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Diverting Indigenous youths from the criminal justice system

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Overview

1. Indigenous people and the criminal justice system
2. Diversion in Australia
 1. Government response
 2. Programs across the jurisdictions
3. Indigenous youths and diversion
 1. Participation in diversion
 2. Access to diversion
4. Conclusion

What is diversion and why have it?

1. Diverting offenders away from the criminal justice system
2. Diverting offenders away from 'traditional' criminal justice responses to crime
3. Traditional criminal justice responses have been ineffective in dealing with the causes of criminality
4. The causes of criminality, such as drug dependency, are considered a 'health issue' - beyond the capacity of traditional criminal justice responses alone

Indigenous people and the criminal justice system

- Research has shown that Indigenous offenders are more likely than non-Indigenous offenders to:
 - begin regularly offending at younger ages
 - be younger when they first commit an offence
 - receive custodial sentences for property and violent offences
 - have further contact with the criminal justice system, once they come into contact with it
 - begin drug use at earlier ages
 - report being under the influence of alcohol at the time of the offence or arrest
 - attribute their offending to substance use

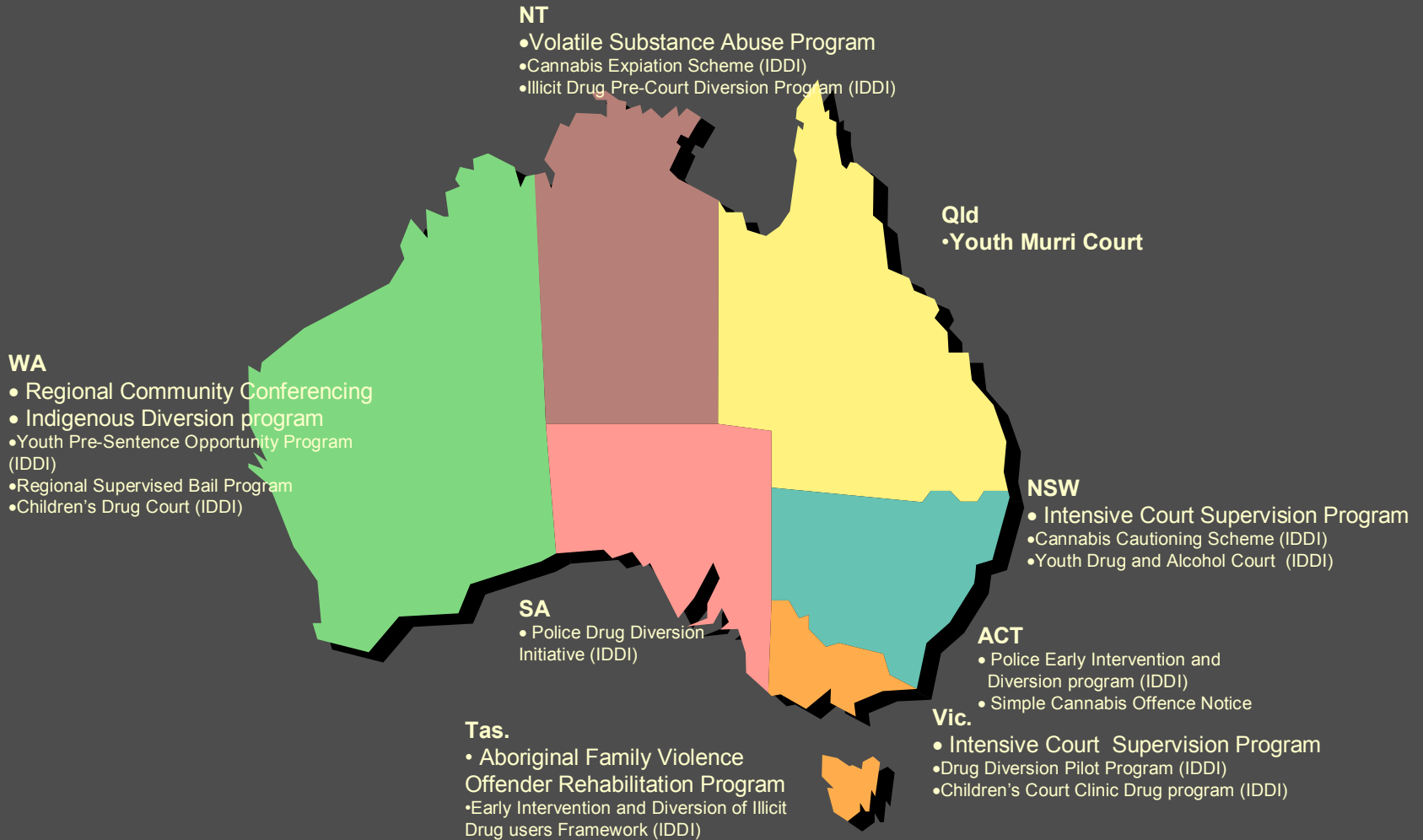
Diversion in Australia

- Indigenous over-representation continues to be an issue
- 1997 Ministerial Summit on Indigenous Deaths in Custody
- Aboriginal Justice Agreements
 - NSW Aboriginal Justice Plan
 - Vic Aboriginal Justice Agreement
 - Qld ATSI Justice Agreement
 - WA Aboriginal Justice Agreement
 - SA Aboriginal Justice Strategic Directions
 - NT Overarching agreement on Indigenous affairs between the Commonwealth of Australia and the Northern Territory
 - ACT Aboriginal Justice centre
 - Tas Tasmania Together and Aboriginal Strategic Plan

Diversion in Australia (cont.)

- All jurisdictions have diversionary options
 - divert offenders away from the criminal justice system completely or
 - minimise progression through the justice system
- Traditional criminal justice responses have been ineffective in dealing with the causes of criminality
- Causes of criminality, such as drug dependency, are considered a 'health issue'

Indigenous specific diversion/courts



Indigenous offenders and diversion

Access to diversion

- Research has identified numerous issues influencing Indigenous access to diversion, including:
 - less likely to make an admission of guilt to police;
 - more likely to have multiple charges;
 - more likely to have previous criminal convictions;
 - more likely to have drug misuse problems that are not covered by the drug diversion programs; and
 - more likely to have a co-existing mental illness.

Indigenous offenders and diversion - barriers

- Little or no consultation with Indigenous community in developmental stages
- Absence of Indigenous specific programs or programs with Indigenous workers
- Lack of any treatment programs in remote areas
- Limitations imposed by requirement that some programs require an admission of guilt before diversion can occur
- Limited knowledge of the programs by Aboriginal legal services
- Eligibility criteria relating to presence of parents/ responsible adults, violent offences, multiple charges and concurrent offences impact differentially on Indigenous offenders

Indigenous offenders and diversion – what's needed?

- Culturally appropriate treatment services
- Holistic approach to treatment
- Inclusion of family
- Potential for a shorter duration of intervention
- Importance of community development
- Greater flexibility to adapt treatment to each individual's requirements
- Tyranny of distance
- Differential police practices

Indigenous access to diversion (cont.)

Admission of guilt to police

“Access to the programs here is certainly an issue for Indigenous youths. Aboriginal legal services often tell them not to say anything and that automatically excludes them.”

“The number of Indigenous offenders was certainly much lower than expected and in this case I believe it was due to inadequate consultation with the Aboriginal community. In turn, the community had a poor understanding of what was involved- of what the court does and how they could benefit.”

Indigenous access to diversion (cont.)

Presence of parent, guardian or responsible adult required for caution

“Juveniles are missing out ... another problem is that they have to have a parent or guardian present for the caution. Most miss out on a caution because their parents can be hard to find”

Indigenous access to diversion (cont.)

Multiple Charges

“From my own experience a lot of Aboriginal offenders, mostly male, will come in with several charges and the program doesn’t allow diversion when there are concurrent offences. This isn’t always the end though, I know in practice when there is a real need to get someone on the program the officer will sometimes drop other charges depending on what they are so that the person can receive treatment.”

Indigenous access to diversion (cont.)

Previous criminal convictions and prior imprisonment

“In this program the fact that no one with a prior history of violent offences can be accepted does mean that many Indigenous offenders are excluded. We are trying to have this requirement changed.”

Indigenous access to diversion (cont.)

Drug misuse problems outside scope of programs

“The police do try and divert where they can and I know that when they see someone with substances that aren’t covered by our program they often ask whether they’ve ever used cannabis as a way to try and get them in.”

Indigenous access to diversion (cont.)

Other potential barriers:

- mobile population
- co-existing mental illness
- remoteness of location

Conclusion and future directions

- Standard eligibility criteria an issue for Indigenous offenders
 - drug use problems specific to Indigenous offenders
 - expansion of programs to cover substances which generally fall outside the scope of many drug diversion initiatives
 - assessment for suitability on a case-by-case basis
- Wider dissemination of program information
- Issues to examine in future research:
 - the extent to which Indigenous people are diverted
 - the outcomes of their participation in diversion programs; and
 - the cultural relevance of mainstream diversionary programs



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