions devised by government administrators. The objective of this paper is to seek evidence of the extent to which custodial programs in Australia and New Zealand have adapted to assist young people to make a positive transition from the institution to the community.

THE PHILOSOPHY OF ADMINISTRATIVE REFORMS

The paper draws on unpublished papers which describe juvenile justice policies and programs of Australian states and territories, and of New Zealand. The papers were presented at a workshop convened by the Secretariat of the Standing Committee of Social Welfare Administrators in March 1990.

The following describes the eight principles most frequently elaborated in these policies, and the strategies used to implement these. Table 1 summarises evidence of these principles found in the policy paper of each administration.

1 Prevention

Support services should be provided for young people who may be at risk of offending by virtue of social and economic deprivation.

Strategies include the funding or direct operation of child and family support services which are available to children who are at risk, and to their families. Western Australia has also introduced crime prevention programs in areas with a high incidence of juvenile crime.

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1   Morris and Giller summarise the principles of the justice model as "...the removal from the juvenile justice system of non-criminal behaviour by juveniles (for example, truancy) and victimless crimes (for example, drug abuse), diversion of juveniles from juvenile courts wherever possible, procedures to make visible and reviewable the discretionary practises of those working in the system and limiting sanctions available to juvenile courts by reference to principles of proportionality, determinacy and the least restrictive alternative": Morris, A and Giller, H, *Understanding Juvenile Justice* (1987) p246.

2   In 1989, the Winston Churchill Memorial Trust provided financial assistance to the author for the purpose of conducting a study tour to the USA, Canada, England and The Netherlands, to seek out girl-specific programs. The NSW Department of Family and Community Services supported the project by the provision of study leave. A report of the findings is available from the author.

2 Decriminalisation

Young people who have come to the attention of authorities solely as a result of welfare problems should be excluded from juvenile justice interventions, both legislative and administrative.

Strategies are principally legislative. Administrators have also been required to ensure the physical separation of young people detained for welfare and criminal reasons.

3 Diversion

Measures should be taken to ensure that minor and first offenders can be diverted from formal court proceedings.

Strategies generally refer to pre-court diversion interventions such as police cautioning and pre-court panels. The provision of a range of sentencing alternatives is also widely considered as diversionary.

4 Due Process

The legal rights of children to due process of law should be protected.

Strategies include access to legal representation and education. Reference is made to the requirement for the administration of the justice system to be prompt and comprehensible to the young person, and to enable their full participation. Also, to the need to prevent excessive intervention and administrative discretion.

5 Social Justice

Access of all children to opportunities that will enhance their maturation should be promoted, regardless of cultural or socio-economic background.

Strategies are community-based programs described as preventive (see 1, above).

6 Accountability for Offending

Three points are raised. Firstly, the need to take account of the impact on victims, and/or the community, of the offence. Secondly the need to provide guidance and assistance to young offenders. Thirdly, the need to make a variety of sentencing options available which can balance these two requirements.

7 Community/Family Integration

The families and communities in which young people live are of central importance to the development of the young person and should be supported.

Strategies adopted in most states relate to the provision of support services, and sentencing alternatives which enable the young person to remain in the community. The range of objectives includes, minimal disruption to the developmental opportunities available to young people in their family/community; preservation of the authority of the family over the child; minimising the stigma of official intervention; providing sentencing opportunities which match, as far as possible, normal social life; and assisting the re-integration of detained young offenders into the community.

8 Decarceration

A range of sentencing alternatives should be provided to ensure that young people can be prevented from being detained in custody.

Reasons given for decarceration are that detention centres are criminogenic; are financially costly; have long term social costs such as family disruption and maladjustment of children. Detention is frequently described as a last resort option, and less frequently, as an option to be used frugally.

Strategies generally refer to increased resourcing of community-based sentencing options. Less frequently described are strategies for diverting young people from remand in custody and secure detention.

Table 1   Summary of Principals of Juvenile Justice Policies in Australia and New Zealand

	ACT[3]	NSW	NT	NZ	QLD	SA	TAS	VIC	WA
1. Prevention				Y	Y	Y		Y	Y
2. Decriminalisation	Y	Y	Y	Y		Y	Y	Y	Y
3. Diversion	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Due Process	Y			Y	Y	Y	Y	Y	Y
5. Social Justice				Y	Y	Y			
6. Accountability for offending	Y				Y	Y		Y	
7. Community/Family Integration		Y	Y	Y	Y	Y	Y	Y	
8. Decarceration		Y	Y	Y	Y	Y	Y	Y	

(Key: Y = Clear statement of this principle in policy document.)

Reforms have been influenced by the knowledge that detention of juveniles can actually do more harm than good, some negative effects of detention being:

- the removal of young people from social contacts which positively influence their development;
- hindering the learning of skills necessary for young people to live in the community;
- providing young people with new opportunities to join criminal networks and learn offending skills;
- creating opportunities for iatrogenic offending; and

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3   Abbreviations: Australian Capital Territory (ACT), New South Wales (NSW), Northern Territory (NT), New Zealand (NZ), Queensland (QLD), South Australia (SA), Tasmania (TAS), Victoria (VIC), Western Australia (WA).

• creating a stigma which impedes the ability of the young person to gain access to developmental opportunities on release.

Together with the knowledge that the greater proportion of young offenders will cease offending if provided with supportive developmental opportunities,[4] this has contributed to the displacement of detention as the central component of juvenile justice interventions.

Administrative reforms undertaken in the 1980s have been predominantly targeted towards setting in place the policies and structures through which the range of community-based sentencing options could be expanded. This range now includes police cautioning; pre-court panels; bail assistance; supervised remands, bonds and probation; community service; supervision by volunteers; attendance centres; weekend detention; residential placements with individuals in the community; community-based residential programs; and culturally specific programs for Aboriginal youth.

DETENTION AS A LAST RESORT

Although detention is now widely described by juvenile justice reformers as a last resort sentencing option, the extent to which juvenile justice statutes promote this is variable. Carney's discussion of the difficulty of balancing the support and control objectives in juvenile justice intervention perhaps goes some way to explaining this:

> Since it is not a defensible position to suggest that neither support nor control is called for as a response to juvenile offending, the dilemma may not be sidestepped. It follows that the task is to devise measures which strike an acceptable balance between the competing considerations. [5]

Carney describes ten guiding principles related to the use of detention which influenced legislative reform in Victoria, and which aimed to strike a balance between support and control objectives. The principle of detention as a last resort is described as:

> ...the cornerstone of a rational scheme to match sanctions to the nature of the offence and to restrict custodial sentences to those cases of last resort where punishment is clearly called for. [6]

Additional principles which underpin legislative reforms in Victoria emphasise the frugal use of detention as a sentencing option; sentencing guidelines which emphasise the need to preserve opportunities for a young person's development; and the decentralisation of large facilities, in conjunction with the establishment of community-based sentencing alternatives. Carney's discussion highlights the importance of striking the balance between support and control in all areas of juvenile justice intervention.

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4 Rutherford, A, *Growing Out of Crime* (1986)

5 Carney, T, "Young Offenders and State Intervention: Issues of Control and Support for Parents and Young People." in (Summer 1988/89) 1 (1) *Australian Social Policy* 54

6 Id at 65-66.

POLARISATION OF CARE AND CONTROL OBJECTIVES

Information reviewed here suggests that administrative reforms to juvenile justice inter-vention have failed to balance support and control in both community-based and custodial programs. Rather, a polarisation has occurred, with community-based programs being de-scribed as supportive and custodial programs as controlling.

Community-based sentencing programs are frequently described with an emphasis on diversion and support. One example of this can be found in the policy document, "An Agenda for Juvenile Justice in New South Wales" (May 1990), released by the Minister for Family and Community Services. In this document community-based sentencing pro-grams are described as responsible for:

> (2) The provision of pre-sentence assessment services by District Officers (Young Offenders) and a range of supervision options to maintain in the community those young offenders whom the court places on community-based orders such as probation and Community Service Orders...
>
> (4) The use of counselling programs at three suburban Community Youth Centres for certain young offenders as an alternative to detention.

The lack of detail about the way in which court orders are supervised suggests that they are not perceived by the administration to have a significant role in the control of juvenile crime. The stated diversionary objective is not balanced by a policy which sets out the role of these services in ensuring that young offenders are made accountable for their offend-ing.

Conversely, detention centre programs are most frequently described by administrators as having control and rehabilitative functions. The concept of rehabilitation through de-tention flies in the face of knowledge about the negative effects of incarceration which has underpinned reforms and the principles of diversion and decarceration. The failure to de-vise custodial policies and programs which are consistent with the principles guiding ad-ministrative reform in juvenile justice programs promotes this polarisation.

One consequence of equating custody with control is limitations on the available re-sponses administrators have when confronted with media and political pressure for in-creased control of juvenile crime. In New South Wales administrators have responded by increasing security at the cost of reduced contact of detainees with family and other sup-portive persons, and services. Some examples are the closure of open custody residences; the discontinuation of a regional placement policy for detainees; reduced access of detain-ees to family and community contacts; and increased restrictions on the use of leave pro-visions. Such responses not only preclude the pursuit of support objectives by detention centres, but reduce the integrity of community-based sentencing programs. For example, the failure of administrators to take account of a young person's region of origin, when determining their placement in custody, prevents contact with family, and with staff of community-based services who require access to the young person to assess their suitabil-ity for inclusion in these programs.

Increased emphasis on control may be achieved through adjustment to policies, pro-grams and resources devoted to community-based sentencing programs. Support can also

be met through detention centre policies and programs which promote links with the community to which young people will return.

If the principle of social equity is to be seriously pursued young people who are sentenced to detention as a last resort should have continued access to the supports that are important in their development. Carney identifies three significant elements of this principle:

> First the social commitment to, and optimism concerning, the potential of the young. Second a concern to minimise the legacy of harm, stunted potential or stigma carried forward by a young person on reaching adulthood. And, thirdly, it encapsulates a view about the responsibilities owed by the state to actively promote the interest of the young. For this is a social right of citizenship... [7]

TRANSITION — RETHINKING CUSTODIAL PROGRAMS

Overseas custodial programs, visited by the author in 1989, which appeared to strike an internal balance between the support and control objectives of the juvenile justice system had a number of common features. In these programs the objective of assisting young people to make the transition to a positive and supported lifestyle in the community was an equal partner to that of providing secure detention. Young people sentenced to custody were encouraged to maintain and develop community ties which would minimise the disruption to their development of the period of custody and promote opportunities for positive social participation.

The following discussion describes briefly the features evident in the overseas programs. It also gives examples from the policy papers reviewed here, of the incorporation of these features in some local programs. Findings are summarised in Table 2.

1 Casework

Casework planning commences at the time of admission, and involves setting individual targets which are shared by custodial staff and caseworkers from the community where the young person is likely to return.

The policies reviewed here most commonly describe casework as focused on "classification"; and/or, "post-release placement", "re-integration" or "after-care". This involves, at the least, management of security and an attempt to seek an address for the young person upon discharge. In contrast, New Zealand (NZ), South Australian (SA) and Tasmanian (TAS) administrations describe the casework objective as an equal partner to that of security. For example:

> (5.4) All programs in the centre are in response to the Child's Case Management Plan that is formulated within four weeks of placement ... return young people to the care of their parents and to maintain family ties. [8]

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7   Id at 48
8   Tasmania, Department of Community Services, "Information on Departmental Juvenile Justice Services in Tasmania", 1990.

2   Review Mechanisms

Where there is judicial or administrative discretion to vary sentence lengths and/or the level of security effecting a young person's placement, then casework may be directed towards promoting the conditions that would enable early release or reduced security.

In the Australian Capital Territory remissions based on a young person's conduct within the institution was reported as the mechanism for early release. Other jurisdictions describe formal review processes, and criteria for seeking review which take account of developmental opportunities and security requirements. In South Australia "Liaison" and "Release" units:

> ...perform the vital role of liaising with other branches of the Department to ensure that young people are placed in more appropriate placement in the community, [and] wherever possible ... prepare plans for consideration of the Training Centre Review Board for the early release of detention residents.[9]

3   Secure to Open Custody

Small open custody units are being established. The aims of these units include reducing the emphasis on security hardware; normalising interactions between young people and staff; providing greater flexibility in programming; promoting opportunities for participation in community-based activities; and promoting discharge planning. Some of these programs provide the opportunity for young people in secure care to complete their sentence in a less secure environment while seeking accommodation, employment and financial support.

Local programs described as "open" may not have external security fences, but achieve security internally, by conducting programs in isolated environments, such as the Wilderness Programs. In Tasmania a single institution with three levels of classification considers the opportunities for participation by detainees in community activities when making the classification. The casework management focus provides the option to review the level of security.

4   Family/Community Involvement

For young people in secure custody family contact may be encouraged by visits, providing on-campus accommodation for families travelling long distances, and encouraging counselling where family conflict had made a contribution, or been a consequence of, the young person's offending. Members of the community are often involved in work with groups and individual young people within institutions.

Leave provisions were linked to individual plans so that selected young people could be allowed to go into the community, supervised or unsupervised, for the purpose of education, employment, counselling, formal recreation and planning their accommodation on return to the community.

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9   South Australia, Department of Community Welfare, "Background Information for Workshop on Juvenile Justice", March 1990, p16

In New Zealand the principles of "regionalisation" and "localisation" apply to the placement of young people in institutions, with placement as close as possible to family and community ties, as:

> Family Group Conferences ... have the role of making recommendations to the court concerning the ongoing custody of the ... young person.[10]

In Tasmania the institutional program incorporates "off-campus" activities. Similarly, in Victoria, young people who participate in a "work-release" program are allowed off-campus. Tasmanian and Western Australian administrations both employ trained volunteers to assist young people returning to the community to seek out resources immediately after discharge, while overcoming the stigma of institutionalisation.

5 Mainstream Educational Programs

Educational opportunities were provided that would assist young people to establish contact and benefit from educational resources in the community. Vocational programs attempted to encourage young people to consider a wide range of options, and try some out.

Local programs were largely described in the following terms: "remedial", "living skills", "personal development and self esteem". Only in Tasmania did policy stress the objective of promoting participation in community schools. Co-operation between the education authority and the institution was reported in other policies, but did not set out the measures for ensuring that a young person's opportunities to participate in mainstream education would be promoted through the program.

6 Staff Ratios and Training

Open custody programs often have high staff ratios in order that security and control can be achieved without the use of security hardware. Staff are selected for their skills in providing both individual and group programs which are relevant and accepted by young people. Staff may be required to have formal qualifications in behavioural or social welfare studies.

No administration described the use of increased staff ratios as an alternative to relying on security hardware. Only in South Australia was there an emphasis on employing staff with tertiary qualifications. Other states described a range of in-service training which was, at the least, induction, and in other instances covered a range of theoretical and practical skills.

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10   New Zealand, Department of Social Welfare, "The Youth Justice System in New Zealand", March 1990, p11

**Table 2   Evidence of Transitional Principles in Custodial Programs
in Australia and New Zealand**

	ACT	NSW	NT	NZ	QLD	SA	TAS	VIC	WA
1. Casework	Y	Y	Y		Y	Y	Y	Y	
2. Review Mechanisms	Y		Y			Y	Y		
3. Secure to Open Custody			Y				Y		Y
4. Family/Community Access			Y	Y		Y	Y	Y	
5. Mainstream Education						Y			
6. Staff Ratios & Skills						Y	Y		

(Key: Y = Clear statement of principle appears in policy document)

This review should not be read as an exhaustive description of local policies and programs, as the papers reviewed may have reported selectively. However, in view of the forum at which they were presented, it is likely that the central features of each administration's juvenile justice policies were described.

The review indicates that few local administrations have adopted a transitional model of detention. The administrations most frequently emphasised secure care in humane conditions; rehabilitation; and re-integration of detainees into the community. This reflects continued adherence to the discredited belief that it is both appropriate and possible to remove young people from their community, identify and correct some individual deficit, and return them as reformed members of the community.

Programs in New Zealand, Tasmania, South Australia, Victoria and Western Australia have included some of these strategies in custodial programs, and to this extent are at the forefront of introducing transition as a model for detention in the Australian and New Zealand juvenile justice jurisdictions.

REFERENCES

The following are unpublished papers presented at a Juvenile Justice Workshop convened by the Secretariat of the Standing Committee of Social Welfare Administrators, 7-9 March 1990, Sydney.

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