

Understanding the decline in Aboriginal young people in custody in NSW from 2015 to 2019

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AIM

To examine factors contributing to the downward trend in the number of Aboriginal young people in custody in New South Wales (NSW).

METHOD

Young people in custody data were obtained from Youth Justice for the five-year period between 2015 and 2019, including data on receptions into and discharges from custody. Data on how young people aged 10-17 years were proceeded against were obtained from the NSW Police Force. The Court Data Warehouse (CDW) was used to obtain information about police and court bail refusal as well as breach of bail proceedings and bail revocation. Children's Court and Higher Courts data were obtained for young people aged 10-18 years. Five-year trends were compared for both Aboriginal and non-Aboriginal young people using Kendall's rank order correlation test.

RESULTS

Between 2015 and 2019, the average daily number of Aboriginal young people in custody declined from 161 to 121. The number of Aboriginal young people aged 10-17 years proceeded against to court by the police declined from 3,685 in 2015 to 3,324 in 2019. While there was an increase in the proportion of young Aboriginal people refused bail by police (from 34% to 41%) the percentage refused by the court remained stable (21%). While there was an increase in breach of bail established against Aboriginal young people from 845 to 1,082, the percentage of bail revocations declined from 38 per cent to 23 per cent. There was a decline in the number and proportion of young Aboriginal young people aged 10-18 years sentenced to a control order in the Children's Court or a higher court. This was due to fewer being convicted in court, dropping from 2,896 to 2,198, and a fall in the percentage receiving a control order from 14 per cent to 10 per cent. Among non-Aboriginal young people aged 10-18 years the number of convictions and the percentage receiving a control order remained stable.

CONCLUSION

The recent drop in the number of young Aboriginal people in custody appears to be due to both a decline in the number of Aboriginal young people appearing in court and fewer control orders being imposed.

KEYWORDS

Aboriginality

young people

custody

bail refused

sentenced

control order

INTRODUCTION

Young Aboriginal people are significantly overrepresented in custody across Australia. The Australian Institute of Health and Welfare (2020) reports that in the June quarter of 2019 the incarceration rate for Aboriginal young people (aged between 10 and 17 years) in New South Wales (NSW) was 19.7 per 10,000 persons, which is 20 times higher than the rate for non-Aboriginal young people (1.5 per 10,000 persons). However, in recent years, there has been a steady decline in the number of Aboriginal young people in custody in NSW. In December 2015, 145 young Aboriginal people were in custody in NSW, but this dropped to 137 in December 2018 and decreased further to 121 in December 2019. Over the same period the number of non-Aboriginal young people in custody remained stable (NSW Bureau of Crime Statistics and Research 2015; 2018; 2019). This contrasts with an upward trend in the adult Aboriginal prison population which increased by 19 per cent from 2,863 in December 2015 to 3,415 in December 2019 (NSW Bureau of Crime Statistics and Research 2015; 2019).

This brief examines trends in various factors related to the number of young Aboriginal people in custody in NSW to help understand drivers of the recent downward trend in the youth Aboriginal custody population. The size of a prison population is affected by the number of receptions into custody at a given point in time and the average time spent in custody (Weatherburn & Holmes, 2017). Trends in receptions and length of stay are, in turn, influenced by factors such as:

- the number of young people proceeded against by the police;
- the seriousness of young people's offending;
- the rate at which young people are refused bail by police and courts;
- the level of bail revocations due to bail breaches, and;
- sentences imposed by the courts.

Trends in each of these factors are considered here.

METHOD

Data sources

Custody data for young people were extracted from the Client Information Management System (CIMS) and provided to BOCSAR by the Research and Information Section (RIS) of Youth Justice NSW. Two files were supplied. The first contains stock information about the size of the youth detention population on the last day of each month of the calendar year. The second contains flow information about admission and discharges from youth detention each month. Data about how young people were proceeded against by the police were obtained from the Computerised Operational Policing System (COPS) of the NSW Police Force for persons of interest (POIs) aged between 10 and 17 years. Data on court bail decisions and breach of bail outcomes were obtained from the Court Data Warehouse (CDW) for offenders aged between 10 and 17 years. Court data were obtained from Children's Court and Higher Courts finalisations which involved offenders aged 10 to 18 years at finalisation.¹

Analyses

The analyses examined data covering a five-year period from 2015 to 2019. The Kendall's rank order correlation test was used to assess if there was a significant downward or upward trend over this 60-month period (Siegel, 1956). Separate analyses were undertaken for Aboriginal and non-Aboriginal young people. The tables in the Results section provide summaries of frequencies and percentages for each calendar year. Kendall's test for significant trends is displayed as a percentage change over 60 months.² Statistical significance is defined as $p < 0.05$. Non-significant trend tests are displayed in each table as 'stable'.

Several data sources were used to identify Aboriginality. For analyses relating to the custodial population, information on Aboriginality was obtained from CIMS. For COPS, CDW and court data Aboriginality reflects whether the offender had ever self-identified as an Aboriginal person to police at this offence or any prior offence. The non-Aboriginal and 'unknown' categories were combined for all analyses with the latter category representing a small proportion of offenders.³

Additional analyses were conducted for the following types of principal offence: unlawful entry with intent/burglary; break and enter; robbery; theft and related offences; serious assault; breach of custodial order, and; breach of community-based order (Australian Bureau of Statistics, 2011). These offences were selected for further analysis because they more often result in a control order.

¹ We can reasonably assume these young people were children when they offended. Local Court data was not used.

² Defined as: $((\text{Number during 2019} / \text{Number during 2015})^{1/(5-1)} - 1) \times 100$.

³ Data were not used from the 2020 calendar year due to uncharacteristic falls in custodial populations related to the COVID-19 pandemic (Chan, 2020).

RESULTS

Trends in the youth custody population

Figure 1 shows changes in the size of the total youth custody population in NSW over the period from January 2015 to December 2019. The declining blue line is the monthly count of Aboriginal young people in custody and the undulating red line is the monthly count of non-Aboriginal young people in custody. Table 1 shows that the Aboriginal custodial population declined significantly from 161 per month in 2015 to 121 in 2019. In contrast the total number of non-Aboriginal young people in custody was stable over this five-year period.

Table 1 also shows trends in the size of the NSW youth remand and sentenced custodial populations. Both the Aboriginal remand and sentenced populations declined significantly over this period. The Aboriginal remand population dropped from 87 per month in 2015 to 69 in 2019 and the Aboriginal sentenced population dropped from 73 per month in 2015 to 52 in 2019. There was a similar decline over the five-year period in the non-Aboriginal sentenced custodial population (from 73 per month in 2015 to 54 in 2019) but a significant upward trend in the non-Aboriginal remand population (from 62 per month in 2015 to 81 per month in 2019).

Figure 1. Youth custody population at end of the month

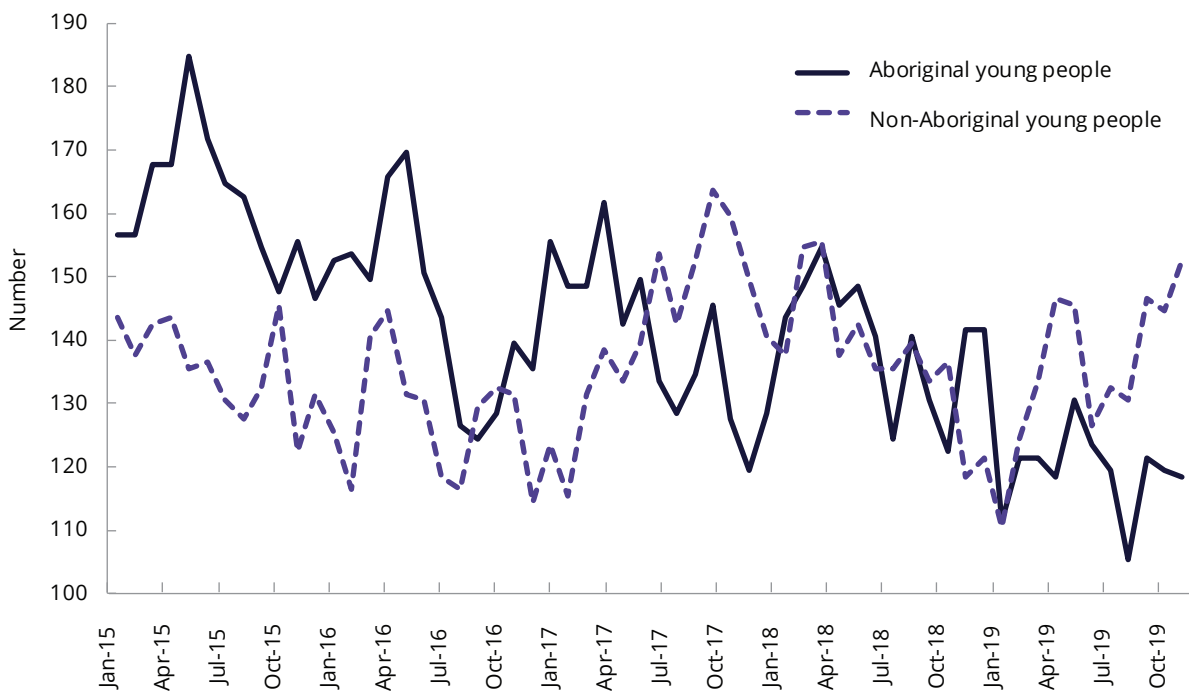


Table 1. Average monthly count of youth in custody by legal status (CIMS stock data)^a

	Current status	2015	2016	2017	2018	2019	60-month trend ^b
Aboriginal young people	Total	161	144	141	139	121	-6.9%
	Remand	87	73	79	77	69	-5.9%
	Sentenced	73	72	61	61	52	-8.2%
Non-Aboriginal young people ^c	Total	135	127	141	138	134	Stable
	Remand	62	75	87	77	81	6.7%
	Sentenced	73	52	54	61	54	-7.5%

^a Monthly averages for each calendar year have been rounded to integers

^b Average annual percentage change

^c Includes young people whose Aboriginality is unknown.

Trends in custody receptions for young people

Trends in custody receptions for both Aboriginal and non-Aboriginal young people (using CIMS flow data) are shown in Table 2, broken down by legal status. Between 2015 and 2019, there was no change in the total number of Aboriginal young people received into custody or the subset of Aboriginal young people received into custody on remand (almost all young people enter custody on remand). While custodial receptions directly into sentenced custody are infrequent, these fell significantly among Aboriginal young people, declining from 108 in 2015 to 54 in 2019.

The trend in receptions was quite different for non-Aboriginal young people. There was a significant increase in the total number of receptions for non-Aboriginal young people between 2015 and 2019, rising from 1,603 to 1,867. This was mostly due to a large, significant increase in the number of remand receptions over this period, increasing from 1,526 in 2015 to 1,821 in 2019. While receptions of sentenced non-Aboriginal young people fell from 77 in 2015 to 46 in 2019, this decreasing trend was not significant.

Table 2. Receptions into custody by legal status (CIMS flow data)

	Reception status	2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Total	1,495	1,366	1,530	1,563	1,490	Stable
	Remand	1,387	1,304	1,485	1,503	1,436	Stable
	Sentenced	108	62	45	60	54	-15.9%
Non-Aboriginal young people ^b	Total	1,603	1,619	1,616	1,628	1,867	3.9%
	Remand	1,526	1,574	1,571	1,576	1,821	4.5%
	Sentenced	77	45	45	52	46	Stable

^a Average annual percentage change

^b Includes defendants whose Aboriginality is unknown.

Length of stay in custody for young people

Five-year trends in length of stay in custody for young people are shown in Table 3 broken down by discharge status. There was a significant increase in the number of Aboriginal young people on remand who were discharged from custody from 1,186 in 2015 to 1,320 in 2019. There was also a significant increase in the percentage of young Aboriginal people who spent one day or less on remand from 51.8 per cent in 2015 to 61.3 per cent in 2019. However there was no change over this period in the median length of stay for Aboriginal young people who spent more than one day on remand.

Meanwhile, the number of sentenced Aboriginal young people who were discharged from custody dropped from 312 in 2015 to 192 in 2019 but there was no change in the median number of days in sentenced custody for Aboriginal young people. Similar trends in discharges and length of stay were observed for non-Aboriginal young people in custody over this five-year period.

Table 3. Length of stay in custody for discharged young people (CIMS flow data)

	Discharge status	2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Remand, total discharged	1,186	1,086	1,299	1,313	1,320	2.7%
	Remand, percentage one day or less	51.8%	58.5%	56.6%	59.6%	61.3%	4.3%
	Remand more than one day, median days	12.0	14.0	15.5	14.0	13.0	Stable
	Sentenced, total discharged	312	293	244	231	192	-11.4%
	Sentenced, median days	99.0	119.0	117.5	119.0	120.0	Stable
Non-Aboriginal young people ^b	Remand, total discharged	1,339	1,408	1,370	1,432	1,652	5.4%
	Remand, percentage one day or less	64.0%	63.1%	60.6%	65.5%	68.9%	1.9%
	Remand more than one day, median days	7.5	10.0	10.0	11.0	9.0	Stable
	Sentenced, total discharged	274	228	211	225	180	-10.0%
	Sentenced, median days	91.0	119.5	119.0	115.0	121.0	Stable

^a Average annual percentage change.

^b Includes young people whose Aboriginality is unknown.

Trends in the number of young people proceeded against by police

It appears from the previous two sections that the drop in the Aboriginal youth custody population is driven by a decline in the sentenced population and a decline in the remand population. Both could be due to a change in the number of Aboriginal young people coming before the courts (either because of reduced offending or higher rates of court diversion). To examine this possibility, Figure 2 and Table 4 present trends in the monthly number of young people who were proceeded against formally by the police through the Children’s or Higher Courts, a police caution, or a Youth Justice Conference (YJC). These data exclude breach of bail because this is not a criminal offence. Trends in breaches of bail are presented separately below.

Over the last five years the number of Aboriginal young people receiving a legal action by police significantly declined, dropping from 5,040 in 2015 to 4,540 in 2019. Most of this decline was due to fewer Aboriginal young people being proceeded against to court (a decreased average annual percentage change of 2.5%). There was no change in the number of Aboriginal young people issued a police caution or referred to a YJC over this period. In contrast, the number of non-Aboriginal young people proceeded against by the police remained stable over this five-year period. There were, however, changes in the method of proceeding against non-Aboriginal young people. There was a decline in the number proceeded against to court (a decreased average annual percentage change of 2.3%) and an increase in the number referred to a YJC (an increased average annual percentage change of 6.7%).

Figure 2. Number of young people aged 10 to 17 years dealt with formally by the police each month (excluding breach of bail)

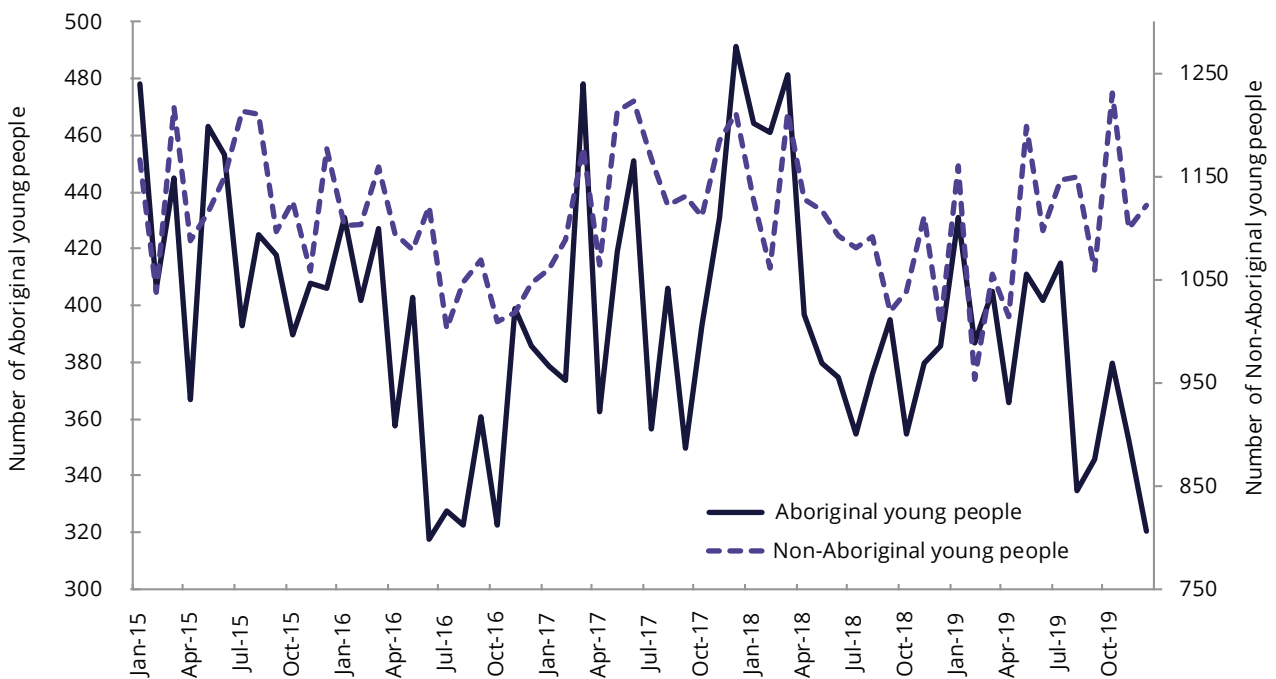


Table 4. Number of young people aged 10 to 17 years dealt with formally by the Police, by method of proceeding (excluding breach of bail)

		2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Dealt with by Police (total)	5,040	4,447	4,880	4,793	4,540	-2.6%
	Proceeded against to court	3,685	3,318	3,667	3,543	3,324	-2.5%
	Caution Young Offenders Act	1,137	1,007	1,075	1,057	1,012	Stable
	Youth Justice Conference	218	122	138	193	204	Stable
Non-Aboriginal young people ^b	Dealt with by Police (total)	13,620	12,822	13,721	13,054	13,255	Stable
	Proceeded against to court	7,142	6,630	6,984	6,590	6,517	-2.3%
	Caution Young Offenders Act	5,990	5,767	6,249	5,889	6,106	Stable
	Youth Justice Conference	488	425	488	575	632	6.7%

^a Average annual percentage change.

^b Includes young people whose Aboriginality is unknown.

Given the decline in court actions, Table 5 shows the police court proceedings against Aboriginal young people by offence type. This shows that the offences with the largest declines over the five-year period examined were: break and enter; property damage, and; traffic. Table 6 shows the police court proceedings against non-Aboriginal young people by offence type. This shows similar declines for the same offence categories.

Table 5. Aboriginal persons of interest aged 10 to 17 years proceeded against to court by the NSW Police Force

Most serious charge	2015	2016	2017	2018	2019	60-month trend ^a
Homicide and related offences	3	2	2	0	2	n.c. ^b
Acts intended to cause injury	684	632	731	769	737	Stable
Sexual assault and related offences	55	41	59	54	60	Stable
Dangerous or negligent acts endangering persons	24	31	27	26	26	Stable
Abduction, harassment and other offences against the person	22	25	31	35	25	Stable
Robbery, extortion and related offences	165	123	153	179	180	Stable
Unlawful entry with intent/burglary, break and enter	684	610	663	589	502	-7.4%
Theft and related offences	842	745	843	830	699	Stable
Fraud, deception and related offences	67	63	88	109	82	5.2%
Illicit drug offences	88	64	52	86	81	Stable
Prohibited and regulated weapons and explosives offences	44	29	47	37	55	Stable
Property damage and environmental pollution	339	332	328	244	240	-8.3%
Public order offences	359	304	333	311	350	Stable
Traffic and vehicle regulatory offences	89	98	90	69	51	-13.0%
Offences against justice procedures, government security and government operations	207	207	217	196	227	Stable
Miscellaneous offences/unknown	13	12	3	9	7	n.c. ^b
Total	3,685	3,318	3,667	3,543	3,324	-2.5%

^a Average annual percentage change.

^b Kendall's rank order correlation test was not calculated.

Table 6. Non-Aboriginal^a persons of interest aged 10 to 17 years proceeded against to court by the NSW Police Force

Most serious charge	2015	2016	2017	2018	2019	60-month trend ^b
Homicide and related offences	6	9	9	12	9	n.c. ^c
Acts intended to cause injury	1,376	1,344	1,447	1,402	1,451	Stable
Sexual assault and related offences	171	208	195	214	202	Stable
Dangerous or negligent acts endangering persons	187	169	182	166	163	Stable
Abduction, harassment and other offences against the person	45	49	52	53	45	Stable
Robbery, extortion and related offences	400	204	340	403	406	Stable
Unlawful entry with intent/burglary, break and enter	682	498	473	402	373	-14.0%
Theft and related offences	1,217	1,171	1,333	1,272	1,226	Stable
Fraud, deception and related offences	119	149	209	175	173	9.8%
Illicit drug offences	282	348	325	308	305	Stable
Prohibited and regulated weapons and explosives offences	91	100	82	93	160	Stable
Property damage and environmental pollution	723	534	516	441	477	-9.9%
Public order offences	486	480	547	477	551	Stable
Traffic and vehicle regulatory offences	856	858	785	690	503	-12.4%
Offences against justice procedures, government security and government operations	475	474	462	460	452	Stable
Miscellaneous offences/unknown	26	35	27	22	21	n.c. ^c
Total	7,142	6,630	6,984	6,590	6,517	-2.3%

^a Includes young people whose Aboriginality is unknown.

^b Average annual percentage change.

^c Kendall's rank order correlation test was not calculated.

Trends in the number and proportion of young people refused bail

Earlier we reported that half of the decline in Aboriginal young people in detention was due to a fall in the number of people on remand. The remand population is influenced by: the number of suspected offenders charged; the rate at which those suspected offenders are remanded; the length of time spent on remand, and; the revocation of bail.

We have already seen that the number of Aboriginal young people coming into the criminal justice system has fallen. Here we consider whether a change in the rate of bail refusal could also be contributing to the fall in the remand population.

The path to remand first requires a decision to refuse bail by police followed by a decision to confirm the bail refusal by a magistrate. Table 7 shows the five-year trends in police and court bail decisions for Aboriginal and non-Aboriginal young people. Between 2015 and 2019 there was a significant increase in both the number and percentage of young Aboriginal people refused bail by police; with an average annual percentage increase of 2.9 per cent and 5.3 per cent, respectively. The increase in the rate of police bail refusal was sufficiently high that the volume of Aboriginal young people bail refused by police rose, despite the overall decline in Aboriginal young people charged. By contrast, we see no evidence of an increase in the rate of bail refusal by the courts. Although there was considerable variation between 2015 and 2019 in the number and proportion of young Aboriginal people refused bail by the court,

overall the trend was stable. Similar trends in police and court bail decisions were apparent for non-Aboriginal young people over this five-year period.

These results are consistent with the length of stay custodial data shown above. In Table 3 we saw a significant increase over the last five years in the proportion of Aboriginal young people on short term remand (one day or less in custody). Episodes of short-term remand most often occur when the police refuse bail to a young person and the young person is subsequently granted bail by the court shortly thereafter.

To summarise, while police increased the rate at which they refused bail to Aboriginal young people, this did not translate to an increase in the remand population because there was no change in the court bail refusal rate. The increase in police bail refusal did, however, lead to an increase in Aboriginal young people spending very short periods on remand.

Table 7. Police and court bail decisions for young people aged 10 to 17 years by Aboriginality

		2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Police bail refused (n)	1,058	999	1,127	1,190	1,185	2.9%
	Police bail refused (%)	33.5%	34.0%	37.1%	38.3%	41.2%	5.3%
	Court bail refused (n)	701	592	639	661	603	Stable
	Court bail refused (%)	22.2%	20.2%	21.0%	21.3%	20.9%	Stable
Non-Aboriginal young people ^b	Police bail refused (n)	1,241	1,257	1,355	1,334	1,511	5.0%
	Police bail refused (%)	19.3%	20.2%	21.4%	22.0%	25.9%	7.6%
	Court bail refused (n)	647	624	689	578	615	Stable
	Court bail refused (%)	10.1%	10.1%	10.9%	9.5%	10.5%	Stable

^a Average annual percentage change.

^b Includes young people whose Aboriginality is unknown.

Trends in the rate of breach bail and bail revocations

Another potential influence on the remand population is breaches of bail and bail revocations. Here, we examine trends in breach of bail. Table 8 shows the number of Aboriginal and non-Aboriginal young people proceeded against by police for a breach of bail between 2015 and 2019. Also shown here is the number and proportion of bail breaches that resulted in bail being revoked. For both Aboriginal and non-Aboriginal young people, there has been a steady increase over the last five years in the number of bail breaches recorded by police. The magnitude of the average annual percentage increase over time is very similar for these two groups (around 6%). Interestingly, however, while police are detecting more bail breaches among young people, the proportion of these breaches resulting in bail revocation has fallen. This is particularly true for Aboriginal young people, for whom there has been a drop in both the number and proportion of bail revocations over the period 2015 to 2019. This is another factor contributing to the fall in the remand population.

Table 8. Bail breaches established in court by whether bail was revoked, young people aged 10 to 17 years

		2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Total breach of bail established	845	825	966	1,057	1,082	6.4%
	Bail revoked (n)	317	268	279	248	243	-6.4%
	Bail revoked (%)	37.5%	32.5%	28.9%	23.5%	22.5%	-12.0%
Non-Aboriginal young people ^b	Total breach of bail established	1,021	1,033	1,099	1,202	1,288	6.0%
	Bail revoked (n)	282	259	266	233	252	Stable
	Bail revoked (%)	27.6%	25.1%	24.2%	19.4%	19.6%	-8.3%

^a Average annual percentage change.

^b Includes young people whose Aboriginality is unknown.

Trends in court finalisations and control orders

We turn our attention to the volume and type of penalties imposed by the Children's and Higher Courts for young people aged between 10 and 18 years with a proven offence. This is primarily relevant to understanding the fall in the number of Aboriginal young people in sentenced custody. However, it also allows us to confirm the general decline in court proceedings involving Aboriginal young people which was reported above using police data.

Figure 3. Number of proven Children's and Higher Court finalisations each month for young people aged 10 to 18 years

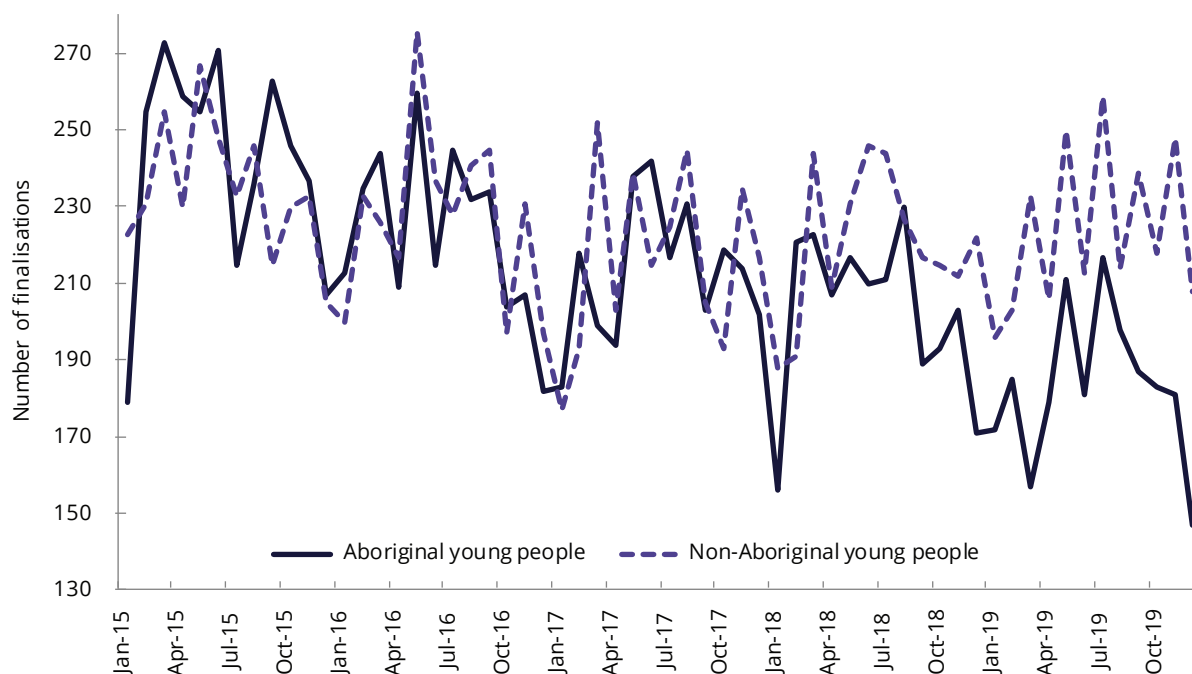


Figure 3 shows the monthly number of proven finalisations for young people aged between 10 and 18 years in the Children's and Higher Courts between 2015 and 2019 by Aboriginality. Table 9 reports the results of the 60-month trend tests for the number of finalisations and the number and percentage of control orders. Among Aboriginal young people the number of proven finalisations significantly declined from 2,896 in 2015 to 2,198 in 2019. There was also a significant decline in the number sentenced to a control order from 404 in 2015 to 221 in 2019. Importantly the percentage of Aboriginal young people

sentenced to a control order also significantly declined from 14.0 per cent in 2015 to 10.1 per cent to 2019. Among non-Aboriginal young people there was no change in the number of proven finalisations or the number and percentage who received a control order.

Table 9. Number of Children's and Higher Court finalisations for young people aged 10 to 18 years, and number and percentage of control orders imposed: All offences

		2015	2016	2017	2018	2019	60-month trend ^a
Aboriginal young people	Finalisations (proven)	2,896	2,680	2,560	2,431	2,198	-6.7%
	Control orders (n)	404	340	319	329	221	-14.0%
	Control orders (%)	14.0%	12.7%	12.5%	13.5%	10.1%	-7.9%
Non-Aboriginal young people ^b	Finalisations (proven)	2,816	2,728	2,599	2,646	2,687	Stable
	Control orders (n)	174	163	170	176	147	Stable
	Control orders (%)	6.2%	6.0%	6.5%	6.7%	5.5%	Stable

^a Average annual percentage change.

^b Includes young people whose Aboriginality is unknown.

In order to better understand the decline in control orders for Aboriginal young people, further analyses were undertaken examining trends in a subset of more serious offences (i.e. those where a higher percentage of young people are sentenced to a control order). Table 10 shows five-year trends in the number of finalised court appearances for Aboriginal young people and the percentage who received a control order for the following six principal offence types: unlawful entry with intent/burglary, break and enter; robbery; theft and related offences; serious assault; breach of custodial order, and; breach of community-based order.

For Aboriginal young people, there was a significant decline over the 60-month period in finalised court appearances for unlawful entry with intent/burglary, break and enter, robbery, and theft and related offences but no change in the percentage who received a control order for these offences (Table 10). For breach of a community-based order there was a significant decline in the number of finalisations between 2015 and 2019 (from 406 to 264) and also a significant decline in the percentage of young people who received a control order (from 15.8% to 5.7%). There was no significant change in the number of finalisations or the percentage who received a control order for serious assault or breach of a custodial order.

For non-Aboriginal young people, there was a significant decline over the 60-month period in finalised court appearances for unlawful entry with intent/burglary, break and enter from 184 to 110 but no change in the percentage who received a control order (Table 11). There was also a significant decline in breach of a community-based order from 272 to 208 but no change in the percentage who received a custodial order. There was a significant increase in finalised robbery appearances from 170 in 2015 to 202 in 2019 but no change in the percentage who received a control order. There were no changes in trends for theft and related offences, serious assault or breach of a custodial order.

Table 10. Principal offence^a for Aboriginal young people aged 10 to 18 years sentenced in the Children's or Higher Courts: number of finalisations and percentage sentenced to a control order

		2015	2016	2017	2018	2019	60-month trend ^b
Unlawful entry with intent/burglary, break and enter	Finalisations (proven)	368	321	296	264	206	-13.5%
	Control order (%)	28.3%	23.7%	26.7%	31.1%	23.3%	Stable
Robbery	Finalisations (proven)	123	112	94	78	88	-8.0%
	Control order (%)	42.3%	49.1%	39.4%	37.2%	38.6%	Stable
Theft and related offences	Finalisations (proven)	440	395	378	396	337	-6.4%
	Control order (%)	10.7%	7.9%	7.9%	10.1%	6.8%	Stable
Serious assault	Finalisations (proven)	240	210	192	248	212	Stable
	Control order (%)	17.9%	14.3%	15.6%	16.5%	16.0%	Stable
Breach of custodial order	Finalisations (proven)	41	46	56	48	28	Stable
	Control order (%)	65.9%	69.6%	66.1%	75.0%	53.6%	Stable
Breach of community-based order	Finalisations (proven)	406	388	335	292	264	-10.2%
	Control order (%)	15.8%	13.7%	9.6%	9.9%	5.7%	-22.5%

^a Where a person has been found guilty of more than one offence, the offence which received the most serious penalty is the principal offence.

^b Average annual percentage change

Table 11. Principal offence^a for non-Aboriginal young people^b aged 10 to 18 years sentenced in the Children's or Higher Courts: number of finalisations and percentage sentenced to a control order

		2015	2016	2017	2018	2019	60-month trend ^c
Unlawful entry with intent/burglary, break and enter	Finalisations (proven)	184	176	152	139	110	-12.1%
	Control order (%)	17.9%	13.1%	17.1%	9.4%	14.6%	Stable
Robbery	Finalisations (proven)	170	115	121	160	202	4.4%
	Control order (%)	27.7%	27.8%	30.6%	27.5%	26.7%	Stable
Theft and related offences	Finalisations (proven)	344	367	333	335	361	Stable
	Control order (%)	3.8%	2.7%	3.6%	3.3%	3.9%	Stable
Serious assault	Finalisations (proven)	234	214	263	279	275	Stable
	Control order (%)	9.0%	14.0%	6.1%	11.1%	7.3%	Stable
Breach of custodial order	Finalisations (proven)	20	24	27	26	19	n.c. ^d
	Control order (%)	70.0%	33.3%	70.4%	73.1%	36.8%	Stable
Breach of community-based order	Finalisations (proven)	272	256	234	240	208	-6.5%
	Control order (%)	8.5%	8.6%	11.1%	7.5%	4.3%	Stable

^a Where a person has been found guilty of more than one offence, the offence which received the most serious penalty is the principal offence.

^b Includes young people whose Aboriginality is unknown.

^c Average annual percentage change.

^d Kendall's rank order correlation test was not calculated.

DISCUSSION

The purpose of this brief was to explore some of the factors that may have contributed to the significant decline in the number of Aboriginal young people in custody in NSW between 2015 and 2019. To summarise, the results indicate:

- a decline in both the number of Aboriginal young people in remand (average annual percentage decline of 5.9%) and in sentenced custody (average annual percentage decline of 8.2%);
- a drop in the number of Aboriginal young people proceeded against to court by police, particularly for high volume property offences, property damage and traffic matters;
- an increase in both the number and volume of young Aboriginal people refused bail by police but no overall change in the ultimate bail refusal rate because court bail refusal rates remained stable;
- an increase in the percentage of Aboriginal young people serving periods of short-term remand (due to higher police bail refusal rates) but no change in the length of stay for other Aboriginal detainees;
- a rise in bail breaches involving Aboriginal young people brought to court by police but a fall in bail revocations for Aboriginal young people;
- a drop in the number and proportion of Aboriginal young people sentenced to a control order, due to fewer Aboriginal young people being convicted in court and a fall in the percentage receiving a control order (particularly for breaches of community-based orders).

Together these results suggest that the recent drop in the youth Aboriginal custodial population is largely driven by a reduction in remand due firstly, to fewer young Aboriginal people being proceeded against to court, especially for high volume property offences and traffic offences, and secondly, a reduction in bail revocations. The number of Aboriginal young people in sentenced custody has also declined in part due to the fall in offenders coming into the courts (particularly for offences likely to result in a control order) but another factor is the reduction in the proportion of guilty Aboriginal young people being sentenced to a control order (especially for breach of community-based order offences).

Interestingly, non-Aboriginal young people showed a similar trend in burglary offences over the same five-year period but at the same time there was a concurrent increase in proven finalisations for robbery and no change in theft offences for this group of young offenders. The proportion of young non-Aboriginal people issued a control order by the courts has also remained stable.

While the results for young Aboriginal people are very encouraging, it is concerning that at the same time as the decline in serious offending and control orders issued, the number and proportion of Aboriginal young people refused bail by police increased. This did not translate to an increase in the remand population, because, in the two-step process towards bail refusal (police decision then court decision), the courts failed to follow suit with the police increase in bail refusals. However, this has resulted in more short-term remand episodes for Aboriginal young people. Clearly, further work is needed to understand these trends in bail, including further investigation into any impact of the *Bail Act 2013* (NSW) on bail refusal rates for young people (see Yeong & Poynton (2018) for further discussion). Any amount of time spent on remand, no matter how short, can have significant negative consequences for young people (Richards & Renshaw, 2013).

The disparity between police actions and court decisions is also apparent in the case of bail breaches. While there has been a significant increase in bail breaches involving Aboriginal young people brought to court by police, there has been a corresponding decline in the proportion of those bail breaches resulting in the revocation of bail by the courts. For Aboriginal young people the proportion of established bail breaches with a bail revocation dropped from 38 per cent in 2015 to 23 per cent in 2019; resulting, ultimately in fewer overall bail revocations.

The increase in bail breach proceedings is concerning for Aboriginal young people subject to bail conditions. We are unable to determine from our data whether more young people are failing to comply with their bail conditions or, alternatively, whether police are more proactively targeting bail breaches by young people. Further investigation is also warranted into the nature of bail conditions imposed on young people, which bail conditions are breached and whether this has changed over this five-year period. More complex or onerous conditions may result in higher rates of non-compliance, particularly if they are not well understood by young people.

Further research is also needed to explore the recent drop in control orders for Aboriginal young people. The rate of custodial sentences was particularly low in 2019 for a range of offences. Here, it is worth noting that in 2015, the NSW Government established the Youth Koori Court at Parramatta Children's Court. In 2019, the Youth Koori Court was expanded to Surry Hills. Eligibility is restricted to Aboriginal young people who are likely to be sentenced to a supervised order and involves the development of a case management plan to assist the young person to address risk factors related to non-appearance, breaches of bail and recidivism. Though the numbers are small, it is possible that the Youth Koori Court has resulted in improved criminal justice outcomes for Aboriginal young people. An evaluation of the Court is currently underway. It is also noteworthy that in recent years non-specialist magistrates operating in the Children's Court jurisdiction have had access to further training and resources.⁴ In particular, the change in sentencing trends for young Aboriginal people could reflect recent efforts to improve the domain knowledge of non-specialist judicial officers through a three-month rotation program in the Children's Court.

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⁴ There are currently 15 specialist Children's Magistrates in NSW who are appointed under section 7 of the *Children's Court Act 1987* (NSW). They are selected on the basis of their knowledge, expertise and experience in dealing with young people and their families. While these specialists often complete 'rural circuits', many matters in regional and remote locations continue to be heard by non-specialist Local Court magistrates.

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