

Commissioner's Position

South Australia's Commissioner for Children and Young People calls for continued and focused effort on reducing the number of children being incarcerated in South Australia's youth detention centres in line with the fundamental principles of child justice:

- that diversionary programs are preferred
- restorative approaches should be used where possible
- custody should be a last resort; and
- rehabilitation for any child being held in custody should be the focus.

We want our children to be healthy, attending school, engaged in sports and hobbies, and getting the supports and services they need from their local communities. This means prioritising policies and practices that provide support for children and families to thrive.

For this to become a reality we need to make changes to state laws, policies and workforce practices and programs, that ensure all South Australian children who are arrested and accused of unlawful behaviour, and who are awaiting trial and sentencing, experience restorative justice that aims to divert them away from the youth justice system rather than draw them toward it.

By making this our top priority we take responsibility for strengthening the systems that provide equality of access to education, health care, and parental support. It also means we are much more likely to address the criminal behaviours that led each child to be apprehended for offences in the first place. Regardless of what they may have been accused of detention is not a place for children, particularly those who have not yet been sentenced, have nowhere to live, or who need some form of health treatment.



The lack of bail accommodation for children

In South Australia, there is currently a shortage of child safe appropriate bail accommodation available to children who are coming in to contact with the youth justice system, especially amongst children living in rural and remote communities.

Recently South Australia's Office of the Guardian for Children and Young People found that in just one year, more than 2,000 children under 18 years of age ended up in police watch houses around the state because there was no other suitable accommodation available. Given police watch houses are used to detain adults, they are completely inappropriate places for children to be held.

What we know

We know that youth detention is one of the worst places for children to develop physically, psychologically, and emotionally. For this reason, we must remain committed to diverting and reducing the number of children who enter the youth justice system altogether.

According to data released by the Australian Institute of Health and Welfare there has been a measurable reduction in the number of children placed in youth detention over the past few years. This provides us with an opportunity to look more closely at what has been working, as well as determine what those children who are still coming in to contact with youth justice need. By developing interventions tailored to meet more specific needs we can work together to reduce these numbers further.

As a community we know that most children who encounter South Australia's youth justice system have one or more of the following:

- a history of abuse and neglect
- a lived experience of family violence
- a disability and/or mental health problem/s
- homelessness and/or school disengagement; and
- drug and/or alcohol misuse as a coping mechanism.

One of the other significant things we know about SA children who interact with the youth justice system is that the majority are not formally sentenced. In practice this means many children are being detained in a detention centre prior to having their case heard, and often only because they have nowhere else to go.

Once children enter the youth justice system, it can be extremely difficult for them to find a pathway out. Being detained in a detention centre means a child can spend years carrying the trauma, stigma, and in many cases, racism that usually accompanies this experience.

The focus of the youth justice system should be on counteracting the abandonment, exclusion, and marginalisation that some SA children experience. This exclusion and marginalisation can come from families, schools, agencies, and government departments, as well as from the wider community.

By placing the focus on rehabilitation and support, rather than reinforcing their trauma through a youth detention experience, we can support children to move beyond their misdemeanours and mistakes, so they are not paying such an exponentially high price. Taking this restorative, rather than punitive approach, will prevent children as young as 10 years from becoming trapped in a cycle of shame, stigma, and disadvantage.

Just like every South Australian young person, these children deserve and are entitled to a better chance to develop and thrive within their own families and communities. The emphasis needs to be on what we can do to support young offenders to be rehabilitated, so that they can grow into successful adults who have become responsible citizens and valued members of their community.

By making a commitment to changing the processes, policies and systems that maintain the use of detention to punish children, particularly before they have even been sentenced, we are much more likely to restore their confidence and trust in the adults and systems we have designed to foster cohesive communities.

Discrimination against Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children are over-represented in SA's youth justice system, including those who are refused bail. Although Aboriginal Australians make up just 2% of South Australia's overall population, recent statistics show that 47.6% of children under 19 years of age are being held in unsentenced detention¹ indicating a system that is biased against this cohort.

Child Rights under the United Nations Convention on the Rights of the Child include:

Article 3 – all actions that affect children should be made in their best interests

Article 37 – that detention of a child only be used as a measure of last resort, and for the shortest possible period; and

Article 40 – that all children have the right to legal help and fair treatment in a justice system that is required to respect their rights.

Children being refused bail for their “own good”

There is evidence that children in South Australia are being refused bail because of issues that are unrelated to their offence.²

Research shows that stakeholders believe some children are being placed on custodial remand because they have no place to go, or because they cannot participate in programs that are only made available to children who are already in detention.³ This is a worrying trend. It reveals that programs and protections aimed at preventing SA children coming in to contact with the youth justice system are not in place.

What needs to happen?

In the first instance we should:

1. Ensure unsentenced children and their families have access to suitable support services and resources that divert them away from youth detention while awaiting sentencing.
2. Provide options for children who have no safe accommodation available to them while they await sentencing. This includes those children with complex health needs and those who have been made homeless due to difficult circumstances at home.
3. SAPOL and the courts should revisit bail practices and look to setting bail conditions which support children to succeed; not inadvertently set them up to fail. This can include reducing the number and complexity of bail conditions set, so that children can understand and follow them more easily.
4. Expand South Australia's youth justice system workforce to include greater diversity in terms of race, ethnicity, cultural background, sexual orientation, and gender expression. By doing so we are likely to increase potential for better youth engagement and be providing more positive role modelling.

Endnotes

- 1 AIHW, Youth detention population in Australia 2017, 5 December 2017, <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2017/data>. Young people aged 10–17 in un-sentenced detention on an average night. Tables 12 and 18.
- 2 nl: Drivers of custodial remand for young people.
- 3 ibid.