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Court appearances via video link for young people in detention in Queensland

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Abstract

Young people in detention (10–17) are routinely appearing in court via video link. There is little research on the use of video-link technology for court appearances for this age group. This project maps current practice through systematic courtroom observations, backed up by interviews with judges, lawyers, police, court personnel and others involved in the youth justice system. It identifies strategies to improve current video-link processes and changes to protocols needed to minimise the risk of adverse outcomes for the children appearing via this technology.



Executive summary

History and context

Video-link or audiovisual link (AVL) technology has been available in Australia since the 1990s. In January 2014, the Queensland Department of Justice and Attorney-General (DJAG) commenced a program to increase the number of video links for adult defendants. In May 2014, the Queensland Government closed the separate Quay Street Children’s Court in Brisbane, and all Children’s Court matters were moved to the courts precinct in George Street. One of the repercussions of the move of the court to the adult facilities was an increased opportunity for use of AVL in the children’s sector. The proportion of AVL appearances from the Brisbane Youth Detention Centre rose from 9.9 percent of all appearances in 2014 to over 47 percent in 2018. The percentage of AVL appearances from the Townsville Detention Centre in 2018 was even higher (approximately 60%), possibly reflecting use for appearances in more remote and regional courts in the north. The legal system also uses AVL for other children—namely, victims—with a range of protections built in around its use. However, when the same technology is used for children who offend, the protective scaffolding is pulled away. In many cases these are the same children.

Methodology

This research includes a review of prior empirical studies along with a critical analysis of the law and academic and policy literature on the use of AVL in the courts more generally. Relevant statistics were collected in order to provide context for the study. The research also included 35 observations of AVL hearings taking place in Magistrates Courts in three different Queensland locations—Brisbane city, Townsville and Beenleigh. No video links were observed to take place for more serious matters in the Children’s Court of Queensland (CCQ). The study incorporated 40 interviews with magistrates, judges, solicitors, barristers and police, together with detention centre, court and youth justice staff throughout the state. All observations and interviews were completed by June 2019.

Young people in detention

Young people in detention tend to come from situations of social and economic disadvantage. Statistics show that the group is predominantly male (over 82%) and some are as young as 10 (CCQ 2019: 37, Figure 11). On an average day, Indigenous children constitute over 70 percent of the young people (CCQ 2019: 2, 38, Figure 12), and 84 percent were on remand rather than in sentenced detention (CCQ 2019: 39, Figure 14). Research indicates that the young people who find themselves in detention are likely to be suffering from a raft of physical, educational, language and other health deficits which would make them poor candidates for the use of this technology if the purpose is for them to participate effectively in court proceedings.

Current legislative framework Queensland

Child witnesses providing evidence via video link come within specific *Evidence Act 1977* (Qld) provisions (see Division 4A Evidence of Affected Children). When the child is a defendant in a criminal proceeding, the *Youth Justice Act 1992* (YJA) provisions apply. According to s 53(1), bail applications may be heard using AVL 'if the child agrees to the use of the link and the court is satisfied the child has had an opportunity to obtain independent legal advice'. Sentencing may take place using AVL providing the child is legally represented and 'the prosecutor and the child agree to the use of the link' (YJA s 159(1)). There are wider provisions covering the use of audiovisual links for adults (see *District Court of Queensland Act 1967* s 110C and *Justices Act 1886* s 178C).

The 2018 Atkinson Report recommended that new stand-alone youth justice legislation was needed to clarify the youth justice regulatory framework (Atkinson 2018: 10). This would no doubt clarify and augment the provisions covering the use of video links. In the absence of a legislative amendment to the *Youth Justice Act 1992*, the President of the CCQ has issued two Practice Directions that are relevant to this discussion. Practice Direction No. 1 of 2017 is headed *Sentence proceedings*. The purpose broadly is to expedite sentence hearings by allowing arraignments to take place via AVL if a pre-sentence report is required. It is tailored to facilitating sentencing at circuit court sittings, where delays had been occurring because of adjournments in order to obtain pre-sentence reports.

A more recent direction (20 November 2019) sets out more extensive rules on the *Use of video-link or audio-link appearances* (No. 1 of 2019). The provision states that the use of the technology is 'at the discretion of the presiding judicial officer'. There are seven issues that need to be taken into account, the final factor being 'any other relevant issues including the interests of justice'. Other provisions cover what must occur prior to, during and after the trial or hearing. Similar guidelines covering the use of this technology for young people appearing in the Magistrates Court in Queensland were published on 11 December 2019.

The observations in this study, and most of the comments made during interviews, relate to lower court hearings, where the use of video links is more prevalent, and all interviews took place prior to the release of the 2019 Practice Directions and to the 2020 COVID-19 related changes.

Observations in the Magistrates Courts

Observations were undertaken in three geographical areas in Queensland in front of seven different magistrates and using five different courtrooms. The matters included bail applications (11), pleas (7), sentencing (7), mentions (6) and other (4). Approximately 18 of these 35 appearances lasted less than 10 minutes, with more than five hearings taking one minute or less. Eleven matters took over 21 minutes. There were distinct variations in the style of the hearings and in the quality and extent of the court's view of the young people. The children mainly sat quietly, some for long periods without being addressed or acknowledged, while the magistrates dealt with the lawyers and read the documentation handed to them.

Technology in the courts and detention centres

Despite large sums being spent on technology in the courtrooms, particularly in the city centres, many of those interviewed believed the cameras were not voice-activated and commented that the camera remained focused on the magistrate during hearings. Those regularly present in the courts commented on how differently the AVL framed the children depending on the video-link location. The feedback from those interviewed was that the technology and production generally did not result in a quality experience for the young person or others taking part in the hearing in the courtroom.

Procedural fairness

Video links can amplify injustice unless legal rules and procedure are in place to protect the vulnerable (Donoghue 2017: 998). While those interviewed expressed overall support for the use of the technology on simple matters such as adjournments and mentions, the general consensus was that the young person should be present in court for trials and sentencing. According to interviewees, the decision regarding the use of AVL needs to be based on the individual child's suitability, with issues such as fitness to plead, English as a Second Language (ESL), and hearing and sight problems being considered.

Preparation and timing of appearances

It was obvious in all the court sittings observed that the magistrates had extremely heavy work schedules. As a result, matters in the courts generally moved quickly. Many of those interviewed for this study were concerned that the young people viewed the link as a one-on-one conversation with the magistrate and had no real concept of it being an appearance before a court. The solicitors, prosecutors and detention staff also thought that the technology, court formats and detention centre processes could play a greater role in preparing the children for the court hearing to disabuse them of any notion that this was other than a very legal process.

Addressing reasons for court avoidance

Most interviewees agreed that video links are a vital communication tool to assist with remote hearings and special circumstances that sometimes arise in a state the size of Queensland. But many of those interviewed raised issues pertinent to the use of this technology that are less positive. AVL is being used as a way for children to be spared the trauma associated with being transported to court, the watch house experience and the need for body searches. Taking into account the vulnerabilities of this cohort, is the technology being used in the best interests of the child? Moreover, the use of video technology is promoted as being cost-effective. Is this true?

Conclusion

This report traces the history and context of the use of video links for children in the youth justice system in Queensland. It examines the available statistics, the demographics of the children in detention, the empirical research in relation to the use of the technology and the legislative frameworks built around the practice in the courts. Overall there is a widespread view that the system could be improved by ensuring that the practice in all respects was more child centred. The research prompted a range of recommendations.

Recommendations

- There are gaps in the data being collected by the various agencies involved in the use of video links in the youth justice system, including by the courts, detention centres, child safety services, the watch house and police. These agencies need to collect the data required for a complete understanding of how the links are used and the outcomes of their use for the children. In particular, the agencies should be seeking to ensure that the use of the links is not disadvantaging children by shortening their time in and access to the court, extending the overall time for matters to be finalised, or resulting in adverse outcomes in terms of sentence or time in detention.
- On 20 November 2019, the CCQ issued a guideline covering the use of video links (Practice Direction No. 1 of 2019: *Use of video-link or audio-link appearances*). Similar guidelines are now in place to cover the use of this technology for young people appearing in the Magistrates Court in Queensland. The Youth Justice Department and the courts services should be monitoring the effect of these new directions on practice—for example, by collection of additional statistics on the use of the technology.
- The courts service should ensure that there is more consistency in the technical equipment available in the courts. All personnel using the equipment should have regular updates on changes. Training needs to include production skills information. The objective should be for the video-link experience to be as close to the ‘in-person’ hearing as possible.

- The courts should establish enhanced protocols so that when video technology outages occur, a timely warning and information on expected duration is sent to all the agencies involved.
- All detention facilities should ensure that video-link suites are soundproof.
- Detention centres and watch houses should ensure that appropriate support persons are available and present in the remote room with the young person and that those persons are known to the child. Those in the court must be able to see and be introduced to any persons in the remote room before proceedings begin.
- Detention centres and watch houses should ensure that sufficient rooms, staff and resources are in place to guarantee solicitors can visit their clients at the detention centre or watch house well before the hearing in order to gain instructions and make a judgement as to whether their client should appear in the court via video link.
- The courts should ensure that there are sufficient secure video-link facilities available in any court precinct to be used by lawyers to gain additional instructions.
- The courts should use video links rather than audio links as an interim technological solution during court closures and for more complex configurations, such as when multiple parties are appearing from remote areas.
- All detention centres should facilitate the provision of culturally appropriate support to young people—for example, through the presence of authorised community elders—throughout the video-link process.
- All those taking part in the court hearings should be encouraged to use less formal language and to provide additional explanations to ensure that young people are capable of understanding the court processes taking place via the video link.
- Youth justice agencies should ensure that children are checked for hearing and sight problems prior to appearing on video links and that appropriate changes are made to the set-up if the AVL appearance is to go ahead.
- All detention centres should provide materials such as diagrams of the courtroom, information on court etiquette and forms of address to prepare children for any video hearing.
- The presiding judicial officer and the court clerk, and the courts service generally, should ensure a clear beginning and end for each video-link appearance, with time warnings and prompts. There must be a formal greeting and standard court introduction to the proceedings.
- All detention centres, watch houses and courts should install non-invasive body scanners, such as those used at airports, to be used for young people entering court precincts in order to identify contraband. Up-to-date technology should be made available at all transition points and search spots.

- Youth Justice and other relevant agencies should provide specialised training for all police and all court and corrections staff who come into contact with young people in detention during the transit process.
- Youth Justice should examine the reasons for young people refusing to attend court in person, especially when it is in their best interest to do so, and consider whether any of the following would improve the situation.
 - Reopening a separate facility for children’s hearings in Brisbane and opening one in Townsville, or holding court sittings at a facility adjacent to the detention centres.
 - Ensuring that children do not walk through public areas in handcuffs.
 - Upgrading older watch-house facilities, such as that in Beenleigh.



Introduction

I think we lose sight of the fact that these are children, that needn't necessarily understand what's happening to them, what's going on, particularly in a formal process like the court. I think it's pretty easy for the lawyers to forget about that. I think that's an obligation on practitioners in the Children's Court to appreciate that their clients are in a different position than a fully knowledgeable adult. (Interview 2 Judge/Magistrate)

Young people in detention (10–17) are routinely appearing in court via video link. There is little research on the use of video-link technology for court appearances for this cohort. This project maps current practice through systematic courtroom observations, followed up through interviews with judges and magistrates, lawyers, court and detention centre personnel, police and others involved in the youth justice process. It identifies strategies to improve current video-link practice, and the changes to protocols needed to minimise the risk of adverse outcomes for the children appearing via this technology.

History and context

Video-link or audiovisual link (AVL) technology has been available in the courts since the 1990s, and it has been used to assist child witnesses to give evidence in sex offence cases for some time. In January 2014, the Queensland Department of Justice and Attorney-General (DJAG) piloted a program to increase the number of adult defendants appearing at court hearings without leaving prison. Economic efficiency was the main driver. The benefits were said to include 'time and cost savings for government and legal practitioners', especially in relation to 'travel and prisoner transfers'; 'more police and correctional officers released to frontline duties'; and 'reduced safety risk' to the community (DJAG 2014: 40). The Video Conferencing Project commenced on 1 July 2015. This involved a state-wide rollout of the initiatives trialled the previous year (DJAG 2017: 78). The number of in-custody adult defendants appearing by video rose from 50 percent in January 2014 to over 70 percent in June 2018 (DJAG 2018: 111).

In May 2014, the Queensland Government closed the separate Quay Street Children's Court in Brisbane, and all Childrens Court matters were moved to the central courts in George Street. Some of those interviewed were still dissatisfied with this change from the dedicated court precinct, noting in particular the lack of space for young people to be held separately from adults. They commented on the advantages of a stand-alone Children's Court facility with its own resources and holding areas to allow all the children's services to be brought together in one place.

I really do think we need some separate accommodation for Children's Court. Of course, that would involve where they are housed as well while they're waiting for court.

(Interview 3 Judge/Magistrate)

One of the repercussions of the Court's move to the adult facilities was that the opportunity arose for increased use of AVL in the children's sector.

Frequency

It is difficult to gain comprehensive and accurate data covering the frequency, geographical incidence, comparative outcomes, and costs involved in the use of AVL in the youth justice sector. This is exacerbated by transfers of responsibilities for youth justice across and between government departments in the last decade. There is a division of departmental cost centres having responsibility for children. These include the courts, police and the Department of Youth Justice who, along with education, health and mental health services, are increasingly working together to produce improved outcomes in the sector. In addition, the numbers increased in February 2018, when 17 year olds were transferred into the children's jurisdiction, increasing the workload of the Magistrates Courts, where 96 percent of all Children's Court criminal matters are heard (Magistrates Courts of Queensland 2018: 33).

Only those young people held in custody (either in a watch house or detention centre) would appear via video link. The number of AVL appearances from the Brisbane Youth Detention Centre rose from 9.9 percent in 2014 to over 47 percent of all appearances in 2018. This increase reflects the changes to the Brisbane city court precincts in 2014 along with the rollout of the Video Conferencing Project in 2015. The proportion of AVL appearances from the Townsville Detention Centre in 2018 was even higher (approximately 60%), possibly reflecting use for appearances in more remote and regional courts in the north. These figures do not include appearances from watch houses throughout the state. The numbers have increased markedly in 2020 due to the COVID-19 court arrangements.

According to a count of appearances in the Children's Courts in 2018–19, 2,611 young people in detention appeared on video link, with the majority of appearances (2,536) occurring in the Magistrates Court jurisdiction. In more than 53 percent ($n=1,352$) of the AVL appearances by children in the Magistrates Courts in that financial year the matter was finalised or bail was granted. The other appearances ($n=1,184$) constituted non-finalising events. There are no comparable data available on outcomes for children in custody who appeared in person in the Magistrates Courts.

These figures, however incomplete, provide a snapshot of the growing use of AVL for hearings for children in custody or detention. They also highlight the main focus of this report.

The *Gateways to Justice Project* team reported that its research:

...indicates that courts could benefit from more consistent standards of record-keeping about the use of video links to better inform how to best allocate resources, to pinpoint areas where the use of these technologies might be increased, or more effectively deployed, and to enable comparisons about the use of audio-visual links generally both within and between jurisdictions. (Rowden et al. 2013: 23)

That research included suggestions on the kinds of data that might be usefully recorded, including the purpose of the hearing (eg bail or sentence), duration, and the location of the remote site. In Queensland, some of the relevant information would be held by agencies other than the courts, such as detention centres, police watch houses and police escort services. Additional data are needed on the impact on outcomes of the use of AVL. Are there more adjournments where AVL is used? Are bail applications less likely to succeed (Harris 2018: 19)? Are there significant differences in the duration of identical matters when heard on the video link compared to those where the child appeared in person?

Recommendation

There are gaps in the data being collected by the various agencies involved in the use of video links in the youth justice system, including the courts, detention centres, child safety, watch houses and police. These agencies need to collect data to provide a complete understanding of the way the links are used and the outcomes of their use for the children. In particular, these agencies should be seeking to ensure that the use of AVL is not disadvantaging children by shortening their time before and access to the court, extending the overall time for matters to be finalised, or resulting in adverse outcomes in sentence or time in detention.

The young people in detention

The children who are using AVL are the small percentage of young people who are charged with an offence and as a result find themselves in police custody or detention. It is widely acknowledged that the young people in detention tend to come from situations of social and economic disadvantage. Statistics show that the group is predominantly male (over 82%) and some are as young as 10 (CCQ 2019: 37). On an average day, Indigenous children constitute over 70 percent of these young people (CCQ 2019: 2, 38), and 84 percent were on remand rather than in sentenced detention (CCQ 2019: 39).

Eighty is probably lower than what I would say is the norm, which is about 85 per cent of kids in court are Indigenous kids...significant overrepresentation is probably the key message. The further north you go or the further west, the data will get worse...Mount Isa is often 100 per cent. (Interview 31 Youth Justice)

National statistics demonstrate that those children who have been ‘abused or neglected’ are more likely to enter the youth justice system (AIHW 2019: iv; VSAC 2019). Fifty-seven percent of the young people under youth justice supervision during 2018–19 in Queensland also received ‘a child protection service in the 5 years from 1 July 2014 to 30 June 2019’ (AIHW 2020a: 10). Such interventions arise due to a child’s experience of ‘trauma, abuse, harm, neglect, parental death or incapacitation or the risk of harm’ (VSAC 2019: 93). Many of the children in detention and appearing before courts in Queensland via AVL have been the subject of a child protection order. Youth justice and child protection matters are treated separately by the courts and usually involve different magistrates. At least one interviewee commented on this anomaly, which deprives the court of the ‘opportunity of knowing the full story’ (Interview 34 Police). Nationally, of all the young people in youth justice supervision during 2018–19, ‘almost one quarter had a care and protection order (23%)’ and ‘just over 1 in 5 (22%) were in out of home care in the previous five years’ (AIHW 2020a: 13). Those interviewed were very mindful of this anomaly.

Over the last five...years, we have become a mixture of a youth justice service and an adolescent child protection service...90 percent of the kids that we work with...have had some interface with the child protection system...About 20 percent of our kids on orders are dual clients. (Interview 31 Youth Justice)

The bulk of the children in the youth justice system are Child Protection kids. The problem is – are we, as parents, the chief executive of these children, doing the right thing for them? Why should such a large percentage of them end up in the Youth Justice Court?... Some of...their offences are only committed at the house where they’re living with the carers that the government pays to look after them. I find that really wrong. (Interview 3 Judge/Magistrate)

In addition, according to the 2019 Youth Justice Census of young offenders, 53 percent were disengaged from education, training and employment; 21 percent were homeless or in unsuitable accommodation; 80 percent had used at least one substance including 39 percent who had used ice or other methamphetamines; 56 percent had mental health and/or behavioural disorders (diagnosed or suspected); 16 percent had a disability (assessed or suspected); 63 percent had experienced or been impacted by domestic and family violence; and 33 percent had at least one parent who had spent time in adult custody (Qld Department of Youth Justice 2019). A number of the young people under 18 were themselves parents of young children. These statistics were substantiated in the accounts of those interviewed.

A high percentage of children coming for...court are disengaged. They’re either not going to school and they’ve got an active enrolment or they’ve been disengaged for some time, so they don’t have an active enrolment. (Interview 33 Ancillary Staff)

The children in the detention centres are themselves some of the most disadvantaged in Queensland.



Methodology

The aims of this project are to examine practice in relation to the use of AVL with young people in the youth justice system and to identify strategies to improve the current AVL processes in Queensland. To this end, this research includes a review of prior empirical studies along with a critical analysis of the law and academic and policy literature on the use of AVL in the courts. Relevant statistics were collected in order to provide context for the study.

Qualitative research included 35 observations of AVL hearings taking place in Magistrates Courts in three Queensland locations: Brisbane city, Townsville and Beenleigh. The observations took place from August 2018 to June 2019. These courts were chosen because they are representative of three different court localities—a state capital city that is the site of the state’s largest detention centre, a major regional centre with the northern detention centre in its catchment area, and a growing regional town in the south of the state. No video links were observed to take place for children appearing on more serious charges before the Children’s Court of Queensland (CCQ). A Checklist Observation Sheet was used. This covered a number of factors for each matter including the charges, process, outcome, time taken for the hearing, young person’s demeanour and dress, courtroom layout, court’s view of video room, interactions and technical or noise issues. NVivo 12 was used to augment the analysis of the observation sheets. This was a small pilot project and therefore no provision was made for observations of a sample of in-person hearings to use as a comparator group in respect to demeanour, understanding, and effective communication and participation. However, most of the persons who took part in the interviews had witnessed large numbers of court appearances and their comments therefore encompassed such comparison.

The study incorporates 40 interviews with magistrates, judges, solicitors, barristers and police, together with detention centre, court and Youth Justice staff and others involved throughout the region. Those interviewed were chosen using a snowballing technique targeting practitioners who were familiar with, and frequently appeared within, the children's jurisdiction. Representatives of Aboriginal and Torres Strait Island communities were included in the group. No young persons were interviewed for this research. However, McKay's comments, based on interviews with 31 adult prisoners in NSW with lived experience of AVL, certainly resonate in the courtroom observations and interviews in this study (McKay 2018: 180–186). The views of young people are vital and it is envisaged these will be canvassed in subsequent research. The interviews took place from May 2018 to June 2019. Ethics clearance was received from the Southern Cross University Office of Research Ethics Committee (ECN-17-241). Permission to conduct this research was sought and received from the Queensland Police Service Research Committee, the Director-General of the Office of Child Safety, Youth and Women, the Chief Judge of the District Court, the President of the Children's Court, the Chief Magistrate and the Deputy Chief Magistrate. The Queensland Police Service (QPS) provided a potential list of officers who would be available for interviews while the Youth Justice Department organised visits to the detention centres and an introduction to persons who would be able to assist the research. All the interviews were undertaken by the researcher. The interviews were taped and a transcription service used together with an analysis of the data by research assistants using NVivo 12 software. The report focuses on some of the issues which arose in the discussions, while incorporating commentary from previous research and observed examples where relevant, as well as recommendations arising from each topic.

The research base

Empirical studies on the use of AVL in the criminal courts have tended to focus on the adult sector. The studies often examine the advantages and disadvantages of the technology or, alternatively, concentrate on the experience of child witnesses and vulnerable persons, and the technological enhancements required to minimise trauma. The amount of research and concerns surrounding the use of video links with child victims appearing as witnesses in child sex cases provides a stark contrast to the lack of research in relation to child defendants' use of AVL.

Comparing AVL and in-person appearance outcomes

Remote area use

The research demonstrates high satisfaction rates where AVL is used in special circumstances such as weekend bail and links to remote areas. A brief pilot for young people seeking bail in Parramatta on weekends and public holidays had positive results (Hatzistergos 2008). The studies highlight the overall convenience of video links in special circumstances, or when the court is linking in to remote areas (Wallace 2008). The advantages are most apparent in reducing long-haul custodial transport in regional and remote areas (SCEPA 2011). The interview data supported this research (see *Remote linkups and special circumstances*).

Use for bail proceedings

The results of UK pilots undertaken nearly two decades ago were equivocal as to comparative results for grants of bail compared with in-person appearances. The first of two early studies on AVL in the UK, which included some youth justice matters, examined bail application success rates for those involved in AVL appearances. The results suggest that ‘there were no dramatic differences in the proportion of cases granted bail over the link compared with when the defendant is present in the courtroom’ (Plotnikoff & Woolfson 1999: 35).

Reports from the UK Bail Observation Project examining AVL use in the immigration bail process highlight concerns with different outcomes when detainees appeared over video link. In a 2013 study, bail was granted to ‘21 out of 41 applicants appearing in person’ but only to 54 of 170 of those appearing by video link (MacKeith & Walker 2013: 5). An extensive 2020 study conducted for the evaluation of the Video Enabled Justice (VEJ) Programme was prompted by a new court booking tool being used by the police. Youth cases, along with cases ‘involving vulnerable defendants’ were excluded from the study (Fielding et al. 2020: 13). It was noted that defendants appearing via AVL ‘were less likely to have legal representation’ than those appearing in person (Fielding et al. 2020: 9). Nevertheless, the evaluation finds that ‘Bail (conditional and unconditional) was...more common in video court’ compared to the non-video court control groups (Fielding et al. 2020: 10). The effect of appearing via video link for bail applications requires further research.

Delays and a ‘culture of adjournments’

The VEJ study also finds that ‘the rate of adjournments was higher in video court’ (Fielding et al. 2020: 10). This result echoes a warning about delays arising from use of the technology in a 2009 Canadian study in Ontario’s video remand court, which covered 758 matters including some youth cases. Worryingly, the study identifies a ‘culture of adjournments’ (Webster 2009: 122) and suggests that the use of video links in a remand court setting contributes to lengthy case processing. Webster notes that by ‘distancing the accused from the bail process, as well as encouraging the perception that video appearances are cost-free for the system, repeated adjournments are the norm in this court’ (Webster 2009: 103). While the Plotnikoff study finds no obvious difference in outcomes (Plotnikoff & Woolfson 1999: 35, 64), Webster suggests that video court appearances in her study constituted a kind of ‘holding tank’ where defendants were held ‘in limbo’ while ‘defence either prepares a release plan for bail, attempts to divert the case to another court which may be more appropriate given the “special needs” of the accused or simply moves toward truncating the bail process and going directly to plea’ (Webster 2009: 116).

Harsher outcomes

In the UK, early studies suggest that, while AVL reduced the time from charge to first hearing, failure to appear rates and transport and police cell costs, other factors gave rise to concern (Terry, Johnson & Thompson 2010: 29). These included 'the physical separation of defence and the courtroom, time pressures, the authority and conduct of the court, rates of guilty and not guilty pleas, legal representation, hearing outcomes, sentencing outcomes, any variance in impact according to defendant characteristics (age, gender and ethnicity), and the views of victims' (Terry, Johnson & Thompson 2010: 21). The study finds that those who appeared via video were more likely to plead guilty and more likely to receive a custodial sentence (Terry, Johnson & Thompson 2010: 24, 25). It is suggested once again that an explanation for these results may be that legal representation rates in the pilot were lower than in traditional court settings.

Concerns centred on children receiving a 'fair hearing'

Harris questions whether children's appearance via video links has a 'negative impact on children's ability to participate in court proceedings' (Harris 2018: 9). Harris notes that, in the UK, AVL was originally intended for use with case management and remand hearings, 'but over the years...use has expanded to a greater range of hearings, with defendants submitting pleas, having bail considered, and being sentenced over video' (Harris 2018: 7). Harris argues that AVL does not allow for the effective participation necessary for a fair trial under Article 40 of the United Nations Convention on the Rights of the Child (UNCRC), enumerating evidence of connectivity issues, time constraints, loss of non-verbal cues, ability to question and clarify issues, and paucity of access to and communication with their lawyer, which may be especially problematic for black, Asian and minority ethnic children (Harris 2018: 10). According to this study, video appearances also limit the time youth workers can spend with their clients. The child has less support from their family and less understanding of the gravity of the hearings. Children with mental health issues, disabilities and other vulnerabilities are especially at risk (Harris 2018: 13). There was little evidence of any adjustments being made to cater for these vulnerabilities, and Harris points out negative outcomes with AVL hearings, referring to statistics showing that high percentages (63% in 2017–18) of children given a custodial remand order in England and Wales do not subsequently receive a custodial outcome on sentence (Youth Justice Board 2019: 31).

The UK Transform Justice Report, based on a survey of 180 Youth Justice personnel and practitioners, eight interviews and a focus group discussion, voices similar misgivings. The results suggest that 'virtual justice may not be more efficient, may not deliver the cost-savings it is meant to do, and may compromise human rights and confidence in our justice system' (Gibbs 2017: 3). The report suggests that the technology 'degrades the quality of human interaction' so that 'nuances may be undetected, misunderstandings may go unnoticed more easily. Empathy may be lost' (Gibbs 2017: 1). It finds that 61 percent of respondents 'felt video had a negative effect on children and 53 percent on young adults' and that over 75 percent thought it had a negative impact on those with English language difficulties (Gibbs 2017: 25).

Lack of engagement with the court processes

Wallace raises the issue of communication and engagement between the child and the court process. Wallace investigated judicial perceptions of AVL use in Australian courts through 56 interviews along with site visits, court observations and experiments (Wallace, Roach Anleu & Mack 2019). While AVL was found to be beneficial in helping to manage workloads and to service remote/regional communities, the technology was also found to affect communication in that it limited direct engagement by the judicial officer with the defendant (Wallace, Roach Anleu & Mack 2019: 54). The symbolism and significance of the court process was lost, leading to an increase in inappropriate behaviour or less formal behaviour (Wallace, Roach Anleu & Mack 2019: 55, 59). It also increased the workload expectations of the courts (Wallace, Roach Anleu & Mack 2019: 60).

Similar issues were addressed in a focus group study in Brisbane which explored eight defence lawyers' perspectives of the benefits and problems related to AVL when they were representing young people in the youth justice sector (Page & Robertson 2016; Walsh 2018). The lawyers identified downsides to the process, such as technical difficulties resulting in failure to hear what is being said, confidentiality and Right to Silence issues, concerns that young people might make admissions or disclosures without a lawyer present, children's lack of understanding of proceedings, and difficulties in taking instructions and in building rapport (Walsh 2018: 173–175). There were particular concerns surrounding Indigenous young people, centring on 'gratuitous concurrence' and, at times, a possible lack of capacity to follow proceedings (Walsh 2018: 176). Gratuitous concurrence refers to 'the pattern of saying yes in answer to a question (or no to a negative question), regardless of actual agreement, or even understanding of the question' (Eades 2015: 47). This is most commonly seen in situations where those being questioned have a poor understanding of English or the language being used in the question. Young people with intellectual disabilities are similarly disadvantaged, because of their limited capacity to understand what is happening (Legal and Social Issues Committee 2018: 64).

Vulnerabilities of detention population

Early commentary examined AVL technology through the prism of social psychology (Poulin 2004). Once again, savings in time and resources transporting defendants, reducing the security risk and discomfort of travel, and greater efficiency when processing defendants so that if they receive a custodial sentence, then they are already in jail, were the stated benefits (Poulin 2004). These benefits are weighed against the technological glitches, skewing of the court's perception of the defendant arising from prison attire, camera angles emphasising 'harsh facial features or unattractive expressions', a loss of non-verbal cues and a communications deficit with a lack of eye contact affecting credibility. While defendants are unlikely to be accustomed or trained to speak into a camera, an unpolished presence is likely to be judged more negatively. Clients and their lawyers cannot easily communicate and defendants cannot easily gauge the atmosphere in the courtroom. Videoconferencing may inhibit the defendant's participation (Poulin 2004; Illinois Juvenile Justice Commission 2015).

Pertinently, the Banksia Hill Project studied the language skills of 98 young people sentenced to detention in Western Australia. This study examined the prevalence of fetal alcohol spectrum disorder (FASD), finding that 36 of the 98 young people were affected. It finds that '[m]ost young people for whom English was not their first language demonstrated difficulties in SAE (Standard Australian English) competence. Further, nearly one in two young people were identified with language disorder—over half of whom had language disorder associated with FASD' (Kippen et al. 2018: 40). In addition, the study concludes that '[o]f those with language disorder associated with FASD, 28 percent had a history of ear and hearing problems' (Kippen et al. 2018: 47). US research recognises that poor language skills are present at high rates in juvenile and adult correctional institutions (LaVigne & Rybroek 2011). These studies indicate that the young people who find themselves in detention are likely to be suffering from a raft of physical, educational, language and other health deficits that make them poor candidates for the use of AVL technology if the purpose is for them to participate effectively in court proceedings.

Witness intermediaries, to facilitate communications for complainants in sexual offence cases, are becoming more prevalent. The service has been available in England and Wales since 2004. In some jurisdictions, such as Northern Ireland, this publicly funded assistance is also extended to vulnerable suspects and defendants (Cooper & Mattison 2017: 353; Cooper & Wurtzel 2013). Intermediaries can provide a number of functions, such as translation and communication during trials and preparation of reports on comprehension and communication capacities. There are trial programs underway in Europe to provide more effective video-mediated translation services in legal proceedings (Braun 2016; Braun & Taylor 2011). However, assistance by intermediaries is not the norm in the youth justice system in Australia despite the communication deficits within this population (Tasmania Law Reform Institute 2016: 32).

Technology and the court process

Use of AVL technology to simulate a court hearing involves two very different spaces. Both of those physical spaces require modifications to ensure a much improved experience for the young people in detention as well as those in the courtroom. Research has highlighted the importance of including appropriate facilities in the remote sites and catering for all stages of the court encounter, including preparation, physical spaces and technology, the court session, and what occurs subsequently (Rowden et al. 2013; Kashyap et al. 2017: 5, 10). A three-year Australian Research Council Linkage Project, *Gateways to Justice: improving video-mediated communication for justice participants* led by Professor David Tait of the Justice Research Group (WSU), set out to investigate whether the use of video links in justice settings was achieving its objectives and to make recommendations to improve its use. The particular focus was on the use of video links to take evidence in court (Rowden et al. 2013: 6). As part of the study, the research team analysed sites involved with video-link court proceedings in over 40 courthouses and 20 remote sites (Rowden et al. 2013: 8). 'Interviews were conducted with 61 stakeholders, including judicial officers, lawyers, court staff, expert witnesses, remote court officers, court administrators and architects experienced in court buildings' (Rowden et al. 2013: 9). The study made two major findings: 'Firstly, the way in which video-link technology is implemented has a real impact on service delivery, and therefore justice outcomes; how video links are used, their design and operation, matters. Secondly, a successful video-linked court encounter requires

careful consideration of the technology, environments, personnel, protocols and legislation that enable their use. These factors work together and none of them should be ignored or viewed in isolation' (Rowden et al. 2013: 10). Later research based on the site visits, observations and interviews demonstrated that 'attending court from remote locations significantly alters the experience of justice for all involved', therefore suggesting that 'perceptions of legitimacy and due process are impacted by the space of law' (Rowden 2018: 264–265; Kashyap et al. 2017: 47–49). The study examines the loss of a sense of community judgment when the defendant is not sitting in the courtroom along with their peers, and expresses concerns about technology such as AVL having a negative impact on the legitimacy of the legal process. It emphasises 'the fragility of law's rituals and the importance of symbolism' in conjuring law's authority (Rowden 2018: 281).

To summarise

Many of the issues that arose in the literature and empirical studies on this topic were echoed in the interviews undertaken with stakeholders in the youth justice system. Researchers are beginning to ask questions about whether constraints should be placed on the use of the technology for vulnerable children. These prior studies provide an excellent context for the present examination of young people's use of AVL in Queensland courts.



Current legislative framework

Central to this discussion is the overarching philosophy, reflected in the *Youth Justice Act 1992* (YJA), of the ‘best interests of the child’ (UNCRC). The existing legal framework aims to support these principles.

International and comparative perspectives

In November 2010, the Committee of Ministers of the Council of Europe adopted the Guidelines on Child-Friendly Justice, including ‘the child’s right to be heard and participate as laid down in the UN Convention on the Rights of the Child (CRC), and as recognized in the case law of the European Court of Human Rights under the European Convention on Human Rights (ECHR)’ (Liefwaard 2016: 905).

‘Child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level...and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity. (Guidelines 17)

In relation to this, the CRC Committee observed in its General Comment No. 12 on the child’s right to be heard that ‘[a] child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age’, and that ‘proceedings must be both accessible and child-appropriate’. This also means that ‘particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, [and] clothing of judges and lawyers’ (Liefwaard 2016: 910). Even so, the Explanatory Memorandum to the Guidelines notes that: ‘131. Although using audio or video recording of children’s statements has some advantages...direct testimony in front of an interrogating judge may be more appropriate for children who are not victims, but alleged perpetrators of crimes’ (Guidelines 89).

In the UK, the Queen's Bench Divisional Court held in 2003 that 'live video links did not breach the right to a fair trial under Article 6 of the European Convention on Human Rights provided the defendant's lawyer could hear and see' (*R v Camberwell Green Youth Court and Ors* [2003] All ER (D) 32) (McKay 2016: 32). However, 'the Youth Justice Board...the Magistrates Association...and a recent Criminal Practice Direction...recommend that children should usually be produced in person at court, with applications for video link considered on a case-by-case basis, taking into account individual needs and involving consultation of relevant parties' (Harris 2018: 7). As Harris comments,

[b]oth the [Youth Justice Board] and Criminal Practice Directions [3N.14] are clear that sentencing children over video link is inappropriate, although the latter provides caveats such as overly long distances to court or significant mental health difficulties. Despite these recommendations, Transform Justice survey responses suggest that in the UK the use of video link for children is quite widespread, including appearing from police stations, submitting pleas, bail applications, and even sentencing. (Harris 2018: 7)

In New Zealand, the *Oranga Tamariki Act 1989* (previously called the *Children, Young Persons and Their Families Act 1989*) covers children's proceedings. Less serious children's matters are handled by the police. The *Courts (Remote Participation) Act 2010* covers the use of audiovisual links. Criminal procedural matters must be heard 'by audio-visual link rather than in person, when the defendant is in custody and the technology is available, taking into account the criteria under sections 5 and 6 of the Act' (Ministry of Justice 2020). AVL is primarily used for remand. Sentencing may also take place by AVL. The Act (ss 5, 6, 8, 9) requires that certain issues must be taken into consideration by the judicial officer, especially in relation to substantive and sentencing matters. These include 'the potential impact of the use of this technology on the effective right of the defendant to a fair trial, and to his or her rights in association with the hearing'—in particular (s 6), the ability of the defendant to comprehend, participate in their defence, consult and instruct counsel privately, access relevant evidence and examine the body language and other characteristics of witnesses for the prosecution, as well as the level of contact the defendant has with other participants. These are all potentially affected by video-link appearances and members of the judiciary must remain cognisant of any adverse impression that may arise through the defendant's appearance via video link (*Courts (Remote Participation) Act 2010* (NZ) s 6). Assistance and direction is provided for the use of AVL by way of the *AVS – Court to Custody Operating Guidelines – District Court* (Ministry of Justice 2018). This guide includes as appendices a judicial protocol for using AVL, a technological failure protocol, architectural and courtroom transition protocol and procedural instructions for incidents interrupting service.

Australia

In Australia, youth justice falls within state jurisdiction. Most jurisdictions have adopted a hybrid of youth justice legislation and adult legislation, with young people in detention subject to specific rules under the relevant bail legislation or to supplementary legislative considerations under the evidence legislation. There have been recent amendments to court practice in most Australian jurisdictions to temporarily extend the use of AVL during the COVID-19 pandemic restrictions. Many of the Children's Courts have been closed and hearings delayed. Hopefully, the use of AVL for young people in detention will not be normalised as a result of increased use of technology during this emergency period and, instead, will return to pre-pandemic levels.

In New South Wales, video-link appearances—whether for adults or children—are allowed under the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) s 5BA. Section 5BA(1) provides that an accused detainee must appear physically before the court if it is a 'physical appearance proceeding' (defined in s 3 as 'a trial or hearing, inquiry into fitness, or bail proceeding'). There are exceptions to this in s 5BA(2). According to s 5BA (3), s (1) does not apply if the parties to the proceeding consent to the accused detainee appearing before the court by AVL. Section 5BB covers appearances by AVL for all other matters.

In South Australia, matters in relation to the use of AVL are also covered in the *Evidence Act 1929* (SA) s 591Q rather than the *Young Offenders Act 1993*. The rules for the use of video links for children often differ from those for adults. Section 5BA(7) of the New South Wales evidence legislation requires that additional considerations regarding child detainees as provided in the *Children's Court Rule 2000* (NSW) r 32A must be taken into account. The states provide special protections for child witnesses; for example, see the *Evidence (Children and Special Witnesses) Act 2001* (Tas). However, AVL use for other purposes is covered in the *Justice Rules 2003* (Tas) r 68 (Magistrates Court) and the *Evidence (Audio and Audio Visual Links) Act 1999* (Tas) s 6(1) rather than the *Youth Justice Act 1997*. In Western Australia, AVL matters for adults and children are covered in the *Criminal Procedure Act 2004*, which stipulates that the first appearance by an accused would normally be in person. Additionally, that state provides in s 14A of the *Sentencing Act 1995* (WA) that an accused is normally required to appear in person for a sentencing process if facilities are available and it is in the interests of justice. This is also the case in the Northern Territory, where according to s 117 of the *Sentencing Act 1995* (NT), offenders should be present for sentencing matters.

In the adult jurisdictions, AVL hearings are being normalised for many matters. Even so, the various jurisdictions have stipulated that some matters should be heard in person—even in adult proceedings. In Victoria, for example, the Magistrates Court website sets out when AVL would ordinarily not be used. This includes an inquiry into the accused person's fitness to plead, a hearing where the accused person is pleading not guilty, and committal hearings, when the accused person is first brought before the court following arrest to be dealt with according to law – unless consent to appear via AVL is given (Magistrates' Court of Victoria 2020). AVL may not be suitable in certain circumstances, especially in more serious matters in the District and Supreme Courts. It is accepted that AVL is less appropriate where there is a need for a longer hearing or where the defendant is unrepresented or has cultural, health, mental health or other issues.

The terminology in the various jurisdictions also varies, with Victoria, New South Wales, Tasmania and South Australia, for example, using ‘audio visual link or audio link’ while Western Australia and Queensland legislation refers to ‘video links and audio links’. All of this demonstrates that the legislative framework can be quite confusing for non-specialists, especially where they are working within both the adult and youth sectors or between jurisdictions.

Queensland

In Queensland, the human rights conventions are echoed in the recent *Human Rights Act 2019* (Qld). Section 32(3) states: ‘A child charged with a criminal offence has the right to a procedure that takes account of the child’s age and the desirability of promoting the child’s rehabilitation’. According to s 33, ‘Children in the criminal process are entitled to special protections on the basis of their age’. These provisions are relevant to ensuring court procedures are tailored to children and not adults.

Child witnesses providing evidence via video link come within specific *Evidence Act 1977* (Qld) provisions (see Division 4A Evidence of Affected Children). When the child is a defendant in a criminal proceeding, the *Youth Justice Act 1992* (YJA) provisions apply. According to s 53(1), bail applications may be heard using AVL ‘if the child agrees to the use of the link and the court is satisfied the child has had an opportunity to obtain independent legal advice’. Sentencing may take place using AVL providing the child is legally represented and ‘the prosecutor and the child agree to the use of the link’ (YJA s 159(1)). Pursuant to YJA s 66, provisions in other legislation, such as the *Criminal Code 1899* (Qld) and the *Justices Act 1886*, are also relevant to the Children’s Court jurisdiction, including these provisions pertaining to mentions, remands and arraignments (see *Criminal Code* s 97C(4), *District Court of Queensland Act 1967* s 110C and *Justices Act 1886* s 178C).

The 2018 Atkinson report recommended that new stand-alone youth justice legislation was needed to clarify the youth justice regulatory framework.

43 That the Government consider standalone child criminal justice legislation that potentially incorporates bail and police powers and responsibilities relating to a child. That consideration also be given to including in the stand-alone children’s criminal legislation, provisions relating to court proceedings for children, the role and functions of the Children’s Court and the role of key agencies in the youth justice system. (Atkinson 2018: 10)

This would no doubt clarify and augment the provisions covering the use of video links. In default of a legislative amendment to the *Youth Justice Act 1992*, the President of the Children’s Court of Queensland has issued two Practice Directions which are relevant to this discussion. Practice Direction No. 1 of 2017 is headed *Sentence proceedings*. The purpose broadly is to expedite sentence hearings by allowing arraignments to take place by video link if a pre-sentence report is required. It is tailored to facilitating sentences proceeding at circuit court sittings, where delays had been occurring because of adjournments in order to obtain pre-sentence reports.

A more recent direction (20 November 2019) sets out more extensive rules on the *Use of video-link or audio-link appearances* (No. 1 of 2019). The provision states that the use of the technology is ‘at the discretion of the presiding judicial officer’. There are seven issues that need to be taken into account, the final factor being ‘any other relevant issues including the interests of justice’. Other provisions cover what must occur prior to, during and after the trial or hearing. Similar guidelines covering the use of this technology for young people appearing in the Magistrates Court in Queensland were published on 11 December 2019. All the observations in this study, and most of the comments made during interviews, relate to lower court hearings where the use of video links is more prevalent, and took place prior to the release of the 2019 Practice Directions and the COVID-19 related changes (see Judicial College of Victoria 2020 for current changes for all jurisdictions).

The new *Directions on the use of video-link or audio-link appearances* which are now in place in both the CCQ and for the magistrates sittings of the Children’s Court should result in a marked improvement in the outcomes for and understanding of children appearing before the court via video.

Recommendation

On 20 November 2019, the CCQ issued a guideline covering the use of video links (Practice Direction No. 1 of 2019: *Use of video-link or audio-link appearances*). Similar guidelines are now in place to cover the use of this technology for young people appearing in the Magistrates Court in Queensland. The Youth Justice Department and the courts services should monitor the effect of these new directions on practice—for example, by additional collection of statistics on the use of the technology.



Observations in the Magistrates Courts

Queensland legislation permits most matters to be heard via video link. As is evident from the statistics, the main use of AVL occurs in the Magistrates Courts rather than for the more serious matters heard in the CCQ. All 35 observations were undertaken in the lower courts. The hearings took place in three different geographical areas of Queensland in front of seven different magistrates and using five different courtrooms. In the main, the hearings consisted of bail applications (11), pleas (7), sentencing matters (7) and mentions (6). Approximately 18 of these matters lasted less than 10 minutes, with more than five hearings taking one minute or less. Those appearances with shorter timeframes (1–5 minutes) were either bail applications or mentions. Eleven matters took over 21 minutes. Without comparative statistics on the time taken for matters when children physically attend court, it is difficult to conclude that these cases are any longer or shorter than standard. There were no commonalities in relation to the longer appearances; some these were delayed due to technical issues, interruptions caused by family members in court, or as a result of an extensive list of charges. Some included obvious attempts by the magistrate to communicate meaningfully with the young person on the screen for example, by:

- greeting or acknowledging the young person by name at the beginning of the appearance,
- asking the young person if the sound was clear,
- introducing all those present in the courtroom, including the defence counsel and prosecutor, and mentioning whether family members or carers were present,
- checking who they could they see in the courtroom,
- explaining the meaning of terminology such as probation along with the relevant ‘rules’ that must be followed in their Probation Order,
- checking with the young person whether they had any questions or needed anything clarified, and
- providing a clear end to the appearance with a statement such as ‘Okay, you’re free to go’.

Providing this structure took one or two extra minutes. This framework ensured that everyone in the courtroom was clear on the purpose and outcome of the appearance.

Visibility

From the back of the court, the images of the young people on the screens were often very unclear, with shadows on their faces and poor lighting and colour. At times, the screen froze or the image on the screen jerked. The screen sizes differed between courts. Most of the courtrooms had larger wall-mounted screens along with another laptop-size screen positioned on the magistrate's bench. Some courts only had screens mounted on mobile trolleys. Each court had a different set-up. Most had a number of cameras mounted on the wall to the left of the magistrate's bench. Usually only one or two of these cameras were activated. The young people were appearing via AVL from the Brisbane or Cleveland detention centres or, sometimes, from the Brisbane City watch house.

Brisbane Detention Centre videoconferencing suites were located in the visitor centre in proximity to the interview rooms. There were Indigenous design murals lining the tiled corridors in the main areas. The videoconference rooms are stark and windowless, with hard-wearing carpet and a standard upholstered upright chair without armrests where the young person sits at a large steel-legged desk with a hard laminex surface. The concrete block walls were without decoration and painted a light green. There is no clock in the room, nor is the time normally shown on the video screen. The door to the room was a darker olive green with a glass viewing panel. The large TV screen and camera were secured inside a perspex box opposite the desk. Unless the court glimpsed the young person entering or leaving the room, there was no opportunity to gauge the height, average age or physicality of the child. The young people were usually seated at the desk when the video links were activated so the court's view was of the child's head, shoulders and chest. The court sometimes caught a glimpse of an accompanying staff member entering the room with the young person. However, that other person sat out of the camera's view. At times, the young person seemed to be speaking with the staff member while waiting for the court appearance to begin.

The court's view of children in the Cleveland Detention Centre was more benign, in that there was a longer camera angle with the young person seated at a table with one, or sometimes two, detention staff seated alongside them. There were carpeted floors, a large laminex desk and soft vinyl-covered padded chairs with arm rests. The screens and equipment were well secured and protected behind clear perspex. Three large, shaded, external windows behind those seated at the table allowed the court to see grassed spaces, with shadow figures at times passing at a distance outside. As well as the Australian national flag, large Aboriginal and Torres Strait Islander flags were hanging on the walls outside in the visitor suite. The impression was one of calm normality. Some of the young people in Cleveland acknowledged the court—standing, bowing their head to the magistrate and thanking the court. They appeared to have been well prepared for the appearance and to be making an effort in dress and demeanour to show respect for the process.

Young people in the Brisbane City watch house were seated extremely close to the camera so in some cases the image on the screen in the courtroom only showed half of their face, and, in at least one instance, just an older teenager's forehead and eyes. When inspected, the watch house AVL booth was a small, secure, perspex-walled space with a stool and bench, neither of which could be adjusted for the differing heights, age or size of the young people, whether they were 10 or 17 years old. The screen and camera were also secured behind perspex. This could result in the image projected being smeared or unclear. The attending officer was seated in an identical small clear booth on the other side of the screen from the young person. The accompanying person was not visible to the court.

From the observations and interviews with various participants, it appeared that for most court events the young people, whether they were in the detention centres or the watch house, could only see the magistrate, and at times the bar table.

Access to lawyer

All of the young people had a lawyer representing them in the court. It was unclear whether the solicitors had full instructions. In three observations, the court was completely cleared to allow the young person to communicate privately with their lawyer via the courtroom AVL equipment. On several occasions at the end of the hearings, if allowed by the magistrate, the solicitors took the opportunity to explain the outcomes to the child via the video link in the court.

Support person in court

In 14 observations the young person had a support person in court or on the phone. A support person may be a parent, guardian, community elder or adult friend. Usually one parent, or often a grandparent or foster carer or a departmental representative, would be in the court for the hearing. In at least nine cases the observer was not aware of any support person in the court apart from the defence lawyer. One matter was not finalised because the magistrate did not want to take the plea in the absence of the young person's parent. Another child had their mother in court, but it was unclear if the young person could see her or even knew that their mother was there. If the cameras are not directed to the back of the court, then the child will only be aware that there was a family member in court if the magistrate, or perhaps their lawyer, introduces that person to the court. Another child was refused bail because the parent, who had been in the court precinct earlier in the day, could not be located.

Interactions in court

There were distinct variations in the style of the hearings and this seemed to be very much dependant on the magistrate rather than on the physical surroundings of the court. In 13 of the cases the young person was not introduced to those in the court, and there was little to no interaction between the bench and the child. Other magistrates had very open interactions with the young person, who was spoken to directly and introduced to the court. The magistrates in those cases took time to build rapport with the young person and their parents.

Demeanour of the young people appearing on video link

The children mainly sat quietly, some for long periods without being addressed or acknowledged, while the magistrates dealt with the lawyers and read the documentation handed to them. They were generally dressed casually in dark coloured t shirts or long-sleeved sweatshirts. At least one child looked extremely unwell, tired and exhausted. One was swinging round on the chair to check on noises in the corridor outside. Several were stretching and yawning and obviously bored. Another two were very distressed, and one of these was crying. In the main, their interactions with the magistrates were polite although one swore at the magistrate at the end of the hearing. It would be difficult to draw the conclusion that attending court via AVL was the cause of the distressed behaviour exhibited by some of the observed young people. Attending court itself could be a cause of anxiety (Nathanson & Saywitz 2015); the environment in detention or the watch house may also potentially be a contributor (as may other factors, such as mental health or personality issues).

Noise and distraction on the video link

In her 2012 study, McKay focuses on auditory cues and identifies a 'soundtrack of incarceration' made up of disturbing sounds that can be heard in the court during an AVL session. McKay also examines the defendant's prison dress and its effect on views of innocence, the poor quality of audio and video, and concerns about privacy and confidentiality (McKay 2016, 2018). Consistent with McKay's work, noise issues were apparent in at least 20 of the court events. The AVL provides a link not just to the young person but to their environment, leading to additional sounds not normally encountered in a court room. These include the sounds of banging iron doors, jangling keys and distracting voices outside the AVL room, some of which were joking and laughing but others of which were rough and visibly unsettling or alarming to the child on screen. There were also loudspeaker announcements in the detention centres, one announcing a lockdown at the centre. Several of those interviewed, including the judges and magistrates, commented on how distracting that background noise can be to them in the courtroom.

Technical issues

Various technical issues were identified during the observations and appropriate action was taken. These included situations where the young person could not hear the magistrate or where there was feedback on the sound equipment. The court clerks rebooted the court equipment or asked the detention centre to phone in again. There were at least two instances where a young person was visible on a screen, ostensibly with the sound muted, during other matters.



Technology, the courts and detention centres

Provision of equipment in the courts and detention centres

Expenditure on technology is necessary in all 21st-century courtrooms, correctional facilities and detention centres. However, the government does need to ensure that the most current and effective technology is purchased, and that it is well maintained and provides optimum connectivity. These outlays are of most benefit to the larger numbers in the adult sector. The use in the children's jurisdiction tends to be a by-product of the larger context. Technology is costly. In 2018, the DJAG reported an additional \$31.6 million over five years (2017–22) being allocated to replace AVL technology in courtrooms and correctional centres across the state (DJAG 2018: 111). These costs are on a par with spending in other Australian states, with the NSW Department of Justice reporting a \$40 million Audio Visual Link Consolidation Project, and Victoria and Tasmania instigating similar projects, 'ensuring that every courtroom is video-enabled' (Magistrates Court of Tasmania 2018: 23). As part of the spending, a Court Technology Renewal project reported a \$6.261 million program including 'upgrading 34 courtrooms 2017–18 with new AV systems, installing 200 media PCs to provide enhanced evidence presentation capabilities, rolling out eight additional video-conferencing trolleys, and upgrading three video-conferencing units in youth detention centres and one unit in a remote witness room' (DJAG 2018: 111); and budgeted capital expenditure to DJAG for 2018–19 includes \$8.4 million 'to expand and upgrade existing audio visual capacity in the justice system, which includes video conferencing and in-custody court appearances' (Legal Affairs and Community Safety Committee 2018: 4). There are also costs associated with the fitting out of spaces in the detention centres. This includes work to accommodate video-link facilities in the buildings along with provision of waiting areas and installation of Integrated Services Digital Network (ISDN) and telephone lines. The interviews identified a degree of variation between the facilities in the courts in the CCQ and the Magistrates Courts in Brisbane compared to the facilities at regional courts.

Despite large amounts being spent on technology (particularly in the city centres) and voice-activated cameras being rolled out in courtrooms, many of those interviewed thought that the cameras being used were not voice-activated and that, in their experience, the camera remained focused on the magistrate during hearings. The equipment being placed in courtrooms does vary. The 'Rolls Royce' model includes courtrooms with multiple adjustable cameras, so that everyone in the court can see and be seen by those using the system. Such systems are also able to display any evidence being used in the case. These systems might cost approximately \$100,000. A trolley model costs less, perhaps \$30,000, with the least expensive systems around \$5,000. The design of the building can determine what upgrades are possible. Interviewees pointed out that some of the correctional centres are solid concrete, so 'it's significantly harder to upgrade a correctional centre than it is a courtroom' (Interview 38 Court Staff). The older equipment requires a corrections or detention staff member to manually adjust the camera for each individual, so the court staff would need to communicate with the centre and say 'left, right, that's perfect, leave it there' (Interview 38 Court Staff). With the newer equipment, the court clerk in the courtroom can adjust and move the cameras using a control panel at their desk. This includes the 'ability to zoom in and out on an individual as well' (Interview 38 Court Staff). The system is dependent on the reliability of the network in the court area. Some rural areas have high dropout rates, making AVL reception unreliable.

Production of authentic video appearances

Production of an authentic video-link experience involves more than purchasing state-of-the-art equipment and placing it in a courtroom (Donoghue 2017: 1008; Licoppe 2015; McKay 2018). Current legal discourse principally focuses on the technology as 'equipment'. In modern visual productions, rarely do we speak about camera specifications. Rather, discussion will centre on the camera angles, lighting, sound and colour. While being committed to the introduction of sophisticated technology, we need to acknowledge that we are importing another medium into the process in the courtroom, and this is not a neutral action (Moore, Clayton & Murphy 2019). Older studies from the United Kingdom note that there are constraints inherent in the clerk having to also take on the role of producer once the equipment is installed (Plotnikoff & Woolfson 2000: 31).

Camera placement in the courtroom can determine the effectiveness of the communication taking place with the young person on the video link. Being unable to see everyone in the room and gauge their responses or behaviour can affect the young person's ability to communicate (Gibbs 2017: 18). Family members or other support persons in the court may not be speaking or taking part in the proceedings, and thus not be visible to the child if the cameras are voice-activated. The court cameras and AVL system are designed to aid communication between those at the bar table and the bench with the defendant. The cameras do not normally include those people in the gallery. In addition, there is rarely time available within tight court schedules for minor technical issues to be addressed.

‘Physical exclusion’

The architecture and physical layout of the courtroom, and the roles being played by each of the actors—judge, prosecutor, defence council, parent or guardian, Youth Justice officer, child safety officer, clerk—all constitute aspects of a drama. In a video link, the young person can be unaware of the full impact of the scene. The use of AVL may, to this extent, exclude the child from the hearing of their own matter (although, as one of the judiciary pointed out, even those children who appear in person are often placed in a sealed dock, behind a glass screen, for security purposes, rather than seated at the bar table with their defence counsel). To this extent the young person is excluded from the main court area and bears the stigma of being labelled as a flight risk or dangerous (Rossner et al. 2017). However they can still witness the proceedings. Before the magistrate enters the courtroom, the child can see how the various players interact with each other and note their differing roles. The child can feel and experience the change in atmosphere and level of decorum once the member of the judiciary enters the room. The detention staff also reported experiencing a sense of exclusion with AVL hearings. This occurred particularly in situations where the magistrate had not greeted or acknowledged the child at the beginning of the appearance, so as to make them feel part of the process.

Comparing experiences, views and usage in court

Those visiting and using the courts regularly commented on how different their experience was in the various locations, so that every court room is different (Interview 10 Youth Justice). The newer courts are voice-activated and ‘whoever is speaking will trigger the camera to be on them’ (Interview 7 Solicitor). In the suburban courts, ‘it’s just a TV with a camera on top that’s pointed at the magistrate, so the kid can hear voices but [they] don’t necessarily know who’s attached to those voices’ (Interview 7 Solicitor).

From the judiciary’s perspective

The judges and magistrates were most affected by the different camera layouts and facilities in the courts they were assigned to use. Magistrates in particular are under time constraints and sometimes need to move between different courts. They need to be mindful of what facilities are available when they enter each court because ‘there’s a different set-up in every court building in the state, so there would be a large variance between what happens in Brisbane and what happens in regional centres’ (Interview 9 Judge/Magistrate). They are frequently dependent on the clerks to be familiar with the systems so as to operate the technology in each courtroom.

All those interviewed favoured having a number of voice-activated cameras around the court. The default camera position is frequently a headshot of the magistrate or judge. Some of the members of the bench were critical of this aspect, believing that it was preferable for the child's default view to be one of the entire bench and the whole bar table: 'I personally think it's better for the child to get the depth and context of the courtroom rather than having my big head'. These views echoed recent sociological research identifying two separate courtroom filming styles, 'transcription' (using head shots) and 'observational' (using longer views of the court) (Moore, Clayton & Murphy 2019: 10,11). The research establishes that 'different stylistic modes prompt different types of audience engagement and allow for different levels of comprehension' (Moore, Clayton & Murphy 2019: 1). The reason for the single-person view was thought to be camera placement—'a monitor mounted on the bench with a video camera on top of it'. At least one magistrate thought that 'it would be better to contextualise the courtroom to let the child see it, even though the child might not see me as closely, so long as the child can hear me', so that the child is provided with 'a better concept of what's happening' (Interview 23 Judge/Magistrate).

The judges were dissatisfied with the placement of cameras in some of the courtrooms. They reported that in at least one court, 'the camera's above the door in the courtroom. So, instead of looking at the person on the monitor...I have to look at the camera over there to talk to them. That's really distracting' (Interview 9 Judge/Magistrate). In another court, the monitor placement was difficult in that it had to be angled in such a way that both those at the bar table as well as the magistrate could see the screen. At times, the voice-activated cameras might turn to other voices in the back of the room while the magistrate was speaking. At other times the cameras were static, so that the magistrate needed to explain what was happening: 'Okay, well I'm going to hear from the prosecutor now, and you'll hear them talking, but you might not see them' (Interview 9 Judge/Magistrate). Other members of the bench expressed some frustration with the systems: 'I don't know what the kid sees'. So, in this situation the magistrate would question the child as to whether they could hear the magistrate, then, once everyone has made their appearances, the magistrate would ask the child again whether they heard the introductions. In that way this magistrate could be certain that the child had some idea of what was happening and that they felt a part of the proceedings (Interview 37 Judge/Magistrate).

So, the judges and magistrates who were interviewed were aware that every courtroom they entered would have a different set-up and that, wherever possible, it was their responsibility to ensure that the system worked to some extent.

From the court staff perspective

The court clerks were aware that as well as ensuring that the matters in the court were flowing and were being recorded accurately, they were being expected to undertake video production. They, too, were very pleased with the voice-activated cameras. However, more often than not their experience was that they were expected to control the cameras manually. This was very difficult because of their other duties, including assisting the magistrate, updating the court record, leaving the court to assist children signing bail undertakings, and helping the prosecutors, solicitors and Youth Justice officers as required. It is not surprising that the general response was that 'in this courtroom...we...leave the camera on the bench, because at least it's there' (Interview 24 Court Clerk). The trolley systems have a remote control for the clerk and it is possible to use a zoom function as required. The default is to leave the camera on the bench (Interview 39 Court Clerk). Certainly those regularly viewing the courts from the detention centres and watch house agreed that, for whatever reason, the only view the young person was seeing in the court rooms was the magistrate.

The court view of the young person

The court clerks were most concerned that the young person's face was clearly visible on the link. This was to ensure that the right person was appearing before the court. There are some safeguards in that the defence counsel should be able to recognise their client. Although the police will have a photo on file, the police prosecutor may not have seen the child previously. Sometimes the court can also see staff seated with the child. This is the case at Cleveland Detention Centre. The camera angle at Brisbane Youth Detention Centre is not as wide so only the child appears in the camera frame (Interview 40 Court Clerk). In the Brisbane Watch House,

[t]he video screen is literally pushed up against the glass and then the young person's probably only maybe 30 centimetres from the glass so you've essentially got maybe 40 centimetres between the camera and the young person. (Interview 36 Youth Justice)

The court clerks mentioned that there were constraints with the view of the child from the watch house. The equipment is set up in a small cubicle with a built in bench and non-adjustable, bolted-down metal stool. The video equipment is secured behind a clear screen.

The quality is at times really bad because sometimes when the kids are...leaning on the table, we can't really see them...so that has been an issue...There's a lot of reflection...I'm not sure whether it's a glass or perspex. (Interview 40 Court Clerk)

Another aspect of the video links was the actual surroundings in which the young person appeared. Does the context and backdrop for the child affect the court's view of their offending? The detention staff expressed a desire to have the child appear in a more normal and court-like setting on the video. This would assist the child to recognise the formality of the occasion, and lessen any negative stereotypes of incarceration being projected to those in the court (Moore, Clayton & Murphy 2019).

We have a proposal put together for soft furnishings, to soften the feel in the room and to make sure that the tables and chairs are in place, the chairs going to a soft furnishing and the tables to be fixed fittings. (Interview 28 Detention Staff)

The varying context for the child results in the court having quite different perspectives. It may be that a magistrate could form a very different opinion of a young person from seeing a longer shot of a child seated quietly at a table with adults, compared to the same child seated and visible from waist height, dressed in prison garb in a locked bare cell, compared to a young person in the glass walled watch house with only the top half of their face visible on the screen.

Suggestions for improvements

Voice-activated cameras were preferred but even these did not necessarily provide the young person with a view of their family. Where the camera view does not include the family seated at the back of the court, there should be a direction for the parents to be seated close to the bar table. A standard order that the family must be shown on camera to the child at the beginning or end of the appearance is required. Experienced staff in some centres are aware of the camera limitations and direct the family to appropriate seating where they are more likely to be seen by the child.

[At] Richlands...they will always start with the view of the bar table...So...the young person's family will put themselves in a position where they can be seen. (Interview 35 Solicitor)

Where the camera is solely on the magistrate, the proceedings would be much more difficult for the young person to follow. This is particularly the case where, for example, the defence and prosecutor have voices that cannot be easily distinguished. One solicitor suggested that where both the defence and the prosecutor were of the same sex the young person might not be able to distinguish which person was speaking, and would therefore have difficulty following the proceedings.

[T]wo females. Like today, they wouldn't have been able to follow. (Interview 20 Solicitor)

Several interviewees reported that especially in regional areas there were insufficient numbers of courts with camera equipment installed. In addition, the quality of the picture could be improved.

It seemed black and white today. I actually think it's colour, it's just there's not a lot of colour in it. (Interview 19 Ancillary Staff)

Overall, those interviewed seemed to think that there should be more standardisation and consistency of the technology being used in the various courts. The feedback was that the technology and production did not result in a quality experience for the young person or others taking part in the hearing in the courtroom. One statement summed up the aspirations well.

Best-case scenario it would be like the young person's there and they can see everything and they can hear everything just like it would be if they were sitting in the dock in the courtroom. (Interview 36 Youth Justice)

Recommendation

The courts service should ensure that there is more consistency in the AVL equipment available in the courts. All personnel using the equipment should have regular updates on changes. Training should include production skills information. The objective should be for the AVL experience to be as similar to the in-person hearing as possible.

Network issues and background noise

At times, the fault with the connections lies not with the technology itself but with network failures. System-wide outages occur in all organisations; however, they directly affect the AVL court processes. At other times, the system may have accidentally been set to mute and, once identified, the fault can be speedily remedied.

The distraction caused by noise outside the video suites at the watch house or detention centres was a recurring theme in the interviews and observations. Apart from soundproofing, installing carpet in the rooms themselves, and in the outside corridors, could alleviate some noise. The banging of heavy metal doors, angry voices and rattling keys should not permeate the courtroom.

Recommendation

The courts service should establish enhanced protocols so that when video technology outages occur, a timely warning and information on expected duration are sent to all the agencies involved.

All detention facilities should ensure that the video-link suites are soundproof.

The role of the support person in the remote room

The support person in the remote room should be advising the court if the young person is experiencing technical difficulties in accessing the hearing. McKay, in her research, notes that dropouts occurred regularly and gives the example of severe ongoing technical issues prompting one 21-year-old male defendant to give up in frustration, ‘telling the magistrate “Look, I can’t hear, just do it without me”’ (McKay 2016: 31). The literature recounts that video technologies have often been inadequate, with restricted vision, limited eye contact (Rowden et al. 2013: 3), ‘an unnatural dislocation of the sound of the voice from image of speaker’ (Rowden et al. 2013: 9), and poor sound quality. Those interviewed reported ‘pronounced delay’ and echo at times in court. The children may lack the confidence to speak up and this is a strong argument for another person to be sitting with them in the detention setting. Without that support, the first indication of a technical difficulty is when the court addresses the child directly and they do not respond. The children do not often announce that they cannot hear (Interview 6 Solicitor).

Those interviewed referred to the ‘void’ within the youth justice system when compared to the child protection system in terms of the lack of support offered to young people appearing in court (Interview 34 Police). The solicitors noted the absence of the support person normally present with affected child witnesses when they were giving evidence. The support person identifies each of the people in the court for the child and notes the switch in the proceedings from one person to the other; for example, ‘that’s the judge, the one wearing that robe’ and ‘now see the lawyer, they’ve just been talking’ (Interview 6 Solicitor). This comparison was also made by the judges, who commented that in the affected child witness proceedings there is a support person in the room with the child,

[a]nd they’re always told to speak up if they see something wrong going on. On occasions the camera focus won’t switch—it’s supposed to switch to the person asking questions and they speak up and say the camera is still on you Judge; it’s not on the questioner... You need that monitoring on both sides of the link and in detention centres you don’t have that, you have an employee of the detention centre as present in court, no particular support person for the child unless...they have psychological problems...You don’t even get a Youth Justice worker, the justice worker is usually in the court room rather than [at] the detention centre with the child. (Interview 2 Judge/Magistrate)

There was concern that there should be a person in the room with the child ‘who has knowledge of the young person’, who can ‘facilitate rapport’, alert the court to technical problems or significant incidents that had occurred ‘prior to them going in for their video link... that could impact on their engagement’, and who is given an opportunity to verbalise any concerns to the court because ‘mental state is dynamic’ (Interview 17 Ancillary Support). This type of assistance would be akin to the intermediary role used for child witnesses (Cooper & Mattison 2017: 353; Cooper & Wurtzel 2013).

The court does not know who is in the room with the child. This created disquiet among some of those interviewed, who preferred to see the person in the room with the child and for that person to introduce themselves to the court (Interview 14 Judge/Magistrate). Even when the person is not visible, those in the court room knew there was someone else there with the child.

It’s quite obvious, sometimes, when you’re looking at a young person, that there is some sort of interaction that is going on between that youth worker and the young person. You sometimes get a reaction—the young person reacts to that rather than to what the magistrate’s saying. There’s a potential for that to be misconstrued. So that is unfortunate. (Interview 35 Solicitor)

There was a broad assumption that the person was a guard or a youth worker from the centre, and a questioning of whether it was appropriate to have detention centre security staff in the room, as the child may be unwilling to confide in, or show vulnerability to, that officer. Others thought that the person might be the child’s case worker or a youth worker from the visits unit. The court was generally left guessing.

Sometimes...there are a series of young people who are on the video link, the one case worker will be present for all of the visits...So, really, it's almost like there is a stranger... with them in the room. It's not their own case worker, and in fact, they'd be far more familiar with the visit staff. (Interview 35 Solicitor)

There was general agreement that the child needed someone there to ensure they were understanding the process, because 'it's a machine...a fast-moving machine'. (Interview 33 Ancillary Staff)

Is this person simply a guard, or should their role be to explain what has occurred? With in-person appearances, there is more opportunity for the solicitor and case worker to explain what has occurred. In some of the organisations, such as the Aboriginal and Torres Strait Islander Legal Service (ATSILS), there is a lawyer and a court support officer who will explain the outcomes to the child and provide them with a court letter as a record and which includes further court dates and actions. If the child is in the detention centre then they must organise a call to the solicitor from the centre once they return from their AVL court appearance.

There are issues of confidentiality in this support role. In addition, those interviewed raised the issue of whether the support person was culturally appropriate and whether they could explain what happened over the video link. It would seem that the technology is available for the judicial officer to check on who is in the detention suite by using the fisheye camera. This is in the top corner of the room and it shows everybody in that room. It is a safety feature (Interview 38 Court Staff). However, time limitations in the court may well restrict the use of this additional check by the court.

Despite the disquiet voiced by those interviewed, based on the interviews it would seem that those sitting with the children were, by and large, experienced case work support officers within the detention centres or watch house. The person sitting with the child has access to the court lists and prior Verdict Judgment Records. After the hearing, the court clerk updates the Queensland Wide Inter-linked Courts (QWIC) database on the day, and then the new Verdict Judgment Record containing the hearing outcome is emailed to the detention centre (Interview 13 Court Clerk). According to the interviews, it is not unusual for the case worker to phone the solicitor after the hearing to verify what had just occurred on the link. At one of the centres, the same person sits in on all the video links. At the other centre, the case workers attend on a roster. The case worker with the child is not necessarily their own case worker. If the young person is on a Child Safety Order then their Child Safety Officer would normally be in court for a hearing. The case worker at the centre will liaise with the Youth Justice Service centre and the Child Safety Officer in relation to the child's welfare. It was mentioned in the interviews that Child Safety also has a liaison officer at the detention centres; however, this person is not in attendance at the AVL hearings.

Recommendation

The detention centres and watch houses should ensure appropriate support persons are available and present in the remote room with the young person and that those persons are known to the child. Those in court must be able to see and be introduced to any persons in the remote room before proceedings begin.



Procedural fairness

As noted earlier, the physical layout of the courtroom and the roles being played by each of the actors constitute aspects of the courtroom drama. In a video link, however, the young person can be unaware of the full scene, resulting in a ‘physical and metaphysical exclusion’ from their own court hearing.

Digital justice means (and requires) a cultural shift in how we approach the use of technology in courts: this necessitates a reorientation of current policy approaches to ensure that proper attention is paid to developing greater knowledge about, and training in, the participative and communicative dynamics of courtroom IT to inform the design and implementation of future reforms. (Donaghue 2017: 1024)

Participants in earlier research queried whether the AVL process was unfair, ‘based on the defendant’s right to be present’, ‘concerns that the link acts as a barrier to communication between lawyer and client which prevents meaningful discussions about plea’, and ‘a feeling that the defendant can neither follow nor participate in proceedings if not physically present in the courtroom’ (Plotnikoff & Woolfson 2000: 35). Video links can amplify injustice unless legal rules and procedure are in place to protect the vulnerable (Donoghue 2017: 998). McKay’s research also highlights concerns that a custodial appearance creates a ‘heightened zone of demarcation between prisoners and courtroom participants’, which results in a challenge to ‘procedural justice’ (McKay 2018: 2). While those interviewed demonstrated overall support for the use of the technology, there were comments that ‘it is being used a lot more than we would seek for it to be used’ and that ‘from our perspective it’s rarely desirable’ (Interview 6 Solicitor). There are a number of considerations raised by those interviewed suggesting AVL hearings could lead to injustice.

[O]ne of my concerns with video links is that you never have that child in a courtroom where it’s clear to them that they’re in the custody of the court and not the executive... even though they’re appearing in court, they’re not under the control of the court on video. (Interview 8 Judge/Magistrate)

As a result, any opportunity for the young person to seek the court’s intervention is taken away.

The solicitors need to obtain clear instructions from the young person

The young person needs to be able to speak with their solicitor and provide instructions prior to their appearance before the court. So there are benefits to the child of a face-to-face meeting with their solicitor, and this should occur prior to the court sitting. Should there be a time limit placed on how long prior to the hearing this discussion should take place? Rigid timelines for access to video links in the UK pilot often affected the defendant's ability to communicate with their representative (before or after the appearance). Many of the solicitors mentioned as a barrier the limited ability to see their client prior to the appearance to get clear instructions. For the most part, matters heard via AVL are mentions and procedural matters; however, serious matters such as a plea can take place providing the solicitor has clear instructions.

In their comments, the solicitors drew a distinction between 'best practice' and 'adequate practice':

We'd like to at least be able to strive for best practice, which to our mind generally would include having young people available to deal with one-on-one...so that they can sign instructions in the event that there's any degree of complexity to the matter. (Interview 6 Solicitor)

The solicitors reported having difficulty gaining adequate and timely access to their young clients to take instructions prior to their video appearance in court.

If [I] haven't seen them or if I've only spoken to them by phone, I don't want to do a video link for them. So sometimes that does depend upon the availability of visits, and visits are very hard to get at the detention centre...often they're booked out weeks in advance. (Interview 35 Solicitor)

Recommendation

The detention centres and watch houses should ensure sufficient facilities, staff and resources are in place to guarantee solicitors can visit their clients at the detention centre or watch house well before the hearing in order to obtain instructions and make a judgement as to whether their client should appear via AVL.

Additional instructions during the court hearing

The solicitor needs signed instructions. Audio recordings of phone calls, recorded videoconferences, faxed signed instructions, and standing down matters in court so the solicitor can talk to the client using the court private conferencing booths are all useful. However, all agreed that the young person needs to be in the courtroom in person for a trial where the police might raise a new point that the solicitor had not discussed with their client, or where the young person needs to provide an opinion on a possible new home placement.

When you definitely need a client, of course, is almost always for a trial...if you haven't seen all the material...police put something to you late, then it's good to be able to have the client there to be able to get those instructions...with Child Safety...you often don't get...information about where a particular child is going to live until the day. (Interview 35 Solicitor)

None of the observed video-link hearings involved trials. However there were instances when the court was cleared so that the solicitor could quickly confer with their client. One solicitor commented that if the young person is not in court it can slow down the process and cause delays (Interview 6 Solicitor). One solicitor who had practised in another jurisdiction pointed to the possibility of having a phone available at the bar table in order to check issues with their client during an AVL hearing (Interview 4 Solicitor). The preferred view was that there should be an area in the court where the solicitor could speak to the young person confidentially vis AVL should the need arise (Interview 2 Judge/Magistrate). Any other solutions were thought to raise confidentiality issues.

Recommendation

The courts should ensure that there are sufficient secure AVL facilities available in the court precinct for use by lawyers to gain additional instructions.

When the child wishes to interact with the court

Evidence suggests that many adult defendants present in the court feel removed from proceedings and that they have no role, similar to Ericson and Baranek's idea of the accused as merely 'passive players in the game' (Hackler 1983: 484; Ericson & Baranek 1982: 191). Attracting the attention of counsel during video-link hearings is likely to be even more difficult for children because they may not be sufficiently assertive to interrupt the proceedings, especially if they cannot see their legal representative on camera.

I think that it's sometimes difficult for young people on the video link to work out when it would be appropriate to speak...They like to be there, and they also like to work on their appearance and their grooming, and to show the court they're taking the matter quite seriously. (Interview 35 Solicitor)

In the UK study, both courtroom professionals and former defendants suggested that the 'loss of courtroom formalities', such as standing for the magistrate, exacerbates 'the sense of distancing experienced' (Fielding et al. 2020: 9). A potential lack of engagement is already an issue with young defendants appearing in person, who may struggle to understand proceedings. However, AVL reinforces this.

There's very little interaction from children in the video link situation...They don't tend to want to say much because they're sitting with people from the detention centre...They're not sitting next to their lawyer who can give them the okay to say something. (Interview 5 Judge/Magistrate)

If the young person appearing via AVL wants to interact with the court, there should be an opportunity within the normal processes for them to do so, rather than risk an interjection being treated as disruptive behaviour.

Access to ancillary support staff and family

Some of the defence lawyers were supportive of their young clients coming out of the detention environment and saw the court hearing as informal surveillance, and an additional safeguard for the system. In addition, both the solicitors and the police were mindful that being in the court was another way of gaining access to the additional services, such as housing and education assistance, available within the court precincts.

You haven't got other workers, who might be in the precinct of the court, who are going to be able to go down and see them. (Interview 35 Solicitor)

There are some legal implications, there's...perpetrator accountability, psychological, engagement with specialist services whilst at the court house or the watch house. There's all this stuff that wraps around a court...you lose the direct linkage to the case worker, you lose the linkage to catching up with family and support in person at the watch house. (Interview 16 Police)

The young person should have their family or carer in court. When they appear via video link, it is often the case that the child does not know the family are there, because the camera does not show the gallery. The family may well be sitting in the court in Cairns as support for the child who is in detention in Townsville and the video would not reveal that (Interview 2 Judge/Magistrate). At times, the family member will interrupt court proceedings by, for example, calling out to the child or waving when it appears the child on the camera has 'zoned out'. The family member, for example, may stand up in the middle of proceedings and call out to the child on camera.

Sometimes they can see them because they wave, sometimes inappropriately, at them. (Interview 4 Solicitor)

In the normal course of events, there is no provision for family visits if a child is being housed in the watch house pending a place becoming available in the detention centres. An in-person appearance would provide an opportunity for the child to at least see their family.

The young person's Child Safety Officer should also be in court each time the child has a hearing. However, if there are three children appearing on video from a particular service centre, then only one of the officers might come to court and that officer may not be intimately acquainted with each child's circumstances. As a result, they may not be able to assist the court with answers to any questions 'about what this particular child is doing' (Interview 5 Judge/Magistrate).

Accountability and engagement with the process

Some of those interviewed raised the important concept of authentic engagement with the legal process, and the judicial officer, as something that was lost during an AVL hearing. For one police officer, it was very much linked to accountability. This officer questioned whether a five-minute AVL hearing could lead to behavioural change. The suggestion was that real engagement in a courtroom setting will have longer-lasting effects and lead to indirect benefits to other players in the system, such as the police (Interview 16 Police). Of course, young people can also experience very brief in-person hearings and these, too, may be unlikely to lead to major behavioural change. However, therapeutic court interventions—such as the High Risk Offenders Court which operates in Townsville with specialist staff—may well result in a better outcome for the children involved.

Which matters are appropriate for AVL hearings?

There are a variety of matters that come before the Magistrates Courts and the CCQ, including mentions, adjournments, arraignments, sentencing, trials and bail applications. Minor procedural matters were thought to be most suitable for AVL hearings. These mentions and adjournments are mainly administrative. On the other hand, as mentioned earlier, researchers have questioned whether AVL appearances may lead to an increased number of adjournments and delays in finalisation of matters.

Trials

The general consensus was that in the normal course of events the young person should be in court for their trial (Interviews 35, 37). The complexity of the proceedings, including the presentation of evidence and the cross-examination of witnesses, would require the young person's physical presence. Interdisciplinary scholars have investigated the efficacy of video-link technology and have noted limitations with attention spans when using this form of communication. There was a view that longer hearings, certainly 'anything more than an hour', are not suitable for AVL because you 'lose focus' (Interview 38 Court Staff). Children, in any case, have shorter attention spans even in face-to-face dealings (Liefwaard 2016: 923; Rap 2013: 80, 139), and if the child has any special needs then they may need an intermediary to assist their understanding.

Mentions and adjournments

The defence solicitors were mindful of the 'different dynamic' in having a child on screen compared to having the same child in the court. When the child is in court, the judicial officer will be made more aware of the vulnerability of the young person. The court appearance becomes a more 'personal experience' (Interview 6 Solicitor). Most of those interviewed considered the real benefit of AVL occurred when the matter was going to be adjourned, so that 'there's not going to be a bail application...there's not going to be a committal with cross-examination, there's not going to be a plea of guilty' (Interview 16 Police). No statistics are available on the number and percentage of adjournments that are taking place on average for any one matter. However, there are many reasons for a matter being delayed, including the necessary reports or materials not being available, the prosecution or defence solicitor being unready to proceed, or the solicitor being unable to obtain proper instructions (Interview 12 Youth Justice).

Arraignments

Arraignments are sometimes done via AVL in instances where the young person may be facing a detention order and therefore needs a pre-sentence report. That report can only be ordered following a guilty plea. If the child is being held in detention at some distance from the court then it may be in their best interests to take the plea via AVL so as to organise the pre-sentence report. There was some disquiet voiced at this approach. It was pointed out that, after all, the reports must be prepared within a statutory time. The magistrates had particular concerns.

I wouldn't do it if a child had a lot of charges to be dealt with. Because we have to take the plea from them, and in taking the plea, we've got to be satisfied that children really understand what they're doing. (Interview 5 Judge/Magistrate)

Bail

In the normal course of events, an objection-to-bail affidavit may be completed by the police. If the child is at the court, it allows the defence lawyers more scope for ensuring that

[w]hat the officers are saying and what the child's saying...match up...It could make a big difference to whether or not the child gets bail, depending on what other alternate version might be placed before the court. (Interview 22 Police)

There are also the practicalities for the parents in terms of whether the child being granted bail will be released from the court or from the detention centre.

Some defence would want to get their clients in if they know he's going to be released and someone is here to pick him up. (Interview 40 Court Clerk)

However, according to one account, 'most, 90 percent', prefer that the child appears via AVL because then, if they are to be released, Youth Justice or Child Safety can arrange for them to be taken into their 'family's care' (Interview 40 Court Clerk).

Sentencing

Most of those interviewed thought that sentencing was best done when the young person was present in court. From the judiciary's point of view, this meant that they were able to 'relate better to someone' and, by physically looking them 'in the eye', achieve more in handing down the sentence (Interview 14 Judge/Magistrate). The general view was that sentencing children to probation orders and community service orders, especially when it was for the first time, was too complex a matter for a video link.

To have to explain to children about what a probation order is going to be for the first time, or a community service order, to even satisfy yourself that...they understand what you're saying to them...would be too complex. (Interview 5 Judge/Magistrate)

For one of the judges interviewed, one aspect that confirmed this view was the children's differing responses when sentenced in person from those sentenced via AVL.

I can get quite a lot of attitude from kids appearing via video, but I tend not to get the same attitude if they're appearing in person. (Interview 23 Judge/Magistrate)

In the observations, at least one young person swore at the magistrate at the end of the AVL appearance, but for the most part the children on video appeared detached in comparison to those sitting at the bar table or in the dock, who were very much present and following proceedings more closely. For all these reasons, a decision for a child to appear via AVL for their court appearance should not be automatic. The defence solicitor, the court and the child need to make a decision on what is most appropriate for each situation.

Remote linkups and special circumstances

The Parramatta study and Wallace's work on remote area link-ups demonstrate the benefits of video links when different players are geographically distant (Hatzistergos 2008; Wallace 2008). Telephone link-ups were previously used where a young person lived remotely and are still used during holidays or other periods when some courts are closed. At times, young people move out of the jurisdiction, to New Zealand or interstate, and in those cases '[u]se of the links allows finalisation and resolution of matters that otherwise couldn't be dealt with' (Interview 35 Solicitor). Facilitating the young person remaining outside a particular locality can, in some cases, be very positive because it separates that child from negative peer influences and can thus prevent re-offending. The comments from those interviewed emphasised the advantages in certain circumstances.

Interviewees commented that the 'best use' of technology occurred when the judge or magistrate, the lawyers and the young person were all in different geographic locations. This can occur when a matter is started in one city and then has to be adjourned.

For example, you might start a sentence matter in Cairns and for some reason it had to be adjourned. I've dealt with matters where I've sat in Brisbane by video link with defence counsel, prosecutors in different centres, and the accused in a different prison. (Interview 2 Judge/Magistrate)

The interviewees provided other examples.

We had ATSILS in court. They had already spoken to the child via video. We'd have a police prosecutor from Cairns...We'd also have Youth Justice in Cairns. Then in the court in Aurukun, we'd have the police officer, the child, any family, community justice groups, that kind of thing...definitely is advantageous to the child because you don't want that child taken out of the community if they're going to be granted bail. (Interview 8 Judge / Magistrate)

Sometimes you'll have a solicitor based in Normanton and you'll have the juvenile appearing in Doomadgee or on Mornington Island, generally with a support person there. But Youth Justice in Cairns looks after the Gulf of Carpentaria, so Youth Justice will generally appear via Skype. So, I'll be doing what can sometimes be a four-way video link, or even a five-way video link. I would have done bail applications with me in Townsville, a prosecutor in Mt Isa, a solicitor in Normanton, Youth Justice from Cairns and the juvenile on Mornington Island or at Doomadgee. (Interview 23 Judge/Magistrate)

In an area the size of Queensland, it makes sense to use technology when appropriate, and therefore it is important that the courts work within a clear framework for decisions as to when its use is most appropriate.

During public holiday periods, many of the courts close and those being held in some of the watch houses will appear via telephone hook-ups rather than video links.

What you'll have is one magistrate will be appointed...The Sunshine Coast magistrate might do Gympie, Nambour, Caboolture, Redcliffe and whatever other watch houses are associated with that one jurisdiction. Brisbane will do all of Brisbane and probably down to...Richlands. So, you've only got about three or four courts operating in the state to do the entire state over this timeframe...You wonder what impact that has, even worse than a video link (Interview 16 Police)

Recommendation

The courts should use video links rather than audio links as an interim technological solution during court closures, and for more complex configurations such as when multiple parties are appearing from remote areas.

The need for a clearer framework for when video links are suitable to use

A number of those interviewed emphasised the need for an individual assessment for each child's suitability – 'a child-centred approach' – so that the decision was about 'what's in the best interests of children in that instance' (Interview 31 Youth Justice). Unfortunately, however, it did seem to some that the decisions being made were 'really ad hoc', and that everyone needed 'more of a guide or...a framework as to when it's appropriate, when it's not appropriate, under what circumstances' (Interview 16 Police).

Who decides?

It is the judge or magistrate's decision as to whether a child should appear in person. Most defence solicitors said that they would appreciate some degree of actual decision-making authority, and that if the child is on video link then there should be explicit provision for the solicitor to speak to the child before and after. As one interviewee explained, regard is had to 'the nature of the offence, the age of the offender, the geographical location of the offender, those sorts of factors'. This interviewee thought that the lawyer and the child themselves should have some input into the decision (Interview 14 Judge/Magistrate). The defence solicitors were also mindful of their client's right to be in court whenever their matter was mentioned because '[i]t's their matter, they have the right to be there' (Interview 4 Solicitor). More often, however, the child will refuse to come to court and this can result in difficult situations. This solicitor thought the matter 'should be purely at the election of the child' (Interview 4 Solicitor). This was not a widely held view, especially among the judiciary.

As mentioned previously, the CCQ (20 November 2019) and the Magistrates Court (11 December 2019) have now published Practice Directions including guidelines covering the use of video links. The provisions in those guidelines answer many of the concerns raised in the interviews. The Practice Directions limit the use of video links to instances where the child is legally represented and consents. In addition, the decision regarding use of AVL resides with the 'presiding judicial officer', who needs to take into account issues such as the 'nature of the proceedings', the child's right to participate fully, any significant disadvantage to the child in proceeding via video link, the child's wishes, any needs of the child for special support, the legal representatives need to take instructions during the proceedings and 'any other relevant issues including the interests of justice'.

Fitness to plead

The available reports note that it is difficult to assess the capacity of children to appear via AVL (Harris 2018: 15). The legal representative will meet with the young person and identify whether there may be questions about their fitness to plead. That assessment needs to take place in person rather than remotely. This is separate again from the child's ability to participate effectively on a screen, where it becomes more difficult to differentiate between behaviour of a 'surlly teenager', 'lack of confidence' or 'significant learning difficulties and a lack of understanding' (Gibbs 2017: 25). In addition, there is no easy test for autism and children with autism will often have trouble transferring their understanding of a real courtroom and its expectations to the AVL setting (Gibbs 2017: 23; Tidball 2016). 'Non-verbal cues', such as voice tone and eye contact, can be difficult to interpret on a video link. It is important, in terms of a 'mental state examination', to have the child in court where there are professional support persons present 'to provide some comment around whether the young person actually understood the questions that were asked of them, how they were presenting' and whether there were any 'mental health concerns' that should be followed up (Interview 17 Ancillary Support). The interviewees showed some disquiet with the number of children who have developmental and other deficits coming before the courts.

It would seem that, for some children, AVL is preferable. These are children whose condition is not sufficient to warrant a mental health defence, and who, because of the prevailing low threshold, are not considered 'unfit to plead'. They are:

[k]ids who are extremely complex in terms of their needs. They just can't stay in the community. Every time they've been out, they've lasted a day or two... They understand enough to be able to go through court normally...I think those kids are better on video link because they're in a calmer...and...familiar environment. (Interview 20 Solicitor)

Children with low cognitive capacity may have special challenges dealing with technology, especially if their first language is not English. If the child needs to appear via AVL then the process must be explained for them. One interviewee recounted how this was done.

I've got a kid in Doomadgee and I'm doing a five-way video link, I do say to them I'm in Townsville, he's in Normanton, he's in Mt Isa, she's in Cairns...Here's the wonders of modern technology, we're all here together, even though we're in different locations. (Interview 23 Judge/Magistrate)

Some children may be assessed as being fit to plead. However, they may have cognitive impairments which result in their having low retention and little verbal comprehension. The difficulty in being able to assess and communicate with young people suspected of having 'any sort of intellectual capacity problems' was raised as an important factor warranting in-person appearances.

So one of my clients can repeat everything back to me brilliantly...he's got absolutely no clue...what it actually means. So you miss those nuances in those conversations when you're talking to people on an AVL that you pick up when you're in person. (Interview 4 Solicitor)

With video links one of the risks is how do you pick up that the kid's got an intellectual disability without seeing them face-to-face, because it's the body language, it's the little nuances that you go, 'Hang on...something is not quite right here!', because a lot of kids have learned to mask their disability. Then if you're on video link and they're just nodding, they're just another uncommunicative kid on the other end of the line; then the outcomes are going to be pretty shocking. (Interview 7 Barrister)

The young people coming through, they're more likely to have a learning disability or a verified disability or something under...the *Disability Act*. So they're given support for a learning disability, like ADHD, or they've been verified as...Autism Spectrum Disorder...or ID, which is intellectually disabled. (Interview 33 Ancillary Support)

Those who had been working in the youth justice space for some time were well aware of the deficits in the current situation, and the need, not for more detention, but for new therapeutic approaches and interventions (Interview 34 Police).

English as a second language and cultural awareness

Indigenous community elders spoke of the need for more cultural support and specialised magistrates and practitioners. They also spoke about the need to use community elders more in the process, and about the advantages in treating every child as an individual with ties and connection to their culture and responsibilities. The elders were supportive of courts where the magistrate introduced everyone in the court. They noted the need for ongoing support: 'It's got to be cultural support' (Interview 30 Indigenous Elder). They were mindful that up to 80 percent of children in detention are on remand, 'which means they don't have anywhere to go. They have a family breakdown there. That really is the crux of the problem' (Interview 29 Indigenous Elder).

Indigenous children, as well as those from other cultural groups, may require an interpreter. The point was made that health services in northern Queensland were using 'interpreters a fair bit for young people who reside in the Cape [York]'. This example was unrelated to the court services, but the comment was rightly made that these were 'the same population' (Interview 17 Ancillary Support). One interviewee noted the need for more support for the Aboriginal and Torres Strait Islander and Pacific Islander cohorts 'just because their culture is so different', and also because 'English was not their first language'. Young people should be assessed prior to their appearance via AVL and arrangements put in place for an interpreter to be available either at the court or with the child at the detention centre. One example provided was a young Samoan person.

Samoan was their first language...When the young person was asked a question by the magistrate...he felt too embarrassed to say he didn't understand so he just said yes and yes was not the right answer. The magistrate became very angry, yelled at that young person, 'How dare you say that!'...The young person really just couldn't understand. He just agreed with everything because he just wanted to get it over and done with. He didn't want to be in court. (Interview 12 Youth Justice)

Cultural customs and behaviour such as not looking a superior in the eyes, or agreeing with everything that is said, may not work well for these children in a court situation.

I think that the problem is that kids from New Zealand and Samoa and Tonga and Pacific Islander countries, they're indigenous to their land, but they're not treated like Indigenous people in this land. So the way they are treated is like a western person, but they don't understand like a western person. They are probably at the same disadvantage as an Aboriginal or Torres Strait Islander person. (Interview 1 Solicitor)

There are other disadvantages. Some of the young people who come from more remote communities do not have experience of technology.

We had an experience with a young person who actually thought the television was talking to them. They didn't realise this was happening in real time, and there was someone in the other end engaging this young person in this assessment. (Interview 17 Ancillary Support)

For this reason, authorised elders from the local community have at times sat in on AVL appearances with the young person in the detention centres. However, this is not common practice.

Recommendation

All detention centres should facilitate the provision of culturally appropriate support to young people—for example, through the presence of authorised community elders—throughout the AVL process.

Assistance with understanding legalese and court processes

There was a general consensus among those interviewed that the young people had difficulty understanding the formal language and terminology used in the courts, and were often unsure of the outcomes of their appearance (Interview 12 Youth Justice). This issue formed one of the recommendations from the 2018 Victorian Legislative Council Legal and Social Issues Committee:

Recommendation 10: That the Children’s Court use less formal language during trials to ensure that young people better understand the court process and the link between their sentence and their offence/s. (Legal and Social Issues Committee 2018: 64)

Stephanie Rap’s research demonstrates that it is important for children’s effective participation in court proceedings that professionals acquire skills to hear the views of children (Rap 2013: Chap 4). Hearing the views of children requires conversation techniques that enable the child to give their views freely and that go beyond mere interrogation or checking of facts. Conversation techniques include asking open-ended questions, showing genuine interest and encouraging the child to give their views by listening and asking follow-up questions in an open and unbiased manner. Also of importance is to adapt language to the level of understanding of the young person and to adapt the length of proceedings to their attention span (Liefwaard 2016: 923). In Rule 22.1 of the UN Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules), there is a statement concerning the need for professionalisation and specialisation, including that ‘everyone dealing with juvenile cases should be provided with training and education to ensure specialisation in the field of juvenile justice’. As Rap comments, this serves as a reminder to states ‘to provide courses that fall outside the professionals’ own field of study (such as providing courses on child/adolescent development to legally educated judges, prosecutors and lawyers)’ (Rap 2013: 47). Every professional working with, and for, children should receive training in the application of CRC article 12 in practice, ‘including lawyers, judges, police, social workers, community workers, psychologists, caregivers, residential and prison officers, teachers at all levels of the educational system, medical doctors, nurses and other health professionals, civil servants and public officials, asylum officers and traditional leaders’ (CRC Committee 2009: para. 49).

The 2018 Tasmanian *Facilitating Equal Access to Justice* report included comments by a speech pathologist as to the dearth of testing mechanisms for communication skills for young people. Adequate communications skills are necessary to ensure children are able to follow proceedings in court. Any deficits may be exacerbated when the child is appearing via AVL. Research demonstrates that a significant proportion of young offenders ‘perform poorly on language measures relative to age matched peers’ (Anderson, Hawes & Snow 2016: 195). One interviewee explained how this could play out in an AVL hearing. Those children with expressive language impairment ‘might take longer to tell their story or to explain the narrative of what happened’. The court would need to be made aware that:

Silence isn’t them finished; it might be them thinking about...the next part...They are not able to sprinkle their utterances with the niceties that may benefit them in the eyes of a courtroom...making eye contact, sitting up straight, using polite language. (Interview 26 Youth Justice)

These speech and demeanour skills deficits have been recognised for some decades as a result of the work of Eades (1992) and others. In an AVL hearing, in the absence of others in the court who can modify their responses and assist their understanding, such children are doubly affected. Members of the judiciary working in children’s jurisdictions are becoming more aware of these issues as a result of unfitness-for-trial assessments.

There’s about half-a-dozen questions that are asked, and two or three of them focus on understanding the process in court, understanding that it’s an inquisition into whether you’re guilty or not guilty, understanding the role of the magistrate, the prosecutor, the solicitor. (Interview 23 Judge/Magistrate)

Armed with this knowledge, many magistrates, in conducting the hearings, try to provide a clear introduction to the roles of those in the court and to the process taking place. They will, for example, refer to bail rules rather than bail conditions (Interview 33 Ancillary Support). The magistrates use techniques such as asking the child to explain in their own words what has been said: ‘So, I’ve put you on a curfew, six until six. What does that mean to you?’ (Interview 31 Youth Justice). However, these slower explanations are much less likely to take place in a five-minute AVL hearing. Solicitors working in the jurisdiction are also aware of the language deficits. This is particularly important during arraignment so that the children know exactly which offence they are pleading guilty to; for example, ‘Now this is the one about the red Audi. You’re supposed to have been in that’ (Interview 7 Solicitor).

There needs to be more recognition that the use of legalese is not appropriate for the children’s jurisdiction and some attempt should be made, and time taken, to explain the process to the young person. This may mean that CCQ appearances will take slightly longer. However, it is important that the child understands what is happening to them in their hearing. Many of those interviewed gave examples of where this was not the case during AVL hearings.

One young person walked out...all gloomy...I said...you got bail. His face just changed... They hear it, but they don’t comprehend it. (Interview 10 Youth Justice)

Recommendation

All those taking part in court hearings should be encouraged to use less formal language and to provide additional explanations to ensure young people understand the court processes taking place via AVL (see Braun 2016; Braun 2011; Eades 2015; Fowler 2013; Snow 2019).

Hearing and sight problems

Should video be used where the child has a disability? What if this disability is not immediately obvious to the legal representative or the court? In the UK Transform Justice study, it was noted that '[i]t can be hard to recognise when a defendant has a disability or support needs when they appear in court in person, and it is harder still when they appear on video' (Gibbs 2017: 2). Many of the children have undiagnosed disabilities and it is difficult to gauge the extent of those disabilities over a video link.

There is some provision for children who have hearing problems. However, this requires the child to disclose to their solicitors and the court that they own a hearing aid and have it with them. Hearing loops, linked to specific brands of hearing aids, are available in the courts to enhance hearing and are also available when using AVL. There are also provisions for Deaf Queensland to provide two interpreters for a deaf defendant in court. If there is a visual disability, the court can appoint a support person (Interview 38 Court Staff). However, for any of these adjustments to take place, the child, the court and the detention centre need to be made aware of the disability.

If the sound level is too low or there is lack of clarity in the audio, or a speaker is not facing the child as they are speaking, this can detract from the child's ability to understand. One interviewee raised the idea of subtitles as a potential means of clarifying communications on some occasions. This was one area where interviewees thought that the judiciary could be more aware of potential issues.

I would like to see magistrates being aware of their body language, and aware that sometimes they're mumbling...that means clarity of speech, the volume of what they're saying, and then their choice of language. (Interview 19 Ancillary Support)

Those interviewed noted that young people coming from specific communities in the north of the state could well be suffering from some hearing loss because of the conditions in those areas. In the interviews, examples were raised of children with disabilities such as hearing impediments.

They are very deaf, to the point where they require hearing aids...They haven't worn them...for a long time. They don't even know where they are...they just went through life deaf. They didn't know how to sign either, so they just went through life...guessing. (Interview 33 Ancillary Support)

Similarly, in many cases children's sight problems have not been identified or assessed (Interview 33 Ancillary Support). As one interviewee commented, 'there aren't very many young people in the youth justice system with glasses' (Interview 35 Solicitor). Identifying these types of common deficits often falls to teachers and close relatives. Children in the youth justice system are often not attending school regularly. There are also additional costs for testing as well as compliance aspects involved in remedying eyesight issues.

Recommendation

Youth justice agencies should ensure children are checked for hearing and sight problems prior to appearing via AVL and that appropriate changes are made to the set-up as required if the AVL appearance is to go ahead.



Preparation and timing of appearances

Timing of the video link hearings

It was obvious in all the court sittings observed that the magistrates were managing extremely heavy work schedules. The expectation is that the magistrate will clear all children's matters in one day of sittings. There is generally only the one sitting time. Unfortunately, there are not separate morning and afternoon sessions as occurs in the adult jurisdiction. All children are instructed to appear in the morning. However their matter may not be heard until 3 pm depending on the size of the list. Some courts have set times for hearing AVL matters; others intersperse AVL and in-person appearances; yet others leave the schedule to the solicitors in terms of who is ready to appear with a client, either on video or in person. The staff in one detention centre pointed out the advantages of having the children's AVL appearances early in the day. This was the best fit for the routine within the centre. It also allowed time for the necessary processing in order to organise a child's release (Interview 28 Detention Staff).

Although court appearances always take precedence over other activities in the centre, detention staff were concerned that the court was not always mindful of the time it takes to bring the young people into the AVL suites. The courts might want to see a child with little prior notice. However, the young person might be involved in outside activities that may require them to change clothes and generally prepare for the appearance. Certain children needed to be kept away from others—referred to as 'mix issues' by detention staff (Interview 27 Detention Staff). Movements within the centre had to be planned and controlled in terms of the staff available and the children involved in the move.

Information and preparation for the young people

The 2018 Inquiry into Youth Justice Centres in Victoria made recommendations about enhanced education and support for the children appearing in the children's jurisdiction (Legal and Social Issues Committee 2018: 64; Kashyap et al. 2017: 26–34). This view resonated with many of those interviewed for this study. Some were concerned that the young people viewed AVL hearings as a one-on-one conversation with the magistrate and had no real concept of the formality of the appearance (Interview 35 Solicitor).

For this reason, several of the solicitors were keen to see information sheets in the video-link rooms at the detention centre reminding the young people that they are sitting in a court room (Interview 35 Solicitor). One of the duty lawyers explained that she had prepared a diagram of the local court which she gave to the children, along with a list of legal words and their definitions. In addition, she drew up a flowchart of potential outcomes. She also gave them information about court protocol. The suggestion was that this type of information could be provided in the video-link rooms at the detention centre facility. In addition, the interviewees thought that the adult accompanying the young person has a responsibility to assist the child and prepare them prior to the hearing, 'briefing the young person properly before they come in' (Interview 35 Solicitor).

Several ideas for additional preparation of the young person before the AVL hearing were suggested.

A case support worker or a cultural support officer...giving them a bit of an understanding what videoconferencing is before they appear, so that they get...an understanding as to the process and how that can assist them. (Interview 16 Police)

The children need to be provided with information about court etiquette.

Making sure that everyone's on the same page when it comes time to address magistrates and judges...You should be silent, you should be seen, not heard, is probably the best terminology for the courtroom...unless you're asked something. (Interview 28 Detention Staff)

Young people need to be in the 'correct frame of mind for the court appearance'. It was suggested that one way of preparing the child for court is to separate the AVL facility from the visiting area so that the child is not having conversations with other young people prior to their appearance (Interview 35 Solicitor).

Recommendation

All detention centres should provide materials such as diagrams of the courtrooms, information on court etiquette and forms of address to prepare children for any AVL hearing.

Introductions for appearances

Many of the AVL appearances observed in the Magistrates Court were very short. Several of those interviewed thought that the children needed a clearer set framework for the appearances so that there was a formulaic beginning and end to the process. When the child appeared in person, this would be covered by the solicitor's introduction to the bench and the submissions of those participating in the court process.

Each person or stakeholder at the bar table...announces their appearance. However, when it's a Children's Court call-over day we only do it at the very beginning of the day...Sometimes we have 70 young people in court. If we had to do it for every single appearance that's a lot of time...maybe that needs to happen...the magistrate [needs]...to say 'This is who is in the court'. (Interview 12 Youth Justice)

There should be a set protocol in every appearance, with the child being greeted by the magistrate and the various officers of the court and relevant support persons in court being named. The need for routine introductions for every appearance and a clear end to the hearing were discussed by several of those interviewed (Interviews 16, 12, 27, 31). The interviewees noted that the children appearing on video were frequently not clear whether the appearance was in the Magistrates Court or the District Court. There were positive comments regarding the specialist Children's Court magistrates, who were most understanding of the need to interact with the young people appearing before them. One interviewee suggested that the child at the remote site could be shown a pre-recorded message on the video screen, such as a countdown or teleprompts at the detention end before the child goes live in the court.

Magistrates Courts are...a sausage factory...there's just so much work, they physically don't have enough time to go through those niceties...If we acknowledge that's the case then we should at least have some sort of prompt on the screen...something at the detention centre, not something needed in the court room. (Interview 16 Police)

The child's name, charges, court, date, and time could appear on the screen at the detention centre. This would not be visible on the large screen in court. This information would come from the court database. If the technology permitted, it might also display on the magistrate's screen, again without showing on the larger screen in the courtroom.

Recommendation

The presiding judicial officer and the court clerk, and the courts service generally, should ensure a clear beginning and end for each video-link appearance, with time warnings and prompts. There should be a formal greeting and standard court introduction to the proceedings.



Addressing reasons for court avoidance

The principal objective of the project, as previously stated, was to examine current practice and suggest improvements. While conducting the interviews, it became apparent that there were other related and relevant issues that needed to be addressed. AVL use is increasing. Most interviewees agreed that video links are a vital communication tool to assist with remote hearings and special circumstances that sometimes arise in a state the size of Queensland (1,730,648 km²). The use of AVL technology is promoted primarily as being cost-effective and saving time and money. The young people, on the other hand, may see AVL as a means of avoiding the need for body searches, the trauma associated with being transported to court, and the watch house experience. However, avoiding an in-person appearance may not always be in their best interests.

Savings in escort and operational costs

The use of video links is always highlighted as a major cost saving strategy. The actual annual costs for transporting young people to court from the detention centres and watch houses in Queensland are not available, although it is possible to estimate some costs.

Studies of video links emphasise the transport costs savings based on figures from the adult sector. Total expenditure on prisoner transport and court escort services in the adult sector delivered by Queensland Corrective Services and the Police was estimated at \$11 million in a 2012 Report (NSW Commission of Audit 2012). By 2017–18, the total Queensland Corrective Services transport and escort services recurrent expenditure in the adult sector had risen to \$31.755 million (SCRGSP 2019: Table 8A.1). This was slightly less than the Western Australian expenditure and possibly relates to the geographical distances covered in those two states. The latter figure represents a large increase in costs over the five-year period and no doubt covers matters other than simple court-to-corrections transport—for example, the cost of vehicles and possibly even the police air wing.

Cost effectiveness studies are ambivalent. According to a 2018 NSW study, new AVL facilities in three local courts resulted in a decreased number of in-person appearances and estimated savings of \$459,500 in prison transport costs in that district (Donnelly 2018). A 2011 US study highlighted estimated savings over \$10 million (Doyle 2011). In contrast, a 12-month UK pilot study of AVL linking police stations and magistrates courts, using detailed analysis of criminal justice data as well as interviews with practitioners, 'indicates that, overall, the Virtual Court pilot added cost to the delivery of criminal justice in the London pilot area, compared to the traditional process' (Terry, Johnson & Thompson 2010: iii). Once again, young people under 18 were not involved in the UK pilot. The main saving was in prisoner transportation costs, but was offset by the implementation cost of the technology. Ongoing costs of technical support and upgrades would also need to be addressed.

As mentioned, annual costs for the transport of young people to court are not available. This is because definite figures for young people from the detention centres and police watch houses attending court for in-person events are not available. However, it is possible to estimate the savings from AVL use in 2018. AVL appearances from Brisbane Youth Detention Centre in 2018 took place in multiple sites across Brisbane and regional Queensland, stretching as far as Townsville, Cairns and Woorabinda. If all 1,276 appearances in Brisbane had been in-person rather than via AVL, the cost would have been approximately \$545,500. The prison vans house up to eight persons in separate locked cubicles. In Brisbane, young people are accommodated by scheduling movements within the Wacol prison circuits; therefore, this figure is likely to be less. Transport to courts in the northern parts of the state includes flight costs and longer transit times. A police escort to Mt Isa from Brisbane, for example, would cost in the vicinity of \$3,500.

AVL is used for over 60 percent of cases in Townsville. Therefore, if numbers and courts were known for the 1,323 appearances in Townsville, it would be possible to estimate savings for 2018. There are now fewer in-person appearances taking place in the northern region. The numbers may be as few as four young persons a week. These are mostly local appearances in Townsville or Cairns. The young person would either take the shorter trip to the Townsville Central Court with the police or fly to Cairns (QGAIR, commercial or charter).

In Queensland, the cost per young person subject to detention-based supervision on an average day in 2017–18 was \$1304.83 (SCRGSP 2019: Table 17A.21). A high proportion of these young people, at times as much as 87 percent, are unsentenced (AIHW 2020b: 16). As the cost per average day per young person subject to community-based supervision in 2017–18 is \$190.59, then obviously the most cost-effective outcome is to move the young people out of detention as quickly as possible (SCRGSP 2019: Table 17A.20). In this regard, there is research pointing to the propensity for AVL to extend the time taken for matters to be resolved (Webster 2009). If this is indeed the case, then caution should be exercised in determining which appearances are undertaken in this format. However, it may take four or five appearances to complete a matter. Some of those appearances would be mentions and adjournments. Where there are significant distances and travel involved, 'the savings are huge' because 'if she were appearing in person and she's still in custody she has to be escorted the whole way' (Interview

11 Detention Staff). This is particularly the case for the ‘Gulf Circuit’ (Interview 22 Police). Apart from the transport costs, there are savings in administrative staff costs in preparing and checking paperwork for discharge and admissions for each appearance.

The costs outlined in this section of the report are speculative. No publicly available government documents include accurate figures outlining the actual costs for transporting young people to courts in Queensland each financial year. Overall, there is no dispute that AVL appearances result in savings in police escort costs. However the current investigations demonstrate these amounts are not high for the youth justice sector. What is necessary to remember is that the justice system is dealing with low numbers of children. The main point to emphasise here is that the decision on whether the child should appear in person or via AVL is not primarily a financial consideration. Our legislation embeds the principle of ‘the best interests of the child’, and everyone in the system—and every procedure—needs to operate within that framework.

Avoiding body searches

Avoiding body searches is a factor in decisions regarding AVL appearances. This issue arose several times during the interviews. Security requires basic searches take place during transitions, and this can occur up to four times for one in-person appearance: at discharge from the centre, when the police admit the child to their care, when the police discharge the child to the care of the court, and when they are readmitted to the detention centre.

A number of government inquiries have investigated strip searches and body searches for detainees in Queensland. The Queensland Criminal Justice Commission (CJC), in its report *Police strip searches in Queensland: An inquiry into the law and practice*, made recommendations specifically in relation to watch house searches. At those public hearings, the suggestion was made that the ‘QPS look at new and developing technology to use in detecting items that may have been secreted on a detainee’s body or clothing’ (CJC 2000: 36). In the same year, the Forde report noted that ‘[r]egulations permits the use of reasonable force if necessary to carry out any of these searches. Although all centres keep a register of unclothed and body searches, the registers do not indicate if force was used. The physical restraint of a non-compliant young person to permit workers to forcibly remove his or her clothing is unacceptable’ (Forde 1999: ix).

In November 2017, the Australian Children’s Commissioners and Guardians (ACCG) again examined this issue in its *Statement on Conditions and Treatment in Youth Justice Detention*. It commented:

[i]n general, there are three different types of searches that take place inside most youth justice facilities across Australia: ‘pat/frisk searches’, ‘strip/unclothed searches’ and ‘cell searches’. Strip/unclothed searching involves a person being required to remove some or all their clothing. Strip/unclothed searching is more intrusive than ‘pat’ or ‘frisk’ searching. A small number of jurisdictions allow children and young people in youth justice detention to be subject to internal body/cavity searches. (ACCG 2017: 19)

There was a suggestion that other less intrusive screening, such as electronic wands, should be made available. Once again, there was a recommendation on this matter: '9 Searches of a child or young person should be conducted only when reasonable, necessary and proportionate to a legitimate aim. Searches should be publicly reported to an independent oversight mechanism' (ACCG 2017: 19). Despite this, recent data from Tasmania and NSW show that routine body searches do take place in detention centres particularly on first entry, court appearances and family visits (Human Rights Law Centre 2019; Whitson 2019). According to recent press reports, a 'non-invasive body scanner is being trialled' in the Brisbane Youth Detention Centre (*Courier Mail* 2019: 23). Apparently this technology is not yet available in the Townsville centre.

Comments from those interviewed

At least six of those interviewed, including judges/magistrates, police, solicitors and detention staff, commented on the importance of body searches as a factor in the decision to use AVL for children's appearances (Interviews 15, 18, 25, 35, 36, 37). AVL eliminated the need to go from one secure environment to another (Interview 36 Youth Justice). Interviewees were at pains to emphasise that strip searches were not carried out in the detention centres, though the children are 'wand searched' and, if the child 'has previously been known to have contraband', they are 'searched with a wand or partial clothes search' (Interview 25 Detention Centre). One interviewee commented on the fact that the detention centre had policies around the transit processes; however the police have far greater discretion in their actions. 'It depends on who the...police officer is at the time' (Interview 35 Solicitor). There was also a recognition that we were talking about young people in a vulnerable time of their life: 'if you're a 14-year-old girl, the last thing you want to be is going to be searched. I'm sure if you're a 16-year-old boy, you don't want to be searched either' (Interview 37 Judge/Magistrate).

Those interviewed were concerned that in coming to court the children were at risk of searches taking place at transit points. At the time the interviews were being conducted, a greater number of children were being held in watch houses in Queensland. Although there is no policy in place calling for routine searches, the police undertake a risk assessment when a person is accepted back into custody. The young person may be subject to an unclothed search; however, this is in extreme cases. Usually a pat-down or wand search only is required. Unclothed searches are subject to strict protocols and are required to be authorised in advance on every occasion by a senior officer.

The advantage of using video links...is the child is not removed from the Brisbane Watch House...re-searched, re-handcuffed, put into a prison van, taken...to the court cells...at 363 George Street...Corrective Services run the court cells...So the children will then be taken into someone else's custody...the custody of the Court. They will probably be put into another cell and they'll be placed...into another system, asked a whole heap more questions. They will wait there for a period of time...After they've seen the magistrate they would come back to the court cell, back to the van, police would be called, police would go and pick them up and we would bring them back in. Because they've been in someone else's custody we will re-search them...so it may simply be a pat down, it may be a pat down with a wand and/or it might include all of those plus removal of clothing. Then...the young child's put back into a cell. (Interview 15 Police)

Youth Justice staff should be responsible for the supervision of young people in the court cells rather than Corrective Services officers.

Recommendation

All detention centres, watch houses and courts should install non-invasive body scanners, such as those used at airports, to be used for young people entering court precincts in order to identify contraband. Up-to-date technology should be made available at all transition points and search spots.

Youth Justice and other relevant agencies should provide specialised training for all police, court and corrections staff who come into contact with young people during the transit process.

Avoiding transport trauma

A number of those interviewed commented that AVL appearances were less traumatic for the children. Trauma arises from the processes required to transport young people to court. Reducing transport trauma was the subject of recommendations in a 2018 UK report, including that 'children in the secure estate are held closer to their home and relevant court; children are transported in smaller, more comfortable vehicles, accompanied by a known member of staff and never transported with adults; and children's court proceedings are brought to them through suitable "pop-up" courts within or near the establishment they are being held' (Harris 2018: 18). Gibbs notes:

Many lawyers and prisoners themselves point out that it is much more convenient for someone already in prison to take part in a short hearing by video. If prisoners go to court they have to get up in the middle of the night, be processed out of their prison, spend hours in a very uncomfortable van (nicknamed "sweatbox" since hot with very small windows), wait in court cells and then travel back arriving very late and having missed supper – all often for an appearance in open court of less than half an hour. Sometimes prisoners are moved to a new prison at the end of the court day, not necessarily because of the court outcome, but because of the complications of prison space logistics. So it is clear why prisoners may prefer video hearings. (Gibbs 2017: 15)

The logistics

The QPS is responsible for moving a child from police custody after a court appearance to a youth detention centre. While the legislation is silent on how a child gets to court, transportation is usually provided by the police. The children may be transported anywhere in Queensland, and this can involve the Police Air Wing. Normally, children are not transported in the same vans as adult prisoners. Adults being transported to or from the courts include both males and female, and both those being held on remand and those sentenced to detention.

However sometimes depending on urgency or late notification from the centres we may have adult prisoners in that van with that child depending on where we're going...so the child...could hear but can't touch or see another prisoner. (Interview 15 Police)

Young girls and boys are not transported in the same vehicle unless they can be separated.

Depending on how many young people are going to court—they don't transport male and female in the same vehicle unless it's one of those pod vehicles where they can separate them. (Interview 25 Detention Staff)

Information obtained from the interviews suggest that the young people (and possibly the detention centre staff) would have little advance notice about the nature of the transport vehicle, which police officers or other staff would be in charge of the transfer to and from the court, or who their fellow travellers might be.

Transport delays

Added to these unknowns is the fact that the children can be assured of long waiting times at various points during the day. They need to be ready to leave the detention centres early, yet because of the need for diversions along the way, they may not get to the court quickly—'sometimes the children are the first to be picked up off other sites, and the last to be dropped off at night' (Interview 5 Judge/Magistrate). The delays between leaving the detention centre and arriving at the court were described by some as 'inordinate...the time periods don't equate' (Interview 35 Solicitor). Once at the court, they would need to wait in the cells for their matter to be called—'just in the cells downstairs with nothing to do' (Interview 5 Judge/Magistrate). If the child is not released or granted bail, then there would be an additional anxious wait for the return journey. The transport staff might be different. Their fellow travellers would also be different.

Young people travelling further afield in the north would be dependent on the availability of the Air Wing (Interview 24 Court Clerk) and infrequent flight schedules, or, in some cases, longer trips in the back of police vehicles (Interview 22 Police). Trips that court staff and lawyers could undertake in one day may take the child three days.

The risks

The logistics, delays and risks associated with transportation from detention centre to court can dissuade young people from wanting to go to court. The decision to appear in person for their own court case means that the child is taken out of a structured and known environment, and placed under the control of different agencies, with the risk of ‘catching people on bad days’. As one interviewee commented, ‘there’s no good news for these kids when you move them’ (Interview 15 Police).

Avoiding the watch house experience

The architecture and conditions in the watch houses at the various courts throughout the state differ markedly. Some of the spaces are long overdue for renovation. The watch houses in some of the older courts are arguably not suitable for adults, let alone children. Several of those interviewed referred to Beenleigh as being in need of renovation, referring to it as ‘a disgrace’ (Interview 7 Barrister), ‘a hell hole’ (Interview 11 Detention Staff), ‘a horrible place’ and ‘a dungeon’ (Interview 1 Solicitor).

The recent discussions of children being held in the Brisbane City Watch House as a result of a lack of space in the detention centres highlights the issues involved for children accommodated in these spaces for more than a short time (Atkinson 2018: 20; Youth Advocacy Centre 2018). Special arrangements have been put in place in the city watch house to accommodate young people, although, as one interviewee pointed out, the city watch house is designed for adults and is ‘not a purpose-built youth detention centre’ (Interview 15 Police). The situation whereby young people are held in the same facilities as adults has arisen in part because of the closure of the separate Children’s Court (staffed by Youth Justice) at Quay Street. Some interviewees mourned the loss of the separate court.

The courts don’t really cater for children at all anymore state-wide...at the Children’s Court we had that watch house run by trained youth officers, so they would be very well looked after. They were treated with a lot of compassion. They knew how to deal with kids. They’d often sit in the cells with them and just settle them down, make sure they were fed and things like that...when a Children’s Court runs properly it becomes a place where the kids can feel like they can go for help as the services are there. We used to have that. (Interview 7 Barrister)

This matter also formed the basis of the 2018 Atkinson Report recommendations 39–42 (Atkinson 2018: 10).

Risk of further criminal charges

Some of the young people are afraid to go into the watch house because of the way they have been treated in the past. And there is always the risk of further charges arising from the transport.

There have been incidents with juveniles having been assaulted by watch house officers. There are quite a few kids who are scared to go into the watch house. A lot of my clients are scared to go in there. They sit in there for hours...there were a lot of occasions when the kids would graffiti the watch house...and then you have more offences. (Interview 20 Solicitor)

Treatment in the courthouse

Once in the courthouse, the young people are usually brought to a holding cell and then to the court room. Some of those interviewed thought that, in an ideal world, where there were fewer appearances each day, all the children should come to court for their appearances. However, they thought the court facilities were not suitable for this. The courts, police, transport, and holding cells are not sufficient to handle large numbers of children.

If you ask me about a different court in a different town where we had one appearance a week and they were video linking them in, I'd say no, let's get them in there every time... I'd definitely prefer that option. There's more benefit to that just on the face of it. Having the kid in the court, why not, we're all there...We largely average 300 per month...There are occasions where we've had four courts running on the same day...On an average Children's Court day, we will have 40 to 60...There is the possibility of some unintended consequences by having every child come in. (Interview 31 Youth Justice)

The service facilities and staffing numbers are not sufficient to handle larger numbers of young people coming to court on the one day. The children may be appearing in different courts—Children's Court, or adult courts for some matters. In addition, some children should not be mixed with others for legal and social reasons (Interview 25 Detention Staff).

Children's matters throughout the state are now heard in designated courts within the adult facilities. In Townsville, if all the courts with internal dock facilities are being used, then the Children's Court needs to sit in another courtroom. The only options at that point are for the matter to go ahead without the young person's presence or for the child to be 'brought through the foyer in cuffs, in front of people' (Interview 31 Youth Justice). This can mean that the young people are appearing in public in handcuffs (Interview 19 Ancillary Support). This aspect alone may be sufficient to deter children from wanting to go to the court. The Children's Court sittings are supposed to preserve the child's anonymity, and this will not happen if children are seen entering and leaving courtrooms in handcuffs—especially in smaller communities.

Young people do decline to attend court in person and the reasons for doing this are not always evident. It may be that the young people consider that they are irrelevant to the court process or that there are risks for them in attending court. However a number of children also decline to appear via AVL (Interview 24 Court Clerk). AVL saves on transport costs, and can be an effective way of avoiding collateral trauma associated with children being transported to court in police custody. However, AVL is not suitable for use in all circumstances. The system needs to identify ways of improving the transition experience from the detention centre to the holding cells or watch house, to the courts, and back to the detention centre. Care needs to be exercised to ensure that young people are not systematically disadvantaged by the use AVL leading to an increased number of adjournments and longer times to finalise matters. The costs of keeping children in detention, whether they are viewed as financial or in terms of long-term social deficits, are high. Young people need to be brought before the courts speedily in order to finalise their matters, and provided adequate assistance to exit the justice system.

Recommendations

Youth Justice should examine the reasons for young people refusing to attend court in person, especially when it is in their best interest to do so; and, in doing so, consider whether any of the following would improve the situation.

- Reopening a separate facility for children's hearings in Brisbane and opening one in Townsville, or holding court sittings at a facility adjacent to the detention centres.
- Ensuring that children do not walk through public areas in handcuffs.
- Upgrading older watch house facilities such as that in Beenleigh.



Conclusion

There have been a number of recent reports dealing with youth justice, some focusing specifically on AVL. Most of these include relevant recommendations. There is consistency in the views being expressed and in the suggested reforms. The system uses AVL for child victims with a range of protections built in around its use. However, when we use AVL for children who offend, the scaffolding is pulled away. In many cases, these are the same children. They are the victims. However, they are demonised as offenders. Implementation of the recommendations will go some way to improving the AVL experience for young people in detention, thus increasing the likelihood of improved efficiency and ensuring that the children are diverted out of the justice system.

This report has traced the history and context of the use of video links for children in the youth justice system in Queensland. It has examined the available statistics, the demographics of the children in detention, the empirical research in relation to the use of the technology and the legislative frameworks built around the practice in the courts. The recommendations are based on 35 Magistrates Court observations along with 40 interviews with adults working in the system. Overall, there was a strong and widespread view that the system could be improved by ensuring that practice in all respects is more child-centred.



Postscript

The legal world has changed as a result of the COVID-19 crisis. Courts have been closed and, except in the most urgent situations, all appearances have been taking place via AVL. Regulations and Practice Directions have set out responsive court arrangements to adapt to the ongoing crisis. In Queensland, it was business as normal at the commencement of 2020. By the end of March, the President of the CCQ had issued Children's Court of Queensland (District Court) Practice Direction No. 1 of 2020 urging practitioners to consider whether it was necessary for children to attend court and stipulating that those children who were in detention would be appearing via AVL. Similar arrangements were put in place for Children's Court (Magistrates Court) sittings. From 15 June 2020, with a relaxing of the COVID-19 restrictions, more in-person matters were being allowed (Children's Court (Magistrates Court) Practice Direction No. 6 of 2020). Responsive legislative amendments were also made in other Australian jurisdictions (see Judicial College of Victoria 2020).

This situation has highlighted some of the advantages of using technology in the courtroom, while encouraging more research into means of improving the situation for all actors in the system (EHRC 2020; Fielding et al. 2020). No doubt some encouragement will be given to a widening of the use of video links when the immediate COVID-19 danger abates. However, it is important that young people and others who are vulnerable are assured of a fair hearing. This research project points to a cautious adoption of this technology when it is being used for young people, and highlights many areas for improvement in the system.

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