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## Give them a chance: public attitudes to sentencing young offenders in Western Australia

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**Abstract**

Public opinion is often reported as punitive towards sentencing young people. Attitudes remain important to investigate given their potential to influence policy within the criminal justice system (Roberts and Indamaur, 2007). Therefore, it is important to understand the formation of these attitudes and their consistency with sentencing principles. Semi-structured interviews (n=72) and surveys (n=502) were used to gauge opinions of sentencing young people under different scenario manipulations (age; weapon; drug treatment; prior record). The findings revealed the public expected punishment, but favoured rehabilitation with an opportunity to repent, suggesting the public are open to alternatives to 'tough on crime' approaches.

Key words: public attitudes, sentencing, young offenders, principles of sentencing, youth justice.

## **Give Them a Chance: Public Attitudes to Sentencing Young Offenders in Western Australia**

### **Introduction**

Children's Court magistrates and judges have the unenviable task of deciding the punishment or response to children who offend. They take into account the severity of the crime, the circumstances of the offending young person, and the safety of the wider community (*Young Offenders Act 1994* [WA]). Their decisions can be problematic when the public disagree and call for tougher penalties and harsher sentences (Applegate, Davis, & Cullen, 2009). These extreme reactions to sentencing fuel perceptions that the public are largely punitive especially in the wake of unusual and violent youth crime. The importance of understanding public attitudes to sentencing is due to the influence the public can have on policy development (Tanasichuk & Wormith, 2012). This was evidenced in the introduction of mandatory sentencing legislation after extreme public reactions to the perceived injustices of sentences provided to "one punch" attacks resulting in death in Western Australia (WA) (Ferguson & Robson, 2015). However, research on adult offenders has shown that while the public can be retributive, they can also be progressive in their opinions of sentencing if given contextual information similar to that considered by magistrates and judges (Velazquez & Lincoln, 2009). Magistrates use different guidelines in the Children's Court to take into account the developmental differences afforded to young offenders. It is currently unknown whether the WA public would sentence similarly to the judiciary given the media focus on high profile violent cases. Therefore, this research provided an understanding of how the public would sentence young offenders and the contextual factors that alter these judgements.

### **Attitudes to Sentencing**

Sentencing refers to the decisions made regarding the punishment of, or response to, a perpetrator of a criminal act. Sentencing decisions take into account the severity of the offence and the mitigating or aggravating factors influencing the offence. Public perceptions of youth courts and youth responsibility were examined using interviews in the UK (Allen,

Trzcinski, & Kubiak, 2012) and focus groups in the US (Roberts & Hough, 2005). Participants in both studies felt that sentencing measures in juvenile courts were too lenient. However, when participants were presented with contextual factors such as age, life circumstances and alternatives to detention, public attitudes shifted (Allen et al., 2012; Mackenzie et al., 2012; Roberts & Hough, 2005). Varma (2006) also indicated that when more information regarding an offenders background was revealed, such as their schooling and living status, the public became less punitive. Thus, punitive public attitudes soften when presented with contextual information to consider.

An Australian based telephone survey of 6005 participants (802 from WA), explored the confidence of the public in sentencing measures (Mackenzie et al., 2012). The findings indicated that 64% of respondents believed juvenile property crime was not sentenced harshly enough, with 28% expressing that juveniles should be sentenced more harshly. However, 80% of respondents also believed that young people should engage in programs which build self-esteem, moral values and job skills rather than be placed in detention (Mackenzie et al., 2012). The findings represent the opposing views that are often held concurrently by the public (Lacey & Pickard, 2015). They call for punishment but are vocal about the need for offender rehabilitation, seemingly wanting harsher consequences and rehabilitative measures simultaneously.

Piquero, Cullen, Unnever, Piquero, and Gordon (2010) conducted phone interviews with 1,502 Pennsylvania residents regarding their beliefs on youth crime leniency and recidivism. The findings demonstrate that the sample believed in punitive measures for serious offenders while also believing that young offenders are capable of being reformed (Piquero et al., 2010). This was supported by Applegate et al. (2009) in a survey of 967 Florida residents regarding waiving juveniles into adult courts. Participants often indicated that serious offenders should be tried in adult courts; however there was also an assumption

that even the most serious offenders should be provided with rehabilitative treatment (Applegate et al., 2009). Further, Nagin, Piquero, Scott, and Steinberg (2006) found that participants were, on average, more willing to pay higher taxes for youth rehabilitation opposed to paying for longer periods of incarceration. Support for rehabilitative options, however, was dependent on the extent and level of contextual information provided.

### **Influences on Perceptions**

Public attitudes towards sentencing are impacted by the severity of a crime, the offender's age and participant demographics. Severity of crime was examined by studying the perceptions of young offenders who committed murder (Applegate & Davis, 2006). The responses indicated that participants (n=470) become more punitive depending on the context of the murder. Only 2.4% of the sample selected a sentence of 'probation or less' when the murder victim had been beaten severely during the course of the murder. This is similar to O'Connell and Whelan (1996) who found that participants' decisions considered the wrongfulness and harmfulness of an offence. In the cases of serious crime, public opinion is punitive even when young offenders' scenarios are presented.

Bradley, Mayzer, Schefter, Olufs, and Laver (2012) found that participants believed the punishment for older offenders should be more severe. They found that older juvenile offenders were held significantly more responsible for their actions by participants (Bradley et al., 2012). This finding supported Varma (2006) who explored the difference in perceptions of young offenders and adult offenders. The most notable finding was the public's belief that rehabilitative sentencing measures were more important for young offenders than adult offenders as they believed young people are more susceptible to reform (Varma, 2006). This highlights the importance of contextual information on public perceptions.

Participant demographics also impact attitudes to sentencing. Ewing, Garberg, and Libkuman (2009) suggest that perceptions differ based on the beliefs, values and education of the sample population. The idea of older age being more consistent with punitiveness was challenged by Velazquez and Lincoln (2009) in a survey of 270 Australian residents. The survey found that sentencing goals were mostly consistent across age groups and that ages' effect on sentencing attitudes was negligible (Velazquez & Lincoln, 2009). Thus, literature indicates that sample population characteristics can influence attitudes to sentencing.

### **Relevance of Public Perceptions**

Previous studies have revealed Australians hold an inaccurate perception of the criminal justice process and have little understanding of how it operates (Cullen, Fisher, & Applegate, 2000; Luskin, Fishkin, & Jowell, 2002). This lack of knowledge can result in a lack of confidence in the criminal justice system (Jones & Weatherburn, 2010; Samra-Grewal & Roesch, 2000) and calls for tougher sentencing. Therefore, public views are considered important as they can influence policy and legislation decisions made by their elected government, often resulting in policies that go against established best practice.

### **Young offenders**

A disproportionate amount of crime is committed by young people and they commit crime for a variety of reasons including need for goods, peer acceptance, lack of daily supervision and structure (Loeber & Farrington, 2000). For many, this behaviour represents a temporary shift from law-abiding behaviour which ceases when the young person ages and matures (Moffitt, 1993). It has been consistently demonstrated that diversion from the criminal justice system is the most effective way of dealing with most young offenders to prevent an entrenched life-course persistent criminal career (Moffitt, Caspi, Harrington, & Milne, 2002). Therefore, contact with the criminal justice system represents a late opportunity to intervene and treat young people and their families (Farrington & Welsh, 2003). When punishment is swift, not too punitive and achievable young people are less

likely to recidivate; therefore, legislation and policy has been designed specially to deal with young offenders (*Young Offenders Act 1994* [WA]).

### **Sentencing Principle Framework**

The *Young Offenders Act 1994* (WA) outlines the principles of sentencing young people. Specifically, s.7 of the *Young Offenders Act 1994* (WA) states that detention should only be used as a last resort when all other lesser options have been considered and, if used, should be for the shortest time possible (United Nations, 1989). It is acknowledged that mandatory sentencing contravenes this section, and although imperative to youth justice issues, a full discussion is beyond the scope of this paper. Therefore, to protect the best interests of the young person, the court attempts to impose alternative sentences which hope to sanction the young person in the least detrimental way. The intention is to provide young offenders with opportunities to behave pro-socially in the community in a way which impacts positively on their life and prevents recidivism. These sentencing principles will be adopted as a framework for this study. The President of the Children's Court permitted Magistrate Horrigan to guide this study in order to more fully understand the nuances of public attitudes to the sentencing young people. Participant sentencing decision making and explanations will be provided to illustrate where public attitudes align with guiding sentencing principles.

### **Research Questions**

Overall, this project was guided by four research questions:

1. How would the public sentence young offenders in a short vignette?
2. Under what circumstances would they change the sentence?
3. Do gender; age; income; education; and/or parental status predict levels of punitiveness?
4. What do they think is the most important outcome of sentencing?

### **Method**

This project was an exploratory mixed-methods study, utilising semi-structured transcribed interviews (n=72) and data collected from structured surveys (n=506). The



interviews were conducted first, transcribed verbatim and analysed. The responses were then utilised to develop survey questions.

### **Participants**

A convenience sample of 72 interview participants and 506 survey participants aged 18 years or older participated, with a mean age of 34.51 years (SD=14.83; range 18-79 years), with just over half of respondents under the age of 30 (57.8%). Gender was relatively even 42.5% male and 57.5% female (21 participants did not indicate gender).

There was also an even split of survey participants who reported having children 51.7% with 48.3% reporting no children (24 missed responses). They were also a well-educated sample with 20.5% reporting a university qualification, 15.5% completing a TAFE (college) qualification, and 22.5% were still studying at university or TAFE. Most worked full time (41.3%), with 37.1% reporting part time or casual employment and 64.3% earned less than AUD\$60,000.

### **Materials**

#### ***Semi-structured interviews***

The semi-structured interviews began with questions that aimed to establish a baseline for public attitudes focussing on youth, such as: how would you define young people?; why do you think young people commit crime?; and how should we deal with young people who commit crime? Following these questions, participants were provided with a scenario in which two young offenders committed an aggravated robbery and had pled guilty. The participants were asked what sentences they would hand down to the offenders. Thereafter, participants were provided with mitigating and aggravating factors for each offender which manipulated their age, the presence or absence of prior criminal records, the presence of a weapon, and whether they had participated in a drug rehabilitation program before sentencing.

### ***Surveys***

Subsequent surveys utilised a Five-Point Likert Scale ranging from 1 (strongly disagree) to 5 (strongly agree) for baseline statements like: I believe young people are sentenced harshly enough. For consistency, the scenario from the semi-structured interview was used in the survey. However, as preliminary analysis of the interview data showed that the public were unaware of sentencing options for young people these were provided as options in the survey (ranging from no punishment, no condition to custodial sentence). To ascertain what the public viewed as the most important outcome for sentencing, a free response question was included at the end of the survey.

### **Procedure**

#### ***Semi-structured interviews***

The data utilised was collected by research students under the guidance and tuition of experienced lecturers and researchers. Students were trained in interviewing skills prior to conducting their interview. Participants were not subject to any selection criteria as students were directed to use convenience sampling. The interview process was explained to the participants via an information letter. The participant was also informed that the interview would be recorded and that it would only proceed once consent was obtained. After written consent was obtained, demographic information was collected.

#### ***Surveys***

Survey respondents were provided with paper copies of the survey for completion by the students. Interview participants were excluded from survey participant selection due to a possible increased awareness of sentencing. Voluntary involvement was emphasised amongst participants, and ensured they were free to withdraw from the study at any time. After completion, the surveys were de-identified by ensuring the consent form was stored separately from the survey.

**Data Analysis*****Semi-structured interviews***

Thematic analysis was used to develop and determine themes among interviews.

Thematic analysis allowed for recurring sentiment to be identified and reported to show similarities within the participant's responses (Braun & Clarke, 2006).

***Surveys***

A variety of statistical tests, were employed to examine the quantitative data. All analyses were conducted using SPSS version 26 for Windows. The various statistical measures have been explained accompanying the question by question responses in the results section.

**Results**

As the study utilised both semi-structured interviews and quantitative survey data, the paper has been organised by presenting survey results in the results section. The interview themes and quotes have been used to explore the quantitative results in the discussion section.

**Sentencing**

To determine how the public would sentence a base crime the scenario (herein referred to as the default context), presented an aggravated robbery where a man in his early 20's is assaulted and has his phone and backpack stolen. The young offenders were both male: Adrian, aged 15, no prior record, who punched the man; and Bill aged 17, with a prior record for robbery, and a methamphetamine habit. Bill kicked the man while he was on the ground. Both of the offenders pled guilty to the charge of aggravated robbery. Based on the information provided, survey participants then judged what they deemed to be an appropriate sentence from the following options:

1. No punishment, no conditions (dismiss, warning)
2. No punishment but conditions (ie. Curfew, going to school)
3. No punishment but security or recognisance (bond)
4. Fine (monetary punishment)

5. Youth Community Based Order (such as rehabilitation, community work, supervision)
6. Intensive Youth Supervision Order (stricter conditions to above, report more regularly to Youth Justice Officer. If they don't follow could result in detention)
7. Custodial sentence (incarceration in detention centre)

Two fifths of the sample (41.1%) thought that a Youth Community Based Order (YCBO) would be best suited to Adrian in the default context. Just under a third (32.9%) selected an Intensive Youth Supervision Order for him while 13.9% selected a custodial sentence. The 'no punishment' options were selected by 9.2% of participants with only 2.8% opting for a monetary punishment for Adrian.

In contrast, Bill's sentencing was harsher, with only 10% nominating a YCBO. Over a third (36.2%) selected an Intensive Youth Supervision Order (IYSO), with just over half (51.2%) electing for Bill to have a term of detention.

After preliminary inspection of the data, the first four options were combined into a 'no punishment with or without conditions' category as there were so few cases selected for these sentences, they could not be statistically included individually. The fine option was removed from analysis due to the small number of cases (n=12). The YCBO, IYSO, and Custodial Sentence were retained. These changes allowed for more sophisticated statistical analysis.

### **Scenario manipulation**

To determine under which circumstances would prompt a change to the sentencing options, the scenario was manipulated to include mitigating or aggravating factors. These included manipulation of age, presence or absence of prior record, presence or absence of a weapon or if the offender Bill had completed a drug rehabilitation program prior to sentencing.

**Providing a sentence for Adrian**

In the scenario Adrian was the younger of the two offenders (aged 15), and had no prior record. Figure 1 provides the proportion of responses for different sentencing options chosen for Adrian depending on the information provided. Due to the ordinal nature of the data, a Friedman ANOVA was conducted to statistically assess for any differences among the different scenario contexts. The ANOVA result was statistically significant,  $\chi^2(3) = 879.99, p < .001$ . Follow-up Wilcoxon tests were carried out to determine the specific differences among contexts. The default context was 'no record'; that yielded a variety of responses, but were primarily dominated by the 'community order' and 'supervision order' options. Participants tended to be less punitive if Adrian was younger (aged 12) while also having no prior record ( $z = -11.06, p < .001, r = -.50$ ). If Adrian had a prior record ( $z = -16.65, p < .001, r = -.76$ ), or if he was carrying a weapon at the time of the offence ( $z = -15.73, p < .001, r = -.73$ ) judgments tended to be more punitive and primarily spread across the 'supervision order' and 'custodial sentence' categories for both of these contexts. Throughout this article 'r' is reported as a measure of effect size as discussed by Field (2009) with a general interpretation as per Field's guidelines of .1 (small effect), .3 (medium effect), and .5 (large effect). The effects mentioned in here are therefore all considered to be 'large effects'.

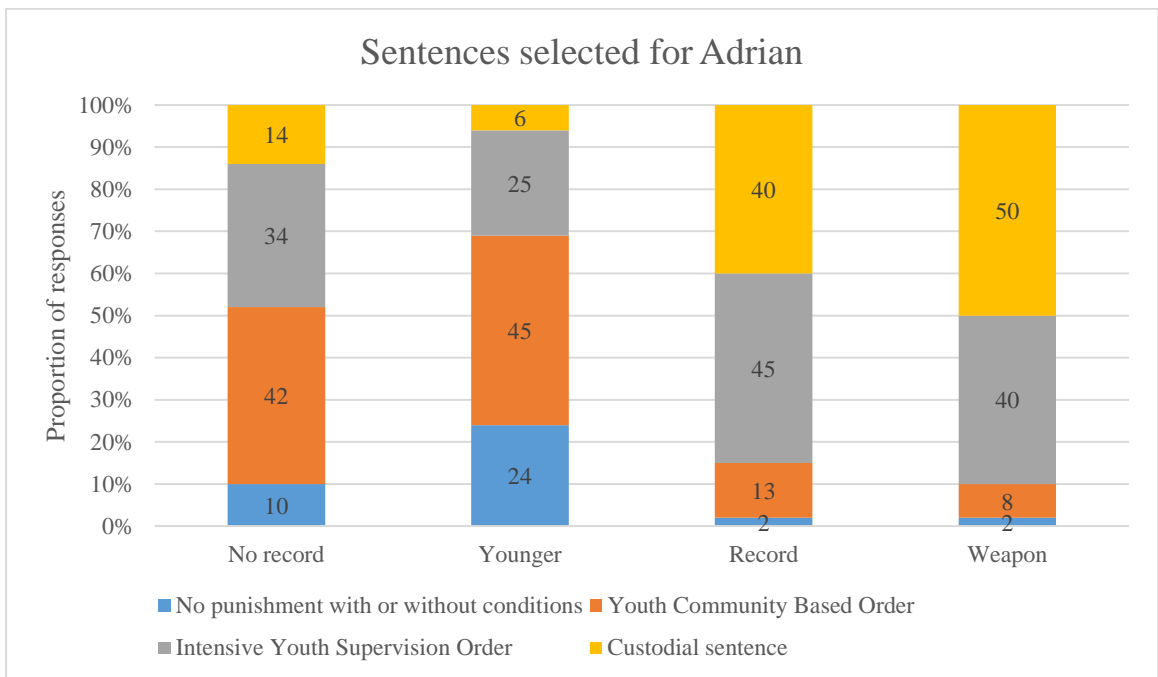


Figure 1: Proportions of participants choosing different sentencing options for Adrian after provided with different contextual information. The statistics within the bars are percentages of participant responses.

Analysis of the sentence selection changes showed that if Adrian was younger, 39% of participants down-graded the sentence. If Adrian had a record, or if he was carrying a weapon, 66% of participants increased the sentence. Taken overall, the results indicate that participants tended to be less punitive if the age of the offender was lower, and more punitive if the offender had a prior record, or was carrying a weapon during the offence.

### **Providing a sentence to Bill**

In the scenario Bill was the older of the two offenders (aged 17), had a prior record, and a drug habit (methamphetamine). Figure 2 provides the proportion of responses for different sentencing options chosen for Bill depending on the information provided. A Friedman ANOVA result was statistically significant suggesting statistically different responding across the contextual information provided,  $\chi^2(3) = 611.29, p < .001$ . The default context was 'record', with the majority of participants choosing 'custodial sentence' (52%), followed by 'supervision order' (37%). Compared to the default context, if Bill had no prior record ( $z = -14.65, p < .001, r = -.67$ ), or if he had successfully participated in rehab prior to sentencing ( $z = -10.56, p < .001, r = -.49$ ), participants were more lenient in judgment. In these instances, the most frequent response was 'supervision order' instead of 'custodial sentence'. Compared to the default context participants were more punitive when Bill was described as carrying a weapon at the time of the offence ( $z = -10., p < .001, r = -.49$ ), in this context 75% of participants chose 'custodial sentence'. Similar to the findings previously reported for the Adrian character, all effects reported here are considered to be 'large'.

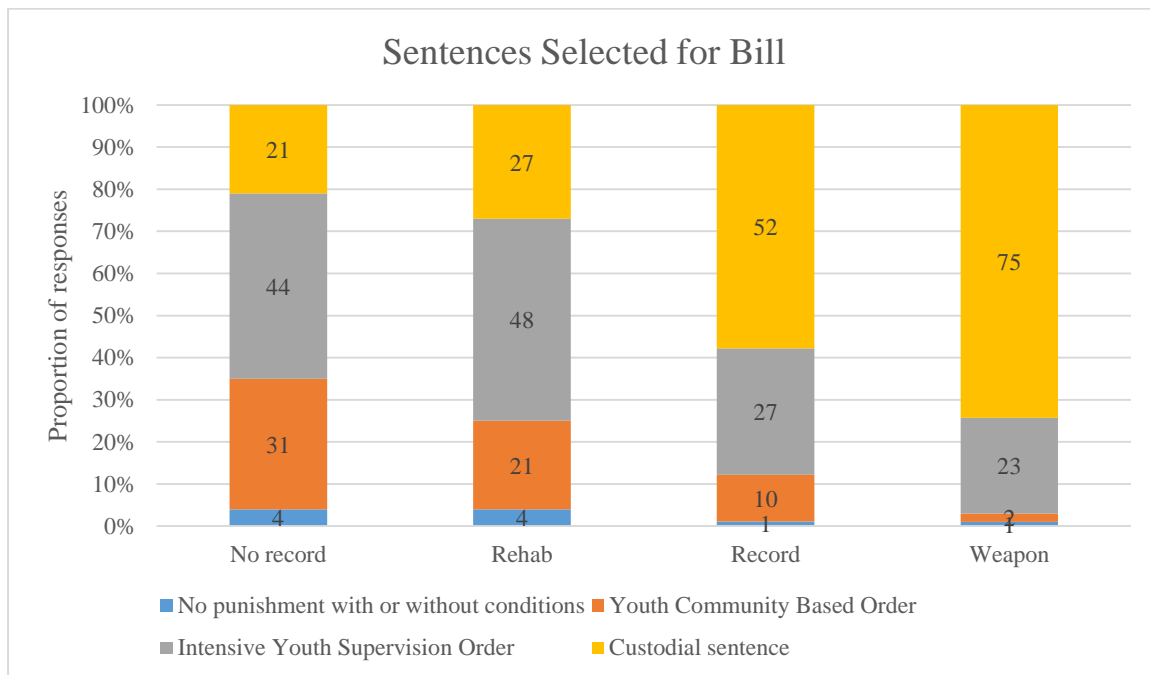


Figure 2: Proportions of participants choosing different sentencing options for Bill after provided with different contextual information. The statistics within the bars are percentages of participant responses.



Analysis of the sentence selection changes demonstrated that if Bill had no prior record 58% of participants down-graded the sentence. If Bill had successfully completed drug rehabilitation prior to sentencing, 42% down-graded the sentence. If Bill was carrying a weapon, 32% of participants then again increased the sentence. Taken overall, the results indicate that participants tended to be less punitive if there was no prior record, and if drug rehabilitation was an additional factor to consider. Also, around a third of participants were more punitive if the offender was carrying a weapon during the offence.

### **Other factors that influence the extent of punitiveness**

The prior sections contain data that demonstrate how additional information provided about the perpetrator can influence sentencing judgments. In this section the aim was to explore how different personal characteristics of the person making the judgment may be associated with different levels of punitiveness.

To address research question four, an overall measure of punitiveness was created by averaging across all the sentencing judgments for both Adrian and Bill. Correlations between individual items are provided in Table 1, and reveal consistent moderate associations among the items. Used as an overall measure of punitiveness, the item set has a Cronbach's Alpha of .90. The composite 'punitiveness' variable is normally distributed ( $Mean = 3.01$ ,  $SD = 0.58$ ).

	1.	2.	3.	4.	5.	6.	7.	8.
1. Adrian – ‘no record’	1							
2. Adrian – ‘record’	.74*	1						
3. Adrian – ‘weapon’	.53*	.59*	1					
4. Adrian – ‘younger’	.69*	.62*	.47*	1				
5. Bill – ‘record’	.52*	.60*	.42*	.47*	1			
6. Bill – ‘no record’	.66*	.55*	.44*	.58*	.64*	1		
7. Bill – ‘weapon’	.33*	.45*	.56*	.28*	.55*	.40*	1	
8. Bill – ‘rehab’	.47*	.45*	.39*	.47*	.52*	.56*	.44*	1

\* $p < .001$

Table 1: Correlations of individual scenarios

***Gender, age, education, income, and parental status.***

The sample comprised of 206 females, and 279 males. Females ( $M = 2.93$ ,  $SD = 0.58$ ) were found to be less punitive than males ( $M = 3.12$ ,  $SD = 0.58$ ),  $t(483) = 3.64$ ,  $p < .001$ ,  $r = .16$ . The effect size indicates this should only be considered a small difference.

The sample comprised of 249 participants reporting to be a parent, and 233 without children. Parents ( $M = 2.93$ ,  $SD = 0.59$ ) were found to be more punitive than non-parents ( $M = 2.93$ ,  $SD = 0.59$ ),  $t(480) = 2.89$ ,  $p < .01$ ,  $r = .13$ . Again, the effect size indicates only a small difference.

The age distribution of the sample is as follows: 18-24 = 150 (39%); 25-34 = 73 (19%), 35-44 = 43 (11%); 45-55 = 85 (22%); 55+ = 35 (9%). There was no significant difference among age categories,  $F(1,381) = 2.10$ ,  $p = .08$ .

The distribution in the sample for education level achieved is: Completed year 10 or less = 72 (15%); Completed year 12 = 74 (15%); Currently at University = 98 (20%); Completed TAFE = 75 (16%); Completed University degree or higher = 99 (21%); Other = 66 (14%)<sup>1</sup>. The level of education achieved was found to have a significant effect on punitiveness  $F(4,413) = 5.77$ ,  $p < .001$ ,  $r = .23$ . Follow up Bonferroni adjusted comparisons revealed this effect is driven by ‘currently at University’ having a slightly lower mean compared to all other education groups (all  $p$ 's  $< .05$ , with exception of comparison with ‘Completed University degree’ which is borderline significant  $p = .06$ ). Results suggest that university students are typically slightly less punitive compared to people not currently studying at university.

The distribution in the sample for income level is: 0-\$20,000 = 132 (29%); \$21,000 - \$40,000 = 90 (20%), \$41,000 - \$60,000 = 74 (16%), \$61,000 - \$80,000 = 51 (11%), \$81,000+ = 113 (25%). The level of income was found to have a significant effect on

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<sup>1</sup> The ‘other’ category consists of a few categories that did not constitute enough sample size for analysis purposes: Never went to school = 2; Started TAFE but not complete = 15; Started University but not complete = 22; apprenticeship = 16.

punitiveness  $F(4,455) = 4.55, p < .05, r = .20$ . Follow up Bonferroni adjusted comparisons revealed this effect is driven by '\$81,000+' having a slightly higher mean compared to all other income groups (all  $ps < .05$ , with exception of comparison with '61-80k' which is non-significant  $p = .09$ ). Results suggest that individuals in upper income brackets are typically slightly more punitive compared to people earning less than \$60,000 a year.

## **Discussion**

### **How the public sentence a scenario**

To determine how the public sentence after reading the short vignette, they were asked to select an option of possible sentences. The majority of participants felt some type of community based order was most appropriate for Adrian (15 years with no prior record) with most choosing either the YCBO (42%) or the IYSO (34%). Mackenzie et al. (2012) suggested that when options were provided, participants were able to think more critically about which sentence they would select. This was affirmed in the current study where participants were able to select sentences. However, participants in the interviews were unable to provide precise examples due to a lack of knowledge of the sentencing options available and therefore defaulted to punishment options. These views changed when they processed the different options available favouring those with a rehabilitative focus. This could explain views that the public hold punitive attitudes as they are unable to select options if they are unaware they exist. This reiterates that it is imperative to provide context and information when researching with the public about criminal justice issues (Simpson, Guthrie, Lovell, Walsh, & Butler, 2014).

When asked to select a sentence for Bill, harsher options prevailed; over half of the participants selected a custodial sentence and just over a third an IYSO. Qualitative responses were generally similar but differed as the interviews allowed for participants to respond with any sentence. Despite selecting harsher sentences for Bill than Adrian, many still suggested rehabilitation, which was not an option for survey participants:

*“I would most certainly see to it that part of Bill’s sentencing would be some form of methamphetamine rehabilitation to get him off the drug because that is the driver.”*

These findings support previous research which documents the tendency for the public to call for both harsher punishments and rehabilitative measures simultaneously (Applegate et al., 2009; Piquero et al., 2010). Furthermore, even though there were calls for serious young offenders to be dealt with as punitively as adults, they still assumed that even the most serious offenders should be provided with rehabilitative treatment (Applegate et al., 2009).

### **How a magistrate would sentence the same scenario**

The scenario was developed in consultation with Magistrate Andrée Horrigan from the Children’s Court of Western Australia and describes an actual event. Interestingly, the public’s insight into the factors examined when sentencing young offenders aligned with sentencing remarks provided by ~~from~~ Magistrate Andrée Horrigan:

*“Adrian and Bill saw a vulnerable person - earphones in his ears, listening to music, approaching from behind, unaware of the impending robbery - and made a plan to rob him. The robbery occurred almost immediately, from behind. Both boys used actual violence on the complainant – Adrian punched his nose which caused a fracture and Bill kicked the man’s jaw, both attacks causing pain to his face. The violence enabled the robbery to be successful as the complainant had his backpack (containing his wallet), headphones and mobile taken.*

*In my view, given Adrian’s age and lack of record, a diversionary approach should be the preferred course. A referral to victim mediation would enable Adrian to offer an apology to the victim. Ideally, this process would bring benefits to the offender and the victim – insight and closure. The matter is too serious to consider no further punishment or a good behaviour bond, given the use of serious and cowardly violence in company. Fines are pointless for a child with no income. A YCBO with supervision and attendance conditions*

*should be imposed to ensure that Adrian has the benefit of ongoing supervision and programs. In this way, personal and general deterrence are given effect.*

*Bill's situation is quite different. Bill is looking at detention. The robbery was planned and executed from behind, whilst the victim was unaware of what was to happen. Bill used violence, kicking the victim who was helpless on the ground, already injured by Adrian's punch which caused the fractured nose. He has a record of recent similar conduct and appears not to have been deterred by the previous disposition. He is also significantly older than Adrian and, by virtue of his age and experience, ought to have played a more responsible leadership role. He did not. He pleaded guilty at the first opportunity and this is a significant mitigating feature.*

*His methamphetamine addiction may have been the catalyst for the offending. He would be eligible upon his plea of guilty to make an application for a Drug Court assessment. If he pursued this option and remained committed to the Drug Court program for a significant period of time, then he would be looking at an order in the community."*

Although the public were limited in the options provided to them for sentencing, Magistrate Horrigan's remarks echo rationale from the public. They felt that factors such as the age, criminal background of the offenders, the violence used and Bill's drug use needed to be considered when sentencing. Magistrate Horrigan would have sentenced Adrian to a YCBO with conditions and Bill to a Custodial Sentence, if he did not elect participate in the Children's Court Drug Court.

***Record (presence or absence of prior record)***

To understand if contextual circumstances would prompt the public to change their sentencing options various scenarios were presented. Participants sentenced significantly more harshly when Adrian's default context was manipulated to show that he had a prior record. The findings indicate that two thirds would increase the severity of the sentence, with one third keeping their initial sentence.

*“Well if he had a prior record at 15 I’d give him a harsher sentence cause, obviously, he wasn’t put off by the first instance”*

Conversely, Bill’s default context was manipulated to show him without any prior records. Proportions were similar to Adrian’s sentence increase but were in reverse with just over half decreasing the severity of the sentence and over a third retaining their original sentence.

*“...first offence, sit down and work out what’s going on in their lives, what’s making them choose that path, if repeat offender, things need to be a little more serious...”*

This concurs with previous literature that indicates the public demand harsher penalties for repeat offenders (Cullen et al., 2000). The current participants believed young offenders should be given a ‘*second chance*’. However, if they committed another crime then the penalties should be harsher because they had not ‘*learned their lesson*’ and therefore should be dealt with more severely. These sentiments align somewhat with principles of sentencing in that magistrates and judges consider the circumstances of the offending, including prior offending history, when decision making (s.127 *Young Offenders Act 1994* [WA]). Repeat offenders, especially those of a serious nature, are dealt with more severely than those without a prior record.

***Weapon (presence of absence of weapon)***

Participants sentenced significantly more harshly if the scenario was manipulated to show that the young offenders were armed at the time of the offence. Again, the public viewed this more seriously, two thirds increased the severity of the sentence for Adrian and just under a third increased the sentence for Bill (who already had a high proportion of the harshest response). They reasoned:

*“...the pre-intention would have to be punished that would make the punishment more severe because it could have turned out that the crime could have been fatal.”*

The public responses indicated two main themes about weapons. They reported the presence of the weapon indicated premeditation. They described it as more intentional or planned “...if the boys had bothered to take a weapon...” They were also concerned that it indicated that the severity of harm to the victim was more likely to increase if a weapon had been used. This is consistent with the previous research where Irish participants considered the wrongfulness and harmfulness of an offence (O’Connell & Whelan, 1996). The current participants discussed the harmfulness of the potential injury that could be caused by the use of a weapon. This was explained as being due to the harm to the victim and the danger that the offender could pose to community safety. Magistrates are guided to consider the safety of the community when imposing a sentence thus responses align with sentencing principles.

#### ***Drug rehabilitation***

Bill’s default context was manipulated to indicate he had successfully completed a drug rehabilitation program before sentencing. The findings indicated that just over two fifths would decrease their initial sentence if Bill had successfully addressed his drug use through drug rehabilitation.

*“I would take that into consideration with the sentencing part of it but... doesn’t excuse what he has done but at least he is showing that he is trying to amend his ways”*

Overall, there was support for Bill if he addressed his substance use as it was viewed as a major contributor to his offending behaviour. This is consistent with existing literature which shows that alternative options to addressing drug use are preferred by public, especially for young people (Gately, Ellis, & McCue, 2016).

#### ***Age***

When Adrian’s age was manipulated to a younger 12-year-old (instead of 15) nearly two fifths of participants opted for a lesser sentence.



*“I think that would heighten the chance of him just not understanding the magnitude of the situation... I think that there should be more care taken to solving the issue rather than punishing him”*

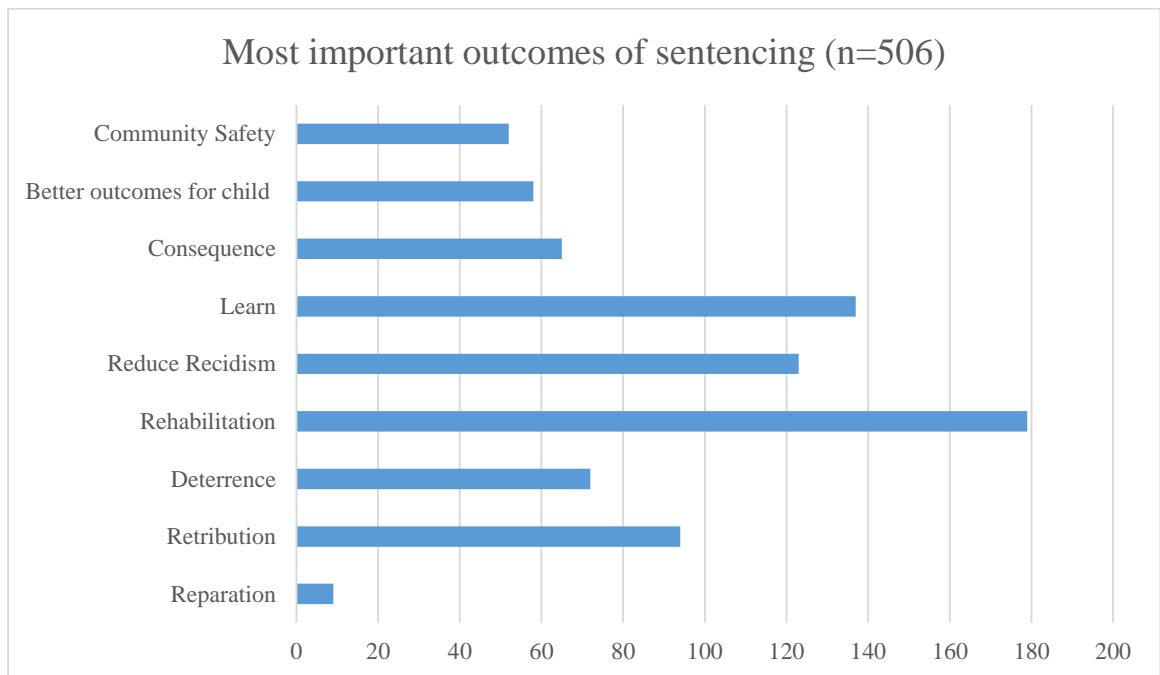
The findings concur with Bradley et al. (2012) and Varma (2006) who concluded that younger offenders were considered significantly less responsible for their actions and therefore should be punished less severely. This was evidenced in the initial sentencing where participants explained they had sentenced Bill more harshly because of his age.

*“Bill would receive a harsher sentence due to the fact that he is the older of the two.”*

Overall, the qualitative responses suggest that Bill was viewed as the instigator of the crime due to his age and dependence on methamphetamine (thus needed money to fund his habit) while Adrian was viewed less harshly in comparison. The age of the offender was a key consideration in sentencing. Further, these findings support Bradley et al. (2012) where participants stated punishment should be harsher for older offenders.

#### **The most important outcome of sentencing**

The participants were asked to provide their opinion on the most important outcomes of sentencing. The responses were quantified and overwhelmingly the response was rehabilitation, following by ‘learning’ and to ‘stop offending’ as indicated in Figure 3 below.



\*verbatim responses included more than one concept

Figure 3: Themes of most important outcome of sentencing

**Rehabilitation**

Primarily the participants discussed the need to address the underlying causes of child offending. However, they believed the court could order the young person to address issues such as drug use, family issues, mental health issues, or education/schooling problems that may impact on future offending. The ‘fixing’ was thought to be conducted by ‘*someone [who would] uncover the problems*’ and ‘*deal*’ with them.

Furthermore, they acknowledged that young people needed assistance with these issues to lead more productive lives and ensure they do not offend. Consistent with previous research, the participants did not appear to have great knowledge of rehabilitative practices or services believing them to be an enforceable sentencing option that was plentiful and readily available for immediate referral (Gately et al., 2016). Many believed this was the ‘nirvana’ that would ‘fix’ young offenders and prevent them from reoffending. Therefore, this was perceived to be a failsafe sentence that would result in the young person becoming a pro-social and contributing member of society.

Participants believed that a young person could change their ways but needed support to do so:

*“...young people need guidance, mentorship, education, assistance and clearly some of these kids are not getting that at home. So more, emphasis needs to be placed around rehabilitation.”*

Despite the focus on rehabilitation, there were conflicting views in that participants felt that a young person still needed to be punished and taught to face the consequences for their actions.

*“The emphasis needs to be placed around rehabilitation, and assisting, education, guidance, mentorship but punishment has to take place.”*

**Consequences**

The participants discussed young people taking ‘responsibility’ for their actions. This concept was different to their theme of ‘learning’ which was seen as a developmental

exercise. Consequences were referred to in the terms of punishment, and to the perceived need of a consequence for the young person's illegal or immoral actions; for them to take responsibility:

*"I definitely think that they should be reprimanded for the actions they have done... shouldn't continue doing it because there will be consequences."*

What became most evident was the distinction between the differences the participants gave to consequences and an additional concept of 'learning'. When thematically analysed, the participants wanted a sense that the young person should learn 'right from wrong' and to fully understand what their actions meant for themselves in both the short and long term, for their families and wider society. They felt this should be part of sentencing (the role of court personnel) and this 'learning' would occur if mentored in the correct manner. They wanted the young person to be insightful about the bigger picture so they could contribute to society. In short, they were discussing a concept of repentance.

### ***Repentance***

Collectively, the public commented on the need for young people to '*truly understand*' the impact of their actions on individuals and the community, and to learn right from wrong. It was thought that only through this could they fully comprehend criminal actions and be able to turn away from crime.

*"...you can't just punish these kids. They need someone to show them the way, to teach them, to help them understand."*

They wanted young offenders to learn from their experiences and contextualise their offending. They wanted young offenders to gain insight so they could '*truly understand*' and '*change their ways*'. In addition, they wanted the young person to regret their actions, have a conscience, and turn away from '*lives of crime*.' Only then did they perceive that the cycle of offending could be broken. However, these participants stated that these concepts of consequences, rehabilitation and repentance had to occur simultaneously.

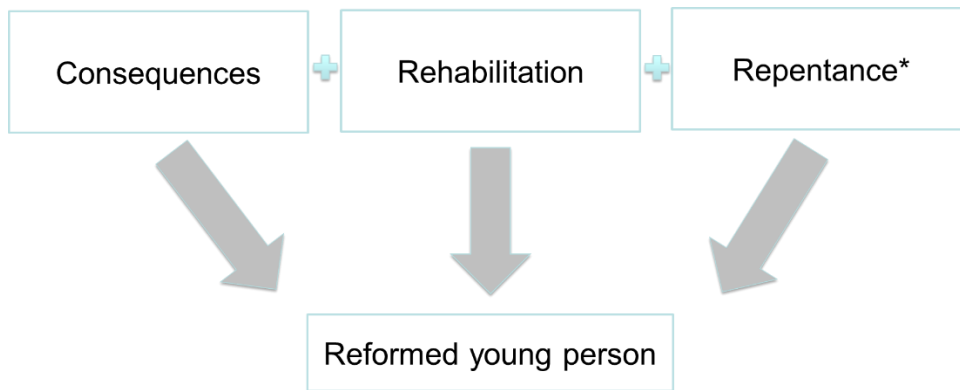


Figure 4: Components required for reform

\*not in a biblical sense. See definition.

These findings are consistent with previous research that finds “the public hold opposing views at the same time” (Lacey & Pickard, 2015, p. 35). Participants want rehabilitation but also they desire revenge and retribution (Maruna & King, 2008; Sundt, Cullen, Thielo, & Jonson, 2015). The participants of the current study displayed some punitive views, but it would be misleading to characterise the public attitudes as indiscriminately punitive. Far from being a homogenous group, they were able to work through the scenario and offer some insightful considerations of the difficulties of dealing with young offenders. These considerations often aligned with sentencing principles. However, overall, they wanted a combination of punishment, rehabilitation and guidance. Without being provided with diversionary or restorative options, they desired young people ‘repent’ for their actions by internalising their behaviour so they could comprehend the damage and turn away from criminal behaviour.

The findings support the workings of the Children’s Court and indicate widespread support for early intervention programs. In agreement with previous findings, the public shows a tendency to be punitive and progressive, wanting correctional systems to achieve the diverse missions of doing justice, protecting public safety, and reforming the wayward (Cullen et al., 2000).

### **Limitations**

There was no mention of ethnicity in the scenario. Therefore, there is no way of knowing if the respondents were stereotyping young offenders or proscribing an ethnical background to the young people involved in the case. Given the overrepresentation of young Aboriginal detainees in Western Australia, future research should address this limitation, particularly the issue of Indigeneity in the scenario.

A potential limitation is that interviews were conducted by different research students, and therefore the consistency may vary in the techniques of interviewing, such as how the

question was posed. In an attempt to alleviate this, students were provided with a pre-determined interview schedule, practised prompts and probes, and given the same level of training prior to the interview. When analysing the transcripts there was not a problematic variation or deviance from the script.

### **Conclusions and Implications**

This research dispels the myth of a punitive homogenous public calling for tougher sentences for young offenders. Consistent with previous research, there is an indication in Australia and overseas that the relationship is much more complex. While the public is supportive of punitive sentencing, there is an increasing call for greater rehabilitative efforts (Allen et al., 2012; Applegate et al., 2009; Mackenzie et al., 2012; Piquero et al., 2010; Roberts & Hough, 2005).

Concurrent with past research on public attitudes and the criminal justice system, the current study revealed that most members of the public lacked knowledge about youth justice, the Children's Court and the options available for sentencing young people, which initially resulted in them relying on a default position of punishment. Consistent with Velazquez and Lincoln (2009) when provided context and alternatives they were supportive of other responses to youth crime. The implication for this finding could be a greater support for options such as the restorative justice approaches where the young person has to address their offending behaviour. Juvenile Justice Teams tie consequences to behaviours in order for the young person to understand the implications of offending. The participants in this study referred to principles of diversionary options without being aware of their existence. Educating the public can be challenging when media outlets report on high profile violent cases evoking emotive responses to diversionary options. It may be the role of academics, practitioners and judicial staff to convey accurate information on best practice with young people; and provide context around sentencing decisions.

The public were more likely to be lenient if the young person was 'younger' in age; was a first time offender; and had completed a rehabilitative drug program. They were more likely to opt for a harsher sentence if the young person was older; had a prior record; or was carrying a weapon. This showed that when provided with a scenario and options, the public are considered in their responses. From their descriptions of their decision making processes, they are consistent with both principles and aims of sentencing as prescribed in the *Young Offenders Act 1994* (WA). Future research could investigate sentencing decisions and judge's remarks to ascertain whether they are consistent with public expectations and conveyed back to the public to illustrate the concordance.

The Children's Court is a different system to the adult process and can provide a diversionary method of dealing with young offenders. The participants believed young people needed to be punished, rehabilitated and to repent simultaneously. They felt it was only through that combination that the young person could be truly 'reformed'. These findings support the principles of problem solving courts such as the Children's Court Drug Court. However, few were knowledgeable about the workings of the courts and the facilities available. From a youth policy and legislative perspective, while media representations often portray an outraged public, the findings of this study suggest a more considered public that support consequential responses crime but also are open to treating the underlying causes through alternatives to 'tough on crime' measures.



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