



Campaign briefing on

Reform of Childhood Criminal Record Legislation



Growing up, Moving on. The International Treatment of Childhood Criminal Records

Introduction

“The disclosure of irrelevant criminal information – whether irrelevant because of the age, or nature of the crime, goes further than is necessary to achieve the objective of protecting vulnerable people”¹

England and Wales have a punitive system for the treatment of criminal records acquired as a child. Children are more likely to receive a criminal record than their international counterparts, and these records have a longer and more profound effect on their lives.

Domestic and international provisions define the purpose of the youth justice system as rehabilitation, not retribution.² Yet, the criminal records policy in England and Wales does not function in practice to help children who have committed crimes to reintegrate successfully into society. Instead it creates barriers that prevent children moving on from the mistakes of their past.

The UK has signed and ratified the UN Convention on the Rights of the Child (UNCRC) and made commitments to ensure that all domestic legislation is compliant with it. Yet the treatment of children with criminal records undermines the obligations imposed on the government under Article 40 which sets out that the treatment of children in trouble must be in a manner that is consistent with promoting their reintegration and assuming a constructive role in society; as well as the Article 3 requirement that the best interests of the child are a primary consideration.

A recent High Court ruling, which declared the criminal records disclosure scheme to be incompatible with its human rights obligations, highlighted the Governments failure in this regard:

“The case of T is held up as an egregious example of the flaws in the regime. His theft of two bicycles before he even became a teenager was disclosed in connection with his proposed participation in sporting activities with children, to which (it is said) it had no conceivable relevance; indeed entries reflective of childish error should be a particular candidate for total elimination in the interests (in words of article 40 of the UN Convention on the Rights of the Child 1989) of 'promoting the child's reintegration and the child's assuming a constructive role in society.'”

Children with a criminal record face stigma and discrimination in accessing education, training, employment, travel³ and housing and these obstacles can follow a child into adulthood. SCYJ believes that urgent changes are necessary to prevent the criminal records system from impacting adversely on children's life chances.

An SCYJ report into the treatment of childhood criminal records across a number of countries in Europe, Australasia and three states in the USA⁴ underscores the need for meaningful changes in our

¹ Recent ruling from Lord Justice McCombe and Mrs Justice Carr between R (on the applications of P and A) and Secretary of State for Justice, Secretary of State for the Home Department and Chief Constable of Thames Valley Police, <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ad-min/2016/89.html&query=mccombe&method=boolean>

² Section 44 of the Children and Young Person Act 1933 provides that courts must have regard to the welfare of any child brought before it. The Crime and Disorder Act 1998 established the prevention of offending as a principal aim of the youth justice system. The “overarching principles- Sentencing Guidelines for youths” sets out that a court must be aware that the youth justice system is intended to “promote re-integration rather than to impose retributions”.

³ Having a criminal record does not necessarily mean you will not be allowed to travel, but convictions may be grounds for refusal to grant a visa, entry or passport application

⁴ SCYJ, Growing up, Moving on. The International Treatment of Childhood Criminal Records, <http://scyj.org.uk/wp-content/uploads/2016/04/ICRFINAL.pdf>

criminal record system. The report reveals the extent to which England and Wales are in a class of their own in awarding criminal records to children⁵, and thereby linking an individual permanently to their past offences. International comparison shows that less punitive systems can promote successful rehabilitation.

In drawing up our recommendations, SCYJ sought input from professionals working across the spectrum of youth offending services, and from the experiences of individuals with criminal records acquired in childhood. The proposals seek to allow individuals to move on from their past and to contribute to society so that those who committed a minor offence some time ago do not have their lives blighted forever.⁶ The report into international treatment of criminal records shows how far England and Wales have to travel in order to match the progress made by other countries in their treatment of childhood criminal records. Encouragingly, two recent Government inquiries into the treatment of these records reflect a desire to move in this direction⁷, and a recent ruling by the High Court may force the Government to do so.⁸

Within this this evolving landscape, SCYJ propose that meaningful changes must be made on how criminal records acquired as a child are held, and accessed, and a decision made on the point at which these records should no longer be disclosed. These changes, from shorter rehabilitation periods, to expanding the current filtering system, and wiping the slate clean after ten years, will allow children who have desisted from crime to put their past behind them and in so doing strike a better balance between public safety and individual rehabilitation.

The Criminal Record System in England and Wales

“No one will give me a chance, now I have a record. What’s the point? I won’t get a decent job”.

Quote from child with criminal record.

In England and Wales, childhood criminal records are treated in almost exactly the same way as criminal records acquired as an adult - they are held on the same databases and are subject to the same retention and disclosure rules. The only difference is that childhood criminal records are “spent” and can be ‘filtered’ out more quickly than those of adults. Making no real distinction between child and adult records is an anomaly given that the youth and adult justice systems are entirely separate in England and Wales, and for good reason. The majority of jurisdictions examined had separate systems for child and adult criminal records, treating the two very differently.

All convictions, cautions, reprimands, warning and arrests for “recordable offences” are recorded by the police and held long-term on the Police National Computer (PNC) while the Police National Database (PND) contains non-conviction police intelligence.⁹

⁵In England and Wales in 2013/14, over 60,000 cautions and convictions were given to children in. By way of comparison, within same time-frame, only 48 children under the age of 17 were given a criminal record in New Zealand and in New Mexico only one child received a criminal record.

⁶A Balanced Approach, Safeguarding the public through the fair and proportionate use of accurate criminal record information, an Independent Review by Sunita Mason, <http://webarchive.nationalarchives.gov.uk/20100418065544/http://police.homeoffice.gov.uk/publications/about-us/ind-review-crim/a-balanced-approach-12835.pdf?view=Binary>

⁷Independent Parliamentary Inquiry into the Operation and Effectiveness of the Youth Court, Lord Carlile of Berriew CBE QC, June 2014 http://www.ncb.org.uk/media/1148432/independent_parliamentarians_inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf; Sunita Mason as above

⁸Before Lord Justice McCombe and Mrs Justice Carr between R (on the applications of P and A) and Secretary of State for Justice, Secretary of State for the Home Department and Chief Constable of Thames Valley Police,

<http://www.bailii.org/cgibin/markup.cgi?doc=/ew/cases/EWHC/Amin/2016/89.html&query=mccombe&method=boolean>

⁹The National Police Database which was set up in 2011 allows police forces nationally to share intelligence on crime for the purpose of safeguarding children and vulnerable people, to counter terrorism, and to prevent and disrupt serious and organised crime.

In September 2015, a 14-year-old boy had the crime of making and distributing indecent images recorded against him by the police. The boy, who was not arrested or charged, has had his name added to the Police National Database. The boy took a naked photo of himself in his bedroom and sent it to a girl from his school, who then sent it to other pupils. The boys' details, stored on the police database for 10 years, may be disclosed to future employers in a DBS check if he was to apply for certain jobs - including those working with children. Asked about the consequences of the incident, the boy said: "It is just annoying really. Something that I did when I was 14 that could reflect badly in the future."

After a specified amount of time called a 'rehabilitation period' (RP) cautions and convictions become "spent". This means that they no longer have to be disclosed on basic criminal records checks, nor declared when applying for most educational courses, most jobs, insurance or other purposes (e.g. applying for housing). However, a record of the offence is retained on police computers and will still have to be disclosed on enhanced and standard DBS checks subject to filtering rules.

Rehabilitation periods that apply to offences committed as children are around half those of adults. Recent reforms to the Rehabilitation of Offenders Act (ROA) 1974 in March 2014 enabled more serious offences to become spent, and amended the RPs for a number of sentences, but also increased them for Detention and Training Orders (DTOs) and Youth Rehabilitation Orders (YROs).

However, as with adults, child convictions attracting a custodial sentence of over 4 years are never spent. Some disposals (sentences given by the court, and pre-court decisions made by the police) like the youth caution and youth referral order are spent six months after the order ceases to be in force. Rehabilitation periods for offences resulting in custodial sentences of less than four years, vary from 3.5 years to 18 months, plus the sentence.

SCYJ considers that the disclosure of criminal records is the main issue affecting people rather than the retention of the records themselves and that therefore reducing the rehabilitation period is a key part of reducing the negative effect of disclosure rules.

SCYJ proposes the following changes to rehabilitation periods following convictions and cautions received as a child:

- ❖ Youth Rehabilitation Orders (YROs) should become spent as soon as the order is finished. This would bring YRO rehabilitation periods in line with Referral Order (RO) rehabilitation periods which are spent as soon as the order ends.
- ❖ Detention and Training Orders (DTOs) should become spent six months after the order has finished. This would reduce rehabilitation periods for DTOs considerably. Currently RPs for DTOs are as follows: DTOs of less than 6 months are spent 18 months after the end of the order; DTOs of over 6 months are spent two years after the end of the order. The impact of these proposed changes on critical points in the life of a 13-year-old are below.
- ❖ All under 18 custodial sentences greater than two years and less than four years should become spent two years after the end of the sentence.
- ❖ Under 18 custodial sentences greater than four years and less than life should become spent seven years after the end of the sentence. Currently, custodial sentences of more than four years for under 18s can never be spent. The threshold at which custodial sentences can

never be spent is the same for children and adults. This change would mean that a child's custodial sentence could always become spent at some point in the future, unless they were on a life sentence.

Filtering of Records

"This scheme is unlawful because in the case of any person with more than one minor conviction the scheme mandates in the first instance all minor convictions, but also mandates that those minor convictions be available for disclosure forever, where a person with a single minor conviction will have that expunged from the records to be disclosed after 11 years" High Court Ruling January 2016

In 2013, in response to a legal ruling which found that the automatic disclosure of all conviction and cautions was disproportionate, and therefore incompatible with the right to private life under article 8 of the Human Rights Act, the Government introduced a limited 'filtering' system.

Filtering describes the process that will identify and remove convictions and cautions so that they are no longer disclosed on DBS checks.¹⁰ Once a caution or conviction is spent, it will automatically be removed from DBS checks unless it is for specified serious violent and sexual offences (and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults) in which case it will remain subject to disclosure. All convictions resulting in a custodial sentence, whether or not suspended, cannot be filtered, nor can all convictions where more than one conviction is recorded.

At present, the rules around the filtering system are very restrictive, meaning that many old and minor cautions and convictions always have to be declared. Convictions can only be filtered if:

- ❖ 5.5 years have elapsed since the date of conviction.
- ❖ It is the person's only offence.
- ❖ It did not result in a custodial sentence.
- ❖ It is not on the list of "exempt offences"

Note, there are over 1000 "exempt" offences, including: certain assault offences; drug supply offences; certain sexual offences, including those relating to sexual activity or images of children; robbery offences. Youth cautions will be filtered if two years have elapsed since they were given, and they were not given for an "exempt offence". Multiple cautions can be filtered.

Convictions for certain offences such as murder, sexual offences and kidnapping can lead to an individual being barred from working in regulated activities (which involve close or unsupervised contact with children/vulnerable adults) such as the teaching, training or instruction of children and the provision of healthcare or work involving with children and/or vulnerable adults. Employers recruiting to fill positions that include regulated activities will check the DBS barred list.¹¹

A Freedom of Information request made by SCYJ to the Disclosure and Barring Service (DBS) for the period of time 2013-2015 revealed that 88% of childhood convictions are not filtered. The FOI request found that the majority of disclosed under-18 convictions were for non-serious offences, for

¹⁰ It doesn't mean the convictions or cautions will be deleted as they will remain on the PNC. There are three types of DBS checks: Standard: all spent and unspent disposals, as held on the PNC, are disclosed, except those that are filtered; Enhanced: information on a standard check disclosed plus local police intelligence (including information on community resolutions); Enhanced with barred list: information on an enhanced check disclosed, plus details of whether the person is on a DBS list barring them from working with certain groups.

¹¹ In 2013, the number of activities and work classified as 'regulated' was reduced, however these will still be eligible for enhanced CRB checks

example, over two and a half thousand under-18 convictions for theft of a bicycle were disclosed within the time-frame.

The FOI request also revealed that the disclosure of minor offences such as shoplifting, common assault and possession of various forms of cannabis that are not on the list of exempt offences, commonly happens. This suggests that the “two offences” rule is having a significant impact upon individuals, preventing those with minor convictions from ever becoming free of them.

“I have two convictions. Both happened 38-years ago when I was a juvenile. The first was for petty theft, a silly prank with two mates, for which I got a conditional discharge. The second was for ABH: I got into a scrape, pushed someone to the ground and was fined £10. Since then I’ve become a teacher. I was a Deputy Head for some 20 years, but now I’ve started supply teaching I have to explain these as if I am now a criminal.”

SCYJ’s report into the treatment of criminal records worldwide found that England and Wales had far looser rules than other countries about when childhood criminal records could be disclosed. In New South Wales, Germany and France, only more serious offences including as sexual offences are disclosed to employers. In New Zealand, very few children are given a criminal record and these children’s records are not disclosed after a given time has passed, as long as certain conditions are met. In Ohio, Texas and New Mexico childhood records can be ‘sealed’ so that they are no longer disclosed.

Like many other jurisdictions, England and Wales allow far wider records disclosure for work involving vulnerable people or matters of public trust. However, where England and Wales seem relatively unusual, although not unique, is in the breadth of information they permit to be disclosed, and the number of types or organisation allowed access to otherwise undisclosed information. In England and Wales, “standard checks” which contain information about almost all previous convictions and cautions, including those that are “spent” can be accessed by a wide range of employers. For instance, a person seeking to be employed as a locksmith, traffic warden or vet would have such a check.

An independent review by Sunita Mason into the system of criminal records underscores the need for a more proportionate approach to how much information is disclosed by CRB checks, particularly in view of the serious repercussions of the current system for the individual who may be refused a job, or an opportunity on the basis of disclosure of old and minor convictions.¹²

In January 2016 in two cases recently brought before it, the High Court found that the disclosure regime breaches Article 8 rights of people who have DBS checks. The court found that the DBS scheme leads to arbitrary results, and there are people for whom the disclosure is disproportionate.

In the first case, (“P” and “A”), the court was looking at the “multiple offence” rule that is, if you have more than one offence on your record they are not filtered – all have to be declared in an enhanced DBS check. In “G” the court was considering that the fact the certain types of offences are never filtered regardless of the disposal or underlying facts. The court found that these two parts of the criminal records scheme were unlawful, although the general arguments about the lack of discretion will apply to other parts of the regime.

12 A Balanced Approach by Sunita Mason

The High Court's decision means those with more than one minor conviction should not now have to disclose them for every new job they apply for in sectors where checks are required, such as education, health and financial services.

SCYJ believes that the following changes are necessary to the filtering system to reduce the negative impact on rehabilitation, and promote successful reintegration into the community, for individuals with criminal records acquired as a child. The effect of our recommendation would be to greatly increase the number of convictions and cautions acquired in childhood that do not have to be revealed and to reduce the timeframes before filtering can occur. The first two recommendations were included in Lord Carlisle's report:

- ❖ All under-18 cautions are automatically filtered out after a two-year time limit.
- ❖ There is no limit on the number of under-18 convictions that can be filtered out providing they did not result in a prison sentence, and providing that four years have elapsed since the last conviction. The police have discretion as to whether or not to filter under 18 convictions that resulted in a prison sentence providing four years have elapsed since the end of their last sentence or order.
- ❖ Police guidance should make it clear that if a person has any unspent convictions, none of their convictions should be filtered.
- ❖ Guidance to police should be amended, setting out the presumption that under-18 police intelligence is not disclosed.

Linking filtering to the time since the person's last conviction is intended to deal with the issue of reoffending. Rules excluding certain offences from ever being filtered would still apply, so certain offences would never be filtered, even if four years had elapsed.

Wiping the Slate Clean

"It is deeply and bitterly ironic that I now find myself in a position where my prospective career and my work to date is to be overshadowed by an event which occurred 46 years ago and a piece of legislation which completely undermines those basic human rights". In 2012, Bob Ashford, a former Frome councillor, was not able to stand as the Labour Party candidate for the post of Avon and Somerset police commissioner because a crime he committed as a thirteen-year-old barred him from standing for the post.¹³

SCYJ's research into the international treatment of criminal records finds that England and Wales are unusual in that the state retains records of childhood behaviour indefinitely. Eleven out of the sixteen international jurisdictions examined, had provision for expunging childhood criminal records.¹⁴ Yet, England and Wales have no means to wipe records of convictions or cautions received as a child. This means that convictions or cautions effectively stay on a person's record for life and may be disclosed.

¹³ The Police Reform and Social Responsibility Act 2011 disqualifies a person from standing for election for a police and crime commissioner (PCC) if they have at any time been convicted of an offence for which a person could be sent to prison; whether or not they themselves were sent to prison for that offence.

¹⁴ Where they existed, expungement laws varied; only Germany and Spain permitted all sentences apart from life to be removed from a record. Many jurisdictions, such as Canada, Sweden, Italy and Ireland had wide expungement policies, but the most serious offences were excluded. Some jurisdictions, such as France (in some cases) applied conditions to expungement, often linking it to rehabilitation.

SCYJ therefore proposes the following additional change:

- ❖ Ten years after the end of the sentence or order for the last offence committed, convictions or cautions received as a child should be wiped from the PNC and PPND and may not be disclosed by police as part of an enhanced check. So wiping is only available if a person has not reoffended for ten years. A similar recommendation was made by the Home Office report, 'Breaking the Circle' in 2002, and more recently by the Lord Carlisle inquiry which proposed that children who have offended be given a 'clean sheet' at 18, meaning that previous offences would be expunged from their record rather than only filtered (this would not be available for homicide, serial sexual offences and other violent crimes).

"In 1979 I received a conditional discharge for indecent exposure. I was at school at the time and celebrating finishing my exams. I "mooned" a passer-by but didn't appreciate the legal difference between exposing my bottom rather than my genitals. I went to university, and when my conviction was spent, starting working in a bank. I carved out a career in financial services and ended up working in a number of senior roles in prestigious firms. In 2007 the Financial Services Authority obtained complete exception from the Rehabilitation of Offenders Act (ROA) meaning that I need a full CRB check. Since then I have dropped out of a senior new role as I couldn't take the risk of a check damaging my reputation in the industry. So, bizarrely, my conviction has become more relevant the older it has got. Now, nearly 35 years on, it is strangling a career that, until now, flourished with the same criminal background. Surely, there should be some sensible time after which spent means spent. To find that, after nearly 35 years, a conviction that merited only a conditions discharge is still as live today as it was 35 years ago is very odd. In fact, in a way it is more live today".

How does disclosure affect children with criminal records?

"People feel unmotivated to apply for post. They give up from the outset. The negative stigma associated with being an offender, can lead to a self-fulfilling prophecy where they continue to offend because they feel their prospects are so limited". Probation Officer.

A criminal record has far reaching effects on a child that goes well beyond their sentence. While a conviction is 'unspent' children have to disclose the record to education providers, prospective employers, and accommodation and health care providers; all of whom have a risk averse approach to individuals with a criminal record. Yet even after convictions have become spent, many people still face judgement and discrimination that will impede their rehabilitation.

For example, education providers, particularly colleges of further education create barriers for young people with convictions to enrol on courses. This risk adverse approach extends to apprenticeships and training courses.

"I am a student studying for a Higher National Certificate working with communities. Ten years ago, when I was 17, I was charged with racial assault. This was a time when my life was out of control and I was sleeping rough. I'm not a bad person and I regret the bad choices I made. In the last few years all I have done is make positive changes in my life and have done everything to become a hard working member of society.

It took me two years to get into college in the first place I had to fight and prove myself worthy of the place. Part of my course is a 200 hours work placement which I found myself and submitted the necessary application for a Protecting Vulnerable Group (PVG) scheme. This came back with no restrictions – so I wasn't barred from working with anyone – but it did have my previous convictions on it. Because of this, the college won't let me do the placement as a student, and therefore I won't complete the work so will fail in my course. If I fail the course, then I won't get into university which has been a real motivation to me in turning my life around!

Why should I still be punished for crimes I committed 10 years ago? I am passionate about change I want a career in the criminal justice system helping young people before they get into offending. I'm facing this prejudice and decisions are being made by people who don't know me. They just look at a bit of paper and see the crime not the person".

TheRecord, <http://www.the-record.org.uk/unlock-people-with-convictions/barriers-to-education-see-the-person-not-the-offence/>

The University Admissions Service (UCAS) requires students who apply to university to declare criminal convictions when they apply to university. While the UCAS form asks only about unspent records, for certain courses, for example those who deal with vulnerable people, unspent convictions have to be declared. This has implications for individuals applying in the first instance to university, as well as gaining entry.

"If you have a relevant unspent criminal conviction... you must tick the box. However, you should be aware that courses in teaching, medicine, dentistry, health, social work, veterinary medicine, veterinary science and courses involving work with children or vulnerable adults, including the elderly or sick people, are exempt from the Rehabilitation of Offenders Act 1974 and different rules apply with regard to criminal convictions." UCAS application form guidelines

SCYJ commissioned work with focus groups of children with criminal records aged 12-17. The study found that for the older children the effect of a criminal record became more apparent as they got older, particularly as they began applying for college courses, and planning for their future. The children worried about how they would cope with getting turned down for a job if it was what they really wanted to do, and how to deal with changing career paths as a consequence of mistakes they made while growing up.

For job seekers, the implications of a criminal record can also be profound. Job seekers are reluctant to apply for jobs while employers can be nervous about taking on people with criminal records. Research into the bleak prospects in the labour market for offenders found that more than 60% of employers say they would not knowingly hire an applicant with a criminal background.¹⁵

¹⁵ Pager, D.2006, "Evidence based policy for successful prisoners re-entry" p1706 Available at http://www.antoniocasella.eu/nume/Pager_reentry_2006.pdf

"In 2002 when I was 16, I moved into a woman's house who I knew. It was OK at first, but then tensions grew and I was thrown out. When I went back to retrieve some of my property, an argument ensued, the woman attacked me, and I retaliated. I was convicted of using violence to enter a property and battery. Time past, I had a son, went to university to follow my dream of being a social worker. While I was eventually accepted on the course, I was told that because of my conviction, I wasn't guaranteed a job at the end of the course, and that I would have to explain my conviction every time I went for a job for my entire career. After finishing my degree (which I did well in) I started to apply for jobs, however disclosing my criminal records on every single application was demoralising. Because of the economic climate, jobs were few and far between, particularly in the public sector. I knew that disclosing my record would be grounds enough to instantly discard my application before I even got to point of assessment or interview. I've been offered jobs and then had the offer withdrawn when they found out about my record- though they always say it's for a different reason. I continued to try to social work positions across the county but was not successful. Continuing to seek employment with no hope is hard. I am adamant that the reason I have failed to seek employment is due to my criminal record. After over a year of job applications, I was broke, my landlord was about to throw me out and I was still jobless. I had to go on benefits to pay my rent but more importantly to support my family".

Research consistently shows that persons with a criminal record of any type have a difficult time securing and maintaining employment. In fact, they experience more difficulty in obtaining steady employment than any other disadvantaged group.¹⁶

According to a report by the Youth Justice Board, the young people who were more likely to reoffend were significantly less likely to have full-time education, training and employment provision; were older (particularly those aged 16); were female; had been in the care system; had literacy or numeracy difficulties; had previous convictions; had been subject to more serious sentencing disposals.¹⁷

This matters because research suggests that engagement in education and training is one of the key factors in sustaining desistance from crime, not only as an income source but also as a source of structure, social contact, and self-worth.¹⁸ It is a paradox of the criminal records system that the impact a record exerts on a child's future opportunities undermines access to both.

SCYJ's recommendations for change to the criminal record system take into account the wide body of research that shows that children's involvement in offending behaviour is related to an age-crime curve and that many desist, or 'grow out' of crime naturally as they mature.

Statistics on cautions and convictions have consistently shown a sharp incline in offending behaviour of children from early adolescence that peaks during the mid to late teenage years and then declines sharply before steadily decreasing after the mid 20's.¹⁹ By the time this cohort reaches their thirties the majority have stopped committing crime.

Reoffending is most likely to occur in the period immediately following conviction or release from custody. Government research indicate that most re-offences are committed within the first 12-24

16 Kurlycheck, M. et al. 2006, "Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement" p2 Available at <http://www.reentry.net/library/attachment.811140>

17 Barriers to Engagement, Youth Justice Board, 2006: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353968/yjb-barriers-ETE-report.pdf

18 Naylor, B.G2011 "Criminal records and rehabilitation in Australia" p81 European Journal of Probation, Col.3, No. 1, pp 79-96.

19 Farrington, D.P (1986) 'Age and crime' in Tonry, M. and Morris, N. (Eds) Crime and justice: An annual review of research Vol 7, pp 192-5

months of release/offending.²⁰ Three to four years after conviction or release from custody, the risk of reoffending is relatively stable at around 1% for most offences (and around 2% for violent offences)²¹ the rate of reoffending barely increases thereafter.²²

SCYJ's proposal to allow custodial sentences greater than four years and less than life to become spent after seven years reflects the evidence base that after 7 years, the chance of an individual reoffending has significantly diminished, and becomes close to that of a person who has never offended. We support the notion that given the chance; children will 'grow out' of crime.

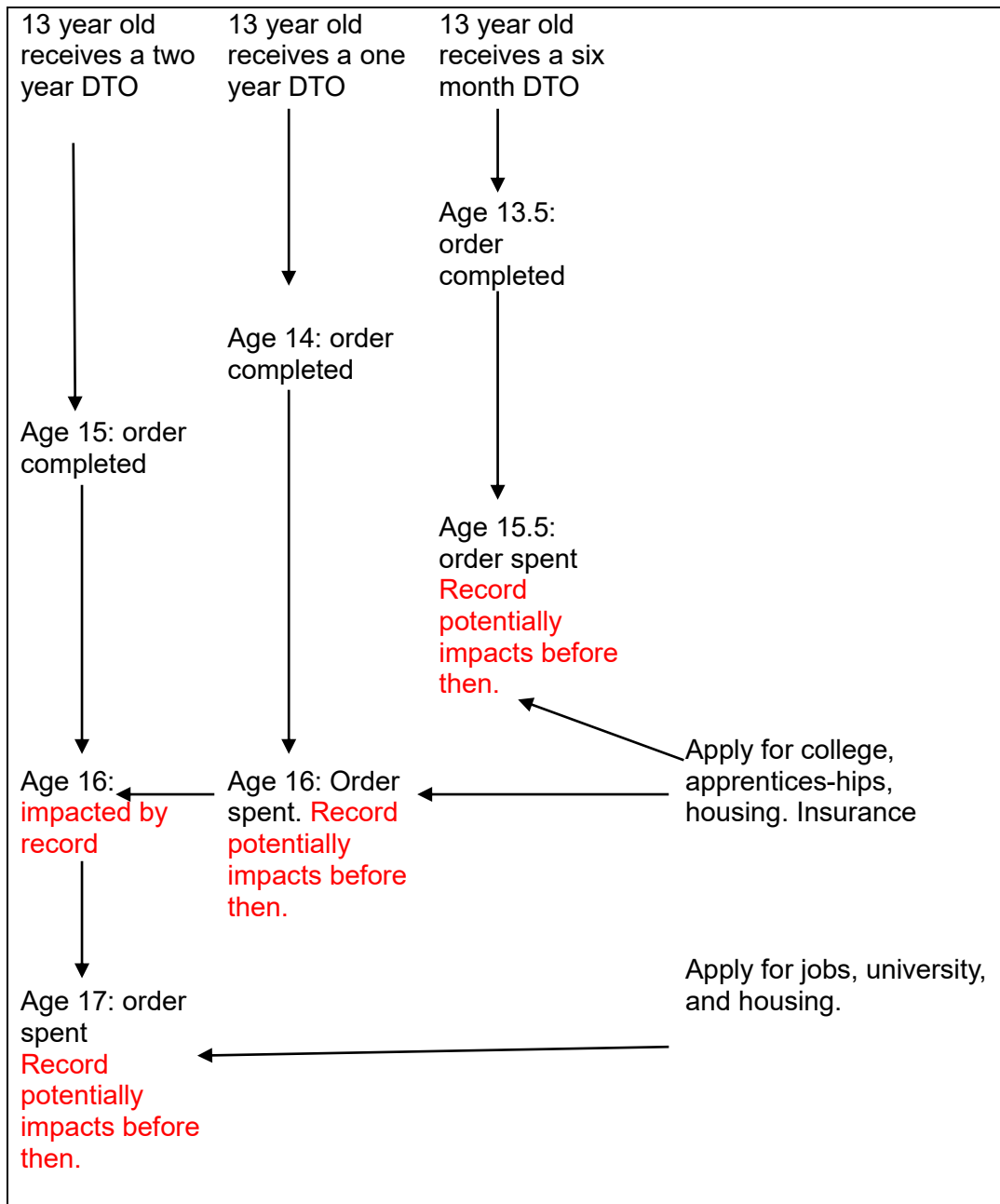
The recommendations proposed by SCYJ would give children who have offended the prospect, at a critical time in their lives, to access education and employment, and for those with a more serious offending history, who have demonstrated years of desistance from criminal activity, to move beyond an offending past.

20 Breaking the circle: A Report of a Review of the Rehabilitation of Offenders Act" (2002) <http://webarchive.nationalarchives.gov.uk/20120119200607/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf>

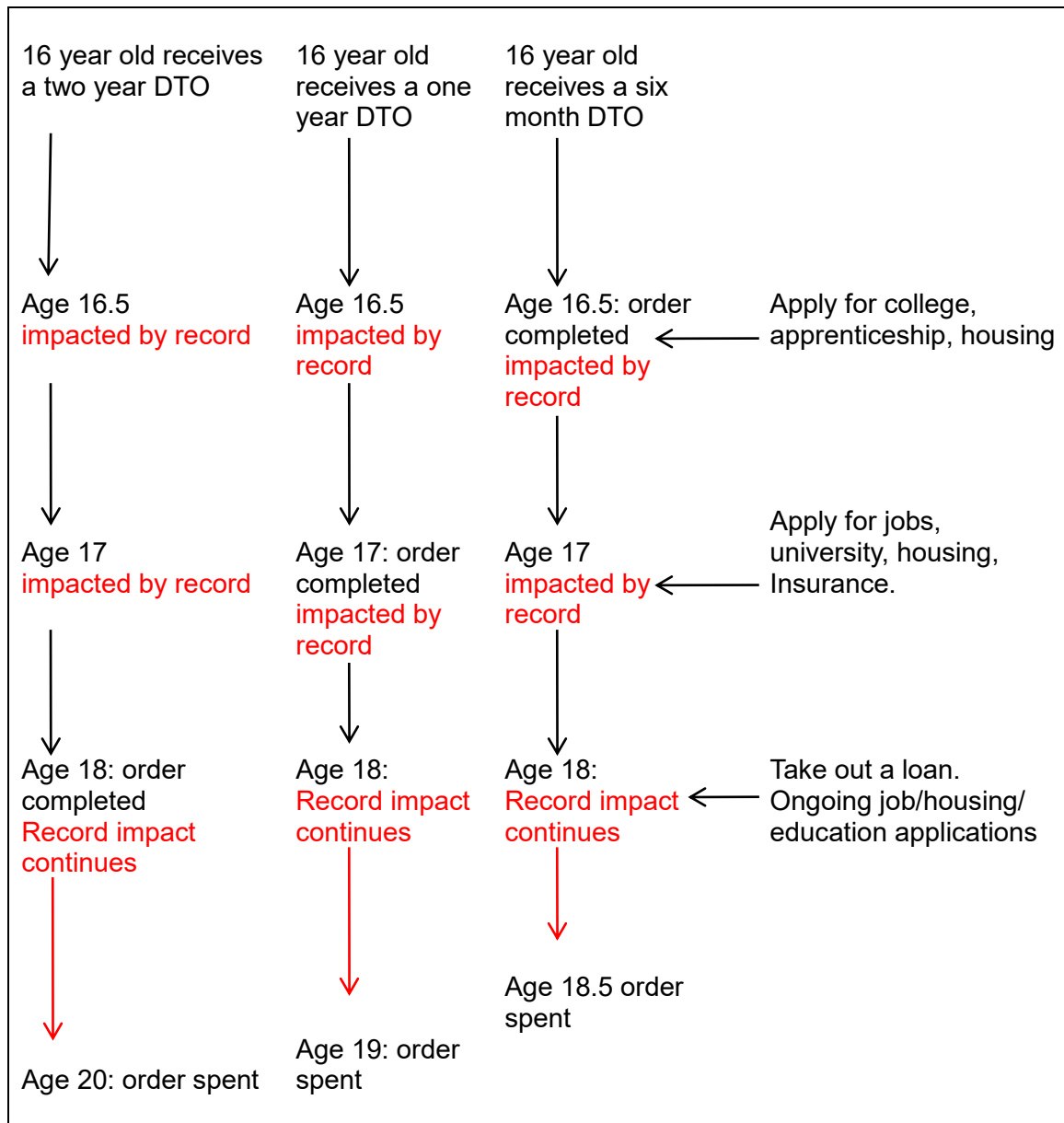
21 Hazards of Different Types of Reoffending' 2001, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217377/research-reoffending-hazards.pdf

22 Breaking the Circle.

13 year-olds: criminal records impact of DTOs of different lengths



16 year-olds: criminal records impact of DTOs of different lengths



CASE STUDIES:

Frankie

Frankie committed a number of theft offences between the ages of 15-17 for which he appeared in the Youth Court and was sentenced to various youth orders. When he had just turned 18 he was with a friend who gave him a cash card and asked him to take money out of the cash machine, and suggested they split the money. Frankie did this and was caught on CCTV.

As Frankie was now an adult he went to the Crown Court charged with fraud. Because of his record he was remanded in custody and went to a young offender's institute for the first time in his life. However, he managed to persuade the Judge to give him a suspended sentence. The judge was so concerned about "taking a chance" on him that he insisted that Frankie be brought back to court every six weeks so that the Judge could personally be updated on his progress. Frankie did well on his order and impressed the Judge. Encouraged by his experience of the justice system he decided that he wanted to study law. The Judge, so impressed by the change in Frankie's attitude, offered him the opportunity to undertake marshalling with him.

Frankie went on to study law, and is currently a year away from graduating with a law degree. However, he has met with many hurdles due to his criminal record. He has taken advice about becoming a lawyer and has been advised that there will be substantial hurdles because of his past. Most jobs and work experience he applied for he was turned down for. He experimented with the application forms for various jobs and he reapplied for roles he had been turned for with the same CV but a different name, saying that he did not have a criminal record, and he found that he was offered an interview or was offered to progress to the "next stage" when they had automatically rejected him under his real name.

Frankie did manage to get a job in a solicitor's firm over the summer holidays, and spent two months working there and doing well. Initially he hoped that they would not ask about criminal records. However, they asked to do a criminal record check and he managed to delay doing it, frightened of what they would find. Eventually they phoned the agency they had hired him through and they found out about his criminal convictions, he was told it was best that they "parted ways" and he left.

Frankie has now decided that he is interested in banking, he has spoken to people interested in giving him work experience, but again has been advised that this will be very difficult for him as for anyone working with money there will be stringent checks. He is yet to find any work experience.

Frankie has recently changed his name by deed-poll, he has found that having done this, his criminal record is not found as easily. He recently ran as a councillor in a local election under his new name, he does not know if his criminal past would have prevented him doing so, he was not asked directly about it, but was aware that "background checks" were done on him, and thinks him using his new name might have helped him pass those checks. He came second in the election, and continues to show an interest in local politics.

Paul: "I feel that once I disclose my criminal record all the good things I've done go out of the window."

Paul grew up in an area where there were local gangs, like a lot of teenagers he spent a lot of his time with two particular friends. They committed some criminal offences, and the local police treated them as if they were part of gang. When he had just turned 15 he was involved in offence of stealing money and a mobile phone. He appeared before the local youth court and was sentenced to a referral order. He completed that order without any issue. Despite this involvement with the criminal justice system he continued to study and achieved 10 GCSEs at school and went on to study a BTEC in business at college.

When he was 17 he borrowed a friend's jacket which had a bladed article in the pocket. He was stopped and searched and charged with possession of bladed article and was given a second referral order. He was doing well on that order, and finished his BTEC at college, achieving a merit. But the summer after he finished at college, and when he was in the final month of his referral order he was travelling through Brixton when the riots happened. He was in a car with friends and he helped put various items from the shops in the back of the car. He was identified and charged with non-residential burglary. By the time the matter came to court he was 18 years old and he pleaded guilty and was given a custodial sentence of 13 months. He spent 7 and a half months inside before being released on licence.

He was released from custody in February and enrolled in an access course starting the following September in order to enable him to go to university. He also found voluntary positions and worked as a volunteer for a local youth club and also in an alternative provision school.

During this time, he applied for many part time and full time positions -he estimates he applied for over 300 positions. He believes his criminal record was the biggest barrier to getting a job. Some of the jobs asked upfront if he had a criminal record, to which he replied that he had. None of these positions took his application any further. Other positions did not immediately ask and he did not volunteer the information, from these applications he did manage to get a handful of interviews. However, after those interviews he was asked to disclose any criminal records, and once he had disclosed that he was turned down from those positions. The access course lasted a year, he studied psychology, politics and sociology. He received a distinction.

After he had been out of prison for a year he was arrested for another offence of burglary committed on the same night during the riots as the burglary offence he had already received 13 months' imprisonment for. The police now charged him with burglary of the second shop. Again he pleaded guilty, and the Judge commented that given the length of time that had passed between him committing the offence and being arrested for it, and all the good work he had done in the meantime that it would be wrong to send him to prison. He was given a supervision order with unpaid work. After two months of the supervision order, his probation worker told him that he considered that he was doing so well with everything that he did not need any further input from probation.

After his access course, he applied successfully to go to university, and he is currently studying a BA in psychology in one of the leading universities in that field. He is undertaking an evening degree, allowing him to work during the day. Since being released from prison he volunteered as a teaching assistant at an alternative provision school, and once completing his access course he applied for a paid position. He had to do a CRB check, which disclosed all his convictions. The school were nervous about employing someone with a criminal record, but eventually agreed to do so given the amount of voluntary work he had undertaken with children. They did however ask him to undertake a six-month probationary period, which is not standard, because of his criminal history. He undertook that period successfully and now works for them full time whilst studying in the evenings.