Kids or criminals

1 Comment
Liz Curran | 05 September 2008

A 14-year-old boy in a country town has his first gulp of beer in a street. A passing police officer charges him. How is it that the first resort in many cases in Australia is to immerse the child in the criminal justice system? What other interventions are there?

Recent research presents confronting data on the connection between kids who are not in school and criminal offending. In Victoria, for example, of the 86 Children’s Court cases observed 42 per cent of the children or young offenders were not in some form of school or training at the time of offending.

This figure is startling. There is a definite link between children not being in school and criminal offending. Accordingly, having children in school is one method for early intervention and prevention.

Significant effort should go into preventing a child from coming into contact with the criminal justice system in the first place. Domestic and international research has found that the further a child is immersed into the criminal justice system, the more likely they are to have increased involvement with it.

For this reason it is important that we explore other approaches to charging of children and bringing them before the courts. In my view, this is a traditional approach which has not worked. It uses criminal prosecution as the first resort and places the offender at risk of immersion into the criminal justice system.

In Australia we have been too reticent to explore other alternatives that are more likely to connect young people to the community, address problems and behaviour, and hence reduce recidivism.

In most states and territories in Australia, we have a concept doli incalpax. This is a common law presumption that until the age of 14 a child offender is not criminally capable for criminal acts unless the prosecution can provide evidence that they understood the wrongdoing.

Australian legislation governing children and youth offenders does recognise the need to take into account the vulnerability of young people, their developmental progression and the need for family and connection to schooling. It is important such legislation has the support of both government and opposition.

It is long-accepted that children have stages of development and can only respond to learning according to the stage they are at. Lacking adult experience, children may also not make logical connections between behaviour and consequences. This process can be impaired by sustained drug abuse, alcohol consumption or chomring.

A body of psychological studies highlight the importance of role models, consistent parenting, adult guidance, teaching and schooling in ensuring that children develop understanding. In many cases, the children and young people have all or some of these elements missing in their lives.

So keeping kids in school will only work if these other supports are in place. Research reveals that the absence of experience and guidance can limit cognitive development and impact on behaviour. In view of this, charge and arrest might not be a logical response.

There are alternative approaches including the restorative justice approach in Canada, the United States, Britain, South America, New Zealand and Australia. The emphasis in this approach is on dialogue and negotiation between all players with a focus on problem-solving.

More effort can be made to use restorative models to retain students in schools. Teaching approaches can be adopted that are not homogenous and that recognise difference. There are diversionary community options that can be used before criminal charges are invoked.

The restorative justice model places the victim and offender and their families at the centre of the process. The aim is for the offender to understand the consequences of their actions and to take responsibility for them. This makes it possible for the offender to make amends and for the victim to have an opportunity to outline the impact
of the crime on them and their lives.

This is something that the court process often fails to do. Due to delay and the disconnection created by the legal process, the child is often seen as peripheral to the case. The aim of restorative models is for healing rather than for exacting punishment in adversarial contexts, which often creates childhood alienation or anger.

Australia needs to re-examine whether charging as we do is the right way to go. There is no evidence that it is. We should be striving to prevent re-offending by solving the problems which lead to it, such as poverty, lack of familial and social support.

Many child and youth offenders had been let down time and time again by both family and the system. It is time for us as a society to demand a better approach.

Dr Liz Curran's article is based on her Doctoral thesis on the topic of child and youth offenders.

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