IMPROVING DIVERSION FOR YOUNG PEOPLE IN VICTORIA

SUBMITTED BY THE SALVATION ARMY

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The Salvation Army, Australia Southern Territory – Victorian State Council: Improving Diversion for Young People in Victoria

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1. ABOUT THE SALVATION ARMY

Since its beginnings in 1865 under founders William and Catherine Booth, The Salvation Army has become an international Christian movement and is one of the largest providers of welfare services in Australia. Operating for over 130 years in Australia, The Salvation Army has a significant history of working with and advocating for the rights and needs of disadvantaged people in our community.

Support for disadvantaged Australians is driven by our values: human dignity, justice, hope, compassion and community. The Salvation Army is committed to the promotion of social justice and protection of the rights of disadvantaged and vulnerable people. The foundational social services developed by the Booths have remained a visible expression of The Salvation Army’s Christian mission and values. More than 30 million people each year receive support and assistance from services provided by the organisation globally.

2. THE SALVATION ARMY IN VICTORIA

In Victoria, Salvation Army churches, community centres, and social service networks provide more than 300 social programme activities to members of the community.

These social programme responses range from frontline emergency support services and highly targeted, intensive interventions, through to more generalist life stage responses. These programs include:

- Youth, adult and aged accommodation and homelessness services;
- Family and domestic violence support and accommodation services;
- Material aid and emergency relief;
- Financial counselling and assistance;
- Personal counselling and support;
- Drug and alcohol support and treatment services;
- Youth services, including out of home care options;
- Aged care services;
- Emergency disaster responses; and
- Education, training and employment support services.

Today, The Salvation Army works extensively with vulnerable young people through a range of youth and family support services, Out of Home Care services, and youth transition services. The Salvation Army has a long history of involvement with the courts and prisons system, including the Children’s Court. In addition, Salvation Army services across the state provide case management and advocacy to young people who become involved or are at risk of becoming involved in the justice system.
3. DEVELOPING OUR RESPONSE

The Salvation Army welcomes the Victorian Government’s commitment to improving youth diversion and thanks the Government for the opportunity to respond to the discussion paper *Practical Lessons, Fair Consequences: Improving diversion for young people in Victoria*.

To form our response, The Salvation Army held a service consultation comprised of senior managers and key practitioners from relevant service networks across the state to discuss issues regarding youth justice and diversion.

The Government’s discussion paper successfully describes the offending behaviour of youth and who the young people in the justice system are. However, The Salvation Army does not agree with the “behaviour modifying” approach taken in the discussion paper and believes that the overarching question of “how can we address the criminal behaviour of a young person”\(^1\) is fundamentally the wrong question to ask. Instead, The Salvation Army believes that the question that should be asked is, “Why do young people offend?” The question of “why” shifts diversion practices from trying to modify behaviour to trying to address the reasons for that behaviour. Until the question of why is understood, diversion will have limited effectiveness.

Traditionally, Victoria has had a very good youth justice system and has done diversion well. This is evidenced by the fact that Victoria’s rates of youth detention and remand are the lowest in the country.\(^2\) Today, Victoria still has one of the most effective youth justice and diversion systems in Australia due to the flexibility of the system and the ability to respond to each young person’s needs and behaviour on an individual basis. Keeping these strengths in mind, there are still always areas for improvement. To this effect, The Salvation Army makes the following points:

- Rehabilitation and diversion are principles currently underpinning youth justice legislation in Victoria. These principles need to be maintained;
- Diversion is a principle designed to exit young people out of the youth justice system and redirect them back into the mainstream community as quickly as possible;
- The principle of diversion is intrinsically linked to the identity and milieu of a young person both of which influence why young people do or don’t offend;
- Diversion programs that seek to modify young people’s behaviour will not succeed if the underlying reasons for their offending are not addressed;
- Diversion in Victoria has been extremely successful for the majority of young people in Victoria; and

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\(^1\) *Practical Lessons, Fair Consequences: Improving diversion for young people in Victoria.* P 22, Question 3

A small group of highly disadvantaged young people are still heavily involved and over represented in youth justice. We need to ask how we can better meet the needs and address the behaviour of these young people.

4. PRINCIPLES AND LEGISLATION OF YOUTH JUSTICE IN VICTORIA

The discussion paper asks if there should be specific principles underpinning diversion in legislation and how these principles could be used to deliver better diversion programs. It is The Salvation Army's opinion that the principles of diversion already underpin Victorian legislation. These principles work well and just need to be acted upon in a meaningful way.

The Victorian Youth Justice System and Children’s Court approach to offending young people is one of diversion and rehabilitation rather than punitiveness, as it is based on principles of doli incapax (child development), due process, and rehabilitation. These principles are outlined in the 1984 Child Welfare Practice and Legislation Review (Carney Report) and the Victorian Charter of Human Rights and Responsibilities Act 2006, which are consistent with principles in the UN Declarations of the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and Australia’s National Human Rights Action Plan.

The principles outlined in the above documents recognise that:

“The young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development.”

As a result of their early stages of development, children and youth

“Shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”

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3 Judge Paul Grant, President of the Victorian Children’s Court, as cited in Sentencing Advisory Council. Sentencing Children and Young People in Victoria. April 2012 p 27

4 Doli incapax recognises the varying ages at which children mature and come to understand the difference between right and wrong. See Richards, Kelly. Australian Institute of Criminology. What makes juvenile offenders different from adult offenders? No 409 February 2011 p 5


In regards to youth who become involved in unlawful behaviour, the right to special protection to enable healthy development is not forfeited. Rather the United Nations Beijing Rules stipulate:

“Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in their life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.”

The above principles currently underpin Victorian Legislation under the *Children, Youth and Families Act 2005* which recognises that children and young people are in an important developmental state and thus rehabilitation must be the core objective of any sentence imposed on a child. Section 362 of the Act specifically outlines “Matters to be taken into account” when sentencing a child than may affect their rehabilitation including:

- The need to strengthen and preserve the relationship between the child and the child’s family;
- The desirability of allowing the child to live at home;
- The desirability to allow the child to continue education, training or employment;
- The need to minimise stigma; and
- The need to ensure the sentence is suitable to the child, not necessarily the offence.

The emphasis on rehabilitation in Victorian legislation and the resulting practice of the youth justice system is important as it recognises that criminal behaviour on the part of a young person is not necessarily a calculated action, but is largely a product of underlying circumstances in that young person’s life. To reduce criminal behaviour by rehabilitation, the system must attempt to address the underlying circumstances and causes of crime. This is done through diversion. Thus, by including rehabilitation as an underpinning principle of the youth justice system in Victoria, diversion is also inherently an underpinning principle.

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10 Richards, Kelly. *Australian Institute of Criminology. What makes juvenile offenders different from adult offenders?* No 409. February 2011. P 4
5. WHAT IS DIVERSION?

The Salvation Army is concerned that there seems to be a significant amount of debate about the meaning of the term “diversion” within the youth justice system, police, Government, and community organisations that work with youth involved in youth justice.

A number of programs and practices in Victoria have been labelled “diversion” such as police cautioning, the ROPES program, and group conferencing, among others. While each of these programs has a valuable place at specific points within the justice system, The Salvation Army is concerned that the term “diversion” has come to refer to “a number of programs, interventions and approaches” more than a principle. The danger in understanding diversion as only a program or intervention is that young people will only be considered to be “diverted” if they participate in a particular program. This thinking could bear significant consequences in the form of net-widening and over-intervention in young people’s lives which has been shown to be extremely counterproductive. It is important to maintain a flexible, “light touch” approach to diversion that is able to respond to the particular needs and circumstances of each child without over-intervening.

The Salvation Army believes that diversion is a principle. The principle of diversion is closely linked to issues of identity and the milieu of a young person and it is based on the idea that young people need to be exited out of the justice system as soon as possible and diverted back into the mainstream, law-abiding community where they receive minimum intervention from the justice system but can still access supports if needed.

By getting young people positively reengaged in mainstream society it places young people in an environment that positively affects their identity, social networks, and other external factors that can ameliorate criminal behaviour. Getting young people who offend to reengage positively with the mainstream community is, and should be, the ultimate aim of diversion.

5.1 Identity

The issue of identity cannot be ignored when speaking about young people and their involvement in youth justice. The most common age for young offenders sentenced in Victoria’s Children’s Court is from 15 to 17 years of age. This is commonly known as a vulnerable age during which young people experiment and push boundaries in an attempt to establish their identity and “find themselves.” It is also an age when acceptance by peers and a feeling of belonging is particularly important. As a result, “the influence of peers can heavily impact on young people’s identity cannot be ignored”. 

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risk taking behaviour,”¹⁴ and in some cases may result in offending behaviour.

Research studies have shown that “criminal justice responses, such as incarceration, are criminogenic” and that prisons are “universities of crime” that increase a person’s involvement in the criminal world.¹⁵ A study in Canada by Gatti, Tremblay and Vitaro of young boys involved in the youth justice system also found that contact with the youth justice system and the intensity of interventions had negative impacts on future behaviour and increased the likelihood of involvement in the adult justice system.¹⁶

The above research speaks strongly to the impressionability of a young person’s mind, their self-identity at this stage of their life and their tendency to be influenced by their peer group, community expectations and stigma. According to labelling theory,

“Young people who are labelled ‘criminal’ by the criminal justice system are likely to live up to this label and become committed career criminals, rather than growing out of crime, as would normally occur.”¹⁷

In other words, once a young person becomes involved with the youth justice system the stigmatisation of the ‘criminal’ label can affect the self-identity of a young person and ultimately leads to behaviour that matches and lives up to that of a criminal.¹⁸

It is therefore important that any intervention on the part of police, courts or diversion programs does not result in a young person self-identifying as a criminal. Statutory supervision, group conferencing (which positions the young person as the criminal against the victim) and remand all run the risk of contributing to a young person’s identification as a criminal because each intervention treats the young person as one.

In a similar fashion, programs which group young people who have offended together also run the risk of reinforcing criminal identity because such programs place young people in an environment where they are likely to make social connections with other young people who offend. Naturally, if a young person is surrounded by peers who participate in unlawful behaviour, the likelihood of that young person also offending is high.

The importance of identity for young people highlights why the principle of diversion is so crucial. Successful diversion means a young person is not placed in an environment that will lead to increased criminalisation. They should not be treated like a criminal and they should not be surrounded by peers who are also offending. Instead, young people need to be “bounced back” into mainstream society where they can make positive social connections and where the “Matters to be taken into account” outlined in Section 132 of the Children, Youth and Families Act can be realised:

- They strengthen and preserve relationships with their families,
- They remain at home,
- They continue education, training or employment,
- They are not exposed to the stigma of the justice system.

In developing any diversion model, how it will affect a young person’s identity needs to be considered.

5.2 Circumstances and Environment

Another issue affecting youth offending that needs to be taken into account when thinking about diversion is the issue of external circumstances, experiences and environment, or the milieu, in which a young person lives. Fundamentally, it needs to be understood that young people generally get involved in offending behaviour as a result of other issues impacting their life and not as a result of calculated action or rational thought.

It is widely recognised that a large proportion of young people involved in the Children’s Court have multiple and complex issues and come from a range of backgrounds including that of trauma and/or family crisis.19 In addition, anecdotal evidence from Salvation Army youth support service providers suggests that the majority of young people who come into contact with police are experiencing issues at home such as family or relationship breakdown, a death in the family, financial stress, or substance abuse. Other issues that can contribute to offending behaviour include mental illness, intellectual disability, involvement with child protection, or family violence. A significant proportion of young people involved with the courts are also victims of crime themselves and a significant proportion come from backgrounds of disadvantage such as Aboriginal or CALD communities. Finally, a number of young people involved in the youth justice system may be struggling or disengaging from school.

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The above characteristics and issues hold true for most young people regardless of how far they have progressed into the justice system, as these issues often lead the young person to act out in ways that result in criminal behaviour and contact with police. Diversion programs that seek to modify young people’s behaviour will not succeed if the underlying reasons for their offending are not addressed. Thus, diversion is not only about getting young people out of the justice system and into the mainstream community. It is also about getting them back into the mainstream community and linking them in with services and supports if needed to help them address their underlying issues while building a positive identity and perception of themselves.

6. WHO ARE WE WORKING WITH?

Understanding the circumstances of a young person is important when developing specific program responses to young people’s offending behaviour. The Salvation Army believes that there are two broad categories of young people who come into contact with police and the broader youth justice system:

- Young people who come from relatively stable backgrounds, commit minor offences, and are likely to only come into contact with police once; and
- Young people from disadvantaged backgrounds who have multiple and complex needs and are likely to progress further into the justice system.

While the principle of diversion remains the same for both groups, specific interventions need to address the varying and different needs of each individual.

The majority of young offenders will ‘grow out’ of offending and are likely to only come into contact with police once. 20 Young people in this group may offend for a number of reasons, but most often offending behaviour is a result of tension at home, peer pressure, disengagement from education, substance use, mental health difficulties, intellectual disability, or simply poor and erratic decision making, boredom, or the fun or “rush” of committing a crime. 21 For this group, the “lightest touch” possible from the youth justice system is usually most appropriate and often comes in the form of either informal or formal police caution, warnings or fines. For the vast majority of young people this is the only intervention they will ever need.

However, there is a small group of young people with multiple and complex needs and histories of trauma who are likely to become increasingly involved in the youth justice system. Children in this group come from a range of backgrounds and need an increasing level of support to help them deal with these issues.

21 Mendes, Philip, Pamela Snow and Susan Baidawi. Young people transitioning from Out-of-Home Care in Victoria: Strengthening interagency collaboration, leaving care plans and post-care support services for dual clients of Child Protection and Youth Justice. September 2012 p 8
A group of particularly vulnerable young people who are greatly over represented in the youth justice system are those who are in or about to leave Out of Home Care (OHC). This group is particularly vulnerable due to their pre-care experiences of abuse and neglect, their often poor experiences while in care and their accelerated transitions to adulthood. The lack of ongoing support available to them upon leaving care has been found to significantly contribute to their over representation in the youth justice system.²²

According to a survey of 60 care leavers in Victoria conducted in 2005 by Raman, Inder and Forbes, nearly half the Victorian care leavers had been involved with police and 12 per cent had spent time in detention in the last 12 months since leaving care.²³ Data from the Victorian Children’s Court also indicates that there is a significant over representation of young people who had been involved in child protection and who suffer from other issues of disadvantage in Victorian youth detention centres. According to the President of the Victoria Children’s court, Judge Paul Grant, young people in custody for the 2009-10 financial year had the following characteristics:

- 35% had previous child protection involvement;
- 16% had current child protection involvement;
- 55% were victims of abuse, trauma or neglect prior to incarceration;
- 66% had been suspended or expelled from school;
- 34% presented with mental health issues;
- 14% were registered with Disability Services;
- 88% of cases had alcohol or drugs related to the offending; and
- 21% were parents.²⁴

The involvement of care leavers and young people in state care in the youth justice system is very concerning given the increased criminalisation that often occurs as a result of extended contact with this system. It is, therefore, important to meet the needs of these young people, address their underlying concerns, connect them to mainstream society, and ultimately divert them out of the justice system.

Despite these young people’s increased involvement with the justice system, The Salvation Army believes that the concept of diversion should remain the same. These young people need to be “bounced out” of the justice system as soon as possible and back into the mainstream, law abiding community. The only difference is that where the majority of young people need minimum intervention after contact with police, young people from disadvantaged backgrounds and OHC need to be linked into supports that can assist them in addressing underlying causes of their disadvantage.

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²² Mendes, Philip, Pamela Snow and Susan Baidawi. Young people transitioning from Out-of-Home Care in Victoria: Strengthening interagency collaboration, leaving care plans and post-care support services for dual clients of Child Protection and Youth Justice. September 2012 p 3
²³ Cited in Mendes, Philip, Pamela Snow and Susan Baidawi. Young people transitioning from Out-of-Home Care in Victoria: Strengthening interagency collaboration, leaving care plans and post-care support services for dual clients of Child Protection and Youth Justice. September 2012 p 3
²⁴ Grant, Paul. President of the Children’s Court of Victoria. Smart Justice Launch: A presentation. 16 November 2011
For young people in and leaving OHC diversion needs to come in the form of targeted and intense interventions that address the underlying issues of trauma, neglect, substance abuse, mental health and housing instability that affect these young people’s offending. This support needs to be available to young people at any stage of the youth justice tariff and should be aimed at pushing the young person back down the tariff hierarchy and ultimately out of the justice system all together.

7. CURRENT STATE

Victoria has long been regarded to be at the forefront of innovation in youth justice and has been able to divert the majority of young people away from the youth justice system. The Dual Track system in Victoria is an innovative and effective system as it enables young offenders to avoid imprisonment in adult detention centres and shields them from increased “contamination” from adult offenders and further penetration into the justice system.25 The introduction of the Youth Support Service (YSS) provides a much needed referral system that supports young people to reengage with education, employment, training, family and other community support structures.26 Finally, other initiatives like providing psychiatric and psychological assessments to young offenders through the Children’s Court Clinic and the Children’s Koori Courts help young people identify and address issues that may have impacted their offending.27 All of these aspects of the Victorian youth justice system and others have resulted in a system that successfully diverts the vast majority of young people, down the tariff, out of the system, and back into mainstream society.

According to the discussion paper there were about 545,000 young people in Victoria between the ages of 10-17 in the year 2009-10. That same year, Victoria crime statistics reported that 35,865 youth were processed by police,28 yet according to the President of the Children’s Court, only 6,174 young people progressed to the Children’s Court that year.29 This means that only 6.5 per cent of the entire youth population in Victoria came into contact with police, and of those young people only 17 per cent progressed to the Children’s Court. The remaining 83 per cent of young people who came into contact with police were diverted away from the children’s court through either formal police cautions (9,029), the ROPEs program (838), fines (9,879)30, informal cautions31, or other diversionary programs.

26 Youth Support Service www.ysas.org.au/youth-support-services/youth-support-service
27 Grant, Paul. President of the Children’s Court of Victoria. Smart Justice Launch: A presentation. 16 November 2011
31 Data on the number of youth to receive informal cautions was not available
This is a fantastic outcome for young people and demonstrates the strength of police cautioning in Victoria. According to Victoria Police’s *Child and Youth Safety Strategy 2009-2013* “people who are cautioned, rather than charged, are less likely to have further contact with police than those who appear in court for their first offence.” As a result, The Salvation Army believes police cautioning could be one of the single most effective diversion practices in Victoria. Victoria Police are doing an excellent job at diverting our young people out of the justice system and away from future offending and they should be commended.

8. IMPROVEMENTS TO CURRENT DIVERSSION

Recognising the strengths of the Victorian youth justice system, there are still areas for improvement, particularly in relation to those young people who need more support to address their underlying needs. While The Salvation Army considers diversion to be a principle which guides youth justice’s approach to offending young people, The Salvation Army understands that certain programs and initiatives need to be put in place that can realise this principle. In developing diversion programs for young people at any stage in the youth justice system, The Salvation Army believes the following questions need to be asked:

- Will this program help the young person develop a self identity of “a good kid” or that of “criminal?”
- Will this program place the young person in the company of other young people who offend, or will it help them establish positive social networks with law-abiding peers and community members?
- Will the program stigmatise the young person as a “criminal” who has been involved with the youth justice system?
- Does this program help the young person and their family address other issues in their lives that may have contributed to the young person’s offending?

The Salvation Army believes these questions will help policy makers and service providers develop good diversion programs that adequately deal with issues of identity, stigma, the impressionability of youth and the underlying circumstances that contribute to offending. They will also help policy makers and services avoid the potential to net-widen and over-intervene in young people’s lives when they would normally just ‘grow out’ of offending. Below are several practices and program models which The Salvation Army believes adequately address issues of identity and context and thus deliver effective diversion strategies.

8.1 Police cautioning

Police cautioning in Victoria has minimised many young people’s unnecessary involvement in the youth justice system. Cautioning procedures are currently outlined in the Victoria Police Standing Orders and the strength of police cautioning has been in the ability of police to

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exercise their discretion in determining how to best divert a young person from the system, whether that be by cautioning or other means. However, there have been instances of inconsistency when determining what diversion pathway is best.

Proposals to legislate police cautioning has been discussed within the sector. While legislation may have benefits in terms of reviewing due process for young offenders, The Salvation Army would strongly caution against any attempt to over regulate police’s ability to use their own discretion. Such regulation could result in police cautioning becoming too rigid to be able to appropriately respond to a young person’s individual needs, rendering it ineffective and perhaps even detrimental in achieving youth outcomes. Instead, The Salvation Army believes that increased training for police on how to best use police cautioning could be beneficial in helping police understand appropriate practice and improve consistency regarding youth diversion.

8.2 Police Referral Programs

Knox City Council’s KNOXlink Program is a model which The Salvation Army believes could be extremely beneficial to young people who come into contact with police and their families. When the majority of young people come into contact with Victoria Police, parents are called and notified of the offending behaviour. Most families have the capacity to respond to the underlying issues that may have contributed to the young person’s behaviour and no further intervention will be needed. However, in some circumstances a young person may have offended as a result of their family being in crisis, in which case the family may not have the capacity to address the reasons for the young person’s offending. In such circumstances, the KNOXlink Program enables police to caution the young person while also referring them and their family on to appropriate supportive services that can help them address underlying issues affecting their family. Services available include accommodation services, drug and alcohol services, legal advice, financial counselling, personal development groups, counselling, parenting support, and employment and training support.

This model embodies the principle of diversion as it exits a young person from the youth justice system and links them and their family into appropriate services within the mainstream community that are not affiliated with the stigma of the justice system. The model achieves valuable outcomes for young people and is highly cost effective, as it builds on existing services and depends on effective relationships and partnerships being made between local support services and police. The Salvation Army strongly recommends that this model be expanded and that greater coordination between local police and services should be a priority.

8.3 Intensive support for highly vulnerable youth

A small group of young people need more than the minimum intervention of police cautioning or referral to address more complex issues and needs in their lives. This is particularly true for children and young people leaving OHC.

For young people leaving OHC, the age at which young people leave and the level of support available to them when they leave has been found to have an impact on the likelihood of that young person offending. Under Victorian law young people can be under the care of the state until 18 years of age. However many young people in care suffer developmental delays as a result of the trauma suffered which affects their ability to live independently and navigate an often complex adult service system at such a young age.

Two pieces of legislation have attempted to address the serious vulnerabilities young people face when leaving care. The Children, Youth and Families Act 2005 recognises the vulnerability of care leavers and as a result gives the Government scope to provide leaving-care and after-care services for care leavers up to 21 years of age. In addition, the Australian National Out-of-Home Care standards required as of December 2010 that all care leavers have a transition from care plan starting from 15 years of age. These initiatives are designed to provide access to financial assistance, housing, education, employment, legal advice, counselling, and health services. However, it appears that Victorian Department of Human Services Child Protection services are failing to properly resource and prioritise exit planning for care leavers resulting in these young people being unable to access youth support and transition services.

The failure to develop exit plans for care leavers appears to be a nationwide problem. Although the Australian National Out-of-Home Care standards require all OHC leavers to have a transition from care plan, a study done by Joseph McDowall from the CREATE Foundation in 2011 found that although all young people were supposed to have a care plan, only 31.7 per cent of care leavers nationwide knew a plan existed. Of those, one third of young people had little or no input to its development. Victoria only performed marginally better with 39.8 per

34 Taylor, C. Lond: Jessica Kingsley Publishers. Young people in care and criminal behaviour. 2006 as cited in Mendes, Philip et al (n 21) p 10
35 The CREATE Foundation (Report Care on Education 2006) reports that only 44% of children in care attend school by the age of 17. AHURI (People in care at risk of homelessness 2011) reported that 73 per cent of young people leaving care slept on the streets at one point and 27 per cent became homeless immediately.
36 Mendes, Philip, Pamela Snow and Susan Baidawi. Young people transitioning from Out-of-Home Care in Victoria: Strengthening interagency collaboration, leaving care plans and post-care support services for dual clients of Child Protection and Youth Justice. September 2012 p 3-4
cent of young people surveyed reporting they knew about or had a leaving care plan.\textsuperscript{38}

Children in OHC have a range of difficulties which make them vulnerable upon leaving care and no single solution can adequately address all issues. However, The Salvation Army believes that the more purposeful development of transition out of care plans could be a big step in the right direction in helping young care leavers to avoid the youth justice system. Young people need to be involved in their transition plans and plans need to have meaningful support from OHC workers as well as coordination with other support services such as housing, AOD, education and training, employment, police and the courts. Research has shown that care leavers who exit care into stable accommodation are “twice as likely to stay in stable housing, three times as likely to be employed, less likely to be involved with police and crime and have a more positive sense of wellbeing.”\textsuperscript{38}

Whilst not considered “youth justice diversion” in the traditional sense, improving the quality, effectiveness, support and coordination for a transition out of care plan will ultimately improve outcomes for care leavers and divert them from the justice system. The consequences of failing to support care leavers in their transition can be seen in the numbers of young people in detention who come from OHC and child protection backgrounds. It is imperative that care leavers are not being left to fall through the cracks at the most vulnerable time in their lives. Improved supports and coordination of services for these young people needs to be a priority.

8.4 Remand and Bail

Although the majority of this submission has focused on the early end of young people’s involvement with the youth justice system, The Salvation Army is extremely concerned about the upwards trend in the number of young people placed on remand in recent years.

Principles of due process make it clear that remand is to only be used to ensure the person charged will appear in court to answer charges, to protect the community, or to protect victims, or witnesses.\textsuperscript{40} However, according to the Jesuit Social Services, it is now broadly recognised by police, social workers, magistrates and others that remand is increasingly being used to accommodate Victorians with issues of health and mental health problems, substance abuse and homelessness.\textsuperscript{41} For vulnerable

\textsuperscript{38} McDowall, Joseph.  CREATE Foundation.  2011 Report Card What’s the plan? – Facilitation transition for young people leaving care. P 29
\textsuperscript{39} McDowall, Joseph.  CREATE Foundation.  What’s the plan? – Facilitation transition for young people leaving care. Presentation at the 7th National Homelessness Conference 2012.
\textsuperscript{40} Bamford, David, Sue King and Rick Sarre. Australian Institute of Criminology Research and Public Policy Series No. 23. Factors Affecting Remand in Custody A Study of Bail Practices in Victoria, South Australia and Western Australia Research Consultancy. 1999 p v
\textsuperscript{41} Ericson, Matthew and Tony Vinson.  Richmond, Jesuit Social Services.  Young people on remand in Victoria: Balancing individual and community interests. 2010 p 11
youth, placing them on remand simply because they are unable to meet conditions for bail (such as stable accommodation) severely disadvantages them and places them at serious risk of increased criminalisation and offending.

Remand can have detrimental effects on a young person mentally and emotionally. Not only does remand expose young people to the negative influences of adult offenders and other offending youth,\(^{42}\) it also increases stigma associated with youth justice involvement, increases the likelihood of a young person developing the self identity of “criminal” and disrupts any connections the young person may have in the community such as education or employment.\(^{43}\) However, most importantly, placing a young person on remand takes away the fear of incarceration and removes the main incentive youth justice workers can leverage to encourage a young person to stop offending. Placing young people on remand unnecessarily should be treated as a last resort in the same way that detention is a last sentencing resort.

In order to reduce the number of young people placed on remand, increased bail support services need to be made available. Bail support services have been found to be among the most effective alternatives to custodial remand. A study done by Sinead Freeman in Ireland in 2008 found that 70 per cent of individuals on bail support programs successfully completed their bail and reoffending was prevented in 80 per cent of cases.\(^{44}\) In addition, bail support programs that provide access to housing for young people are needed as a lack of access to stable housing was found to be “the single most significant factor associated with young people being remanded in custody.”\(^{45}\) Given the current housing affordability crisis in Australia, access to stable housing for vulnerable youth at risk of being placed on remand is particularly salient.

Victoria has a number of bail support services available to young people. These services do a good job of diverting young people from incarceration and helping them address underlying issues of offending. However, access to these services remains ad hoc and largely restricted to certain geographical areas. The Salvation Army considers bail support services to be an important part of youth justice diversion, as it is often the last point at which a young person can be diverted from custody. It is important that these services are made more widely available to youth across the state.

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42 Ericson, Matthew and Tony Vinson. Richmond, Jesuit Social Services. *Young people on remand in Victoria: Balancing individual and community interests.* 2010 p 11
44 As cited in Ericson, Matthew.
9. CONCLUSION

The Salvation Army believes that diversion is a principle, not a set of programs or approaches. This principle does, and should, guide youth justice’s approach to working with young people. This principle is closely tied to the identity and milieu of a young person and is based on the idea that the “lightest touch” possible, or the smallest intervention, from youth justice is best. The primary aim of diversion is to exit a young person from the youth justice system as soon as possible and back into mainstream society where they can access supports if needed and develop positive connections with law-abiding members of the community. A number of existing models have been listed which demonstrate the principle of diversion including police cautioning, Youth Support Services (YSS), KNOXlink, and Bail Support Services (BSS). These types of programs should be expanded.

In the course of responding to this paper, there has been a substantial amount of discussion within the sector regarding the need to introduce principles of diversion into Victorian legislation. Discussion on the topic has centred on the need to embed and standardise the practice of diversion within Victoria Police and the court system to ensure consistency. However, The Salvation Army would strongly caution against any attempt to over regulate diversionary practices such as police cautioning or diversionary pathways that a young person may take in the course of their involvement with the system. As argued throughout this paper, The Salvation Army believes that principles of diversion already underpin Victorian legislation in the Children, Youth and Families Act 2005 as is made evident by the emphasis placed on rehabilitation within the youth justice sentencing hierarchy. Any attempt to further legislate these principles could result in an overly rigid bureaucracy and poorly targeted interventions that not only use up valuable resources but also unwittingly net-widen and over-intervene in young people’s lives.

Victoria historically has had one of the best youth justice systems in the country. Today, the youth justice system, and particularly the outstanding efforts of the police, in Victoria currently divert the majority of young offenders who come into contact with police away from the justice system before they ever reach the Children’s Court. The majority of these young offenders do not re-offend. This is a fantastic outcome for Victoria and young people in particular and speaks to the strengths of the Victorian system. These strengths need to be celebrated and preserved.

In developing any diversion model, program, or approach, The Salvation Army believes the following questions need to be asked no matter how far a young person has penetrated the justice system:

- Will this program help the young person develop a self identity of “a good kid” or that of “criminal?”
- Will this program place the young person in the company of other young people who offend, or will it help them establish positive social networks with law-abiding peers and community members?
- Will the program stigmatise the young person as a “criminal” who has been involved with the youth justice system?
• Doe this program help the young person and their family address other issues in their lives that may have contributed to the young person’s offending?

These questions can help to ensure that net-widening does not occur and that the current strengths of the Victorian system are preserved.

The Salvation Army would like to thank the Victorian Government for the opportunity to respond to this discussion paper and welcomes any further opportunity to discuss these important issues.