



Standing Committee for Youth Justice

Raising the custody threshold

About the Standing Committee for Youth Justice

The Standing Committee for Youth Justice (SCYJ) is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system, and;
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

1. Background

Despite a recent drop in the number of children incarcerated for criminal offences, England and Wales has one of the highest rates of child imprisonment in Western Europe. The number of children sentenced to custody more than tripled between 1991 and 2006 and the child custody population in England and Wales increased by 795% from 1989 – 2009. England and Wales has one of the lowest ages of criminal responsibility in Western Europe. Children as young as ten can be imprisoned for serious violent offences, and those as young as 12 for persistent non-violent offences. Over the last fifteen years a series of changes in legislation have extended the criteria for child custody in terms of age and offence. The Standing Committee for Youth Justice has long been concerned at the size of the child custodial population. There are many ways that the population could be reduced, but we believe the most powerful one to be primary legislation and, in particular, raising the custody threshold.

2. The rationale for the principle of last resort

The UN Convention on the Rights of the Child:

- The Convention states that imprisoning children should only ever be used as a 'measure of last resort and for the shortest appropriate period of time'

- As recently as 2008, the UK was found to be in violation of this requirement

Children in prison:

- Boys received the overwhelming majority of the 6,720 prison sentences given to children in 2008/9 (91%) but the number of prison sentences given to girls has increased by more than 10% in recent years
- In 2008/9, there were on average 2,881 children in prison – approximately one in five on remand
- In the courts, Black or black British children are twice as likely to be given a prison sentence as white children
- Approximately a third of children in prison have been in care; 83% have been excluded from school; nearly a quarter have learning difficulties; a third of the girls report having been sexually abused
- Research undertaken in 4 secure units found that 59% of the children had had contact with, or been referred to, mental health services, 39% had self-harmed and 16% had attempted suicide
- 59% of young offenders have learning difficulties or borderline difficulties (IQ below 80) – and at least 60% have difficulties with speech, language and communication that adversely affect their ability to participate in certain elements of the custodial regime

The damage caused by imprisonment:

- Nearly 30% of girls in prison receive no visits at all from family or friends
- The use of restraint against children in prison increased by 25% between 2007/8-2008/9
- 27% of boys and 30% of girls report feeling unsafe at some point whilst in prison
- 30 children have died in custody since 1990
- Boys in custody are 18 times more likely to suicide than children in the community
- 15% of children released from custody have no suitable accommodation in place
- Children released from custody and still below the school leaving age experience great difficulties in re-accessing mainstream education

The effectiveness of the alternatives:

- With three-quarters reconvicted within a year of release, custody has the highest reoffending rate of all sentences
- Preliminary results from alternatives to custody currently being piloted in some areas, such as intensive fostering, multi-dimensional treatment foster care and multi-systemic therapy, have shown great potential for reducing reoffending and the use of custody
- The restorative youth conference order introduced in Northern Ireland has a reoffending rate of 38% - this has been achieved alongside a significant reduction in the number of children who are sentenced to custody, due in large part to the fact that

there is no limit to the number of times a child can be referred for a conference. The principle underlying this approach is that persistent offending reflects unmet needs and that the learning process for some children will inevitably require sustained efforts and intensive support.

3. Evidence that the principle of 'last resort' is not being adhered to:

Why children are in prison:

- At any one time, at least half of the children in custody are there for committing non-violent offences
- Last year, more children were in prison for breach than for burglary
- Over the last 10 years, the average lengths of prison sentences given to children who have committed non-violent offences have increased across the board

4. Experience from abroad – raising the custody threshold

New legislation was passed in Canada in 2002 with the aim of restricting the use of custody for children:

- Since its introduction, the average child custody population has fallen by approximately 40%
- The number of children being sentenced to custody has declined year on year
- The overall youth crime rate has fallen, with property crime rates in particular declining - the rate of violent youth crime has remained unchanged

5. A new custody threshold for England and Wales

SCYJ considers that, for the detention of children to be used as a last resort, legislation must preclude the imposition of a custodial sentence unless a strict threshold has been met. We believe imprisonment should only be used for the most serious crimes – such as rape, robbery and GBH with intent - and for children who pose a serious risk to the public. A relatively objective measure of offences regarded by society as the most serious are those which would attract a sentence of life imprisonment in the case of an adult. Even in such cases, however, there may be other non-custodial alternatives available that would effectively protect the public, taking into account that the defendant is a child. The threshold should accordingly also require courts to obtain a clinical assessment and consider the particular circumstances of the child to determine whether any form of non-custodial sentence would be sufficient to protect the public.

What the principle of 'last resort' might look like in legislation:

1. A court shall not impose a custodial sentence on a person under the age of 18 (the child) unless:
 - a) The child is convicted of an offence punishable with life imprisonment; and
 - b) The court is satisfied that the offence, or the combination of the offence and any offences associated with it, is so serious that no sentence other than a custodial sentence is appropriate; and
 - c) The court is satisfied, on the basis of the factors set out in Section 2 below, that there is a significant risk to the public of serious physical or psychological harm occasioned by the commission by him or her of further offences punishable with life imprisonment.
2. In considering whether it is satisfied of the issue in section 1(c), the court must obtain a clinical assessment and take into account all information as is available about the circumstances and background of the child, including any mitigating factors.
3. For the purposes of section 2, mitigating factors may include, but are not limited to:
 - a) The age and maturity of the child;
 - b) The child's culpability in relation to the offence or offences;
 - c) The particular role played by the child in the offence or offences;
 - d) The contribution of the child's background to his or her offending behaviour;
 - e) The child's best interests; and
 - f) The circumstances of any guilty plea entered.

6. A new custody threshold in practice – impact and costs

The impact of a new custody threshold on sentencing, the child custody population, and the costs of custody:

- Using the most recent Criminal Statistics as a guide, in 2008 more than two-thirds (67%) of all custodial sentences given to children were for offences which did not meet the criteria for life imprisonment
- The reduction in the population of the secure estate would be somewhat smaller, given that it would predominantly be short-term sentences that would be avoided. Nonetheless, we calculate that the sentenced population would decline by approximately 55%

- A conservative estimate puts the financial savings which might be delivered by this threshold at approximately £93 million per year¹ – this includes the cost of delivering robust alternatives to custody in the community for children who do not meet the custody threshold (based on the unit cost of the Intensive Supervision and Support Programme)
- In 2009/10, more than £305 million was spent on purchasing accommodation for children in the secure estate, an increase of 3% on the previous year

7. Implications for remand

The custody threshold put forward above deals with sentencing only - no savings have therefore been factored in for children subject to custodial remand. The legislative change proposed may lead to a reduction in custodial remands, as courts would be more likely to grant bail in cases where a custodial disposal would not ultimately be available. However, recent evidence on decision making indicates that most children who are imprisoned on remand are acquitted or given a community sentence. To that end, we believe the Government should review the Bail Act with a view to amending remand criteria so that only those children who are accused of committing certain serious offences, and who pose a significant risk of committing further serious offences if they remain in the community, can be imprisoned on remand. Restricting the use of custodial remand to such cases would not only deliver further cost savings, but would also ensure compliance with the UN Convention's principle of the use of custody as a last resort and for the shortest possible time.

For further information please contact:

Stephen Gummer, Public Affairs Officer, The Howard League for Penal Reform

Stephen.Gummer@howardleague.org, 020 7249 7373 ext. 113, 07881 956 491

The **Standing Committee for Youth Justice (SCYJ)** is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Members are: Action for Children, Association of Panel Members, Association of YOT Managers, Barnardo's, Catch22, The Children's Society, Children's Rights Alliance for

¹ This figure is an estimate only based on the most accurate data publicly available

England, Council for Disabled Children, 4 Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA, TACT, VOICE, and YWCA.

The contents of this briefing do not necessarily reflect the views of all member organisations.