



**Government of South Australia**

Office of the Guardian  
for Children and Young People

## **Is there still room for compassion in youth justice?**

Excerpts from a presentation by Pam Simmons,  
Guardian for Children and Young People, South Australia  
to the Criminal Law conference, 26 March 2010  
Adelaide Convention Centre

### **March 2010**

Guardian for Children and Young People  
Level 4 east, 50 Grenfell St. Adelaide

[www.gcyp.sa.gov.au](http://www.gcyp.sa.gov.au)

Ph. 8226 8570

Email: [gcyp@gcyp.sa.gov.au](mailto:gcyp@gcyp.sa.gov.au)

Overall, a compassionate approach to young offenders still dominates in the juvenile justice system. The legislation is basically sound and includes the object of care, correction and guidance for young people – and the proper realisation of their potential. It also says that, unless the young person is being dealt with as an adult, any sanctions should be individual deterrence only, not a generalised deterrence for other young people.

There are court diversion options available and over a third of police apprehensions of young offenders are dealt with by formal cautioning and another 18 per cent or so are referred to a family conference.<sup>1</sup>

And as for the workforce – well they work in juvenile justice because they like young people and want young people to learn to live within the law.

However, this compassionate approach is regularly challenged by a populist public debate (and sometimes public policy) that would see less empathy and more punishment. And, sadly, I think this is being driven by political leaders rather than public opinion.

Before launching in to what I think is going on I want to draw an important distinction between those young people who conduct minor offending and those who are involved in serious and repeat offending. The causes of crime and the responses are very different between these two groups.

The youth justice system as a whole affects a good number of young people. South Australian figures show that one in five young people will face law enforcers within a formal setting sometime in their years between 10 and 17. The rate is one in four for males and a staggering 44 per cent if you are Aboriginal.<sup>2</sup> How they are responded to has big implications for their future and our crime rates. Most young people grow out of committing crime. And we do, for the most part, deal well with minor offending.

The vast majority of young people who break the law are acting out as a statement of independence, risk, adventure and fun. Largely it is done in a group context and the decision to engage in minor offending is collective.

The problem now is that some people are making the jump from seeing young people in groups and thinking crime. This is not unusual. Indeed it happened to some extent with each generation – that young people in groups are seen as a menace. But if we have learnt anything over the generations it is to guard against such assumptions and to think about prevention of crime through engagement and respect.

---

<sup>1</sup> Office of Crime Statistics and Research [2006] *Crime and Justice in South Australia, 2005: Juvenile Justice*, Government of South Australia: Adelaide

<sup>2</sup> Wundersitz J., & Skrzypiec, G., 'Youth Justice in Australia: Old Challenges in a New Millennium', unpublished paper, 2004, cited in Parliament of South Australia, *Report of the Select Committee on the Youth Justice System*, Adelaide, 2005, p48.

On the ABC radio recently the then Attorney General said, 'We do not want him hanging around in a gang drinking alcohol, swearing, littering, intimidating people say in a shopping centre, a railway station or a public transport hub. We want to publish his name and photograph to the local community whom he afflicts.'

The inference that the Attorney General makes is that young people in groups are a threat and are about to engage in crime. Where I do agree with the Attorney General is that I don't, as you don't, want to be intimidated in the railway station. However young people in groups may be noisy, active and looking for something to do as a group but this doesn't have to lead to crime or intimidating others. And the answer to it doesn't lie in criminalising them or restricting their free movement.

The assumptions behind the introduction of community responsibility orders (which is what the Attorney General was referring to) or anti-social behaviour orders as they are known in the UK, set adult interests in opposition to youth interests. The community is now in need of protection from youth. Young people are not part of the community but are to be managed in the interests of the community.

Civil orders such as these are not only used against young people. However the evidence from the UK tells us that young people, ethnic minorities and people with disabilities or mental impairment are impacted most heavily.

Of course, this is not the first time in history that this has happened. In the nineteenth century restricting people's movement and detaining them was a means of tackling vagrancy – children and young people were imprisoned for the crime of poverty rather than committing any substantive offence.<sup>3</sup>

In my own lifetime there have been young women, peers of mine, locked away for a long time supposedly for their own protection because of their perceived sexual promiscuity.

And still now we have children remanded to custody, not because of the seriousness of their crime or the likelihood of re-offending but because there is no safe place for them to be – in the community.

So, instead of asking 'what do they need, to live safely and within the law in our community', we lock them out and punish them for their disaffection with us.

It is a particular argument that assumes:

One: youth hanging about and making their presence felt are disorderly and menacing.

Two: that youth hanging about have a propensity to commit crime and

---

<sup>3</sup> Cuneen, C and White, R (2002) *Juvenile Justice, Youth and Crime in Australia*, Victoria: Oxford University Press, p 12

Three: that all crime, or in this case the possibility of crime, must be responded to with punishment or humiliation to teach a lesson and prevent escalation.

Put simply, if cultures and climates of disorder are allowed to develop and take root, then more serious crime will follow, as surely as night follows day.<sup>4</sup>

An alternative argument would go like this:

One: youth hanging around are people making use of social and public space.

Two: That public space may not feel so good to them and we can help to make that space safe and responsive to what they need.

Three: We can deal with young people who break the law by working against their alienation from the community – or, put more positively, for their integration.

Now if I was a café owner in Rundle Mall I also might get annoyed at the group of young people occupying my chairs with one black coffee between them. But, don't forget, that this is public space encroached on by a commercial business. Commercial interests do not automatically dominate.<sup>5</sup>

We have to do better at claiming back that public space and making it available to all. We cannot have it policed for commercial interests alone.

So... instead of prohibiting young people from public space or criminalising their bad behaviour, we should be thinking about engaging young people in the design and delivery of communal space.

Before I run out of time, I want to turn to that second group – the serious and repeat offenders. This is the group we are rightly most worried about – for their sake and ours. The group who are increasingly targeted for harsher penalties and whom we seem to fail the most – and feel most angry at.

These young people are expressing something more deep-seated. Their disaffection from society. Their limited attachment to us. Their limited involvement in making and keeping the rules.

I don't need to tell you how complex the situation is here.

---

<sup>4</sup> Hughes, G and Follett, M (2006) 'Community Safety, Youth and the 'Anti-Social'' p162 in Goldson, B and Muncie, J *Youth Crime and Justice: Critical Issues*, Sage Publications: London

<sup>5</sup> Cunneen and White, *op-cit* p 245

I read this from a newspaper report a while back:

*A boy aged 11 has been assaulted in a Canberra playground by three teenagers who tried to steal his mobile phone, police said. ACT police said the three male youths attacked the boy at a Kambah playground, throwing him to the ground and demanding he hand over his phone.<sup>6</sup>*

Sounds like these boys are on the brink of being serious offenders.

So, ... who are these young people? Do they understand the harm to the boy? Do they care? If not, why not? What is their past? What effect did this have? Where are their families? What should be their punishment? What should be their rehabilitation? What is their future?

All of these important questions the juvenile justice system is expected to address – from questions of maturity and moral responsibility to appropriate punishment and rehabilitation.

Without knowing the history of these three boys I would say – very simply:

Keep them out of prison, if possible;

Offer judges some real choices in sentencing;

If they are in custody, then use that time to help them learn; and

When they are released, assist with the problems on the outside.

So, how well do we do at this? This is where I fear we are going backwards.

In my view, we are using prison too readily and too often. The admissions to detention centres and length of stay is increasing. There has been a 19 per cent rise in admissions over the past four years and a 40 per cent rise in the average daily occupancy.<sup>7</sup> This is happening at a time when national crime statistics over a four year period (admittedly ending in 2006-07) suggest a slight decline in the rate of offending in 15-19 year olds and a slight rise among 10-14 year olds.

As for real choices in sentencing, it is best to ask the Youth Court judges about what choices they have. So I'll leave that as a question for Judge McEwen. But I do wonder if diversion programs couldn't be deepened so that young people who do appear in court with little or no family support get a mandated and required response from the child protection system.

And in custody, well,... in short, rehabilitation programs have been sorely neglected and there is little evidence of coordination between education services and youth justice services in the centres.

---

<sup>6</sup> *Advertiser*, ACT, 22 August 2007, p24

<sup>7</sup> Families SA data warehouse [unpublished], requested by the Guardian for Children and Young People

This is how one young person described it to us:

*"I see they chuck you in here, you do your time, you get out, see you later, that's it."*

*And another:*

*"I did [a program] for a fair few weeks and I ended up finding out the same information I had been finding out before."*<sup>8</sup>

And the fourth – how well do we do at assisting them on their release? Well... There is no graded security for juveniles – the imprisonment is all maximum security and high dependence, and there is little political support for using day release so that young people can make a gradual transition or take up training or jobs outside of custody. They can of course get conditional early release – though serious offenders now are to get less opportunity for this. So while there have been recent improvements in case management for transition from custody, the detention system still resists a good supported transition.

I don't want to leave you with the impression that it is all bleak and going backwards. I think it is significant that youth justice services are still provided by the child welfare arm of government and that we will have a new detention centre designed with contemporary knowledge and understanding of rights of juveniles.

And I see some fantastic commitment in the workforce and a determination to do better by the young people who are imprisoned.

But, if I was in charge – which I'm sure you are relieved I'm not – I'd be redesigning public spaces to accommodate some recklessness and wildness of teenagers, I'd scrap proposals for community responsibility orders, and I'd be investing in rehabilitation programs that have been demonstrated to work for serious young offenders. We're not short of ideas. And to draw the two parts of my address together, why not have the residents of Cavan youth training centre take on a public project of creating a public space that suits young people's needs. Not as free labour but skilled work and learning in design, painting, metalwork, woodwork and so on. It has been done successfully in Middlesbrough in the UK.

In the recent election campaign I didn't hear much talk of creative ideas in youth justice. But as all of you here know, much of how the criminal justice system impacts on people is decided by the people who work in it.

And they have bucket loads of compassion and ideas. We need to hear much more from them.

---

<sup>8</sup> Day, Andrew and Casey, Sharon (March 2008) *Review of Programmes in Youth Training Centres – Part 2: Consultations and Recommendations*, Government of SA: Guardian for Children and Young People, Adelaide SA