Boys at Don Dale Youth Detention Centre. Image credit: Eleni Roussos / ABC News.

It's Time to Treat Sick Kids, Not Punish Them

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'I had a lot of panic attacks at Don Dale. When these attacks happened, I would start breathing quickly and my heart would beat so fast it felt like jumping out of my chest [sic]. My legs would start shaking and it felt as if I was about to drop to the floor. I felt really worried and did not know what was going on ... The counsellor says I have panic attacks and that I have PTSD. Now when I hear keys rattling my heart beats fast. I think it is from my time in Don Dale when I didn't see my family and from what happened to me there.' **– statement of vulnerable witness BQ to the Royal Commission into the Protection and Detention of Children in the Northern Territory.[1]**

This is the testimony of a child struggling with psychological distress in our youth justice system before the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (royal commission). Mental health issues and developmental trauma are experienced by the majority of young people involved in the youth justice system. More often than not, the social and emotional wellbeing needs of these children are not adequately met and sometimes their poor mental health is being used to justify their further criminalisation and unfair treatment. Investing in community-based, holistic, and trauma-informed mental health care delivered by specialists will help us to divert children with mental health problems from confinement to treatment. Piloting a youth mental health diversion court in a small jurisdiction like the Northern Territory (NT) would be a good start.

The royal commission found 56% of children who gave evidence about their experience in youth detention had a history of self-harm and/or suicidal ideation.[2] Recent studies in Australia and the United States have confirmed the high rate of mental disorders among children involved in the justice system and detention centres.[3]

Figure 1. Children in the youth justice system

33% of youths in custody reported high to very high levels of psychological distress.

60% of young offenders presented with two or more disorders.

Source: National Children's Mental Health and Wellbeing Strategy 2021.

The latest 2019 *United Nations Global Study on Children Deprived of Liberty* (UN Global Study) reported that children in detention centres 'have a remarkedly higher prevalence of mental disorder than their community peers'.[4] Further, justice-involved children are more likely to receive more than one mental health diagnosis or suffer from a dual diagnosis of mental health and substance misuse.[5]

There is little doubt that children with mental health disorders are over-represented in our criminal justice system. But experts say that they are also disproportionately affected by punitive policy and practices.[6] This means they are more likely to be arrested, remanded without bail, detained for a longer period, or subject to repeated isolation in detention. In 2021 in the NT, a 15-year-old girl with a significant history of trauma was charged with a range of criminal offences and remanded in custody, but the judge ultimately dismissed all her charges because the court was satisfied that she either did not understand her conduct was wrong or she could not control her conduct due to her multiple mental health diagnoses.[7] This raises the question: could her unnecessary criminalisation and detention have been avoided if more efforts had been made to identify, diagnose and treat her mental health and developmental trauma in the first place?[8]

Not only is our criminal justice system failing to divert children with complex mental health issues out of the system, but it is also making their mental health worse. The UN Global Study highlights that the psychological impact of detaining children is 'inherently distressing, potentially traumatic, and having adverse impact on mental health, often exacerbated by poor treatment and unsatisfactory conditions'.[9] The royal commission was shown CCTV footage of a young person during his first time in detention repeatedly harming himself after being placed in an at-risk isolation cell for three hours with no natural light, access to water, or supportive staff interaction – an episode that the royal commission accepted was highly disturbing and distressing, and potentially dangerous to the mental health of the young person.[10]

In the NT, the mental health care of young people in detention has continued to be inadequate even after the royal commission.[11]

'We must look behind the offending to the complexities, the cultural background, the reasons why they have offended. Ask, not only what happened, the details of the offence, (that is the easy bit) but what is it that happened to you. We cannot hope to get an answer to this question unless there is full engagement and it is only then that we can we have any hope of redirecting their life trajectories, and reclaiming these young lives for the benefit of all.'[34]

– Judge Walker, Principal Youth Court Judge, New Zealand.

For example, the treatment of a female detainee at Don Dale Detention Centre was found to be unsatisfactory and 'a clear breach of most of Australia's international agreements on human rights'.[12] Children with mental disorders in detention should of course have the same rights as other children in detention. But they are also entitled to specific protections under the *UN Convention on the Rights of Person with Disabilities* and the *Principles for the Protection of Persons with Mental Illness*.

This is not just about children in custody and their human rights. As a society, we need to understand that the inability to identify and treat our children's mental health is not just a problem for the criminal justice system – it can have drastic consequences in the broader community as well. In 2020, the lives of three Indigenous teenage girls in the NT were lost to suicide after government agencies failed to respond to their significant trauma and mental health needs.[13]

Consideration of the issues

Policy frameworks

Almost 95% of children in NT detention are Indigenous,[14] and one of the 17 targets of the *National Agreement on Closing the Gap* is to reduce the over-representation of First Nations young people in our criminal justice system by 30% by 2031.[15] Given the prevalence of complex mental health issues among children in the youth justice system,[16] effective strategies that improve the mental health of First Nations young people will no doubt reduce their criminalisation and in turn, their over-representation.

Furthermore, Australia introduced its first *National Children's Mental Health and Wellbeing Strategy* (National Strategy) in October 2021. For children (including children at risk of entering or involved in the justice system), the National Strategy emphasises two main priorities:

- to provide children with priority access to mental health services[17]
- to adopt a holistic care model for these children.[18]

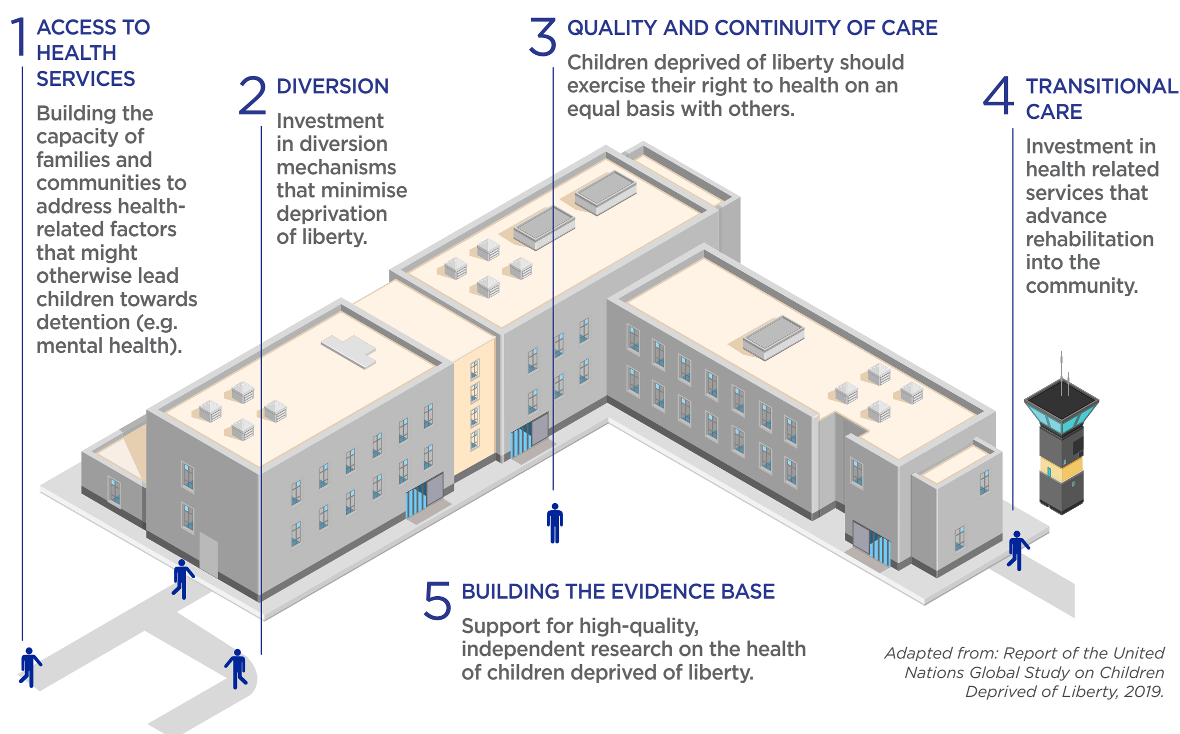
Community mental health care

Priority access and a holistic care model are both good characteristics of quality community mental health care. These characteristics are particularly important for children in the justice system. The Kirby Institute recently found that children who are either at risk of, or in contact with, the criminal justice system are much more likely than other children to use mental health services.[19] So, if we provide these children with better access and quality of mental health care, chances are that their risk of criminalisation and further entanglement in the justice system will be reduced.

To do that, first, we must make sure there are adequate specialist and culturally appropriate mental health services responsive to the unique social, emotional, and spiritual wellbeing needs of Indigenous children in the community. Unfortunately, the current funding the NT receives for mental health services per capita is the lowest in the country and none of the community mental health services at present have capacity to meet demand.[20]

Protesters outside of Don Dale Detention Centre. Image credit: Jane Bardon / ABC News Online.

Figure 2. How to improve the health of children who are at risk or deprived of liberty.



Adapted from: Report of the United Nations Global Study on Children Deprived of Liberty, 2019.

Adequate funding and support for community youth mental health service providers was crucial to the success of the community-based diversionary initiatives I observed overseas during my Churchill Fellowship in 2018. These diversionary programs use appropriate screening tools to identify mental health issues at an early stage to effect timely intervention. When I visited the Juvenile Behavioural Diversion Program (JBDP) in Washington, D.C, young people involved in the program were promptly provided with an assessment for mental health diagnosis by the Child Guidance Clinic and then matched with the relevant services.

In addition to access to and availability of services, the second requirement is to ensure that community mental health care is delivered in a holistic manner. In the JBDP program, young people are able to access not only mental health treatments provided by qualified professionals but also a range of educational and pro-social activities at six drop-in centres.[21]

Therapeutic court model

I also learned from my Churchill Fellowship that it is equally important for youth courts to be supported by mental health experts to make sure the mental health needs of children coming through the justice system are assessed and cared for as part of the court process. In 2018, I visited 15 different youth courts in the United States, Canada, and New Zealand. The common feature of these youth courts is the involvement of mental health professionals to better understand and address the underlying issues affecting the youths concerned (see **case study**). In New Zealand, for example, youth forensic court liaison clinicians are available at different youth court locations around the country to provide referrals to health services and undertake preliminary mental health assessments.[22] By tapping into the expertise of health professionals, courts are able to recognise the relevant mental health vulnerabilities and trauma needs experienced by a child and take immediate action. More importantly, the involvement of qualified mental health professionals often helps to better understand a child's behaviour and in turn, 'therapeuticise' punitive court responses. An example of how assault can be considered differently from a clinical perspective follows:

'A child's behaviour that is far outside the socially acceptable range can be viewed through a legal, moral, or medical lens. Hence, an assault is viewed both as a criminal act, but also as a moral affront against personhood. However it can also be understood as a symptom of a pathological process in the brain, and hence a medical condition, if it is viewed as the outcome of an absence of emotional regulation in the assailant due to absence of self-control in response to provocation from immaturity of the pre-frontal cortex from brain damage in utero from maternal alcohol abuse.'
– John Boulton, Professor of Paediatrics.[23]

Most of the youth courts I visited overseas are known as problem-solving courts. In Australia, the last youth problem-solving court in NSW was defunded 10 years ago.[24] In the United States, there are currently 56 youth mental health courts, as well as many other types of youth problem-solving courts.[25] There is strong evidence to show that they improve the outcomes for child offenders with mental disorders.[26] The two main keys to the success of these courts are:

1. early identification of the causes of offending
2. collaborative solution of the problems.

We might not need to set up specific youth mental health courts such as in the United States. However, we can at least incorporate these two important features into the youth justice system. This can be achieved by introducing court-based clinicians into the Youth Justice Court. The Local Court in Darwin has been doing this for adults since 2016.[27] There are certainly benefits in extending the same service to young people given the prevalence of mental disorders within this vulnerable cohort.

Case study: Behavioural Health Juvenile Justice (BHJJ) project, Ohio, USA.

A statewide Behavioural Health Juvenile Justice (BHJJ) project was established in Ohio in the late 1990s to better assess and treat children with behavioural health challenges with evidence-based programs. Their latest evaluation reveals that less than 4% of children who participated in the program ended up being committed to state-run detention facilities.[28] The recidivism rate was also reported to be lower for those who completed the program, and importantly, it cost $5,140 for each child to participate in the BHJJ project compared to the estimated cost of $177,132 to detain a child in custody.[29] At present, the NT Government spends approximately $3,313 per day or $1.2 million per year to incarcerate a young person.[30] Other countries such as Canada and New Zealand have shown us how to introduce mental health specialists into youth courts and other justice agencies. It is not too late for Australia to do better for our children.

Stakeholder consultation

Preliminary consultation has included the organisations listed below. This is not an exhaustive list and there are other important stakeholders critical to deliberations.

- NT Legal Aid Commission
- North Australian Aboriginal Justice Agency
- NT Children's Commissioner (Acting)
- Criminal Lawyers Association NT
- NT Council of Social Services
- NT Youth Justice Advisory Committee
- Australian Childhood Foundation
- Justice Reform Initiative

Policy recommendations

1. Pilot a youth mental health diversion list in the Northern Territory

The involvement of mental health professionals in early contacts with the criminal justice system and in court processes presents an opportunity to provide children with complex mental needs with effective responses before their untreated mental health problems escalate and it becomes necessary to detain them at exorbitant cost to taxpayers. We can start by piloting a youth mental health diversion list in the NT, with mental health specialists in youth courts and other justice agencies, and commit to acting on the recommendations emerging from the evaluation of the pilot.

2. Involve Aboriginal Community-Controlled Health Organisations (ACCHOs) to co-design and deliver holistic community mental health services

ACCHOs in the NT should be enlisted to co-design and deliver community mental health services. ACCHOs adopt an interdisciplinary, culturally safe holistic framework that enables them to appropriately respond to health needs, not just at an individual level, but also at the family and community level.[31] This would mean using the knowledge and expertise of Aboriginal practitioners in creating place-based models of care that hold a child's cultural wellbeing at the centre in order to respond to their mental health needs. In New Zealand, for example, the bi-cultural model of care is implemented by incorporating the Maori health model of Te Whare Tapa Wha into the service delivery framework.[32]

Acknowledging that families and communities generally offer the best support for children with mental health problems,[33] there is an urgent need for significantly improved provision of community mental health services

for children, and in particular, First Nations children who are already over-represented in our criminal justice system. Health equity principles simply demand that First Nations children in the NT and remote parts of Australia should have access to quality adolescent mental health service in their communities. The same should apply for children in custody, who should not be denied treatment and care by suitably qualified mental health professionals in detention.

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