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Communities and Culture Committee

Scrutiny Inquiry – Youth Justice in Wales

Response from: Prison Reform Trusts

This briefing forms the Prison Reform Trusts submission for consideration as part of the Communities and Culture Committee's Inquiry into Youth Justice in Wales

Executive Summary

England and Wales has one of the lowest ages of criminal responsibility and one of the highest rates of child imprisonment in Europe.

Imprisoning children is expensive and inefficient, and has one of the highest rates of reoffending of all sentence types.

Sentencing in England and Wales is a postcode lottery. In 2007/8, the rate of custody as a percentage of all court convictions across Welsh Youth Offending Teams varied from 12.8% to 2.5%. Overall, the average rate of custody in Wales is higher than in England.

Remand acts as a significant driver to custody. In 2007/8, the rate of remand to custody as a percentage of all remands across Welsh Youth Offending Teams varied from 9.7% to 0.7%.

Alternatives to custody need to be credible and have the full support and confidence of sentencers. Investment in alternatives, such as intensive fostering, needs to be increased.

If local authorities are to invest in alternatives to custody, the costs of imprisonment must be made more visible. Devolving custody budgets to local authorities has the potential to incentivise investment in alternatives as well as to reduce the numbers of children and young people imprisoned.

Context

At 10 years old, England and Wales have one of the lowest ages of criminal responsibility and, according to Council of Europe figures published in 2007, imprisons more children and young people than any other European country except Ukraine. Child imprisonment has the worst record for recidivism, with 75% of children and young people reconvicted within a year of release¹. In addition, public opinion research conducted recently found that two-thirds of respondents did not think imprisonment for non-violent offences was an effective way of reducing re-offending, with a further 62% agreeing that 'prison

¹ <http://www.justice.gov.uk/about/docs/reoffending-juveniles-2007.pdf>

doesn't work for young offenders, it turns them into professional criminals who then carry on committing crime'².

The UN Convention on the Rights of the Child mandates that child imprisonment must only be used as a measure of last resort and the All Wales Youth Offending Strategy (AWYOS) supports this principle, stating that 'locking up children and young people almost always stores up worse trouble for the future – creating new victims and more serious harm'³.

Despite the UN Convention and the stated aims of AWYOS and the Youth Justice Board, the Prison Reform Trust believes that too many children and young people from England and Wales are locked-up for non-violent offences which do not meet the 'last resort' criteria. Their imprisonment is extremely costly, both in financial and emotional terms, and goes contrary to a youth justice system which seeks to ensure 'children and young people receive the support they need to lead crime-free lives', and 'prevent offending and reoffending by children and young people'⁴. Whilst the Prison Reform Trust supports the objective of placing children and young people who have been imprisoned in appropriate custodial settings as close as possible to their home environment, our priority is to reduce the number of Welsh children and young people in custody overall. We could only support an expansion in the secure estate in Wales to accommodate Welsh children and young people if this were met by an overall decrease in the number of places in the secure estate throughout England and Wales.

Do specific groups of children and young people need additional support?

There are many groups of children and young people within the secure estate who need additional support. For the purposes of this submission, the Prison Reform Trust has focused on those groups on which we have specific expertise.

There are high numbers of children and young people in the secure estate who experience a range of impairments, including mental health problems, learning disabilities, learning difficulties and communication difficulties. In the absence of routine and systematic screening the health, welfare and educational support needs of this group frequently remain unrecognised and unmet.

Evidence shows that at least 60% of young people in contact with youth justice services have speech, language and communication difficulties (Brayn and Mackenzie, 2008), which will affect their ability to engage with verbally mediated activities and programmes. Almost a quarter of under 18 year olds in custody have very low IQs of less than 70 and a further third have IQs of between 70 – 80; a third have a mental health need (Harrington and Bailey et al, 2005).

² <http://www.prisonreformtrust.org.uk/temp/CriminalsDamage.pdf>

³ <http://wales.gov.uk/dsijg/publications/communitysafety/youthoffendingstrategy/strategie?lang=en>

⁴ <http://www.yjb.gov.uk/en-gb/yjb/MissionVisionandValues/>

At the point of entry into the youth justice system, effective screening and assessment is required in order that packages of support can be put into place. This would enable:

- Better informed and more effective decision making in the best interests of the child or young person, including diversion from the youth justice system
- More effective participation by the child or young person in the process to which they are subject

What further action is needed to reduce the use of custody and to promote alternative measures to detention for children in conflict with the law?

Address postcode sentencing:

The most recent Youth Justice Board data demonstrates that sentencing in England and Wales is a postcode lottery, with the likelihood of a child receiving a custodial sentence depending on where they are sentenced. Effective local partnership working between the local authority, YOT and sentencers can have a dramatic impact on custody rates, as has been demonstrated in Newcastle, whose rate of custody as a proportion of all those convicted in court is 2.1%, substantially lower than comparable areas and the England and Wales average of 5.7% - within this figure, the England average is 5.6%, and the Wales average is 6%.

The 2004 All Wales Youth Offending Strategy called for a reduction in the use of the secure facilities, with 'custodial sentences to be no more than 6% of the sentences imposed'⁵. The Prison Reform Trust believes this rate is too high and that the Welsh Assembly and Welsh Youth Offending Teams should be working to ensure custody is only used as a last resort.

Across Welsh Youth Offending Team areas there is a great degree of variation in custody rates. In 2007/8, Merthyr Tydfil's rate of custody as a percentage of all court convictions was 12.8%, Bridgend's was 10.1% and Cardiff's was 8%, whereas Ceredigion's rate was 2.7%, Powys' was 2.5% and Pembrokeshire's was 1.7%.⁶

The Youth Justice Board has stated its intention to publish revised guidance on good practice between Youth Offending Teams and the courts' later this year. In view of the unique arrangements in Wales post-devolution, the Prison Reform Trust believes the Welsh Assembly has a vital role to play in bringing all local partners within the youth justice system together.

Invest in alternatives to custody:

The All Wales Youth Offending Strategy sets out the aim of ensuring effective community-based sentencing alternatives to custody. In addition to having lower reoffending rates than custody, rooting the punishment in the community in which the offence took place

⁵ Welsh Assembly/ Youth Justice Board, *All Wales Youth Offending Strategy*, 2004

⁶ Youth Justice Board Annual Workload Data 2007/8

provides a real opportunity for children and young people to make reparation for their offending and to be rehabilitated within their local environment.

Intensive fostering, which is currently being piloted in three areas by the Youth Justice Board, has the potential to provide a real alternative to custody. Based on a successful model practised in the USA, it places children and young people who have offended with specially-trained foster carers who work with them, and their families, to address their offending behaviour. Early results have been promising, but in order for intensive fostering to be a viable alternative to custody available to sentencers, financial barriers to its use must be addressed. Because the full cost of custodial sentences is currently borne by the government, through the Youth Justice Board, local authorities are unlikely to invest in alternative to custody unless they receive additional funding.

Looked-after children:

Over 70% of young offenders have a history of being in care or social services involvement. There is evidence that the wrong-doing of looked-after children is often processed through the criminal justice system when it could be dealt with in a care setting using restorative justice techniques. Local authorities should be encouraged to set up protocols with police and residential staff and to analyse why looked-after children are involved in serious offending and address gaps in their care.

Remand as a driver to custody:

Remand acts as a significant driver to custody, with one-fifth of children in custody in England and Wales on remand awaiting trial or sentence. Across Welsh Youth Offending Teams (YOTs) in 2007/8, the rates of remand to custody as a percentage of all remands ranged from 0.7% to 9.7%, with an England and Wales average of 6.6%.

The AWYOS acknowledges the need for 'the development and extension of appropriate accommodation'⁷ to support its aim of providing community based alternatives to custody.

Remand to non-secure local authority accommodation (RLAA) has decreased significantly in recent years, yet research conducted by the Prison Reform Trust with YOT officers highlighted a lack of specialist accommodation for children on bail as one of the key drivers to remand.

If courts are to be confident in their decision to give bail or use non-secure RLAA, they need to know that the accommodation provided by local authorities is stable, well-supervised and does not house unsuitable peers or adults. A review of the availability of such accommodation in Wales should be conducted in line with the aim set out in AWYOS.

Raise the custody threshold:

⁷ <http://wales.gov.uk/dsjlg/publications/communitiesafety/youthoffendingstrategy/strategy?lang=en>

The current custody threshold allows sentencers to use custody for children who have committed non-violent crimes, including those who have not turned up for appointments with the YOT team and have thus breached their community orders. Children who have committed these crimes get the shortest Detention and Training Orders – either four or six months.

Research has shown that custody is not effective in reducing re-offending. Short sentences are seen by prison staff as particularly ineffective, given that few rehabilitative programmes work in this time-frame. To that end, the Prison Reform Trust is calling for a change in primary legislation so that children and young people can only be imprisoned if:

- the offence committed caused or could reasonably have been expected to cause physical or psychological harm to others and;
- A custodial sentence is necessary to protect the public from a demonstrable and imminent risk of serious or psychological harm.

Raise the age of criminal responsibility:

The case for raising the current age of criminal responsibility in Wales is strong, not just because this would automatically lead to a reduction in the number of children sentenced to custody, but also because custody is inappropriate for most children and young teenagers. The Prison Reform Trust believes the age of criminal responsibility should be raised to at least 14, to bring it into line with most of the rest of Europe.

Make the costs of custody more visible:

Currently, the costs of custody (except one third of the costs of court-ordered secure remands) are borne by the government through the Youth Justice Board, with local authorities bearing the costs of all community sentences. Custody is extremely expensive and has some of the worst rates of reoffending of all sentences, with 75% of children reconvicted within a year of release⁸. If the costs of custody were made more visible to local authorities and youth offending teams, they would be more likely invest in community alternatives to custody and in preventative and early-intervention work.

In view of the One Wales Agreement's 'consideration of the evidence for the devolution of the criminal justice system within the context of funding'⁹, the Communities and Culture Committee of the Welsh Assembly may wish to consider the devolution of custody budgets to local authorities, or to Wales as a whole, within the context of reducing the use of custody.

Restorative Justice:

⁸ <http://www.justice.gov.uk/about/docs/reoffending-juveniles-2007.pdf>

⁹ *One Wales: a progressive agenda for the government of Wales*, Welsh Assembly Government June 2007

The experience in Northern Ireland post-devolution provides much food for thought within the context of reducing the use of child custody. Using a broad restorative justice-based framework, youth conferencing has been in use throughout Northern Ireland since 2006, bringing together the offender, victim (or victim representative), professionals and others to discuss the offence and its repercussions, and to agree on an action plan for the offender. Whilst the system has been built around the principles of reparation, rehabilitation and proportionality, with the stated aim of reducing reoffending, it has also presided over a substantial reduction in the use of custody, from 10% of all sentences in 2004 to 7% in 2006 - more recent figures show a continual decline in the use of custody, with just 23 young people receiving a custodial sentence in 2007/8¹⁰ - and, at the same time, the overall numbers of young offenders being convicted by the court has also dropped, from 1,588 in 2004 to 1,273 in 2006¹¹.

Scotland:

Whilst the Scottish youth justice system is, and always has been, quite distinct from that in England and Wales, the approach taken to children under the age of 16 who offend, which views them first and foremost as children in need of care and protection, means that the vast majority of these children are dealt with outside of the courts and without the use of custody. Indeed, as at May 15th 2009, there were no under-16s in prison in Scotland.

AWYOS acknowledges the 'experiences of poor social welfare, lack of family support, low levels of educational attainment, disengagement and disaffection, health issues and insufficient community provision¹²' that often act as drivers to offending behaviour. In addition, as recent analysis of the experiences of 15-18 year olds in prison shows, we know that around one in three young people have been in care, and 86% have been excluded from school¹³. The vulnerability of those ending up in custody, and the costs associated with imprisonment, suggest a new welfare-based approach to youth justice is needed.

¹⁰ Youth Justice Agency Annual Report 2007/8

¹¹ Campbell, P. and Wilson, M. (2008) *Court Prosecutions and Sentencing for 10 to 17 year olds 2006*, Research and Statistical Bulletin 12/2008, Belfast: Northern Ireland Office

¹² <http://wales.gov.uk/dsilg/publications/communitysafety/youthoffendingstrategy/strategie?lang=en>

¹³ HM Inspectorate of Prisons/ JYB *Children and Young People in Custody 2006-2008*

Key recommendations

- Children and young people entering the criminal justice system should be effectively screened for mental health, learning disabilities or learning difficulties and packages of support put in place where appropriate
- Welsh Youth Offending Teams, local authorities and the courts' should be encouraged to create effective local partnerships to address postcode sentencing
- Primary legislation must be changed to raise the custody threshold
- The age of criminal responsibility should be raised to at least 14 years
- More investment should be made into credible community alternatives to custody, such as intensive fostering
- A review of the availability of non-secure local authority accommodation in Wales should be conducted in line with the aims set out in All Wales Youth Offending Strategy

The Prison Reform Trust aims to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; by informing prisoners, staff and the wider public; and by influencing parliament, government and officials towards reform.

www.prisonreformtrust.org.uk