Protection, not public shaming, is the way forward for child offenders


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Protection, not public shaming, is the way forward for child offenders

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The Victorian opposition recently announced its intention to push for reform of legal responses to child offenders. Described as a “two-strike-style crackdown”, the proposed reforms include removing the protection of anonymity for repeat young offenders and removing the right to request bail.

The opposition describes the weakening of existing laws that ensure the anonymity of all children brought before the Children’s Court as enabling the “cloak of secrecy” to be lifted. Justifying the push to name repeat child offenders in “exceptional circumstances”, Shadow Attorney-General John Pesutto said:

In these circumstances, the public’s right to know takes on great significance and should be a more powerful factor in a court’s decision to allow publication of relevant details of violent offending, including the identity of the offender.

But is there merit in naming-and-shaming policies for children in conflict with the law?

The dangers of naming and shaming
Proponents of naming child offenders – those aged under 18 – argue it secures community safety, deters other children from crime, and ensures children do not evade responsibility for their actions. However, our recent research refutes the merits of naming child offenders.

Such policies – even when applied to serious and/or recidivist offenders – breach the child’s right to privacy, undermine attempts at rehabilitation, and deny a child’s prospect of reintegration.

Rather than acting as a deterrent, naming and shaming also exacerbates criminal behaviour due to the stigma attached to such a label.

By removing the child’s access to privacy within the legal system, naming-and-shaming policies impose a secondary punishment on a child beyond criminal sanction.

This is particularly problematic given the rise of social media, surveillance, and the global spread of information. An offender named publicly can expect their identity to be shared across multiple news outlets and accessed by national and international audiences.

The long-term negative impacts for the child include:

- increased stigmatisation;
- reduced prospects of rehabilitation and social integration; and
- the sabotage of employment opportunities.

**Protecting the rights of children**

The Convention of the Rights of the Child enshrines a child’s right to privacy, including during all stages of criminal justice proceedings. By ratifying the convention, Australia has committed to uphold and protect the rights of all Australia children – including those charged, convicted and sentenced for a criminal offence.

The Standard Minimum Rules for the Administration of Justice provide additional guidance on international norms regarding the privacy of a child in conflict with the law:

> The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

> In principle, no information that may lead to the identification of a juvenile offender shall be published.

While not binding, these rules are considered internationally accepted minimum standards.
The treatment of children in Australian detention centres has already drawn international criticism over failures to uphold their human rights. Changes that would widen the gulf between Australian practice and international standards should be avoided at all costs.

**Minimising contact with the criminal justice system**

Beyond naming and shaming, the Victorian opposition proposes to remove the right to bail and introduce automatic remand for repeat offenders.

This approach would constitute an undue interference with the independence and discretion of the criminal justice system, and would render the criminal justice system a blunt instrument of executive design. Limiting judicial and parole board discretion would prolong children’s contact with the criminal justice system and undermine efforts to rehabilitate child offenders.

The recent images from the Don Dale detention centre in the Northern Territory provided a stark wake-up call on the dangers of incarcerating children.

Victoria, a state that has previously been praised for its progressive approach to youth justice, must now stand firm against the push for punitive policies against children.

**Recognising vulnerability**

The opposition’s proposed reforms are specific to Victoria. But the dangers of punitive legal responses to child offenders is an issue of national importance.

As the royal commission into the NT’s detention centres continues and other inquiries begin across Australia, there is a need to ensure that the rights of Australian children in conflict with the law are not further diminished.

Punitive and reactionary policies targeted at child offending are ineffective responses to youth crime. Research has consistently found children who come before the courts charged with a criminal offence are likely to have disadvantaged backgrounds and have experienced profound adversity, including family violence, poverty and family disruption.

Australian state governments investing in tackling the causes of disadvantage and strengthening communities would be a far more effective crime-reduction strategy than ad hoc policies aimed at punishing children.

The public has nothing to gain from sensationalist media articles about youth crime. And there is certainly nothing to be gained from stripping children of their privacy and destroying their prospects of a meaningful place in society.
Instead, political involvement in youth justice policy must be evidence-based, and aimed at rehabilitating children and reintegrating them into the community.