

Ethnic Diversity, Aboriginality and Sentencing Young Offenders

A report was released by the Judicial Commission of NSW in April 1998, which compared sentences handed out by Children's Courts in 1996 to juvenile offenders from various ethnic backgrounds.

Aboriginal and Torres Strait Islander children, and children from four non-English speaking ethnic groups – Pacific Islander, South East European, Middle Eastern and East Asian¹ – were carefully matched with children from an Anglo-Australian background. They were matched on factors known to influence sentencing, such as type of offence; criminal history; age; plea; number of counts and police bail status; thereby isolating the influence of culture. The merit of this study was the precision of matching. With regard to the offence, they were matched at the level of Act and Section, so that a common assault was matched with a common assault, and a serious assault with a serious assault. Some previous studies have been limited to broad categories, such as 'offences against the person', which can contain anything from homicide to a minor assault. Furthermore, in comparing the severity of their sentences, the study took into account not only the type of sentence received (control order, fine, etc) but also its duration or amount. This resulted in a very precise ranking of each sentence.

The study found:

There were statistically significant differences in the penalties received by the Aboriginal and Torres Strait Islander group and their Anglo-Australian counterparts, with the former receiving harsher penalties.

- Aboriginal and Torres Strait Islander offenders received more community service orders and more supervised orders than their Anglo-Australian matches. Both these penalties are at the more severe end of the penalty hierarchy – the former may only be imposed where a control order is being considered.
- There were statistically significant differences in the penalties received by the Pacific Islander group and their Anglo-Australian counterparts, the former receiving harsher penalties.
- Pacific Islander offenders received twice as many control orders as their Anglo-Australian matches.
- There were no statistically significant differences for the other ethnic groups examined (South East European, Middle Eastern and East Asian), however, the direction of the difference was consistently in favour of the Anglo-Australian group.

It is vital to the social fabric of the state that the justice system demonstrates its impartiality with regard to culture, ethnicity and race. While this study reflects the fact that these issues are being addressed, the results clearly identify the need for accelerating a shift in the judicial culture.

Socio-economic criteria is sometimes used indirectly in the sentencing process. For example, an unemployed young person with what in Anglo-Australian culture may appear to be an unstable home environment (but in other cultures may be viewed as an extended kinship network) may be seen as a poor risk in complying with community based orders. The

1 These groups were selected because they contained sufficient matches to provide an adequate sample size.

use of such criteria is inappropriate, as it bears no relationship to the offending behaviour, and requires value judgments to be made about people on the basis of social and cultural factors over which the persons concerned have little control. A judgment on this basis means that the very factors which disadvantage some groups in general, are used in criminal justice processes to compound that disadvantage.

As criminal history has a serious impact on a young person's life, it is incumbent upon each member of the judiciary to examine their practices when sentencing juveniles from a non-Anglo-Australian background. They should be aware of, and educated about, conscious or unconscious prejudices; tendencies to stereotype; cultural differences in non-verbal communication and customs; the importance of using interpreters and of providing multi-lingual information. These issues should become integral to law courses. In addition, like other Government agencies, the crime justice system should be aiming for a more diversified judiciary, more closely reflecting the population in terms of its racial, cultural and ethno-linguistic composition.

This report also demonstrates the importance of the availability of accurate data on ethnicity and Aboriginality. As the study points out, sentencing is only one stage of the criminal justice process. If other agencies adopt a similar approach, it will be possible to monitor disparity at all stages, and will be an effective tool for informing policy and addressing the problem of discrimination in the whole of the criminal justice system.

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