Police use of court alternatives for young persons in NSW

Clare Ringland and Nadine Smith

Aim: *To measure the level of variation across the NSW Police Force's Local Area Commands (LACs) in the proportion of young persons diverted from court, before and after adjusting for factors police may consider when deciding how to proceed against a young person.*

Method: *Between July 2010 and June 2011, for each LAC in NSW, the number of cases involving young persons that police dealt with by caution or conference referral was calculated as a proportion of all cases proceeded against by caution, conference or court. Factors associated with whether or not a case was diverted from court were examined using multilevel logistic regression.*

Results: *Excluding ineligible cases, the rate of diversion per LAC ranged between 31 and 95 per cent, with 85 per cent of LACs diverting at least 70 per cent of their eligible cases. Additionally, both before and after taking into account factors that police may consider when deciding whether or not to divert, the amount of variation in police use of diversionary options attributable to LAC was small (less than 5%).*

Conclusion: *Variation across LACs in the police use of diversionary options was small.*

Keywords: *young persons, juveniles, offenders, diversion, Young Offenders Act 1997*

INTRODUCTION

The *Young Offenders Act 1997* (YOA) and the *Children (Criminal Proceedings) Act 1987* are currently being reviewed by the NSW Department of Attorney General and Justice (DAGJ, 2011). Among other terms of reference, the review is to consider the implementation of the legislation in practice and to identify how the legislation could be used more effectively.

The YOA established youth justice conferences (hereafter referred to as conferences), cautions and warnings as alternatives to court for children who commit certain prescribed offences. The YOA may be applied to children, also referred to as young persons, who are aged between 10 years and less than 18 years at the time of the offence, and less than 21 years at the time of being dealt with under the Act. The general principles of the YOA include the requirements that the least restrictive form of sanction be applied and that court proceedings not be instituted against a child if there is an alternative and appropriate means of dealing with the matter. The YOA also

seeks to use conferences, cautions and warnings to help to address the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system.

The consultation paper (DAGJ, 2011), prepared as part of the review of the YOA, suggested that diversionary options were not being used uniformly and equitably across NSW. It states, for example, that compared with non-Indigenous children, 'Aboriginal and Torres Strait Islander children are more likely to be referred to court than diverted under the YOA' (DAGJ, 2011, p. 13). In 2010, 48 per cent of Aboriginal and Torres Strait Islander children's matters were dealt with by the Children's Court (rather than by a warning, caution or conference), compared with 26 per cent of matters for non-Indigenous children (DAGJ, 2011). Data presented in the consultation paper show variation across NSW in the use of court proceedings, conferences, cautions and warnings. For example, in 2010, while cautions accounted for 43 per cent of matters state-wide, they accounted for 63 per cent of matters in one Local Area Command (LAC) (DAGJ, 2011). Similarly, an earlier review of

the NSW juvenile justice system reported large variation in the rate of police versus court referral to conferences, leading to the suggestion that 'the leadership of individual NSW Police Local Area Commanders plays a large role in determining outcomes for children and young people' (Noetic Solutions, 2010, p. 57).

While the apparent disparity in the use of diversionary options across LACs is a matter of concern, there may be legitimate reasons for the variation. The YOA only applies in certain circumstances. For example, a legislative condition for the use of diversionary options is that the child admits the offence. Furthermore, a child cannot be cautioned by police more than three times. The provisions of the YOA only apply to children charged with summary offences or indictable offences that may be dealt with summarily. The YOA also does not apply to traffic offences (if the child was old enough to obtain a learner permit), most sexual offences, serious drug offences, and offences under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

In addition, there are other factors that may be taken into account when deciding whether a young person should be dealt with by way of a caution or a conference. The YOA states that an investigating official is to consider:

- the seriousness of the offence;
- the degree of violence involved in the offence;
- the harm caused to any victim;
- the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the YOA; and
- any other matter the official thinks appropriate in the circumstances.

Any or all of these factors, and perhaps others, may explain the apparent variation across LACs in police diversion of young persons from the court system. The profiles of young persons coming into contact with the police may differ widely from one LAC to another. For example, in one LAC, the young persons dealt with may be predominantly first-time offenders who have committed relatively minor offences, while in another LAC, they may be more serious offenders, with prior convictions.

THE CURRENT STUDY

The aim of the current study is to measure the level of variation across LACs in the proportion of young persons police diverted from court by way of a caution or conference. We examine rates of diversion in cases deemed eligible under the YOA and use multilevel analyses to model LAC-level variation in rates of diversion before and after adjusting for factors that police may consider when deciding whether or not to divert a young person from court. These factors included demographic, offence and prior criminal history characteristics.

METHOD

PRIMARY OUTCOME: DIVERSION

The primary outcome variable of the study contained two possible conditions – police use of diversion (i.e., cautions and *police*-referred conferences) versus police referral to Children's Court. Note that cases brought before the Children's Court could have been finalised by the court or by a *court*-referred conference, however, the focus of the study was whether *police* use of diversion varied by LAC.

DATA SOURCES

Data were extracted from the NSW Re-Offending Database (ROD) maintained by the NSW Bureau of Crime Statistics and Research (for more details, see Hua & Fitzgerald, 2006). ROD is a collection of data from agencies within the NSW criminal justice system, including the court system, the NSW Police Force and Juvenile Justice NSW. ROD contains information on all NSW court appearances since 1994, and police cautions and completed conferences since 1998. ROD also contains some information on formal police warnings which are another form of diversion. However, warnings are not included in this study because the conditions of their use differ markedly from cautions and conferences[1] and there are possible issues in terms of data capture.

Additional data not routinely included in ROD were also required. For example, information on conferences that did not result in a completed outcome plan was extracted directly from the data provided by Juvenile Justice NSW to the NSW Bureau of Crime Statistics and Research. Furthermore, the name of the LAC that dealt with the case and the charge dates for court matters were obtained from NSW Police Force data. Data were linked to ROD using person identifiers (e.g., Criminal Names Index, name and date of birth) and criminal charge related identifiers (e.g., police H number).

SAMPLE

Data for 19,121 records of cautions, conferences and Children's Court matters with a reference date between 1 July, 2010 and 30 June, 2011 were extracted for those aged between 10 and 21 years at the time of police proceedings. A record represents a case where one or more offences by a young person are proceeded against by the police. The reference date (i.e., time of police proceedings) is defined as follows:

- Caution – caution date;
- Conference – conference referral date;
- Children's Court proceeding – related charge date.

For a Children's Court proceeding to be included in the study, it must have been finalised by 31 March, 2012, as this was the

most current data available. In the event that a specific case was dealt with more than once (e.g., a police-referred conference that was ultimately proceeded against in the Children's Court because the outcome plan was not completed), the earliest occurrence of the case was included in the sample.

The unit of analysis in the current study was a case. The 19,121 cases related to 13,541 persons. Thus, there may have been more than one caution, conference or court proceeding per person during the period of interest, relating to multiple cases. The average number of cases per person was 1.4, ranging from 1 to 15. Multiple cases per person were included in the study and were adjusted for using multilevel analysis (for more detail, see the 'Statistical analysis' section). However, if more than one young person was proceeded against in relation to a specific case, these were treated as multiple cases.

Of the 19,121 cases identified across the 82 LACs, 10,635 (56%) were diverted by the police and the remainder were referred to the Children's Court. However, not all cases were eligible for diversion. The next section describes the sample after eligibility criteria were applied to this cohort.

Eligibility criteria

In order to determine whether LACs vary in their use of diversion, we must identify the number of cases in each LAC that could have been diverted under the YOA. A number of eligibility criteria were applied to the sample to reflect the stipulations of the YOA in relation to diversion. Figure 1 shows how the number of cases deemed eligible for diversion was affected by applying the criteria of age at offence, offence type and admission of the offence.

Age at offence

The YOA applies to young people aged between 10 and 17 years at the time of the offence. A case may have consisted of multiple offences that took place over a period of time. To be consistent with the YOA, cases in which the young person was 18 years or older at the time *any* offence was committed were excluded from the analysis (n=177). However, consistent with the Act, young people may have been 18 years or older (and up to 21 years of age) at the time the offence was proceeded against.

Offence type

Numerous offences are excluded from the YOA and must result in a court appearance. Cases likely to have been ineligible were excluded from the sample by using data on offence type, classified according to the Australian and New Zealand Standard Offence Classification (ANZSOC; Australian Bureau of Statistics, 2011) and/or law part codes from the NSW Judicial Commission.

Figure 1. Number of cases eligible for diversion by applying criteria in relation to age at offence, type of offence, and admission of offence
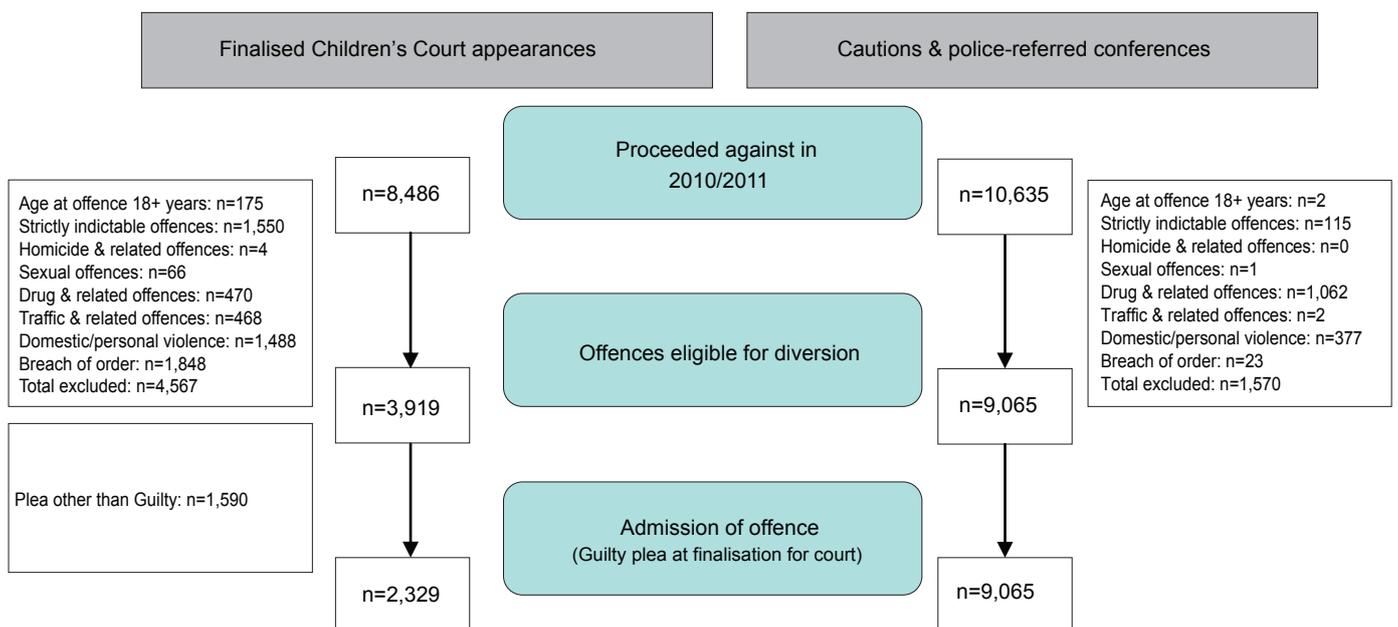
In line with the YOA, the following offences were excluded:

- strictly indictable offences (i.e., indictable offences not able to be dealt with summarily);

- homicide and related offences (ANZSOC Division 1);

- sexual and related offences (law part codes relating specifically to sexual offences listed in the YOA);

- drug and related offences (ANZSOC Division 10 and law part codes relating to specific licit drug offences); [2]

- traffic and related offences (ANZSOC Division 14 and Groups 411, 412) if the young person was aged 16 years or more at the time of the offence;

- domestic or personal violence related offences (law part codes relating to the *Crimes (Domestic and Personal Violence) Act 2007*).

In addition, cases involving breaches of custodial, community-based and violence orders (ANZSOC subdivisions 151, 152, 153) were excluded as the *Children (Criminal Proceedings) Act 1987* implies breaches should be processed in a manner similar to the original offence.

Of those cases dealt with in the Children's Court, 54 per cent (n=4,567) were deemed not eligible for diversion due to the type of offence alleged to have been committed and/or the age of the young person at the time of the offence. The most common reasons for ineligibility were that the young person had breached a prior order (n=1,848), the offence was strictly indictable (n=1,550) and/or the offence was under the *Crimes (Domestic and Personal Violence) Act 2007* (n=1,448).

While some cases that were diverted were deemed ineligible for diversion according to the age and offence criteria (n=1,570), this does not mean that they were incorrectly diverted by police. For example, the majority of the cases deemed ineligible in this study involved drug offences (n=1,062) which may have been appropriately dealt with under the YOA. However, due to data limitations, it was not possible to determine which cases involving drug offences could be dealt with under the YOA and which could not, so all cases involving drug offences were excluded.

Admission of offence

In order for a caution to be given or for a young person to be referred by police to a conference, the young person must first admit the offence. In this study, it was assumed that all those who received a caution or were referred by police to a conference had admitted their offences. For matters finalised in court, data were only available on plea at the final court appearance rather than at an earlier stage, such as the time of police proceedings (i.e., the reference date). Only those with guilty pleas to all offences at finalisation and those with court-referred conferences were deemed eligible for diversion and were included in subsequent analyses.

Of the 3,919 cases proceeded against in the Children's Court that met age and offence criteria, 41 per cent had a plea other than guilty at finalisation and were deemed ineligible for diversion as offences were not admitted.[3] After all diversion eligibility criteria were applied, the Court/non-diverted group[4] had 2,329 cases and the diverted group[5] had 9,065 cases. As such, the overall rate of diversion of eligible cases was 80 per cent.

Cases with unrecorded sex, age, Indigenous status and/or LAC were excluded from the analyses, as were records from four LACs with small numbers of cases (<20 eligible records per LAC). This left 78 LACs with 18,547 records before applying the eligibility criteria (3% of 19,121 were excluded) and 10,994 records after applying the eligibility criteria (3.5% of 11,394 were excluded).

EXPLANATORY VARIABLES

Person-level variables

At the person-level, the use of diversion was examined in relation to the sex of the young person and whether the young person had ever been identified as Indigenous. While the YOA does not explicitly state that sex, Indigenous status or age (included as a case-level variable) should be taken into account when deciding whether or not to divert a young person, it is possible that these demographic characteristics are considered as 'other matters thought to be appropriate in the circumstances'.

Case-level variables

At the case-level, the age of the young person at the time of police proceedings (which may vary per person across the year), the offences they had committed in the current case and aspects of their criminal history were examined in relation to the use of diversion.

More specifically, the offence characteristics examined were the number of offences; and whether any offence was a serious violent offence (ANZSOC Groups 211, 212, 311, 611, corresponding respectively to serious assault resulting in injury, serious assault not resulting in injury, aggravated sexual assault and aggravated robbery).[6]

The criminal history characteristics of the young person (relating to offences and penalties received prior to the reference date) that were examined were:

- the number of prior cautions;

- whether there was any prior conference (completed or not);

- the number of prior court finalisations;

- whether there was any prior alleged serious violent offence; and

- whether there was a prior custodial order.

STATISTICAL ANALYSIS

The use of diversionary options by LAC was described by calculating the per cent of cases that police dealt with by caution or conference referral (of all cases against young persons proceeded against by caution, conference or court). This was done before and after applying the YOA-related eligibility criteria. All remaining analyses used eligible cases only. The analyses were conducted using Stata/MP 12.0.

Factors associated with whether or not a case was diverted from court were examined using multilevel logistic regression.[7] This technique accounted for the three-level structure of the data. In other words, it adjusted for the 'clustering' within the data, accounting for multiple cases per person and persons per LAC. Two multilevel models are presented. The first model included no explanatory variables. The second model included both case- and person-level explanatory variables. If the variation between LACs in the use of diversion is simply a result of variation in the types of offenders/cases coming to the attention of police, it is expected that very little of the variation in diversion will be explained by LAC once case- and person-level explanatory variables have been taken into account. To obtain an indication of the strength of the LAC-effects, a Wald test of the between LAC variance in the likelihood of diversion was run (Steele, 2009).[8]

Estimates of the LAC-level intraclass correlation are presented for each of the models. The LAC-level intraclass correlation is an estimate of the proportion of total variance in the likelihood of being diverted attributable to the LAC.[9] Intraclass correlations less than .05 were considered small (Hox, 2010).

The LAC-level effects (and corresponding 95% confidence intervals) in the likelihood of diversion for each LAC in rank order were presented in a 'caterpillar plot'. The horizontal line at zero on the caterpillar plot represents the mean likelihood of diversion across all LACs. LACs with a confidence interval that did not contain zero were deemed to differ significantly from the 'average' at the 5 per cent level.

The probability of diversion for an 'average' LAC was estimated. A corresponding range of probabilities of diversion containing 95 per cent of LACs was also estimated (this is sometimes referred to as a 'coverage interval').

RESULTS

RATE OF DIVERSION BY LAC

The rates of diversion by LAC are presented in Figure 2. Given the perception of a disparity in the use of diversion across the State, Figure 2 presents rates of young persons' cases dealt with by way of caution or conference (of all cases proceeded against

Figure 2. Rate of police diversion (cautions/conferences) by Local Area Command (LAC), July 2010 - June 2011
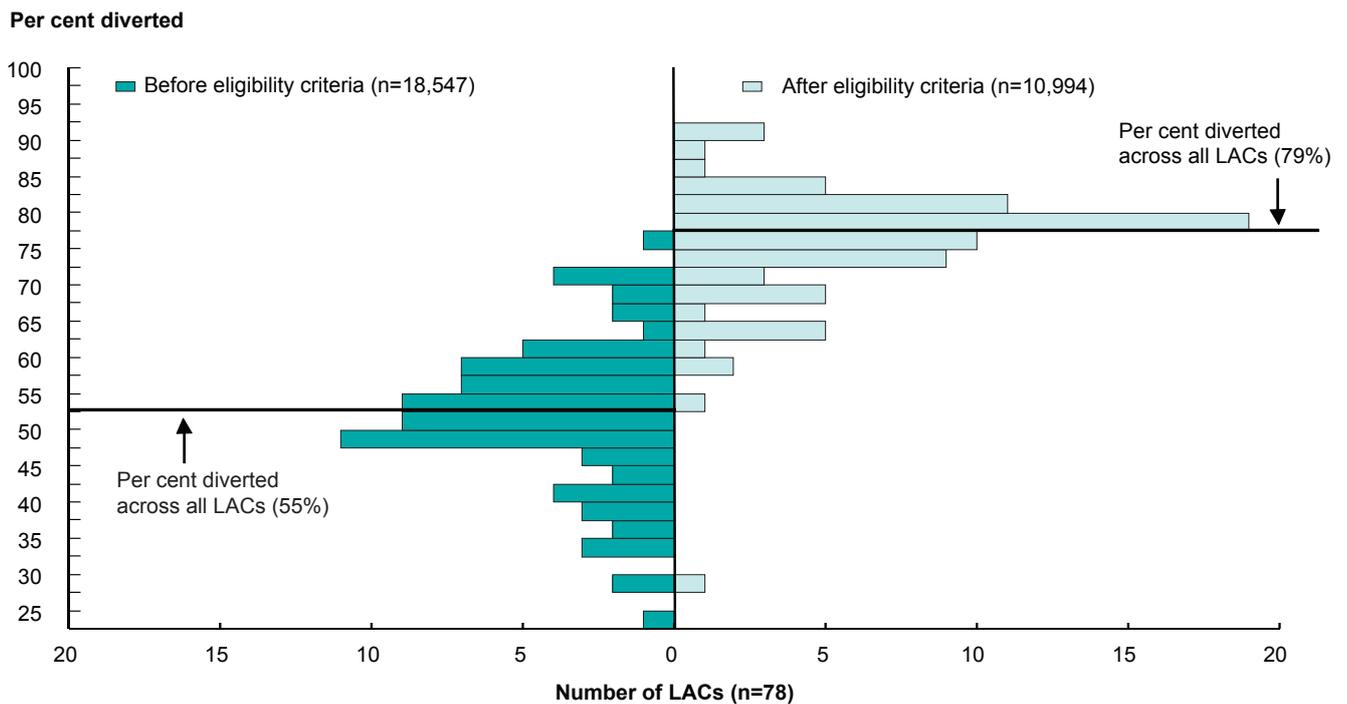
Note. Data are presented for the 78 LACs included in the study, for cases where age, sex and Indigenous status were recorded.

by police by way of caution, conference or court), before and after eligibility criteria for diversion were applied.

Compared to the rates of diversion among all cases (before applying eligibility criteria), which ranged from 26 to 80 per cent, the rate of diversion per LAC among cases eligible for diversion varied between 31 and 95 per cent. However, the LAC with a 31 per cent diversion rate was an outlier. If this LAC is excluded, the diversion rates range from 55 to 95 per cent. Over 85 per cent of LACs diverted at least 70 per cent of their eligible cases.

All analyses that follow include eligible cases only.

DIVERSION BY LAC AFTER ACCOUNTING FOR CLUSTERING

The question, then, is how much variation in diversion is attributable to LAC. To answer this question we examined a three-level multilevel logistic regression model, accounting for person and LAC, but with no explanatory variables. The model had case as the first level, person as the second level and LAC as the third level.

The between LAC variation in the likelihood of diversion was estimated as 0.29 (95% confidence interval 0.18 to 0.47); there was some indication that this variation was significant (Wald test $p<.001$). The LAC-level intraclass correlation, representing the proportion of variation in the likelihood of being diverted that could be explained by LAC, was considered small according to criteria specified by Hox (2010). Only 4.7 per cent of variation in the likelihood of being diverted was attributable to between LAC variation (95% confidence interval 3.3% to 6.6%).

Figure 3 presents a 'caterpillar plot' of the LAC-level effects of the likelihood of being diverted. LACs with a confidence interval not overlapping the horizontal line at zero (representing the mean likelihood of being diverted across all LACs) differ significantly from the average at the 5 per cent level. One-third of LACs are significantly different to the average, with the majority of these below the average. This suggests that, prior to adjusting for case- and person-level factors that police may take into account, there is some variation between LACs in willingness to divert young persons.

In an 'average' LAC, 88.0 per cent of young people were diverted, with 95 per cent of LACs having a diversion rate between 71.5 and 95.5 per cent.

DIVERSION BY LAC AFTER ADJUSTING FOR CASE- AND PERSON-LEVEL CHARACTERISTICS

As noted earlier, in addition to the eligibility criteria applied previously, there are other factors associated with whether or not the police decide to use an alternative to court proceedings for dealing with young persons who commit certain offences. For instance, notably, the YOA specifies that a young person can only be cautioned by the police on three instances. Furthermore, as stated in the Introduction, when deciding whether or not a young person should be dealt with by a caution or by a conference, the investigating police officer is to consider:

- the seriousness of the offence;
- the degree of violence involved in the offence;
- the harm caused to any victim;
- the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the YOA; and
- any other matter thought to be appropriate in the circumstances.

Figure 3. LAC-level effects of the likelihood of being diverted (based on the multilevel model with no explanatory variables; N=10,994)
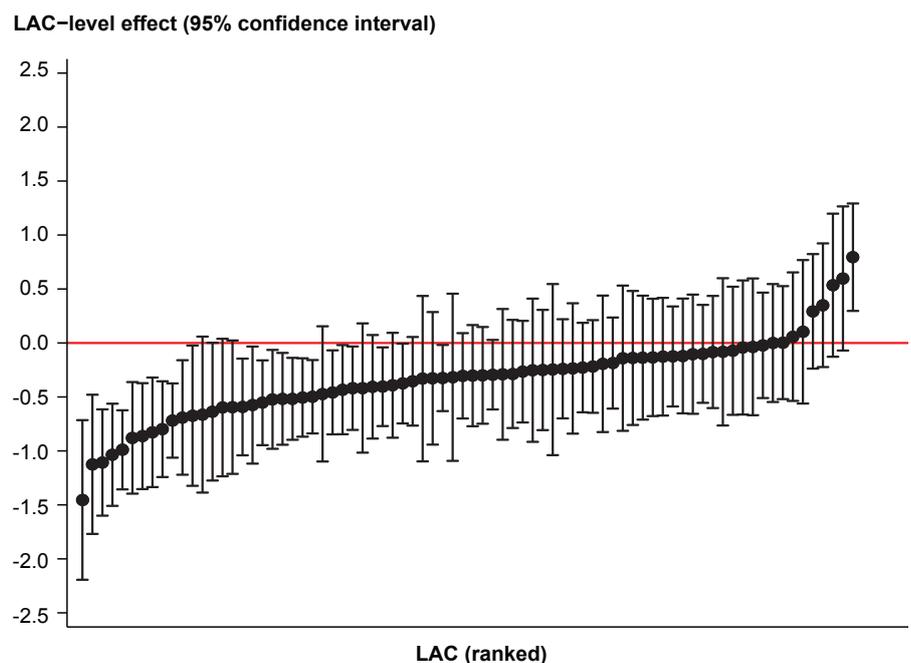
Note. LAC refers to Local Area Command. The horizontal line at zero on the caterpillar plot represents the mean likelihood of diversion across all LACs. LACs with a confidence interval that did not overlap the horizontal line at zero were deemed to differ significantly from the 'average' at the 5 per cent level.

This section examines case- and person-level characteristics associated with whether or not a case was diverted by police, and whether LAC variation changed after adjusting for these factors.

Table 1 presents the demographic, index offence and criminal history characteristics of eligible cases (where age, sex and Indigenous status are recorded). Cases were less likely to be diverted if they involved males, Indigenous persons, persons aged 17 to 21 years at the time of police proceedings, a greater number of charges, a serious violent index offence, a greater number of prior cautions, at least one prior conference, more prior court finalisations, at least one prior serious violent offence or at least one prior control order.

Table 1. Person- and case-level characteristics and per cent diverted (N=10,994)

	n	Per cent of total	Per cent diverted
Person-level			
Sex			
Female	3,315	30.2	84.1
Male	7,679	69.9	77.1
Indigenous status			
Non-Indigenous	7,804	71.0	85.1
Indigenous	3,190	29.0	64.8
Case-level			
Age at time of police proceedings (years)			
10-12	586	5.3	92.3
13-14	2,832	25.8	82.8
15-16	5,027	45.7	78.4
17-21	2,549	23.2	73.8
Number of current charges			
1	8,308	75.6	84.0
2	1,670	15.2	68.8
3	567	5.2	62.6
4+	449	4.1	49.7
Current serious violent offences			
0	10,192	92.7	80.7
1+	802	7.3	59.5
Prior cautions			
0	6,484	59.0	89.5
1	2,619	23.8	75.6
2	1,216	11.1	56.6
3+	675	6.1	34.8
Prior conferences			
0	9,645	87.7	83.9
1+	1,349	12.3	45.2
Prior court appearances with proven offences			
0	9,369	85.2	85.8
1	932	8.5	53.1
2+	693	6.3	24.5
Prior serious violent offences			
0	9,996	90.9	82.6
1+	998	9.1	44.9
Prior juvenile control orders			
0	10,781	98.1	80.5
1+	213	1.9	13.2

Note. Chi-square tests of association between diversion and each person- and case-level characteristic were all statistically significant with p-values less than .001.

Table 2. Likelihood of being diverted by person- and case-level characteristics (from multilevel model with case- and person-level explanatory variables; N=10,994)

Variable	Diverted versus not diverted		
	Odds ratio	95% Confidence interval	*p*
Person-level			
Sex			
Male vs female	0.80	(0.68, 0.95)	.010
Indigenous status			
Indigenous vs non-Indigenous	0.53	(0.44, 0.63)	<.001
Case-level			
Age at time of police proceedings (years)			
13-14 vs 10-12	0.41	(0.26, 0.63)	<.001
15-16 vs 10-12	0.31	(0.20, 0.48)	<.001
17-21 vs 10-12	0.24	(0.15, 0.38)	<.001
Number of current charges			
2 vs 1	0.40	(0.33, 0.48)	<.001
3 vs 1	0.29	(0.22, 0.39)	<.001
4+ vs 1	0.15	(0.11, 0.20)	<.001
Current serious violent offences			
1+ vs 0	0.22	(0.17, 0.28)	<.001
Prior cautions			
1 vs 0	0.47	(0.39, 0.56)	<.001
2 vs 0	0.20	(0.16, 0.26)	<.001
3+ vs 0	0.08	(0.06, 0.12)	<.001
Prior conferences			
1+ vs 0	0.32	(0.26, 0.40)	<.001
Prior court appearances with proven offences			
1 vs 0	0.32	(0.25, 0.40)	<.001
2+ vs 0	0.14	(0.10, 0.20)	<.001
Prior serious violent offences			
1+ vs 0	0.75	(0.58, 0.95)	.019
Prior juvenile control orders			
1+ vs 0	0.24	(0.13, 0.44)	<.001
LAC-level			
LAC-level variation	0.22	(0.12, 0.38)	<.001
LAC-level intraclass correlation	.040	(.026, .060)	

Table 2 presents case- and person-level characteristics associated with diversion, after adjusting for other case- and person-level characteristics. These results are based on a multilevel logistic regression model accounting for case, person and LAC. For example, after adjustment for other characteristics, the odds of diversion for males were 0.8 times the odds for females.

As shown in Table 2, predictors of diversion from the multilevel model were consistent with the unadjusted results presented in Table 1. After adjusting for other characteristics, the characteristics found to be associated with a decreased likelihood of diversion were:

- being male rather than female;
- identifying as Indigenous rather than non-Indigenous;
- being older at the time of the police referral (e.g., 17-21 versus 10-12 years of age);
- having more charges (e.g., four or more versus one);
- having a charge for a serious violent index offence;
- having a prior caution, conference or court finalisation;
- having a prior serious violent offence; and
- having a prior control order.

After controlling for case- and person-level factors that police may take into account when deciding whether or not to divert, the between LAC variance in the likelihood of diversion was estimated as 0.22 (95% confidence interval 0.12 to 0.38); there was some indication that this variation was significant (Wald test $p<.001$).

After adjusting for case- and person-level characteristics, only 4.0 per cent of the variance in the likelihood of being diverted was explained by between LAC variation (95% confidence interval 2.6% to 6.0%) (see Table 2). This LAC-level intraclass correlation was considered small (Hox, 2010). Furthermore, the 95 per cent confidence interval before and after adjusting for case- and person-level characteristics overlapped, suggesting a similar proportion of variance explained.

Figure 4 shows that, after adjusting for case- and person-level characteristics, there is somewhat less variation between LACs in the likelihood of diverting young persons than before adjustment. Less than 20 per cent of the LACs have effects

Figure 4. LAC-level effects of the likelihood of being diverted (based on the multilevel model with case- and person-level explanatory variables; N=10,994)

LAC−level effect (95% confidence interval)

LAC (ranked)
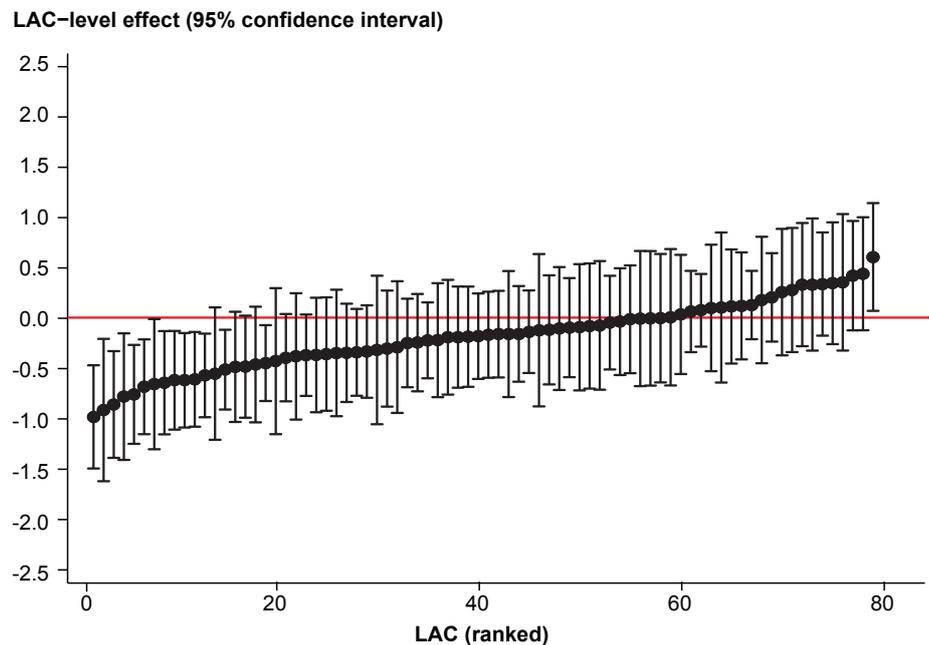
Note. The horizontal line at zero on the caterpillar plot represents the mean likelihood of diversion across all LACs. LACs with a confidence interval that did not overlap the horizontal line at zero were deemed to differ significantly from the 'average' at the 5 per cent level.

significantly different to the average (confidence intervals not including zero). In addition, all but one of these statistically significant results is below the average. Recall that the results unadjusted for case- and person-level characteristics showed one-third of LACs had effects significantly different to the average (Figure 3).

After controlling for case- and person-level factors that police may take into account when deciding whether or not to divert, in an 'average' LAC, 90.4 per cent of young people were diverted, with 95 per cent of LACs having an adjusted diversion rate between 79.1 and 95.9 per cent.

DISCUSSION

Through the use of warnings, cautions and conferences instead of court proceedings, the YOA established procedures for dealing efficiently and directly with children who commit certain offences. Previously reported statistics (DAGJ, 2011) suggested that diversionary options for young persons have not been used uniformly and equitably across the State. The purpose of the current study was to measure the level of variation across LACs in the proportion of young persons diverted from court, after adjusting for factors police must or can take into account when considering whether to deal with a young person via a caution or a conference.

After applying eligibility criteria in line with the YOA, it was found that diversionary options (cautions and conferences) were used by police in almost 80 per cent of cases. While the rate of diversion per LAC was as low as 30 per cent, 85 per cent of LACs diverted at least 70 per cent of their eligible cases. After controlling for other factors, the following characteristics were found to be associated with a decreased likelihood of diversion: being older at the time of referral; being male; identifying as Indigenous; having more charges; having a current or previous charge for a serious violent offence; and having prior cautions, conferences, court finalisations and control orders.

These findings are largely consistent with the YOA which states that the seriousness of the offence, the degree of violence, the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the Act, should be considered when deciding whether a caution or a conference is an appropriate way of proceeding. However, while the YOA does not explicitly state that age, sex, or Indigenous status should be considered when deciding whether or not to divert a young person, findings from this study suggest that police take these factors into account. Whether or not these effects are persistent across LACs, or stronger in some LACs than others, is beyond the scope of this study, but should be investigated in future research.

A principle of the YOA is that the over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system should be addressed by the use of warnings, cautions and conferences. It is of concern to find that, compared with non-Indigenous young persons, Indigenous young persons were less likely to be diverted away from the court by police, even after adjusting for factors such as prior cautions, conferences and court appearances. The reason that Indigenous young persons are less likely than non-Indigenous persons to be diverted by police could be related to factors unaccounted for in this study, such as legal representation and the timing of the admission of guilt. Further investigation is needed to gain an understanding of this finding.

This study focused on the use of diversionary options by police. However, it should not be overlooked that young persons' cases proceeded against in the Children's Court may also result in a caution or referral to a conference. Indeed, of the 20 per cent of eligible cases in this study that ended up in the Children's Court, over 40 per cent were referred to a conference by the Court and 14 per cent were dismissed with a caution by the Court. Although these could be considered cases of diversion missed by police, the fact that they were not diverted by police at an earlier stage could be explained by a range of factors. For example, while a child can be cautioned only on three occasions under the YOA, there is no limit on the number of cautions a Magistrate

can give under the *Children (Criminal Proceedings) Act 1987*. Furthermore, as suggested earlier, the police decision to divert may have been affected by the timing of the offence admission, by the availability of legal advice and/or by the presence of an appropriate adult at the time of police involvement.

While the analyses undertaken in this study showed broad adherence across the State to the general principles of the YOA, they also identified an enduring, albeit small, effect of LAC on the decision to divert a young person. Some LACs had unexpectedly low rates of diversion, these remained even after adjusting for case- and person-level characteristics. However, the current study accounted for only a limited selection of characteristics potentially associated with diversion. As mentioned earlier, other legitimate factors not available in the current data may explain why some LACs have lower than expected rates of diversion. Furthermore, this study focused only on police use of cautions and conferences, and the findings are not necessarily reflective of the use of warnings or diversion more broadly. For example, it is possible that LACs with lower use of cautions and conferences have, in fact, higher rates of diversion overall by having greater use of warnings.

ACKNOWLEDGEMENTS

NOTES

1. For example, warnings may only be given for summary offences and an admission of guilt is not required.

2. Not all drug offences are excluded from the YOA. However, from the available data it was not possible to identify those offences that could be eligible, so we excluded all cases involving drug offences.

3. Approximately half of the 1,590 Children's Court cases excluded on the basis of plea had 'not guilty' pleas; the other half had 'no plea entered' or 'other/unknown' plea, which was largely due to data quality issues. Some 'true' pleas of guilty may have been missed. To examine the influence that the exclusion of these cases may have had on the substantive results, all analyses were repeated excluding cases with 'not guilty' pleas (i.e., including those with 'no plea entered' or 'other/unknown' plea as eligible). There were no substantive differences (in relation to the significance, direction and size of effects) between findings based on excluding cases with pleas other than 'guilty' and findings based on excluding those with 'not guilty' pleas.

4. Of Children's Court/non-diverted cases, 41.1 per cent (n=958) were referred to a conference by the court, and 14.1 per cent (n=328) were dismissed by the court with a caution.

5. 9.3 per cent of diverted cases (n=843) were referred to a conference by police.

6. Many variables relating to index and prior offence types could have been used. For parsimony, and relevance in relation to YOA considerations, only index and prior serious violent offences were considered.

7. The multilevel models were specified as mixed-effects models with random coefficients for person and LAC. Fixed effects include case- and person-level characteristics.

8. The Wald test statistic of the between LAC variation is calculated as the square of the Z-ratio, that is, $[var_{LAC}/SE(var_{LAC})]^2$ and is compared to a chi-squared distribution on 1 degree of freedom. However, this Wald test is crude as it relies on the questionable assumption that the variance estimate is normally distributed (Steele, 2009, p. 7). Therefore, this test is presented to provide some indication of the strength of the evidence for LAC-effects and should not be considered a definitive test.

9. Estimates of the LAC-level intraclass correlation were calculated using the method suggested by Hox (2002) for three-level multilevel logistic regression models (three levels: case, person, LAC): $\rho_{LAC} = var_{LAC} / (var_{LAC} + var_{person} + var_{case})$, where $var_{case} = \pi^2/3 = 3.29$ for the logit model. Person-level variation was included in the calculation of the LAC-level intraclass correlation. However, as the focus of the study was on LAC, the person-level intraclass correlation was not presented.

REFERENCES

Australian Bureau of Statistics. (2011). *Australian and New Zealand Standard Offence Classification (ANZSOC)* (3rd edition) (Cat. No. 1234.0). Retrieved from http://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0/

Department of Attorney General and Justice (DAGJ). (2011). *Review of the Young Offenders Act 1997 and the Children (Criminal Proceedings) Act 1987: Consultation paper.* Retrieved from http://www.lpclrd.lawlink.nsw.gov.au/agdbasev7wr/lpclrd/documents/doc/consultation_paper_-_yoa_and_ccpa_review.doc

Hox, J. J. (2002). *Multilevel analysis: Techniques and applications.* New Jersey: Lawrence Erlbaum Associates, Inc.

Hox, J. J. (2010). *Multilevel analysis: Techniques and applications* (2nd edition). New York: Routledge.

Hua, J., & Fitzgerald, J. (2006). *Matching court records to measure reoffending* (Crime and Justice Bulletin No. 95). Retrieved from NSW Bureau of Crime Statistics and Research website: http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb95.pdf/$file/cjb95.pdf

Noetic Solutions Pty Limited. (2010). *A strategic review of the New South Wales Juvenile Justice System: Report for the Minister for Juvenile Justice.* Retrieved from Juvenile Justice NSW website: http://www.djj.nsw.gov.au/pdf_htm/publications/general/juvenile%20justice%20effective%20practice%20review%20final.pdf

Steele, F. (2009). *Module 7: Multilevel models for binary responses: Concepts.* Retrieved from Centre for Multilevel Models, University of Bristol website: http://www.bristol.ac.uk/cmm/learning/module-samples/7-practicals-mlwin-sample.pdf

Other titles in this series