

MEDIA RELEASE – Tuesday, 06 August 2024

Auditor-General tables report to Parliament on alignment of the duration of custodial stays at Ashley Youth Detention Centre with related sentencing orders

Mr Thompson said, ‘the intent for this audit was to provide assurance to Parliament about one narrow, but very important, issue raised by the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings: have young people serving a sentence at Ashley Youth Detention Centre (Ashley) been detained in line with their sentencing order?’

Overall, Mr Thompson found, ‘custodial stays at Ashley aligned with sentencing orders.’

‘It should be also noted there was an over reliance on staff in ensuring custodial stays were consistently compliant.’

Mr Thompson said that, in some instances, inconsistent record keeping had been identified. There was also an over reliance on manual data entry caused by limitations in systems that were scheduled for replacement.

The report recommends that the Department for Education, Children and Young People:

1. as matter of priority, updates policies, procedures and guidance that relate to the admission and release of young people
2. establish transparent and accessible controls for recording each actual release date of a young person from detention
3. removes or minimises the need for manual data entry and establishes appropriate access controls and audit logs in the system that replaces the current system
4. stores all sentencing orders electronically in an appropriate records management system
5. regularly monitors and reports publicly on the alignment of youth detention custodial stays with sentencing orders.

Further detail and the full audit report can be accessed here:

[Click on this link to read the Report.](#)

ENDS

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Attachments: Report Executive Summary and Report Appendix A: Frequently asked questions.

Executive summary

Summary of findings

All 73 custodial stays corresponding to the 43 young people selected for review were compliant with sentencing orders. Sentencing orders clearly defined sentence duration and end date. The duration of the custodial stay, earliest release date and actual release date were clearly recorded. Amendments to sentencing duration were clearly calculated and documented. However, weaknesses in the governance and control framework were identified. These weaknesses included:

- outdated training materials and work instructions
- outdated or undocumented policies, procedures and guidelines
- an over reliance on staff as the key control
- inconsistent methods for recording the actual release date
- an over reliance on paper files and manual processes
- the current Youth Custodial Information System's limited ability to control who can access information and make changes
- the current Youth Custodial Information System's (YCIS) limited ability to track what changes are made and by whom.

Despite these weaknesses, we found that it was the staff who ensured that custodial stays were consistently compliant with sentencing orders.

Recommendations

We recommend that DECYP:

1. as matter of priority, updates policies, procedures and guidance that relate to the admission and release of young people
2. establish transparent and accessible controls for recording each actual release date of a young person from detention
3. removes or minimises the need for manual data entry and establishes appropriate access controls and audit logs in the system that replaces the current system
4. stores all sentencing orders electronically in an appropriate records management system
5. regularly monitors and reports publicly on the alignment of youth detention custodial stays with sentencing orders.

Appendix A – Frequently Asked Questions

Why did you decide to conduct this audit?

The Commission of Inquiry (COI) into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings Report (2023) made a recommendation directed to the Auditor-General (Recommendation 12.26): ‘The Auditor-General should undertake an audit of the length of custodial stays at Ashley Youth Detention Centre to determine whether they align with sentencing’.

In 2021, a media report indicated that, in the preceding 4 years, 9 prisoners had been released from Risdon Prison before or after their release dates. Commissioners sought assurance that similar issues were not occurring at Ashley Youth Detention Centre (AYDC).

What period of time does the audit cover?

The audit looked at young people released from AYDC over 10 years from 1 January 2014 to 31 December 2023.

Why only 10 years?

It covers the last 3 agencies that have overseen AYDC:

- Department of Health and Human Services up to 2018
- Department of Communities Tasmania 2018 to 2022
- Department for Education Children and Young People (DECYP) 2022 to present.

10 years was considered to be a sufficient time period to provide reasonable assurance on the alignment of custodial sentences at AYDC.

Did you look at every young person sentenced to AYDC during that 10-year period? Why not?

A total of 105 young people served sentences of detention at AYDC from 2014 to 2023. Many served multiple sentences of detention. In order to respond to Recommendation 12.26 in a timely manner, the Auditor-General elected to review a statistically valid sample of detainees. A randomised, statistically significant, sample of 43 young people was selected.

There were no specific reported instances of error in custodial stay duration and no previous audit coverage of youth custodial stay duration. The Expected Error Rate was expected to be low. We have therefore based the generation of the sample size on an Expected Error Rate of 5%. This sample size provides a high degree of confidence that the total population of people and sentences are reflected in the results.

The randomly selected 43 young people represent 73 episodes or ‘stays’ at AYDC.

Only 105 young people over 10 years seems like a low number, how do you account for that?

The *Youth Justice Act 1997* is designed to divert and rehabilitate young people. The Act provides many sentencing options to achieve these aims. Sentencing young people to detention is the last resort. Many young people in the youth justice system never get sentenced to a period of detention.

Did the audit look at the number of Aboriginal and Torres Strait Islander detainees?

No. The sample of 43 young people was randomly selected and did not stratify the composition of detainees, such as, their aboriginal identity, gender, age or where they lived prior to detention.

What is a custodial sentence?

A custodial sentence refers to when a Magistrate or Judge sentences a young person to a period of detention at AYDC.

What is an episode?

AYDC refers to custodial stays as episodes. An episode begins when a young person walks through the door at AYDC and ends when they leave. A young person may have many episodes due to multiple periods of remand and/or multiple sentences of detention.

Does the audit cover young people detained at AYDC on remand?

The audit covers periods of remand where the remand forms part of a sentence of detention.

Most young people sentenced to detention at AYDC are in detention on remand at the time of their sentencing. A young person may have several episodes of remand before being sentenced to detention. Under section 89 (2) of the *Youth Justice Act 1997*, when sentencing a young person to a period of detention, the 'Court must take into account any period during which the youth was held in custody on remand...'.

For example, a Magistrate sentences a young person to 2 months detention, but the young person has been held in detention on remand for the last month. The Magistrate considers the time on remand as 'time served' meaning the young person only has to serve another month in detention (bringing total time at AYDC to 2 months).

The audit did not look at episodes of remand that do not form part of a sentence of detention.

A young person may have multiple episodes of remand but never sentenced to a period of detention. These periods of remand were outside the scope of the audit.

Were young people held at AYDC longer than their sentence?

This was the primary question the audit was designed to answer. We found that none of the 43 young people in our sample were held in AYDC longer, or shorter, than their sentence. This provides reasonable assurance that no young person was held in AYDC longer, or shorter, than their sentence from 2014 to 2023.

How do you know young people were released on time?

Every young person at AYDC has a Warrant of Remand in Custody on Adjourment, a Warrant of Commitment for Sentence of Detention, and/or a Memorandum of Sentence (MoS). The Warrant or MoS provides the legal authority to detain a young person. The Warrant clearly states the date a young person was sentenced, the duration of their sentence and, since 2016, must also state their earliest release date. For every episode of detention within the sample, the audit team reviewed the original Warrant and compared it

with the information stored in AYDC's information system and the actual release date of the young person.

What is an earliest release date and is it different from the actual release date?

Earliest release date (ERD) means the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained, or 3 months, whichever is the longer (*Youth Justice Act 1997*). A young person released on their ERD is released under a Supervised Release Order (SRO) for the remainder of their sentence. A SRO is subject to conditions such as the young person not committing another offence and attending school.

For example, a young person sentenced to 28 days detention will be released after serving 28 days (the full sentence because the sentence is less than 3 months). A young person sentenced to 8 months detention will be released from AYDC after serving 4 months (half the sentence because the sentence is greater than 3 months).

A young person should always be released on their ERD. Therefore, the ERD is the actual release date. However, a young person can be held at AYDC past their ERD if the courts issue a Warrant instructing AYDC to keep the young person in custody. Only the court can do this.

Did the audit look at detention centre offences and how they impact sentence duration?

Detention centre offences are defined in the *Youth Justice Act 1997* and include a range of things from disobeying rules and instructions through to destruction of property and assault. In dealing with detention centre offences, the Act prescribes 4 options available to the Secretary of the relevant Government Department (currently, the Department for Education, Children and Young People). One of these options is to 'order that the earliest release date or next release date be changed to a date which is not more than 3 days later'.

While the audit did not perform any specific analysis of detention centre offences, it should be noted that none of the sampled episodes of detention had their release date modified by the Secretary for detention centre offences.

Did the audit look at how delays in the youth justice system affect sentence duration?

The audit did not look at the effectiveness of the courts system or the youth justice system more broadly.

How long can a young person be held in detention on remand?

The *Youth Justice Act 1997* states that a period of detention must not exceed 2 years. The audit did not examine the frequency or use of remand by the courts.

Can a young person be held in detention on remand and not subsequently receive a sentence of detention?

A young person may be held in detention on remand and ultimately receive a non-custodial sentence. The audit did not examine periods of remand that did not form part of a sentence of detention.

What about young people sentenced in the Supreme Court?

The vast majority of young people detained at AYDC are sentenced in the Magistrates Court under the *Youth Justice Act 1997*. However, a young person that commits a serious (indictable) offence, is usually sentenced in the Supreme Court under the *Sentencing Act 1997*.

When a young person is sentenced under the *Sentencing Act 1997*, they serve a 'prison sentence' instead of a detention order. They do not have an earliest release date. They have an eligible for parole date, which is the earliest they can be released on parole (parole is not guaranteed). A young person serves their prison sentence at AYDC. If the young person turns 18 while serving a prison sentence at AYDC, the young person may be transferred to Risdon Prison to serve the remainder of their sentence.

How long were young people detained in isolation?

The manner in which young people are detained at AYDC was outside the scope of the audit.

Did the audit look at the effect of escapes from AYDC on sentence duration?

When a detainee escapes but is returned to custody within the same day, this does not affect their sentence duration. However, when a detainee escapes for a day or more, this is not considered time serving their sentence and their sentence duration is extended by the number of days the detainee was on escape.

Under the legislation, a day begins at 12:00 am and ends at 11:59 pm. So, if a young person escapes at 10:30 pm and is not returned to custody until 12:30 am, they are considered to have escaped for a day. This day would then be added onto their sentence.

None of the 43 sampled young people had their sentence duration modified by an escape.

What are conditions like at AYDC?

The day-to-day business of AYDC and conditions at the centre for staff and detainees was outside the scope of the audit.