Vulnerable young people with complex support needs and the criminal justice system

Presenter: Professor Eileen Baldry
Context
Vulnerable Witnesses Act & DJP SA

• Intent to improve experience of all parties with disability in the CJS in and out of court towards equality and participation
• Children and young people are vital participants
Abuse of vulnerable children in Youth Justice, out of home care, congregate care and forensic systems

A preliminary comment on last week’s revelations
The Australian Research Council Studies

• Comparative Youth Penality Project (CYPP)
  http://cypp.unsw.edu.au

• People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System (MHDCD)

• Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System
  http://www.mhdcdd.unsw.edu.au
## Australia Young people in juvenile justice

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Indigenous</td>
<td>54% (detention) 43% (under superv)</td>
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<tr>
<td>Child protection (OOHC)</td>
<td>27 times more likely</td>
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<td>IQ in low range (&lt;70)</td>
<td>17%</td>
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<tr>
<td>IQ in borderline range (70 – 79)</td>
<td>33%</td>
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<td>Has a mental health disorder</td>
<td>87%</td>
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<td>Two or more mental health disorders</td>
<td>73%</td>
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<tr>
<td>Substance use disorder</td>
<td>64%</td>
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<tr>
<td>Ever suspended / excluded from school</td>
<td>88% / 47%</td>
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<tr>
<td>Childhood abuse or neglect</td>
<td>60%</td>
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Mental Health Disorders and Cognitive Disabilities

- Studies indicate high prevalence of mental health disorders and cognitive disability in Australian juvenile justice and amongst children and young people who come into contact with the CJS as victims and/or offenders.
- Custody health surveys have found 87 - 88% of young people have a MHD.
- Studies also show high levels of CD amongst OOHC, victims of abuse and youth justice populations. Includes ID, borderline ID, FASD, ABI, some Autism spectrum disorders.
Why is this group of highly vulnerable children and young people not better protected and how do so many end up in the criminal justice system?
Key findings of the studies: Pathways

Those who have disability and complex support needs who end up in prison are significantly more likely to have:

- Been in OOHC, have been victims of abuse, have no formal education attainment, been homeless

- had significantly earlier and more contact with police, juvenile justice and adult prison, more arrests, more convictions, more custodies, more remands, convicted of lower level offences
Average Age First Police contact, conviction & custody

CD complex - significantly lower av. age 1st contact with police. High victimisation

Those who were JJ clients sig. lower av. age of police contact for CD complex
Indigenous Australian young people

- more likely to have disability and complex support needs than non-Indigenous youth
- significantly higher levels of all the disadvantageous things the complex support needs group experienced
Identification and Diagnosis

“... The first mental health assessment they’ve got is when they’re admitted in one of our detention centres”

(Policy Maker)

“... Quite often it’s not until they do come into juvenile justice that it’s picked up”

(Juvenile Justice Director)
We’re trying to do better in this regard in actually getting assessments [of FASD] done. It’s very expensive and time consuming to actually get those assessments and then of course there is the issue once you’ve actually identified somebody as having FASD, how then do you provide for that? It’s lifelong, there’s no magic pill.

(Children’s Court Magistrate)
The Criminalisation of Disability and Disadvantage
When I was at youth and Legal Aid, that was big - ADHD, then all those other disorders, borderline personality, OCD, the whole range of them. So most of our clients would suffer from some, if not all, but most of them are homeless and have a variety of drug and alcohol - like that dual diagnosis mental health issue - which means that they're more likely to get into trouble, commit crimes to survive.

(Children’s Solicitor)
They’re vulnerable young people, they're easily exploited, they're brains are poorly developed in terms of understanding consequences, and you put a bunch of conditions on them that they don’t even hear, let alone understand, let alone have the will and assistance and supervision in their lives to ensure that they meet them. So then they breach for what is really an administrative problem, not another crime and thus this cycle of... In and out in short bursts and of course they can be in quite long periods on remand without sentencing, where they're not getting anything much of anything.

(Policy Maker)
Managed by the Criminal Justice System
There’s a lot of young people coming into detention as a proxy for other mental health services, absolutely, and the complexity of the needs of young people coming into detention is increasing.

(Detention Centre Director)
The police were saying that having them in remand... sometimes is the only way they can actually access services which is perverse, absolutely perverse but sometimes, even though you want to argue with that proposition, you can't.

(Children’s Solicitor)
Support for Young People with Mental Health Disorders and Cognitive Disabilities
The proportion of children and young people and adults who are in custody with disabilities, including mental illness and cognitive deficits, is appallingly high. Why is it that that's where the funnel takes them? The funnel should take them in a different direction. But what services do we have that work well with children and young people that fall in that spectrum?

(Academic, former senior JJ professional)
I think there would be genuinely very few magistrates, or virtually none, who would actually say, ‘if we can’t do anything for them in the community then we will lock them up’, but inevitably that’s what ends up happening because if they don’t get any services whatsoever then... their issues just continue.

(Children’s Court Magistrate)
Importance of place

- Come from and move around small number of disadvantaged suburbs / towns in NSW e.g. 40% of the Indigenous women in the cohort had lived in just 3 towns / suburbs

- Ensure tailored wrap around holistic disability support where they live for people with disability to prevent incarceration and when leaving prison
Young people with complex needs

Negative institutional responses

Managed by police

Funneled into juvenile justice

Warehoused in the adult prison system
Multi-factor and synergistic interactions

Complex Support Needs

Health and Disability

- Poor physical health
- Having a physical, sensory, behavioural or cognitive disability
- Self-harm

Demographic / Identity Issues

- Being indigenous
- Being female
- Being an older person
- Being from a minority ethnic community

Social / Economic Issues

- Substance misuse
- Homelessness and rough sleeping
- Unemployment
- Social isolation
- Being in a disadvantaged geographical location (rural, regional)
- Low income/poverty

Criminal Justice Contact

- Victims of crime
- Contact with police
- Incarceration

Early Life

- Experience of family violence as a child
- Growing up in low income household
- Early leaving home/Out of Home Care
- Early (teenage) parenthood
- Child abuse and/or neglect

(Figure by Han Xu)
Circular and Iterative
Cumulative social disadvantage factors
complex support needs
pathways into JJ/prison
Pathways into CJS are embedded in institutional structures and practices and fuelled by the absence of coherent frameworks for holistic disability, education and human services support.
Implications for SA & future work

• Don’t relegate this group to the police to manage
• An early, holistic, community based service response is required. This should include early recognition and support of mental and cognitive disability.
  
  o different approaches in different contexts e.g. Indigenous families and communities strong mothers strong babies approach; others regular and long lasting MW / postnatal infant support in the home
  
  o build community support around parents and extended family with child with a disability
  
  o the promise of early childhood services for every child must be realised but must be fit for context and child and family
Implications for SA & future work

• Rather than criminalising children and leaving them for police and criminal justice systems to manage, community services need to be adequately funded to deliver support for this vulnerable population group.
  
o  school education crucial
  o  safe and suitable housing
  o  excellent childhood primary and community health services
  o  appropriate in place disability services including for complex support needs
  o  instead of investing in ever more police, draw on, pay and develop local human and support skills and workforce
Discussion

Other implications for SA?