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# Unlocking Potential

Alternatives to custody for young people

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4Children

Foreword by Cherie Booth, QC

In partnership with:



**Barnardo's**

BELIEVE IN CHILDREN

Supported by:

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### Foreword



Despite rising school standards, more young people going to university than ever before and more police officers on the street, we have not yet turned the corner on youth crime. This has a profound impact on our communities – not just because of the suffering inflicted on the victims of crime, their families and their friends – but also because for some, living in the shadow of crime is simply seen as a way of life and carrying guns or knives an everyday occurrence without a real understanding of the danger posed to themselves and to others.

Changing this culture means changing our approach to youth offending, including tackling the difficult issue of youth custody. There is a growing consensus that the time is right for a new debate about how best to deal with children and young people who offend. A recent survey showed that two in three people think of prisons as ‘universities of crime’ that harden offenders whilst putting insufficient emphasis on rehabilitation – and therefore believe them to be ineffective in reducing children’s and young people’s offending.

And the public are right. By locking up more children and young people than any other Western European nation, the UK is failing to reduce reoffending or to deal with the causes of offending. The number of under-18s in custody has more than doubled since 1989. More than eight out of 10 of the boys under 18 who are released from prison reoffend and are reconvicted within two years.

There are some young people whose offences are violent or who are a danger to others for whom custody is the only option but, for most, incarceration does not help them take a different path. From my work as a Barrister and a Judge it is clear that the vast majority of the children in the youth justice system come from our most disadvantaged families and communities. The statistics tell us that around half of these children have been in care and many more are known to Social Services. However, the support needed to overcome troubled lives is often too little too late. There are of course dedicated individuals and examples of projects making a real difference all over the country but more needs to be done to

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ensure that these are consistently available at the right time and in the right place.

This pamphlet sets out a case for the urgent reform needed to tackle the problem of youth offending – it proposes new models for the youth justice system that move away from a dependence on custodial sentences as a first resort, based instead on evidence about what works. A core theme is the need for further investment into prevention and early intervention. By drawing on international examples and local cases studies of good practice in restorative justice, community based sentences and intensive individual support for the most problematic behaviour, this pamphlet makes a compelling argument for alternatives to custody.

Implementing this change of approach will be hard – and will need leadership from central and local government and support from the police, teachers, youth workers, families and communities, but most of all from young people themselves who will help lead the way in creating this new vision and in making it happen.

**Cherie Booth, QC**

### Introduction

The UK increasingly locks up more children and young people than any other Western European nation, but the system is failing against critical tests of reducing reoffending and dealing with the causes of offending. The number of under-18s in custody has more than doubled since 1989 but over eight out of 10 boys under 18 who are released from prison are reconvicted within two years, and even more reoffend.<sup>1</sup>

The increasing use of custody needs to be seen in the context of the nature of youth crime. There are of course a significant number of children who commit crimes but notwithstanding some public perceptions, crime by children accounts for only 12% of all detected crime and the majority of youth crime is non violent and directed at property – things such as theft and criminal damage.<sup>2</sup> While it may seem to be concerning that some 19% of convictions of children are for violent offences, the low level of this offending can be evidenced by the fact that 70% of these are dealt with by way of a reprimand or final warning and are not serious enough to be taken to court. Of course, where serious crimes are committed by young people, a custodial sentence is the right course of action, but serious offences of robbery and sexual offences, in total, account for only 4% of child offending.<sup>3</sup>

There is a growing consensus that the time is right for a new debate on how best to deal with children and young people who offend. A recent poll showed that two in three people think of prisons as “universities of crime” that harden offenders whilst putting insufficient evidence on rehabilitation – and believe them to be ineffective in reducing children’s and young people’s offending.<sup>4</sup> Furthermore, the vast majority recognise the need for work on some of the underlying factors which bring children and young people into conflict with the law and their communities – increased support to families, better and speedier access to mental healthcare and drug or alcohol treatment, more parenting education and support, more measures to prevent school exclusions and more constructive activities to stop children and young people getting into trouble in the first place.

We know that children in the youth justice system come from our most disadvantaged families and communities. Around half

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of children in the youth justice system have been in care and a significant number will have been involved with social services in some other way<sup>5</sup>:

- 40% of males and two thirds of females sentenced in court have mental health symptoms<sup>6</sup>
- 23% of youth offenders hadn't seen a GP in the two years to August 2002<sup>7</sup>
- The majority of children in custody have been out of school for long periods. In one poll conducted by the Inspectorate of Prisons, 75% of children at Feltham had been permanently excluded from school.<sup>8</sup>

The most recent Government initiative in the form of the Youth Crime Action Plan has gone some way in recognising the chaotic and complex lives of some of those who offend and the need to focus on prevention and early intervention. That said, the document has disappointed many by stopping short of the sort of radical changes needed to distinguish between the minority of young people whose offences are severe and dangerous enough to need incarceration and those who are not dangerous but often locked up in circumstances where rehabilitation is desperately unlikely.

But this is not the end of the story – the challenge for policy makers now is to make the positive case for an alternative approach based on working with young people and their families to take responsibility for their actions and providing the support needed for them to address the often chaotic and complex realities of their lives. A new approach needs to help develop the skills required to improve the future possibilities for these young people and to bring stability via education, employment or housing, and to evidence these improvements if we are to have a system which engenders public confidence.



## Custody and the UK youth justice system

In this country we lock up more young people than in any other Western European nation. Between June 2000 and June 2007, there has been a 13.2% increase in the population of children and young people in the 'secure estate' – the secure estate consists of Young Offenders Institutions (YOI), Secure Training Centres (STC) and Local Authority Secure Children's Homes (LASCH). The last two decades have also seen a 800% rise in the use of custody for younger children. In 1992 only 100 children aged 12, 13 and 14 were sentenced to custody; in 2006/07 this figure had risen to 844.<sup>9</sup>

Shockingly, this increase does not correspond to serious youth crime levels. In 2006 the Youth Justice Board Chair reported that twice as many children are now locked up over the course of the last decade, despite the steady decrease in youth crime up until 2005, and while the last two years has seen a slight rise, this has been related to specific types of offences.

So why is the UK locking up more children than ever before? The decrease in diversion from the criminal justice system has played an important role in this, with a rapid decline in the proportion of children and young people diverted from prosecution – from 73.6% in 1992 to 58% in 2004.<sup>10</sup> In 2004 the Audit Commission<sup>11</sup> said: "While some young people are benefiting from early pre-court interventions, too many minor offences take up valuable court time". The same report also noted that the percentage of young people receiving a reprimand or final warning had fallen and that a quarter of all Referral Orders had been made for minor offences. Both the rigidity of the reprimand/final warning system and the offences brought to justice (OBJ) targets have contributed to the rise in the number of children and young people before the courts. The reality is that young people are now much more likely to end up with a custodial sentence if they commit an offence than they would have done 10 or 20 years ago, with legislative changes strengthening court powers and harsher sentencing for the kind of offences which young people are likely to commit.<sup>12</sup> For example in 1980, 17% of indictable offences resulted in custody, which subsequently increased to almost a third of such offences committed by under 18s by 2001.<sup>13</sup>

This extension of custody as punishment is illustrated clearly by looking at the increase in custody for the very young. In 1992 only 100 children under 15 were sentenced to custody, all of whom had committed what was defined as 'grave crimes'. However, in 2006/07 there were 844 custodial sentences given to children under the age of 15 with only 52 of these being a sentence in response to the commission of a grave crime.<sup>14</sup> This increase is also supplemented by the abolition of the 'doli incapax' rule which required courts to be satisfied that a child aged 10 to 14 understood that what they had done was 'seriously wrong' before they could be held to have criminal intent.

Further developments have seen the use of indeterminate and extended sentences for children and young people. These sentences were aimed primarily at adults and intended to address the issue of those serious violent offenders who had received a fixed sentence but were still judged to pose a serious risk to the public by the time of their release date. According to data 240 children had been sentenced under the terms of indeterminate or extended sentences.<sup>15</sup> These sentences can be instituted for a wide range of matters and are not restricted to those children and young people sentenced for the most serious violent offences.

Those who are being locked up are also serving longer sentences: the average length of an immediate custodial sentence for children and young people aged 10–17 at the Magistrates' Court doubled from 3.5 months in 1995 to 6.4 months by a decade later. For more serious offences this trend is borne out through an increase in the average length of Crown Court sentences, rising from 17.6 months to 22.1 months for the same age group over the same period. These figures seem to suggest that we are holding children and young people more culpable and responsible than adults, as there has been a decrease in the average length of sentence for them from 3.1 months to 2.7 months over the same period.<sup>16</sup>

## What's the problem with custody for children?

The Criminal Justice and Immigration Act 2008 defines the primary purpose of sentencing children and young people as preventing reoffending. Yet it is against this standard that current and past sentencing policy appears least effective: the recidivism rate has

remained more or less constant since 1997. In 2004, 84.6% of boys reconvicted within two years of release from prison and 56% of those were sent to custody on reconviction.<sup>17</sup> The evidence also indicates that the recidivism rate is higher the younger a child receives their first custodial sentence. The Audit Commission reinforced this in 2004, comparing the cost effectiveness of various forms of sentencing and highlighting the record of custody as ineffective in reducing reoffending when compared to community sentences.<sup>18</sup> With reconviction rates higher amongst young people released from prison than any other age group, the conclusion that custodial sentences alone are not succeeding in turning the majority of young offenders away from crime becomes inescapable.

Conditions whilst in custody can create mental and emotional health problems even when there were none before, and compound these for the many children and young people with pre-existing issues. Most of the young children in custody will have already experienced fractured and chaotic lives which will be compounded by removal from any stabilising influences there may be in their own home or community. The increasing pressure on the secure estate for children means that many children will be placed a long way from home. In January 2007, 2,067 children and young people in custody, constituting a quarter of the total number of those held, were placed more than 50 miles from their home.<sup>19</sup> In 2006 the Chief Inspector of Prisons commented that 'considerable distances from home compromise resettlement and rehabilitation'. Periods spent in such conditions can often have lasting effect on the ability of released prisoners to reintegrate back into families and communities and can stimulate further problems following the end of the custodial period.

Children sentenced to custody are placed in the secure estate but 83% will be in Young Offenders Institutions which are modelled on adult prisons and run by the prison service.<sup>20</sup> A 2004 report revealed that in a quarter of YOIs young people were sharing cells designed for only one.<sup>21</sup> A 2006 survey by the Chief Inspector of Prisons alongside the Youth Justice Board found that almost a third of boys held in custody had been assaulted or verbally abused during their sentence.<sup>22</sup>

It is not that efforts to reform the system have not been tried. The current Justice Secretary, Jack Straw, when Home Secretary from 1997 to 2001 invested hugely in custody for children, vastly

increasing expenditure on education and drug treatment alongside the establishment of the Youth Justice Board. But the expansion in the number of children locked up has meant that rehabilitative interventions are simply too thinly spread. There is too little education, too little preparing for a world of work and too much hanging around doing very little that is constructive in the life of an incarcerated child.

### **A key stage of development – building patterns for life**

The focus of custody must ultimately be correction and rehabilitation, yet in circumstances in which children who offend are placed at risk and made to feel vulnerable it is likely that behavioural problems will harden and become embedded rather than improved. Just over a third of young people who are under 18 and are in custody have reported feeling at risk at some point during custody – creating the sense amongst children and young people in custody that the only way to survive is to become tougher and more militant.<sup>23</sup> This is compounded by other elements of the custodial regime, in which restraint techniques, strip searching and periods spent in confinement still feature all too often. The fact is that many children and young people who offend emerge even more socially excluded, vulnerable and prone to offending than they were before conviction.<sup>24</sup>

Custody runs the risk that children and young people are incarcerated during a make-or-break period in their development and they come out only to repeat offend because the problems that led to their being in custody have bred rather than being addressed. Custody and excessive contact with institutions of the law have an adverse impact on self-esteem – it can risk embedding a self-perception of social exclusion. Further to this, bad habits can form through associations in custody with other, often more hardcore, prisoners.

There will always be a small number of children whose offences are so serious that a period of incarceration is inevitable. But the current pressure on the secure estate severely compromises the ability to undertake rehabilitative work with damaged children and young people. Many of the children and young people currently in custody would be best dealt with in their own communities, leaving the secure estate only for those who commit serious offences and who require incarceration for the protection of the public and their own safety and well-being.

We know that criminality is intergenerational – having a parent in prison is one of the risk indicators for offending behaviour in children. If we continue to rely so heavily on custody as a response to youth crime, we will compound this ongoing risk for today's generation's own children.

### Another way?

Why do we continue to lock up too many children and young people in the face of the evidence? Protection of society from further offending and creating a deterrence value, as well as an element of punishment, all play a role in the propagation of this policy. Some of the policy changes in the last decade which have influenced youth justice policy could be seen as a reaction to the growing scepticism in the 1990s to the perceived over-use of cautioning as a response to youth crime. Evidence has highlighted the disrepute that cautioning had fallen into as a result of well-publicised cases of young people being cautioned over and over again – so-called repeat cautioning – alongside research which showed that diversion became counter-productive if applied too liberally.<sup>25</sup>

Indeed, the 1997 White Paper *No More Excuses* said explicitly: “An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstance”.<sup>26</sup> This scepticism contributed to increasing public awareness and ‘moral panic’ about youth crime which ultimately led to the 1998 reforms of the youth justice system. This saw the establishment of multi agency Youth Offending Teams (YOT) but more significantly introduced the Secure Training Order (subsequently replaced by the Detention and Training Order) which gave youth courts the ability to impose custodial sentences on children aged 10 to 14 without them having committed a ‘grave crime’ or other indictable offence, or having breached any community order.

A new approach to youth justice needs to learn from the mistakes of the past, both in the importance of creating a system which keeps and builds public confidence but also which is effective delivering positive change for children's and young people's lives.

## **A strategic change in youth justice**

A meaningful approach to youth offending needs to identify and address the circumstances that give rise to offending – including parenting, socio-economic factors, education and lack of skills and substance misuse – whilst also being able to inspire personal and individual level changes in the young people it works with. Only in this way will it be able to deliver a drastic reduction in reoffending rates. As the Young Foundation has convincingly argued, much more intensive and systematic innovation is needed to develop, assess and improve approaches that deal more directly with the causes of reoffending.<sup>27</sup> In order to navigate out of the current crisis of the youth criminal justice system, there must be a gradual evolution focused on those elements we know are capable of delivering successful outcomes, whilst developing new models and methods that address the identified gaps in the current approach.

There is some evidence of a shift in thinking at the top, which will feed down to practical steps of implementation. The Respect Taskforce has been replaced by the Youth Taskforce, still with a remit around anti-social behaviour but with much more emphasis on prevention and support. But the recently published Youth Crime Action Plan, whilst welcomed for its focus on prevention and support for children leaving prison, has been seen as a lost opportunity to reduce the unnecessarily high numbers of children in custody by failing to include measures which would raise the threshold for custody for very young children.

## **The importance of engaging parents and families in turning around young lives**

Parents are clearly vital in helping their children move away from criminal behaviour, and supporting them in this role must be an important component of any policy. Research has shown that inadequate parental supervision is strongly associated with offending. In a Home Office study, 42% of juveniles who had low or medium levels of parental supervision offended, but only 20% of juveniles with high level of supervision.<sup>28</sup> The same research showed that the quality of relationship between parent and child is crucial and that parents who are harsh or erratic in disciplining their children are twice as likely to have children who offend.

Engaging parents of children and young people who are in contact with the criminal justice system to understand how they can help their child turn their lives around can help them to be part of the solution rather than simply taking the blame for where their child has ended up. However, it must also be acknowledged that where parents are unwilling to accept or engage with their responsibilities, courts are currently able to use parenting orders in association with ASBOs or where a child has been convicted of a criminal offence. It is therefore surprising to see that since 1 October 2003 there have been 1,138 parenting orders issued and only 4,026 parenting contracts issued, indicating that a greater focus on the role of parents needs to be given by the courts.<sup>29</sup> The piloting of multi-systemic family therapy identified in the recent Children's Plan<sup>30</sup> offers much hope in delivering a step change in the effectiveness of working with complex families with a range of problems and issues. If this approach is seen to yield positive results it should be used as part of a range of family intervention and support which can be used to help improve the environments in which young people are growing up.

It is also essential that a whole family approach includes grandparents and other extended kin. Grandparents and other relatives are often supporting parents and may even have custody of the children, but their needs are not considered by services dealing with parents and their problems as a matter of course. The involvement of the wider family in creating ways forward for children and young people facing conditions that are linked to offending should be made a priority through the extension of family group conferencing.

**Some alternative programmes are showing high success rates in deterring offending and reoffending.**

The **409 Project** in Lambeth aims to divert young people aged 10–17 who are in the early stages of offending from offending or reoffending. The service and programme consists of home visits, agreed action plans, informal counselling, intensive 1:1 work, offence focused interventions, structured group-work, advocacy (court support, appropriate adults) and personal developmental

residential. 85%–89% of the young people do not offend or reoffend whilst actively involved with the programme.<sup>31</sup>

The **Rainer Rapid Action Project** is an early intervention scheme targeted at 5–13 year olds at risk of offending. Workers are placed in police stations to receive referrals as soon as a young person comes into contact with police – either through a reprimand, displaying problem behaviour, school exclusion or a child whose family has been involved in domestic violence. The worker visits the child at home initially to establish strong relations with the family, and then takes the child on trips outside, to ensure a free space whereby trust can be established. The worker and child develop an action plan to cover issues like behaviour, peer and family relationships, school performance and anger management. The worker will refer to other agencies like drug or mental health services if a need is displayed. In the first year 422 referrals were made, and 100% of respondents said they were happier – only 1% reoffended.<sup>32</sup>

In Bristol, the **Right Track Project** works to combat the over-representation of young black people in the criminal justice system. Working with children who have demonstrated anti-social or criminal behaviour, at all stages from school exclusion through to young people in prison, the group seeks to identify the issues that are contributing towards their behaviour such as drugs, problems at school, bullying and racism. The programme uses one-on-one mentoring, group and activity based work and workers challenge unacceptable behaviour as well as supporting young people with their problems and helping them combat racism. The group also works with parents to empower them when dealing with schools and with the education system to foster a greater understanding of issues facing Black and Minority Ethnic children.<sup>33</sup>



### **Towards a positive future**

The new Mayor of London Boris Johnson caught the headlines by announcing his plans for 100 ‘Saturday respect schools’ in the capital, at which troubled teens at risk of criminality would participate in a disciplined programme of academic and sporting activity, with the aim of establishing boundaries and respect. While high profile, hardline initiatives are more geared to short term publicity than long term behavior change, the basic idea underpinning this approach is sound. Focusing on the education and aspirations of young people who have committed crimes or are at risk of doing so is important.

Research has shown that the peak age for offending is between the late teens and early twenties, but also that many young people will ‘grow out’ of offending behaviour with minimum intervention. During this period, as young people search for an identity and become open to factors, for good and for ill, away from the home, many experiment with risky behaviour that can lead to greater chances of involvement in crime. For these young people the ultimate objective must be to reintroduce stabilising factors into their lives – whether through better parenting, effective education and skills opportunities or through support by more targeted social services.

Opportunities to learn new skills and gain qualifications are essential for employment prospects, with jobs being a key stabilising factor as young people become adults. Socially excluded and vulnerable children and young people who are more likely to end up in custody often demonstrate skills shortages and poor attendance at school, with 72% of those in custody having been excluded at some point and a quarter having left full time education at the age of 14. More than ever, finding employment is a key part of the transition into adulthood. Yet children and young people who offend demonstrate much lower levels of engagement with school and training: and school exclusion is a high risk factor for offending behaviour. Children and young people in the secure estate have low levels of educational qualifications and have records of attendance and attainment at school that are significantly lower than the wider community of their peers.

### Leaving custody

Around 75% of children and young people who offend want to stop, even after a period in custody. Managing the transition from custody back into the community is crucial in terms of the impact on reoffending and resettlement. This transition is currently not smooth for a large number of children and young people. Around 15% of them will not have suitable accommodation on their release and minimal numbers of those of school age go back into education. Many children and young people report feeling unsupported when they leave custody and report needing help with everyday issues such as finance and benefits, accommodation and access to education or training. Additionally, many report feeling isolated and in need of emotional support.

Effective resettlement services for young offenders must provide young leavers with guidance upon re-entering communities, finding housing and jobs, and rebuilding family relationships. Some projects offer a range of support and are showing high success rates. The West Sussex Supported Accommodation Service provides housing for young offenders and helps them to address their offending behavior, access appropriate mental health services and to look for work.<sup>34</sup> The scheme is on a small scale, having helped 25 young people over the last three years, but it has reaped rewards – only five have reoffended whilst on the scheme, so in total 80% have been effectively rehabilitated. This is a complete reverse of the national statistics whereby 80% of young offenders released from prison commit a further crime within two years.<sup>35</sup>

The charity Rainer ran a two year project called Reset, which tested ideas for resettlement services, including mentoring. This provided important continuity for the young offenders, who established their mentor relationship whilst in custody, which continued whilst they re-established themselves back in the community.<sup>36</sup> These local examples highlight isolated good practice, but to achieve maximum benefits to young offenders and the communities they move into, such approaches to resettlement must be on a national scale and system-wide.

### Age of criminal responsibility

Appropriate remedial actions must be based on recognition that maturity comes at different times for different young people, assisted by positive factors or aggravated by risk factors such as homelessness, problematic family lives or dependence on substances. This is essential in understanding the child or young person behind the offence, whilst tackling the conditions that give rise to crime is an important step in reducing reoffending and breaking cycles of risky behaviour before they embed. This requires a more enlightened approach that is based more on the social and personal factors around the offender than a desire to appear 'tough on crime'. Britain has one of the most strictly age-based youth justice systems in the western world, in which fixed delineations determine the type of court that young defendants are tried in, the manner of courtroom procedure and the impact of sentencing if they are found guilty. Other policy impacting on children recognizes the differing maturation levels of children; for example the Children (Leaving Care) Act 2000 requires continued support up to 21 and beyond that for vulnerable children in care and the Sexual Offences Act 2003 says that a child is not capable of consenting to sexual activity until the age of 13.

The strict approach of English law based on the age of young offenders can be traced right back to the age of criminal responsibility itself. Children are held criminally responsible for their actions from the age of 10 in England and Wales, whilst children as young as 12 can be jailed for relatively minor if persistent offending despite the United Nations Convention on the Rights of the Child to which the UK is a signatory stipulating that prison should be an absolute last resort for children. Furthermore, the Home Secretary has the power to order the lowering of the detention age to 10 in certain very serious cases in which a stricter approach is necessary. The age of criminal responsibility in this country compares to 15 in Denmark, Sweden and Finland, whilst Belgium and Luxembourg use 18 as the measure of behavioural maturity before the threshold of criminality is crossed. Indicators on public support in this country for custody for children demonstrate widespread concern, with 85% of respondents to a SmartJustice poll opposing incarceration of children as young as 10 years old.<sup>37</sup>

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The system of youth justice in Scotland gives us a sense of how a more child-focused regime might look in practice, with diversionary methods ensuring that fewer cases are dealt with through the formal justice system and preventative measures meet the needs of vulnerable groups before they offend. The Children's Hearings system lies at the heart of this system. Implemented in 1971 on the basis of recommendations made by the Kilbrandon Committee, the system deals with children referred on both offence and care and protection grounds – meaning that offences play a role in assessing the appropriate sentence but also that wider needs and vulnerabilities are taken into account. The purpose of the new system was to create an informal, relaxed setting in which a lay panel, provided with reliable background information and the time to promote effective communication between all parties, could make an assessment and decide on an appropriate disposal. In particular, this setting would create an atmosphere conducive to the child's participation. The panel would have the power to order supervision in the community or the compulsory removal of children from homes to schools, care homes or secure establishments.

The basis of the Scottish system is in building management of cases on a social education model of care, whilst ensuring that early and minimal intervention is the guiding rule of thumb for officers. The system diverts young offenders, and more broadly young people at risk of offending, away from the formal courts and deals with children referred on care and protection grounds from birth up to the age of 16 and with children referred on offence grounds from age 8 usually up to age 16. Whilst there are circumstances (usually involving serious harm or recklessness) in which children are inevitably referred through the courts, even in these cases, around 40% tend to be remitted back to the Children's Hearings System for disposition every year.<sup>38</sup> Welfare agencies are backed by a stringent regime of national objectives and standards, whilst the creation of multi-agency youth justice strategy groups have linked together social services, welfare bodies and wider agencies into the treatment of young offenders. This brings to life the principle that, in ensuring proportionality and effectiveness of response, the offence cannot be divorced from the wider circumstances and conditions around the young offender. Importantly, investment in an expansion of specialist services aimed at tackling repeat offending has enabled the system to respond in a holistic way to those key

conditions that promote offending, with an emphasis on children in care and coping with homelessness.

The Kilbrandon ethos in Scotland is based on the principle that children who offend and those in need of care and protection have similar needs and that a social educational model of intervention is likely to be the most effective means of addressing these needs. It is built on the reality that as most children grow out of offending and require minimal intervention, resources should be focused on early intervention for those identified as being most at risk, with the aim of nipping offending in the bud, whilst ensuring that the wider community takes a greater role in the management of cases and in meeting children's needs.

40 years on, NCH Scotland reviewed the progress of the Kilbrandon system and concluded that it was an idea whose time had come – although there were areas where the system was weak, these were seen as improvements to a system which was fundamentally right in taking a more welfare based approach. Much could be gained from understanding the implications of the learning from Scotland and lessons, both positive and negative, of the 40 years of experience, to inform any radical rethink of our current system.

## Alternatives and their effectiveness

Of course, there are a very small number of children who commit such serious offences that only incarceration can protect the public, safeguard the child and provide treatment to rehabilitate. However, where there is less of a risk of harm to the wider community there is evidence that other forms of sentencing provide more effective ways to rehabilitate. Community sentences and other alternatives to custody should be the preferred option for less serious and non-violent offences because they address the causes of offending rather than risking hardening young people through custody. Despite the fact that there is no custody element, such sentences still address the main elements of punishment theory: work in the community forming a punitive component, whilst an important reparation and restorative element provides for justice for victims. Our focus should be on repairing the harm – to the victim, to our communities and to the child or young person who offends.

## Building on successful starts

One model which is offering a new approach is the Youth Justice Board's pilot work on 'Intensive Fostering' which early indications show is having a positive impact. This involves highly intensive care for up to 12 months being provided for individual children and young people, as well as a comprehensive programme of support for their family. The scheme is based on the Multi-dimensional Treatment Foster Care (MTFC) model which has been used successfully with offenders in Oregon since the 1980s. One of the concerns raised about this new initiative has been that it is expensive and will be challenging to roll out comprehensively across the local government as it will depend on the buy in and commitment to the issue of individual local authorities.<sup>39</sup> A key challenge, therefore, in enabling wide-scale rollout will be to ensure that incentives and flexibilities exist for local authorities to make this a reality on the ground.

Local responses to youth crime, and indeed wider criminality, have a number of benefits to all concerned. Establishing localized solutions that are right for the community stand a greater chance of public acceptance, and retain the link between the offender and their family; community sentences can foster a stronger link between the offender and the community they committed the crime within. The work on Justice Reinvestment (JR), pioneered in the US and developing in the UK, rebalances responsibility for punishment from central to the local level. JR refers to the efforts to use funds that would have been spent by central government on incarceration more productively on community-based initiatives that have a greater potential to address the underlying causes of criminal behavior.<sup>40</sup> Evidence has shown that this rebalancing of financial control and responsibility to the locality can act as a curb on prison numbers and on crime.<sup>41</sup> This is because greater local financial accountability for the use of prison can produce greater incentives for local authorities to reduce unnecessary custodial sentences and work harder to develop preventative or community-based alternatives.

Key to a strong and effective local response is the development of inter-agency cooperation planning and delivering joined up responses to crimes. Youth Offending Teams (YOT) based in local authorities have provided a way of harnessing the different

interventions of police, children's services, health and education towards preventing offending. A next step could be to establish a pilot whereby the YOT is given a sum of money based on the costs of average use of custody over the last three years, and then is charged for using custody in the following year but can keep any savings.<sup>42</sup> Methods like this to incentivise the innovation of new solutions right for localities could produce significant gains. The recent moves to improve the effectiveness of Children's Trusts in relation to preventing youth crime and tackling reoffending are to be seen as very much in the right direction, however the failure to move this further as part of the Youth Crime Action Plan has been seen as a significant disappointment. Ultimately, incentivising local authorities and resourcing them to divert children away from prison remains a key tool which has not been fully utilized within this agenda.

A pioneering Justice Reinvestment project in Gateshead has led the way in enabling a local authority for the first time to paint a comprehensive picture of what happens in the criminal justice system in its area, which has informed a sophisticated response to developing diversion alternatives.<sup>43</sup> A mapping exercise was undertaken to collect data on criminals and those in contact with the criminal justice system, both adults and younger people. This informed a detailed geographic picture of the areas containing higher levels of criminality – just five wards contained half of all known offenders in 2005/06. Children known to be involved in youth offending lived in neighbourhoods with a significantly higher proportion of children having problems at school or in families. Responding to this highly concentrated occurrence of criminality will involve a more targeted approach on behalf of universal services and can help design more effective multi-agency cooperation in the locality. The findings have also inspired an increased role for the local authority in various aspects of criminal justice, and there is now an identified need in Gateshead to explore the more systematic and imaginative identification of unpaid work placements which might enable more relevant, visible and locally-based opportunities for offenders on community orders to make reparation.

Community justice centres are being developed as effective settings to address local problems with criminality. Two centres have been running in Liverpool and Salford since 2005 and provide a 'one stop shop' using the principles of community engagement, multi-agency working and harm reduction to try local cases and address low

level offending. The focus on early intervention and the reduction of low-level offending means that their potential lies strongly in providing an effective early response to child offending such as school non-attendance and anti-social behavior. The centre in Liverpool brings together a number of agencies including the Crown Prosecution Service, the Probation Service, Youth Offending Team and the Council's Anti-Social Behaviour Unit. A range of services are provided on-site that offer families housing, education, training advice, debt counseling and youth mentoring. Offenders are sentenced to carry out reparation in the form of unpaid community work which is developed in collaboration with community groups and is designed to improve the local physical environment and meet the needs of residents.<sup>44</sup>

A recent evaluation of the Liverpool Community Justice Centre<sup>45</sup> found that the approach supported effective and efficient court operation with the model of one judge providing strong leadership, consistency and continuity and the rapid response reducing delays and unnecessary bureaucracy during the criminal justice process. The co-location of services was found to enable the delivery of a holistic problem-solving approach, ensuring that sentences are appropriate and change behavior – problem solving meetings prior to sentencing are central to informing sentences responsive to offenders' needs. The Centre is also developing a restorative justice service, which fosters direct contact between victims and offenders, which has been found to have made specific, positive differences to the lives of victims and offenders.

## International good practice

Much can be learned from international experience in making alternative programmes work by reducing reconviction levels. Youth justice in Belgium is built on police Young People's Units that combine training in enforcement with wider social work and child development qualifications. An approach to working with young offenders that is built on educating and 'responsibilizing' the young offender has been central to bringing defendants face to face with the impact on the community of their offending, whilst addressing the social and economic context for criminality in areas of high levels of offending.<sup>46</sup>



The emphasis placed on restorative justice in Australian and New Zealand states is instructive. There, the fundamental rationale of youth justice is to rehabilitate the offender and make them face the effects of the crime, whilst engaging the wider family and community in finding a way forward in the offender's life. Family group conferencing and wider mediation between the offender and the victim – both as key protagonists leading the process – are key elements of getting the young offender to take responsibility for the impact of their actions. While a step towards this type of diversion has already been attempted in England and Wales through the growth of Referral Order Panels involving representatives of the wider community in achieving justice, the principles of restorative justice are still not enshrined in statute as they are in other administrations, including that in Northern Ireland.

### **Rebalancing from prosecution to prevention**

A renewed approach to children in the criminal justice system must be based on measures which better reflect the age and maturity of children who commit crimes, and should incorporate greater investment in the infrastructure to both prevent and treat potential and actual young offenders through universal services like education and health.<sup>47</sup> This will require a reformed approach at the highest levels of Government, with the outcomes-based approach of the Every Child Matters strategy led by the Department for Children, Schools and Families having as much relevance for young offenders.

A major element of the preventative approach to reduce young people's chances of offending is the need for more positive activities for all. The Government has recognized this through the launch of the Youth Taskforce, based in the DCSF (formerly the Home Office Respect Taskforce), and its ten year Aiming High for Young People strategy<sup>48</sup>, which includes a commitment to the roll out of positive activities, support of mentoring schemes and other programmes to raise self-esteem and promote aspiration amongst teenagers. However the strategy, ambitious though it is, operates on a timescale that will still mean that many young people will not see changes in youth activities and support for some years to come. Many young people do not currently have access to any youth facility in their area, and many that do only offer a limited

range of activity. Promoting the roll out of positive activities and the widening of access to support services will be key in tackling low level offending and deterring those young people who commit less serious offences from veering onto the path towards anti-social behaviour and crime in the first place.

### **Costs versus benefits and public support**

To keep a child or young person in custody costs the taxpayer between £50,800 and £185,780 per annum, depending on where in the secure estate they are placed.<sup>49</sup> In 2006/07 a total of £3,832,028 was spent on locking up children and young people under the age of 18. Information in relation to interventions for juveniles showed that the average cost of a community-based intervention was around £45,000, a saving of £8,000 against the least expensive form of custody.<sup>50</sup>

Government figures demonstrate that the cost of the criminal justice system over the last decade has risen by 0.5% of GNP, with further rises projected.<sup>51</sup> This forms a higher proportion of public spending than any other Western European state as well as the United States – yet reoffending figures are still high and evidence of genuine rehabilitation scarce. Because the cost of custody for children and young people is borne centrally, this provides a financial disincentive for local authorities to provide local alternatives such as bail support or remand fostering services. There must be strategic leadership from Government in removing this disincentive from local authorities and to encourage them to find local alternatives. This is particularly the case for those cases where children are remanded into custody pending a trial. There has been a consistent rise in refusal of bail alongside a diminishing use of remand into Local Authority Accommodation (RICLA) for children resulting in a rise in custodial remands. In 2002/03 there were 2,613 RICLAs, in 2006/7 this had dropped by almost half to 1,419.<sup>52</sup>

Evidence shows that in general the public likes to see tough action on crime but also that they do not rate custody as effective, whilst holding a widespread concern that prisoners re-emerge from custody more hardened than when they were when convicted. Toughness on crime is in part stimulated by high levels of negative and provocative media headlines about children and young people in general – with a 2004 MORI poll showing that 74% of articles

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over the course of the year concerning teenagers had an anti-social behaviour or criminal angle.<sup>53</sup> However, despite this, large sections of the public favour rehabilitation as the primary purpose of the system, whilst two thirds consulted in one study said they thought prisons were simply ‘universities of crime’ and a further 65% concluded they are ineffective in reducing offending.<sup>54</sup> In the face of another planned expansion in prison places, strikingly, only 30% consulted in an ICM poll during 2006 believed that more prison places – for all their expense – can prove capable of reducing offending.<sup>55</sup>

## Recommendations for change

1. **A series of pathfinders should be established**, jointly led by the Department of Children, Schools and Families alongside the Ministry of Justice **to pilot, monitor and evaluate a range of approaches to community based sentences in areas of high levels of offending**. Based on what is already known about innovations in areas like Gateshead and Liverpool, these should seek to build on developing alternatives to custody.

The pathfinders should create a deeper understanding of the key factors in the success of community-based sentences in certain localities over other areas in addressing conditions that give rise to offending; whilst involving the family of the offender, victims and the wider community as more active partners in achieving justice will be a key element. Ambitious benchmarks should be set for reducing reoffending if we are to ensure an appetite for change in the community, backed up by accountable funding streams which incentivize community-based alternatives to custody.

One-to-one working with children and the building of trusted relationships will be key elements of this approach, as will be taking account of the wider context of the child – family and peer relationships, schooling, etc. – which can inform a personalized approach to addressing potential offending or reoffending. Informal mentoring programmes that provide good and relevant role models, group based support in the community amongst similar young people, education and skills programmes and informal reparations schemes are some of the types of projects that might be involved in this.

2. The Government should consider **statutorily raising the thresholds for imposing custodial sentences on children and young people under 18** to ensure that custody can only be used a last resort and is reserved for those children who have committed serious, violent or sexual offences.
3. **The Offences Brought to Justice (OBJ) targets** have contributed to the rise in the number of children before the courts. We would like to see changes to these so that the

targets reflect detection of more serious crime and crime committed by adults. We would also like to see informal actions, such as reparation or restoration, count towards the OBJ targets.

- 4. The role of Pre-Sentence Reports should be strengthened to provide deeper reflections on the maturity, social conditions and family circumstances of the offender.** Vulnerability, risk and social exclusion factors will be key considerations.
- 5. All Government agencies** – from those working with housing, those combating drug and alcohol addiction, and targeted social services – **should develop programmes tailored to the needs of children and young people who offend. Training should also be provided for local voluntary sector agencies** working with young people and engaged with the criminal justice system.
- 6. Wider use of Family Group Conferencing would increase its reach as a diversionary and preventative tool to address problem behaviour.** Through this method young people who get into trouble can discuss with their family, professionals and wider stakeholders their problems and areas of concern. This enables individuals, with the support of their families, to devise an action plan to resolve problems, and encourages active participation in decision-making and accountability over their own lives and actions.
- 7. Whilst in custody there should be a requirement on children young people, as part of their sentence, to take part in education to comply with the national curriculum.** Alongside this they would be given specific support to re-engage with education on release. Children of school age who go into custody should not be removed from the school roll, as has been the case in recent years.
- 8. There should be an examination of methods which would remove the financial disincentive for local authorities to provide alternatives to remand, such as bail support and remand fostering.**

- 9. All YOTs should be required to operate a specific 'gatekeeping' scheme whereby designated staff check reports prepared for court.** Where no community penalty is proposed and the offender appears to be at risk of custody, the report writer should be required to put forward a community sentence option for the court's consideration.

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**4Children** has been shaping and influencing national policy for the past 25 years. The national children's charity strives to place every child's and parent's needs at the heart of the community through the development of innovative, integrated support for children from birth to teens – providing a comprehensive and joined up approach from 0–19.

Our work helps stimulate debate and brings fresh thinking to old problems. In addition, 4Children plays a vital role in delivering the new Children's Agenda from running our own children's centres, to our contribution as partners in supporting the delivery of the children's centres and extended school targets.

4Children believes that:

- Support needs to be joined up and universal, with targeted support where required
- Prevention is better than cure
- Support is needed throughout childhood: from 0–19.

**[www.4Children.org.uk](http://www.4Children.org.uk)**

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One of the UK's leading children's charities, **Barnardo's** believes in children regardless of their circumstances, gender, race, disability or behaviour. We believe in the abused, the vulnerable, the forgotten and the neglected. We will support them, stand up for them and bring out the best in each and every child.

Barnardo's works directly with over 115,000 children, young people and their families every year. We run 394 vital projects across the UK, including counselling for children who have been abused, fostering and adoption services, vocational training and disability inclusion groups. Every Barnardo's project is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to publicly champion the rights of every child. Our lobbying work is not only bringing vital issues to the attention of the public, but is also actively influencing Government policy.

Barnardo's vision is that the lives of all children and young people should be free from poverty, abuse and discrimination. Its purpose is to help the most vulnerable children and young people transform their lives and fulfil their potential.

Find out more at **[www.barnardos.org.uk](http://www.barnardos.org.uk)**



## **Unlocking Potential**

### **Alternatives to custody for young people**

The UK increasingly locks up more children and young people than any other Western European nation, but the system is failing against critical tests of reducing reoffending and dealing with the causes of offending. The Government's Youth Crime Action Plan goes some way in recognising the chaotic and complex lives of some of those who offend and the need to focus on prevention and early intervention.

The challenge for policy makers now is to make the positive case for an alternative approach based on working with young people and their families to take responsibility for their actions and providing the support needed for them to address the often chaotic and complex realities of their lives.

This pamphlet argues for a new approach that helps young people to develop the skills required to improve their future possibilities and to bring stability via education, employment or housing, plus evidence of these improvements if we are to have a system which engenders public confidence.