Introduction
This performance audit revisits a topic we covered in our 2008 report, *The Juvenile Justice System: Dealing with Young People Under the Young Offenders Act 1994*. This audit was not a direct follow-up of our previous audit or the related cost benefit analysis. Instead, in this audit we assessed whether agencies effectively divert young people in contact with police away from court by providing the right services, in the right places, at the right times. We looked at how effectively agencies directed young people away from court and into services or programs that could help them with the issues that led to their offending. We focused on diversion before court (early diversion), in the years 2012 to 2016 inclusive.

Background
The vast majority of young people in Western Australia (WA) – 97% – do not come into contact with police for an offence. The 3% who do are treated differently from adults who offend. The *Young Offenders Act 1994* sets out how young people will be dealt with in the justice system once they come into contact with police. When police deal with young people who have committed less serious offences, the Act requires that they consider directing young people away from court (referred to as ‘diversion’) and must prefer to caution young people unless the young person’s offending history makes it inappropriate to do so.

The choice to divert young people away from the justice system has been shown to reduce costs to the State,¹ and is an effective way to reduce further offending by young people.²

The main agencies with statutory responsibility for early diversion are Western Australia Police (WA Police) and the Corrective Services branch of the Department of Justice (DoJ). However, other agencies, such as the Department of Communities (Child Protection and Family Support) and the Department of Education, also have a significant role in helping young people at risk.

Police have no option but to proceed to court when a young person commits a serious offence listed in schedules 1 and 2 of the Act. However, for the majority of offences, police can divert young people, primarily through either cautioning or referring them to a juvenile justice team (JJT), a group meeting that results in an action plan for the young person to complete. There are also other options available to police for specific offences, such as cannabis intervention requirements. Diversion options are only available where the young person accepts responsibility.

DoJ is currently reviewing the Act. At the time of our audit, the government was also planning to move some youth justice functions out of DoJ and into the new Department of Communities. The government has announced $600,000 in funding for the Department of Communities to design a new program to target high-risk and recidivist young people who offend.

Audit conclusion

Diversion is an opportunity to provide a positive intervention for young people who come into contact with police but, in most cases, WA Police, DoJ and other agencies are missing that opportunity. Despite the legislative preference for diversion, and its benefits, police chose to divert in less than half of eligible cases. There is no single reason for police choosing not to divert young people. There are many complex factors for police officers to consider in making diversion decisions, and they need more guidance and oversight to help them balance those factors and increase the diversion rate.

Only a small proportion of the young people diverted away from court are linked with services to help them better manage issues that influence their offending. The likelihood of those services being effective is reduced because young people’s needs are not being assessed, and agencies do not evaluate the effectiveness of the services. More meaningful diversion pathways and better monitoring of diversion decisions would also help to shift the balance in favour of diversion over court.

Key findings

Police divert young people away from court less than half of the time, which fails to maximise the benefits of diversion

For the last 5 years, diversion rates have been under 50%

Because most offences by young people are directed to court, the benefits of early diversion, including lower costs and less repeat offending, are not being realised. Between 2012 and 2016:

- 23,730 young people committed 106,169 offences
- police could have diverted between 88 and 96% of offences by young people, but chose to divert less than half (between 40 and 49% over the period)
- most diversions result in cautions (71%), and 22% were referred to JJTs. The remaining 6% of offences were diverted through infringements and a cannabis diversion scheme.

Diversion rates vary by location and ethnicity of young people, but there is no clear reason for the differences in rates

Diversion rates varied by region, district and police station. We found no clear pattern to indicate a single cause for the different rates, which are made up of thousands of diversion decisions by individual police officers. Regional WA recorded a lower diversion rate (between 39 and 46%) than the Perth metropolitan area (43 to 55%) except for in 2016. Offences committed by Aboriginal young people were diverted less often, 35% of the time over the 5-year period, compared to an average rate of 45%. However, not every regional location and not every police station servicing significant Aboriginal populations had low diversion rates.

Police do not have the information they need to improve diversion rates because officers do not record why they choose not to divert young people

WA Police lacks important knowledge about how to improve diversion rates. It also lacks information on what factors lead officers to choose to send young people to court. When police make the decision not to divert a young person from court, they do not record the reasoning behind their decision. When police chose to direct young people to court, we expected them to record why diversion was considered inappropriate. Without these records, WA Police cannot get a good understanding of whether the decisions its officers make are appropriate, or of how to improve diversion rates.

Police have started the work needed to analyse and improve diversion rates, but more needs to be done. In late 2016, police launched a program to analyse offending by young people. The program draws information from the police incident database and presents it in a range of customisable ways. This allows police stations, and WA Police head office to monitor diversion rates and trends by location. However, to provide a more useful picture of diversion rates, the program needs further refinement to exclude offences where police have no discretion to divert.

**Police officers do not have enough guidance and support to help them consistently prioritise diversion**

To increase rates and realise the full benefits of diversion, police need more sophisticated guidance to help them better understand the value of diversion and to work through the complexities of individual cases. The current policies of WA Police align to the Act and express a preference for diversion. However, police also need ongoing education to help them apply diversion options in what can be a difficult decision for police officers in complex circumstances. Because police officers currently divert less than half of offences, and diversion rates are made up of thousands of individual decisions, police need better guidance to balance all the factors they need to consider.

**For most of the young people involved, diversion does not result in meaningful or needs-based help to address their offending**

*Only a small proportion of diverted young people receive any follow-up assistance, so many miss out on help that might make them less likely to offend in future*

Only a small proportion of young people diverted actually end up linked to services to help them with issues that contributed to their offending. This means that some young people who need help may have missed out. The Act creates 2 clear diversion pathways – cautioning and JJTs. We found that, in 2016:

- 33% of metropolitan young people who were cautioned were followed up. Of these, most attempts at follow up were unsuccessful, so only 7% were advised about services available to help them with issues that contributed to their offending
- of the 10 cases in our sample from 2016, we found 4 of 10 JJT action plans for police-referred young people included referrals to services or programs.

Twenty-four percent of young people who were diverted committed 3 or more offences, but only a small proportion get linked to services. This indicates that repeated cautions alone were not effective in changing offending behaviour, and a more intensive diversion intervention may have been needed to address the causes of offending.

**Agencies do not adequately assess young people’s individual needs, so even when they are linked up with services, they may not be the right ones**

Neither WA Police nor DoJ formally assessed young people diverted away from court to work out what kind of help they needed. There is a risk young people who needed help will have missed out, because their needs were not identified. For those young people that were referred to services, the services might not have been the kind that they needed. For example, in Fitzroy Crossing, youth justice staff were concerned about suspected Foetal Alcohol Spectrum Disorder but did not know how to identify or assist clients with these issues. We expected that agencies would recognise a young person’s offending as a trigger to work out what factors had led them to that behaviour, so they could offer the right help to the young person.

**Young people diverted away from court do not always get access to the services they need**

We looked at the range of services that JJTs were referring clients to and found that while many services are available, a JJT referral is not a guarantee of getting help. Despite the range of youth services, they do not always match the needs of JJT clients, in the places and times needed. Staff at various offices reported that some services had long waiting lists or high assessment thresholds, so JJT clients could not get into them. For example, the Midland JJT had stopped referring young people to a drug counselling service as the waiting list was too long.
Agencies need to do more to evaluate how well diversion away from court is working so they can improve outcomes for young people

Agencies made very limited progress towards a joint evaluation of youth justice diversion. While WA Police and DoJ currently have primary responsibility for diverting young people out of the youth justice system, helping these young people may need a dedicated effort by a range of agencies. These include the Department of Communities, the Department of Education, Health Services and the Mental Health Commission. Agencies need to work together to evaluate how well current strategies work, so they can identify how to make the system work better, and how each agency can best contribute.

Recommendations

1. By the end of 2017, WA Police should improve its diversion of young people by:
   a. identifying scheduled offence information in performance monitoring data
   b. ensuring officers include a brief record of their reasons for choosing not to divert when they complete paperwork to charge a young person with an offence.

2. To improve young people's access to services, by the end of June 2018, the DoJ and the Department of Communities should:
   a. review caution follow-ups and communicate expectations to youth justice offices
   b. reintroduce screening tools for young people referred by police to JJTs, and introduce structured assessments for those who screen as high-risk
   c. ensure services young people are directed to match the assessment of their needs, and that they are assessed as effective.

3. By the end of June 2018, agencies should work together to improve outcomes for young offenders by:
   a. ensuring young people are screened and assessed to determine what help they need
   b. extending case management to young people before their offending reaches serious levels, if they are assessed as high-risk and have complex needs
   c. defining desired outcomes for youth justice diversion
   d. measuring youth diversion performance and progress towards desired outcomes
   e. determining early diversion service needs and gaps
   f. better educating police officers about diversion
   g. reviewing local collaboration initiatives to ensure they focus on outcomes.
Response from the Department of Justice

The Department of Justice (the Department) welcomes the findings of the Office of the Auditor General (OAG) Report – Diverting young people away from Court.

Since the end of the audit timeframe in 2016, there have been a number of changes in the delivery and operations of Youth Justice Services (YJS). In August 2016, YJS introduced a new youth risk and needs assessment tool. This is a substantially more comprehensive instrument than the screening tool that was previously used during the audit timeframe and has been chosen based on research and patterns of referral to Juvenile Justice Team’s, with a focus on a restorative justice process.

Furthermore, during 2016 YJS completed reviews of regional youth justice services in West Kimberley, East Kimberley and Pilbara, the locations selected for this audit. Outcomes from these reviews included:

- Informing the Department’s disengagement from Royalties for Regions funding (RfR);
- Implementing a new operating model that is guided by Department statutory functions, core business and caseloads, across the reviewed regions;
- Determining appropriate levels of resourcing for these regions and,
- Planning for this new operating model to be rolled out across the Mid-West, Goldfield, South West and Southern Regional Youth Justice Services

Finally, following the State Government’s Machinery of Government (MoG) changes, the prevention and diversion functions of YJS will transition to the Department of Communities (Communities). It is anticipated that further refinement of YJS functions and roles as well as youth diversion practices, will occur with this change.

The Department of Justice either accepts the recommendations or will consider them in the context of Machinery of Government changes currently underway.

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5 Youth Level of Service/Case Management Inventory 2.0 (YLS/CMI 2.0) risk/needs assessment tool. The YLS/CMI 2.0 is a contemporary and comprehensive instrument that has been validated and is accepted and utilised nationally and internationally.
6 Young Offender Risk Identification (YORI).
Response from the WA Police

In general terms, the Western Australia Police Force (WAPOL) supports the recommendations made in the report relevant to WAPOL, however would like to make the following comments.

The WAPOL strongly supports the restorative approach to justice under the Young Offenders Act 1994 (the Act) and believes the current general principles of youth justice, under section 7 of the Act, are well-balanced. The Act requires police officers to consider diversionary options when dealing with young offenders, before initiating criminal proceedings. It is the policy of the WAPOL to provide special provisions for the fair treatment of young people by diverting them from the Court system whenever possible for non-scheduled offences.

Many complex factors impact on the decisions by police to suitability divert juvenile offenders from the court system. These include, previous patterns of offending, current involvement in the court system or the lack of admission of guilt by the juvenile. Despite this, there are opportunities for WAPOL to further develop frontline officers’ understanding of the Young Offenders Act 1994 and associated policy and procedures.

WAPOL supports the need for the reporting of why police have chosen not to divert young people. The decision to charge as opposed to divert forms part of the review process for young offenders, however a review of current policy and practices has commenced to ensure the documentation of the diversionary decision is clearly identifiable. WAPOL has created a Youth Policing Toolkit within the Business Intelligence Portal provides a snapshot of youth offending throughout the state and provides a breakdown of diversionary options utilised, including cautions and Juvenile Justice Team (JJT) referrals. The inclusion of identified scheduled offence information in performance monitoring data, will likely to be completed within the next 12 months.

By the end of 2018, agencies should work together to improve outcomes for young offenders by supporting further review of current arrangements, by identifying opportunities to improve consultation of agencies to improve outcomes for offending youth. Multi agencies approaches, such as the current WAPOL Youth Crime Intervention Officer model, highlights the benefits of improved outcomes for young offenders, through the Integrated Offender Management process involving other key government stakeholders.