

## **Four Myths of Youth Restorative Justice Conferencing\***

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*The research on conferencing outcomes is difficult to review and compare. Models of conferencing are so varied that they do not lend themselves to conventional methods of evaluation. Some of the varying factors include: training and background of facilitators, philosophy of the program providers (ie/ police-based vs. offender-support based) type of offences and offenders accepted, method of selection of participants (ie/ random vs. assigned), type of control group used (if any), amount of pre-conference preparation and post-conference support, degree of attrition within the program, different follow-up periods, and different definitions of “re-offend”, to identify a few!*

*Further, it is debatable whether random selection for RJ studies is ever truly random, given that conferencing is, by definition, voluntary for both offender and victim. There is likely to be some “self-selection bias” in any study reporting random assignment of participants*

*Having said that, certain themes are emerging from the research with a consistency that lends credibility to their outcomes.*

Critics of conferencing processes often argue four things:

- Conferencing does not reduce recidivism
- Conferencing does not attract the support of victims of crime
- Conferencing is appropriate only for the least serious offences
- Conferencing does not offer sufficient deterrence value to young offenders as a whole

The emerging research suggests that each of these arguments is flawed, either in its underlying assumptions or in fact.

*\*The research in this paper is partially distilled from a 2003 paper, “Restorative Justice Conferencing and the Youth Criminal Justice Act”, available at [www.suf.ca/cfrj/current.html](http://www.suf.ca/cfrj/current.html), the website for the Centre for Restorative Justice at Simon Fraser University.*

### ***Myth #1: Conferencing does not reduce recidivism***

Accepting, for the moment, that it is reasonable to expect a one-time intervention to lead to a reduction in recidivism, Canadian and international research on conferencing (and restorative justice processes in general) is producing certain themes.

Studies have found that the more “restorative” a process is, the more likely it is to lead to reduced recidivism. Young people who were observed to be truly remorseful and who participated in conferences where outcomes were achieved by genuine consensus, were less likely to re-offend.<sup>1</sup> Aspects of conferences that make re-offending less likely include: good preparation, support for the offender during the conference, offender participation, absence of stigmatization/labelling (“ie/ “bad person”) of the offender, and the offender meeting and apologizing to the victim. *“A conference that generates feelings of remorse, of being able to repair harm and of feeling forgiven, and to form the intention not to reoffend, is likely to reduce the chances of further offending.”*<sup>2</sup>

A 2001 meta-analysis of 22 Canadian studies that examined the effectiveness of 35 different restorative justice programs (Latimer et al.) found positive results regarding victim satisfaction, restitution, compliance and recidivism.

The researchers used the following definition of restorative justice:

***“restorative justice is a voluntary, community-based response to criminal behaviour that attempts to bring together the victim, the offender and the community in an effort to address the harm caused by the criminal behaviour.”***

To be included in the study, programs had to fall within this definition, use a control group, report on one of four outcomes including recidivism, and provide sufficient statistical information in order to calculate an effect size. The report concluded that, notwithstanding any possible impact of self-selection bias:

*“restorative justice programs are a more effective method of improving victim/offender satisfaction, increasing offender compliance with restitution, and decreasing the*

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<sup>1</sup> Hayes and Daly (2003)p. 27

<sup>2</sup> Maxwell (2003), p. 10

*recidivism of offenders when compared to more traditional criminal justice responses (ie/ incarceration, probation, court-ordered restitution.)*<sup>3</sup>

Compared to the comparison groups that did not participate in a restorative justice program, offenders in the treatment groups were significantly more successful in avoiding re-offending during the follow up periods.<sup>4</sup>

Universally, the vast majority of agreements resulting from restorative justice conferences are completed.<sup>5</sup> The 2001 Canadian analysis found that offenders who participated in restorative justice programs tended to have substantially higher compliance rates than offenders who were exposed to other arrangements, including probation.<sup>6</sup> These findings are consistent with those of other studies: offenders who agree to restitution through restorative justice processes are more likely to comply with the terms than offenders who undertake restitution through court-administered programs without mediation.<sup>7</sup>

One such program is the “Restorative Resolutions” (RR) program started in Manitoba in 1993 to provide a community-based alternative to incarceration for adult offenders who admitted responsibility for serious crimes (ie/ the crown was recommending custody of at least 10 months.) The program applied restorative principles, including requiring the offender to meeting with the victim and develop a community based plan as an alternative to incarceration.

At two years after the process, statistically significant differences in rates of recidivism emerged between the treatment groups and an inmate control group and also the probation control group, including probationers who had a community service order. At year three, the recidivism rate for the RR group was 34.7% and 66.4 % for the probation group.<sup>8</sup> The program’s success rate is a product of the referral criteria—including the willingness of the offender to participate-- a strongly restorative process and resources,

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<sup>3</sup> *ibid* p. 17

<sup>4</sup> Latimer et al. p. 14

<sup>5</sup> Braithwaite (1998) p. 6, citing research showing majority of agreements are completed.;

<sup>6</sup> Latimer, Dowden and Muise (2001)

<sup>7</sup> Umbreit,(1997) p. 283-285

<sup>8</sup> Bonta et al (1998), p. 19-20 and Maloney & Lloyd p. 6

including a case planner, addiction assessments, psychological treatment, etc. The program makes far greater use of restitution and community service than does probation, and apologies are made by offenders to their victims far more often than in probation.<sup>9</sup>

Other Canadian research includes the remarkable outcomes of the Community Holistic Circle Healing Process in Hollow Water First Nation in Manitoba. In a community of 600, 107 (mostly) sex offenders admitted responsibility and participated in healing circles. The process resulted in much lower rates of recidivism over the next ten years than generally reported for sex offenders (only two of the 107 re-offended) and significant improvements in the health and wellness of the community, including an increased sense of safety, improved parenting, children staying in school longer, young people returning to the community to teach, and a reduction in substance abuse. Significant savings to the justice system were also reported.<sup>10</sup>

## **RISE RESEARCH**

An Australian police-led conferencing process, the Reintegrative Shaming Experiments (RISE), provides evidence that conferencing can reduce recidivism, most strikingly for serious juvenile offences. Between 1995 and 2000, about 1300 cases were randomly assigned to either a court or a conference group. The offences ranged from shoplifting to sexual assault. The RISE report (1997), examined offender attitudes. 63% of the conference-offenders said their rights were respected a lot by the process, compared to 38% of the court group. 74 % of the conference group felt the outcome was fair, compared to 54% of the court group. Those who attended conferences were more likely than the court offenders to feel that they would be caught if they re-offended. They also were more likely to feel encouraged to obey the law.<sup>11</sup>

The evaluation of recidivism patterns was published in late 2000. The results confirm that juveniles who feel fairly treated by the justice system are more likely to comply with the law.

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<sup>9</sup> Maloney & Lloyd, p. 8-10.

<sup>10</sup> Cormier, p. 7.

<sup>11</sup> RISE Working Papers 1-4 (1997)

Recidivism was analyzed on the basis of one year before and one year after the assignment to either court or conference. (Although not all cases could be included in this study because too little time had passed since the last-accepted cases.) In the group of violent offences that was available for study <sup>12</sup>, the court group rate of re-offending fell by 11% contrasted with a 49% reduction for the conference group, a 38% difference. The RISE findings are considered particularly significant because of the use of random assignment, the relatively large numbers studied and separate testing for different offence types.<sup>13</sup> Although the RISE findings have been critiqued for a short follow-up period, research suggests that even a short follow up period can provide reliable data, as most offenders who re-offend do so within a short period of time after an intervention.<sup>14</sup>

## **NEW SOUTH WALES**

In 1997, a new Young Offenders Act was introduced in New South Wales, Australia. Like the YCJA, it enhances the use of warnings and cautions and creates the sanction of a youth justice conference. A young person who admits an offence may be referred to conferencing by the police, the court or the prosecutor. The facilitator is a trained mediator.

The first evaluation of conferencing under this legislation was published by Luke and Lind (2002). Using data for first-time offenders only, who were selected rather than randomly assigned for either conferencing or court, and using regression techniques to control for the effects of measured factors such as age, gender, prior record and offence type, the study compares recidivism rates of one conferencing group with two court groups. The study concluded that conferencing has the effect of reducing or delaying re-offending.

*“While the reduction in re-offending may be small, the effect is persistent in all of the comparisons carried out in this study. When the effects of other factors are controlled for, it appears that both the risk of re-offending and the rate of reappearances per year in*

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<sup>12</sup> 89 of the 100 cases

<sup>13</sup> Luke and Lind p. 3

<sup>14</sup> A 1998 Australian study of 89 conferences found that 50% of those who re-offended within 8-12 months post conference did so within 3 months, and 93% within 8 months. Hayes & Daly p. 16

*the follow-up period (three years) are about 15 to 20 per cent lower for those who had a conference than for those who went to court.”<sup>15</sup>*

Acknowledging that these findings may be partly due to the selection decisions made by referring bodies and the youths themselves, Luke and Lind concluded that the consistency in court re-offending rates, both before and after conferences were introduced, and the persistence of lower levels of re-offending for conferences, “*strongly suggests that the difference in re-offending levels is largely due to the conference experience itself.*”<sup>16</sup>

## **NEW ZEALAND**

New Zealand is the only western country that has a nationally mandated conferencing process for all youth crimes, including serious offences. Although the state retains the power to try the most serious cases, the goal of the legislation is to keep as many youth as possible away from court. The Act requires that, but for the most egregious of crimes, no youth should be arrested before a family group conference has been convened.

*“Unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter...”<sup>17</sup>*

The least serious offences (about 44% of young offenders) are dealt with by police warnings.<sup>18</sup> Police-based youth diversion programs are used for the slightly more serious offences, representing a third of all offences,<sup>19</sup> and family group conferencing is used for all but the most serious remaining offenders, about 25% of young offenders. About one-third are referred pre-charge by the police and two-thirds post-charge by the youth court.

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<sup>15</sup> Luke and Lind p. 21

<sup>16</sup> *ibid*

<sup>17</sup> S. 208 CYPFA

<sup>18</sup> Maxwell p. 4

<sup>19</sup> Maxwell p. 4

<sup>20</sup> McElrea, p. 2

Gabrielle Maxwell's 2003 study finds that the use of conferencing in New Zealand has resulted in a dramatic decline in incarceration of youth, completion of the required tasks by over 80% of the young offenders, and increased sense of empowerment of victims than in earlier studies<sup>21</sup>. 70% of offenders had been constructively employed in the previous six months and 80% reported close personal relationships, factors tending to reduce repeat offending. 60% of offenders reported that they did not want any further involvement in crime, felt that life had gone well for them and had positive views about the future.

About a third had re-offended during the follow up period, most often property offences followed by traffic and violent offences.<sup>22</sup> Maxwell suggests that the relatively high re-appearance rate is not evidence that conferencing is a failure; rather, that the state is not making available the resources necessary to rehabilitate young offenders. It should be noted that these figures relate to the 25% of young offenders who commit the most serious crimes; the remaining 75% are dealt with by either warnings or other diversionary processes. Although Maxwell's research does not use a control group, the reported recidivism rate of 33% may be relatively low compared to the historic average juvenile rate of repeat offending in Canada of 40% for all offence types combined.<sup>23</sup>

*“The findings here are a strong validation of restorative justice theory: repair, reintegration, fairness and respect, participation and empowerment and forgiveness are key elements in effective outcomes while punitive and restrictive sanctions and stigmatic shaming are counterproductive.....a constructive family group conference can make an important contribution to preventing further offending despite negative background factors and irrespective of the nature of the offending.”<sup>24</sup>*

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<sup>21</sup> Judge McElrea writes that “one of the key difficulties facing the Youth Justice system in New Zealand has been a lack of funding...with adequate funding, attention to implementing the provisions of the Act and with good practice protocols operating, the Youth Court model has the potential to produce much better results than it has so far. (p. 9-10)

<sup>22</sup> Maxwell p. 9

<sup>23</sup> Anand, *Preventing Youth Crime*, p. 13.

<sup>24</sup> *ibid*, p. 9-10

***Myth #2: Victim participation in conferencing is unenthusiastic, indicating low value to victims.***

Two recurring findings are emerging from the literature on conferencing. First, with some early exceptions, there are generally high levels of satisfaction with the process and outcomes by both victims and offenders. A common denominator in the literature is participants' sense of the fairness of the process and the outcome, and of having a say in the decision-making process.<sup>25</sup>

The second recurring finding is that there are high levels of observed procedural justice by victims and offenders.

The 2001 Latimer et. al study found that "participation in a restorative justice program resulted in higher victim satisfaction ratings when compared to a comparison group (traditional justice system) in all but one of the 13 programs examined."<sup>26</sup> The most recent study of New Zealand's conferencing regime found that between 80-95% of the victims felt that they were treated fairly and had a say in the agreement. 78% of the victims attended conferences involving both personal crimes of violence (44%) and property crimes (56%).<sup>27</sup>

Victim participation has, historically, been a challenge for conferencing programs.

Suspicion and distrust expressed by victims' groups has been based on factors

including:

- The concept of victim participation in a non-retributive process that pursues a repair of the harm rather than a punishment of the offender is foreign to our culture;
- Inconsistencies in process, standards and funding have led to lower quality programs; and
- There has been a lack of meaningful support for victims in many processes. *"Restorative Justice will not move beyond the margins of the justice system until the cynicism and doubts of victims and victim service providers about RJ are addressed.... We at Justice are of the view that building consensus around a statement of fundamental principles and guidelines that is sensitive to procedural*

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<sup>25</sup> Hayes and Daly (2003) p. 10

<sup>26</sup> Latimer et al p. 9; it should be noted that the one negative result was the only program operating post-sentence.

<sup>27</sup> Hayes and Daly (2003)

*safeguards, voluntary and informed consent and power imbalance issues can go a long way to reduce the doubts and anxieties of victims.*<sup>28</sup>

Assessing victim satisfaction is a challenge as well. For instance, in one study, the victims who participated in conferences were the least able, of all the conference participants, to correctly predict a young person's post-conference offending, and the most likely to think (wrongly) that the young person would re-offend. Despite this, almost 90% of victims recommended that the government keep conferencing in the justice system.<sup>29</sup>

***Myth #3: Conferencing is appropriate only for the least serious offences***

The application of restorative justice in cases of serious crimes has been largely restricted to the post-sentence stage. This is due, primarily, to the concerns of victims' advocates who feel that the pre-sentence application of restorative justice, with its emphasis on repairing harm, may fail to adequately punish offenders who have committed serious crimes.

However, the research suggests that the use of restorative justice/conferencing for serious crime may, in some cases, be the most effective intervention. The results of the Restorative Resolutions evaluation and the Hollow Water healing circle outcomes are certainly such evidence. A 1995 post-sentence victim-offender mediation project in Langely B.C., which dealt with serious crimes such as aggravated sexual assault, murder and armed robbery found strong support for the program from victims. The motivation for victims was to know why the offender committed the offence and to communicate the harm caused.<sup>30</sup>

In Ottawa, a demonstration project, the Collaborative Justice Project, used restorative justice approaches in cases of serious crime. The goal was to offer support to victims and assist accused persons in taking responsibility for their criminal behaviour.

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<sup>28</sup> David Daubney, of Justice Canada, writing to participants in [rjdialogue2@maillist.uwaterloo.ca](mailto:rjdialogue2@maillist.uwaterloo.ca), February 18 2003.

<sup>29</sup> Hayes and Daly, 2003, p.1

<sup>30</sup> Rugge & Cormier, p. 3

Processes used included conferences. Preliminary evaluation showed that a person who commits a “serious offence” is not necessarily a “serious offender”. 51% of offenders in that program were first-time offenders, and were deemed to be low to low-medium risk offenders, with a low likelihood of re-offending.<sup>31</sup>

Victims were largely satisfied with the process (89%), mainly because someone in the system attended to their needs, they had an active role in the criminal justice process and there was an attempt to repair the harm that they had experienced.<sup>32</sup>

As the evaluation of recidivism patterns in the RISE program indicates, conferencing may well offer the best results in the most serious cases pre-sentence as well. In that study there was a 38% difference in recidivism rates between the court and conference groups for violent offenders; whereas there was no significant difference between the two groups of juvenile offenders who committed property offences.<sup>33</sup>

The report’s hypothesis for the difference is that restorative justice affects offenders charged with different offences differently. “*The dynamics of each type of offence may create a different emotional climate and basis for legitimacy of legal intervention using court of conference processes.*”<sup>34</sup>

This is clearly the philosophy of the New Zealand regime, where conferences are reserved for only the most serious offences (other than the extremely dangerous/violent/repeat offenders.)

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<sup>31</sup> *ibid.* p. 8

<sup>32</sup> *ibid.* p. 9.

<sup>33</sup> Sherman, Strang and Woods (2000) p. 15

<sup>34</sup> *ibid.*

***Myth #4: Conferencing is soft on crime; it does not send the appropriate message of deterrence.***

**(a) The determinants of youth crime**

The propensity of adolescents to commit crimes is well-documented; as is the fact that the majority of youth who commit offences do not re-offend.<sup>35</sup> Between 80 and 90 % of young people are estimated to have committed at least one act which, if detected and processed by the law, could result in being found guilty of a criminal offence.<sup>36</sup>

Adolescents lack a fully developed adult capacity for moral judgement. They also lack the intellectual and emotional capacity to appreciate fully the consequences of their acts. Youths will often act without foresight or self awareness, often not conscious of their reasons for committing a crime.<sup>37</sup>

The determinants of youth crime are also well known. Individual risk factors for chronic patterns of deviance identified in the American Surgeon General's 2001 Report on Youth Violence<sup>38</sup> include behavioural issues such as involvement in non-violent offences, dishonesty, substance use, aggression, poor school performance or poor attitude towards school, and ADHD. Other more stable individual risk factors include being male, and prenatal and postnatal complications such a low birth weight, oxygen deprivation, or exposure to lead, alcohol or drugs. A child's family situation is also predictive of violence. In particular, children from families with low socio-economic status and high numbers of children are at risk. Negative family dynamics, including anti-social parents, poor parent/child relationships, harsh, lax or inconsistent discipline, high stress, marital discord, abuse or neglect are also predictive of higher risk. Among these, the factors

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<sup>35</sup> Anand, *Preventing Youth Crime*, p. 13: about 60% do not re-offend according to 1993-94 statistics.

<sup>36</sup> *ibid*, p. 14

<sup>37</sup> Bala, chapter 1 A. p. 2

<sup>38</sup> US Department of Health and Human Services, 2001.

identified as having the strongest impact on violence are a history of other offences and substance abuse. Moderately important risk factors are being male, aggressive behaviour, low socio-economic status and anti-social parents.<sup>39</sup> “*Young offenders tend to live in families with anti-social parents, abusive parents, parents in conflict, parents imposing inconsistent punishment and parents who supervise children loosely.*”<sup>40</sup> Research on protective factors identifies intolerance of deviance, high IQ, associating with peers who disapprove of violence and positive social orientation as individual factors that increase resilience. Attachment to parents, where the relationship is healthy, or another supportive, loving adult role model is also protective.<sup>41</sup>

According to Statistics Canada research for 1998-1999, parents who used poor parenting practices were significantly more likely to have children with behaviour problems than parents who used these approaches infrequently. The odds of such children engaging in delinquent behaviour were 36 times higher if the parents employed ineffective disciplining techniques very often instead of rarely.<sup>42</sup> Children who witnessed violence in the home were twice as likely as children who never witness violence to exhibit a conduct disorder such as physical aggression, bullying, or threatening. They were 1.8 times as likely to be involved in property offences, and 1.6 times as likely to have an emotional disorder.<sup>43</sup>

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<sup>39</sup> Bala includes among the factors associated with high risk of serious or repeat offending spousal abuse or battering, parental drug addiction, alcoholism, violence, lack of maturity or criminal activity, school difficulties which may be due to learning disabilities. He notes that as many as three quarters of young offenders in custody have some form of learning disability. (*Learning Disabilities Association of Canada Position Paper on the Proposed Amendments to the Young Offenders Act*, Ottawa: 1996), Ch. 1D-3

<sup>40</sup> Anand, *Preventing Youth Crime*, p. 26

<sup>41</sup> Kelly and McInnis, p. 6

<sup>42</sup> Children and Youth in Canada, p. 13

<sup>43</sup> Children and Youth in Canada, p. 13

## **(b) The failure of deterrence theory**

The failure of some accepted crime-prevention methods is also well-established.

Deterrence, for instance, is not an effective strategy for preventing youth crime. The theory behind deterrence, that the discomfort of punishment will deter others, assumes a rational-choice model of decision-making. But the punishments for youth crime are so unpredictable that this type of analysis is not possible. Added to that is the reality that youth make decisions to commit crimes based on the immediate situation, not taking into consideration long term consequences.<sup>44</sup> Adolescents tend to be greater risk takers than adults, with less ability to think about the consequences of their actions. They are also more susceptible to negative peer influences than adults.<sup>45</sup> Canadian statistics show that sending more youth to court does not deter other youth from committing crimes. There is no correlation between higher custodial disposition rates and lower youth court caseloads.<sup>46</sup>

It is therefore not surprising that “boot-camp” style programs do not have any deterrent effect on youth. Of four studies comparing the rates of recidivism of youth attending US boot camps to those sentenced to probation, three of the four groups re-offended at the same rate, and in the fourth group, the youth who had attended boot camp re-offended at a higher rate. (None of these programs provided cognitive-behavioural treatment components, something that has been shown to effectively reduce recidivism rates.<sup>47</sup>)

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<sup>44</sup> Anand, *Preventing Youth Crime*, p. 17

<sup>45</sup> Anand, *Preventing Youth Crime* p. 43

<sup>46</sup> Anand, *Preventing Youth Crime*, p. 16, citing FN 53

<sup>47</sup> Anand, *Preventing Youth Crime*, p. 9, referring to the Lipsey and Andrews meta-analysis which found that cognitive behavioural programs yield statistically significant positive results with juvenile offenders.

Ontario's short-lived strict-discipline facility, "Project Turnaround" similarly failed to reduce recidivism. The privately-operated facility accepted 16 and 17 year old males who were considered at high-risk for re-offending. It provided some cognitive-behavioural treatment and after-care supervision and support in a military environment. However, the amount and the type of treatment was contrary to practices shown to effectively reduce recidivism.<sup>48</sup> The Conservative government's evaluation of the project shows that juveniles incarcerated at Project Turnaround recidivated no less frequently than those in the comparison group who were incarcerated at other secure custody facilities.<sup>49</sup> Further, the youths in public facilities made improvements in the academic domain whereas the Project Turnaround youth did not. The two groups made equivalent improvements in other measures such as pro-social attitudes, coping behaviour in general, anger and emotions management, motivation for pro-social change and psychological well-being. As with boot camps, programs or sentences designed to shock young offenders into good behaviour have the opposite effect. The "Scared Straight" program in the US, for example, has produced higher rates of recidivism.<sup>50</sup>

## **Conclusion**

As the body of research on youth conferencing grows and becomes more reliable, so are the few funded programs that are offering conferencing becoming more mature, producing better outcomes. Increasingly the research is showing that conferencing offers more hope for victim participation and satisfaction, and for reduced recidivism of young offenders, than any other process.

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<sup>48</sup> Anand, *Preventing Youth Crime*, p. 20

<sup>49</sup> The government's evaluation found a slight reduction in recidivism for the Project Turnaround youth compared to those in the comparison group; however, the difference was not statistically significant. The Conservative government only announced the statistics generated when the youth who did not complete the program were removed from the equation. This approach, which showed lower recidivism rates for the Project Turnaround youth, is not a credible method of measurement.

<sup>50</sup> Anand, *Preventing Youth Crime*, p. 16

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