



Standing Committee for Youth Justice

Offensive Weapons Bill (2017-19)
Standing Committee for Youth Justice - Written Evidence Submission

Summary

1. The Standing Committee for Youth Justice (SCYJ) is an alliance of 50 not-for-profit organisations campaigning for improvements to the youth justice system in England and Wales. The Offensive Weapons Bill creates a number of new laws around the possession and intended use of knives and corrosive substances. We set out our views and evidence on these proposals, as they affect children (those under the age of 18) below.
2. SCYJ understands that violent crime is a serious problem and that violent behaviour needs to be prevented and stopped. However:
 - ❖ The measures will increase the use of mandatory minimum custodial sentences for children (under 18 year olds). SCYJ opposes mandatory custodial sentences given: they remove judicial discretion; the poor state of child custody; evidence that custody is not rehabilitative; and evidence that custodial sentences do not deter children.
 - ❖ Children carry weapons for a multitude of reasons, and criminal justice measures are unlikely to be effective in tackling this;
 - ❖ The measures create legal uncertainty and may lead to disproportionate sentences.

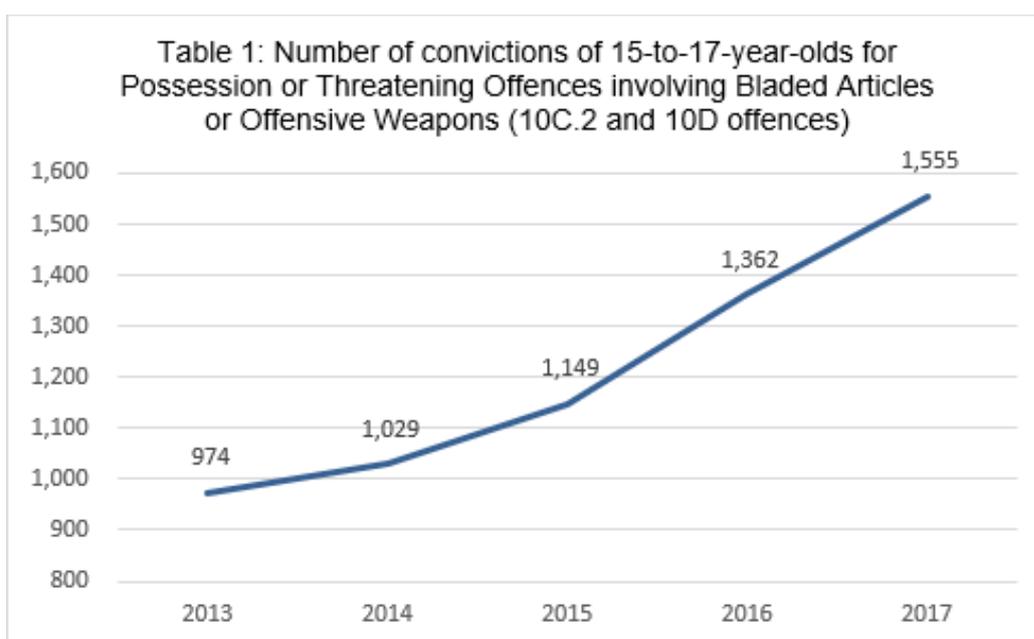
Mandatory custodial sentences

3. The law already currently mandates minimum custodial sentences of 4 month detention and training orders for 16-and-17-year-olds who are convicted of:
 - ❖ two or more knife or offensive weapon possession offences or “relevant offences” (s.139 of the Criminal Justice Act 1988 (The 1988 Act));
 - ❖ threatening a person in public with a knife or offensive weapon (s.139AA of the 1988 Act).
 - ❖ These sentences also apply when the offence has occurred on school premises.
4. **The Offensive Weapons Bill will increase the use of mandatory minimum custodial sentences for children**, by:
 - ❖ creating an ill-defined, loose offence for possession of a corrosive substance in a public place (Clause 5) and a minimum custodial sentence for two possession offences (Clause 6) (see paragraph 25 onwards).
 - ❖ extending the prohibition on possession of a bladed article or offensive weapon in a school to further education premises (Clause 21);
 - ❖ lowering the threshold for conviction of the offence of threatening a person in public (Clauses 26, 27) (see paragraphs 19 – 24.)
5. Violent crime is a serious problem and we promote evidence-based measures to reduce violent behaviour. However, we continue to oppose mandatory custodial sentences for children because:
 - ❖ **There is no evidence that the threat of custody deters children;**
 - ❖ **Custody is not rehabilitative;**
 - ❖ **Mandatory sentences remove judicial discretion.**



Custody as a deterrent

6. One of the principal arguments made for mandatory minimum custodial sentences, and punitive criminal justice measures more generally, is that the harsher punishment will deter children from committing crime. The theory of deterrence relies on two assumptions: that the person has knowledge of the punishment associated with the crime; and that they will then make a rational choice whether or not to offend based on that knowledge. This theory does not hold true for many people in trouble with the law, and especially so for children.
7. Awareness of sentencing amongst children is perceived by frontline practitioners to be very lowⁱ, and there are many children in trouble with the law who we would not expect to make 'rational choices' in the economic sense, that is, acting in their own best interest.ⁱⁱ As well as this, children carry knives for numerous and complex reasons,ⁱⁱⁱ often including the perception it is necessary for self-protection, and punitive measures are therefore unlikely to act as a deterrent even if the child is aware of the punishment and able to act rationally. In other words, for those children who fear for their safety and indeed their lives, carrying a knife may be seen as the rational course of action. This may be particularly so if they perceive other forms of protection (such as the police), as unavailable to them.
8. Research on deterrence has consistently supported the above, with studies finding no evidence that sentence severity or the threat of custody acts as a deterrent to crime. Multiple studies have found that it is the certainty of getting caught rather than the punishment that deters (von Hirsch, Bottoms, Burney, and Wikstrom 1999), with a recent evidence review concluding that "lengthy prison sentences and mandatory minimum sentencing cannot be justified on grounds of deterrence." (Nagin 2013). While the majority of evidence on deterrence is in relation to adults^{iv}, it is likely that any deterrent effects on children will be even weaker, due to children tending to be more impulsive and less likely to consider the consequences of their actions.
9. Statistics on knife crime offences support this evidence. Since the introduction of mandatory minimum custodial sentencing for weapon possession offences in 2015, numbers of children convicted of possession or threatening offences involving bladed articles or offensive weapons have risen (see table 1 below).



Source: Criminal Justice System Statistics publication: Outcomes by Offence 2007 to 2017: Pivot Table Analytical Tool for England and Wales <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>



10. The exact data on the numbers of children convicted of more than one possession or relevant offence and therefore liable for a mandatory minimum custodial sentence as provided by s.139 of the 1988 Act is not currently available (we are awaiting an FOI response). We can therefore not compute the proportion of children liable for mandatory minimum sentences that are sent to custody. However, as illustrated by table 2 below, the use of detention and training orders for 15-to-17-year-olds for possession and threatening with bladed articles and offensive weapons offences has been increasing since 2015. We can reasonably conclude from table 1 and 2 (see also MoJ 2018a) therefore that while the powers of mandatory minimum custodial sentences are being used increasingly by the courts, they are failing to have a clear deterrent effect on children carrying weapons.



Source: Criminal Justice System Statistics publication: Outcomes by Offence 2007 to 2017: Pivot Table Analytical Tool for England and Wales <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

Custody for public protection

11. Another argument often put forward for sentencing children to custody is that locking up those carrying out crimes will reduce the level of crime on the streets. The Home Office has assessed the impact of incapacitation on crime levels and concluded that, to see a reduction in offending of just 1%, a 15% increase in the use of custody would be required (Home Office 2001). These are figures for the general population, and as children in trouble with the law tend to be a more transient group (evidence shows that children go through 'phases' of offending which they then grow out of (Farrington 1986)), it is likely that an even larger increase in child custody numbers would be required to see any substantial impact on levels of crime. As we will discuss below, custody is proven to be less rehabilitative than community alternatives, increasing chances of reoffending comparatively, and this means that even the estimated short-term 1% decrease in crime would be offset in the long term. Given the high cost of custodial places and the damage associated with depriving children of their liberty (see below), the money would be much more effectively spent elsewhere on early intervention and prevention, and community sentences where necessary.

The ineffectiveness of custodial sentences

12. Section 37 of the Crime and Disorder Act 1998 states that the principal aim of the youth justice system is to prevent offending by children and young people. Yet there is plenty of evidence that custody is not rehabilitative. The inclusion of mandatory minimum custodial sentencing in the Bill is therefore not only unlikely to be effective at reducing levels of serious violence, but works against the top priority of the youth justice system.
13. Reoffending rates for children leaving custody are persistently high. Last year over 68% of children who left custody reoffended within 1 year, while the figure for those receiving Youth Community Penalties was 58% (YJB 2018). While we cannot directly compare reoffending rates for different disposals as they will be different sets of children, the consistently higher post-custody reoffending rate holds even when one factors in the more serious and persistent offending of those sentenced to custody.^v Given that custody should be reserved as a measure of last resort, even a small difference in rehabilitation rates should incline us towards community sentences.
14. There is a growing body of evidence that diverting children away from the formal youth justice system is more effective at reducing offending than any punitive responses.^{vi} In fact, the evidence indicates that custody is in itself criminogenic (McAra and McVie, 2007). This is hardly surprising given the poor state of youth custody.^{vii} Children face harsh realities including “hunger; denial of fresh air; cramped and dirty cells; strip-searching; segregation; the authorised infliction of severe pain; uncivilised conditions for suicidal children and bullying and intimidation” (Willow 2015).^{viii} Children in custody are rarely receiving the education they are entitled to^x, and are unlikely to be receiving the trauma-informed, therapeutic care necessary to address the underlying causes of many children’s offending.
15. Multiple studies have highlighted the wide range of negative effects of incarceration on children, and custody’s failings in terms of youth crime prevention and community safety, all at a high cost to the taxpayer.^x Studies have made the case for abolition of child custody in favour of restorative justice and rehabilitative community sentences. Detention and Training Orders “disrupt lives and offer limited opportunities to address the causes of offending behaviour.” (YJB 2003). HMI Probation’s thematic review on resettlement recognised that the disruption of custody can mean “lost accommodation, interrupted education, emotional distress and loss through separation from family and friends, fear of new surroundings and peers.” They found that, for some children, trying to resettle in the community is “as traumatic as their entry into custody” (HMI Probation 2015). Children involved in serious violence need support to move away from that life, and the evidence is clear that custodial sentenced do not support this.

The removal of judicial discretion

16. As we have outlined, custody is a particularly damaging punishment for children, and one which should be reserved for the most severe offences, where it is required for public protection. The UN Convention on the Rights of the Child states that custody should be a last resort (Article 37), yet mandatory sentences remove judicial discretion, and the ability of courts to ensure that the penalty best fits the circumstance of the offence.
17. The Sentencing Council has acknowledged the need to look closely at children’s particular circumstances when sentencing. In 2017, the Council published revised principles for sentencing children (Sentencing Council 2017). This emphasised looking at the background, circumstances and vulnerability of children in the youth justice system, and drew attention to the importance of considering developmental age as well as chronological age. The revised principles also place a stronger emphasis on children’s rights; Paragraph 1.3 states, “a custodial sentence should always be a measure of last resort for children and young people”, and there is an emphasis on avoiding unnecessary criminalisation and promoting reintegration (Sentencing Council 2017: Paragraph 1.4). By removing judicial discretion, the proposals work against the Sentencing Council’s guidance.



18. As we have discussed, children carry knives for complex reasons. New criminal offences and sanctions are not going to persuade them to stop. Educating children and funding wider preventative work in the community will have a greater impact on reducing knife crime (and so the government's stated priority of tackling violent crime).^{xi} Many children who carry knives have been the victim of violence and knife crime, interventions to reduce knife carrying need to take account of this trauma to be effective.

Lowering the conviction threshold for threatening with a knife or offensive weapon

19. It is currently an offence to threaten with an article with a blade or point or an offensive weapon (s.139AA The 1988 Act). To secure a conviction under the 1988 Act, the prosecution must prove that the defendant threatened another with the weapon "in such a way that there is an immediate risk of serious physical harm to that other person". Clause 26 of the Offensive Weapons Bill amends this offence, such that the offence is committed if "a reasonable person who was exposed to the same threat...would think that there was an immediate risk of physical harm". There is a mandatory minimum custodial sentence of a four-month Detention and Training Order (DTO) for children aged 16 and 17 convicted under s.139AA of the 1988 Act.

20. **Clause 26 creates a more complicated, subjective test for whether the offence was committed, and greatly lowers the threshold of conviction. Given the severe penalty associated with a conviction (custody) SCYJ does not believe the change is justified, particularly as no rationale has been offered other than a desire to "strengthen" the existing offence.**

21. Basing the test on how a "reasonable person" would respond to such a threat, and removing the requirement that the victim was objectively at risk of immediate serious physical harm, substantially reduces the conviction threshold – a person's "reasonable fears" can be very broad, and an individual's perception is very difficult to argue against conclusively. It is likely that the proposed changes will result in a much wider range of cases being prosecuted under s139AA of the 1988 Act. Courts can already impose custodial sentences for possession offences, and are already required to take into account the circumstances of the possession when sentencing. Most of the cases that will be prosecuted under Clause 26 could therefore be prosecuted, and given custodial sentences, under existing legislation.

22. "Reasonable fear" is a problematic test to apply, particularly with regards to children. Children find it more difficult than adults to gauge the consequences of their actions and may find it more difficult to judge the intentions of others (Centre for Social Justice 2012). The system may be ripe for abuse by members of rival gangs or others wanting revenge.

23. In addition, it is not clear how the "reasonable fear" test should be applied, and clarification may be best achieved by keeping the law as it is. Either "reasonable fear" is established through a subjective test or it relies on a quasi-objective test – such as whether "the man on the Clapham Omnibus" would reasonably be in fear. The former test is problematic because it is so individual as to be constantly changeable and almost impossible to argue against. If the latter test is to be applied, we would expect there to be an objective risk of harm – on the assumption that a "reasonable person" "reasonably fears" harm where there is an objective risk of it occurring. As such, this test is similar to the current law, and to prevent confusion it is preferable to keep the existing objective test in law.

24. Given the negative effects of imprisonment, SCYJ believes custodial sentences should be used as a last resort and only where it is required for public protection. This will not be the case where children are imprisoned for behaviour that did not objectively put anyone at the risk of harm. Children may also find it more difficult than adults to anticipate or appreciate the effect of their actions on others. The proposed new test will therefore disadvantage children



more than adults, and means children may be convicted and sentenced to custody without having foreseen the effect of their actions, or put anyone at risk of harm.

Possession of corrosive substances

25. Clause 5 of the Bill creates a new offence of possessing a corrosive substance in a public place. Clause 6 creates a mandatory minimum custodial sentence for two or more relevant offences. SCYJ understands the serious and justifiable concern around the recent spate of acid attacks. However:
- ❖ **New legislation is unnecessary;**
 - ❖ **Corrosive substance must be clearly defined in order to satisfy requirements of legal certainty and avoid unjust and unintended prosecutions;**
 - ❖ **Prosecutors should be required to prove intent to cause harm.**
26. Possession of a corrosive substance can be prosecuted under section 1 of the Prevention of Crime Act 1953 (the 1953 Act), which can result in a custodial sentence, including a mandatory custodial sentence for a second offence. The 1953 Act provides that an offensive weapon is any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person. Those found in possession of corrosive substances, where there is proven intent to cause injury, could clearly be prosecuted under this legislation. New legislation is therefore unnecessary.
27. The only rationale for new legislation is that, under the 1953 Act, in order to prove the corrosive substance is an offensive weapon it must be shown that there was intent to cause injury. The new offence would instead put the onus on the child to show they had good reason for carrying it. This is of great concern to SCYJ and, taken together with the fact that “corrosive substance” has not been clearly defined (see below), creates a very loose and ill-defined offence, that will lead to unjust prosecutions, convictions and custodial sentences.
28. The Bill defines a corrosive substance only as a substance “capable of burning human skin by corrosion”. Many household products contain low levels of harmful corrosive substances, and the clause does not specify that the substance must be of a certain concentration or capable of causing lasting harm.^{xii} People must reasonably be able to predict whether their actions breach the law – legal certainty is a well-established principle. If the new legislation was passed in its proposed form, it would be unclear what substances could be legally possessed in public.
29. It is unrealistic to expect children to know whether the products they have bought in a shop are corrosive, or whether they are likely to cause injury. Yet this is the basis of Clause 5, despite the fact that Clause 1 (which creates an offence to sell corrosive substances to under 18s) includes a list of corrosive substances. This creates a situation where children are expected to know that they can legally buy a substance which it is illegal for them to possess in public. This points to the need for prosecutors to have to prove intent to cause injury. As well as this, if children are sold a substance covered by Clause 1 without being asked their age, it is unreasonable to prosecute them on the basis of possession where there is no intent to cause harm.
30. Clause 5 places the onus on the child to prove they have good reason to be in possession of a substance, rather than on the defence to prove intent to cause harm. Proving such a defence may be difficult. For instance, how does a child prove they simply remembered to pick-up some cleaning products on the way home? With no requirement on prosecutors to demonstrate intent to harm, children could be prosecuted for possession of ordinary household products where no harm was intended and could even be given a custodial sentence as a result.



31. All in all, with no clear definition and no need to prove intent to cause harm, Clause 5 may lead to overcharging, prosecutions against people the legislation was never intended to target and who have no intention of causing harm, and mandatory custodial sentences for such people. Custodial sentences in this instance would be vastly disproportionate.
32. As set out above, we believe existing provision in the 1953 Act are sufficient to deal with the very real problem of corrosive substance possession. However, if the government pursues the new legislation a number of changes should be made to Clauses 5 and 6:
- ❖ Corrosive substance must be defined, in an annex, statutory order or similar;
 - ❖ Prosecutors should be required to prove intent to cause harm.
 - ❖ Children should be removed from the requirement to impose mandatory minimum custodial sentences for a second relevant offence.

Impact on Black and Minority Ethnic (BAME) children

33. The impact of the new legislation on Black and Minority Ethnic (BAME) children must also be considered. Corrosive substances, along with bladed articles and other offensive weapons, are likely to be discovered via stop and search. If this is the case, the proposals will disproportionately affect BAME children who are significantly more likely to be subject to stop and search (Home Office, 2017). As well as this, the lack of clarity in the proposed laws around threatening offences and corrosive substances possession, the loose nature of the offences, and the probable over-charging and misdirected prosecutions this will cause, are likely to damage relations between BAME children and the police, which can already be strained (Lammy 2017). Overall the lack of legal certainty is likely to damage trust in the justice system.

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ

References

- Bevan, M. (2016) *Investigating young people's awareness and understanding of the criminal justice system: An exploratory study* Howard League for Penal Reform
<https://howardleague.org/wp-content/uploads/2016/06/Investigating-young-people%E2%80%99s-awareness-and-understanding-of-the-criminal-justice-system.pdf>
- Blakemore, S. J & Choudhury, S (2006). *Development of the adolescent brain: Implications for executive function and social cognition* Journal of Child Psychology and Psychiatry, 47:3, 296-312
<https://www.ncbi.nlm.nih.gov/pubmed/16492261>
- Carlile, A. (2014) *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* Michael Sieff Foundation <http://michaelsieff-foundation.org.uk/content/inquiry-into-the-operation-and-effectiveness-of-the-youth-court-uk-carlile-inquiry.pdf>
- Centre for Social Justice (2012) *Rules of Engagement Changing the heart of youth justice*
https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ_Youth_Justice_Full_Report.pdf
- Farrington, D.P. (1986) *Age and crime* in Tony, M. and Morris, N. (Eds) *Crime and justice: An annual review of research* Vol 7, pp 192-5.



Gavin, P. (2014) *No Place for Children: A Case for the Abolition of Child Imprisonment in England and Wales* Irish Journal of Applied Social Studies, Vol 14, Iss 1, Article 5
<https://arrow.dit.ie/cgi/viewcontent.cgi?article=1219&context=ijass>

Goldson, B. (2004) *Child Imprisonment: A Case for Abolition* Sage Journals, Vol 5, Iss 2
<http://journals.sagepub.com/doi/10.1177/147322540500500202>

Gooch, K. (2016) *A Childhood Cut Short: Child Deaths in Penal Custody and the Pains of Child Imprisonment* The Howard Journal of Crime and Justice, Vol 55, Iss 3, pg 278-294
<https://onlinelibrary.wiley.com/doi/pdf/10.1111/hojo.12170>

HMI Prisons (2017) *HM Chief Inspector of Prisons for England and Wales Annual Report 2016-17* (HC 2018) HM Inspectorate of Prisons
https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/HMIP-AR_2016-17_CONTENT_11-07-17-WEB.pdf

HMI Prisons (2018) *HM Chief Inspector of Prisons for England and Wales Annual Report 2017-18* (HC 1245) HM Inspectorate of Prisons
https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/07/6.4472_HMI-Prisons_AR-2017-18_Content_A4_Final_WEB.pdf

HMI Probation (2015) *Joint thematic inspection of resettlement services to children by Youth Offending Teams and partner agencies* HM Inspectorate of Probation
<https://www.justiceinspectrates.gov.uk/hmiprobation/inspections/youthresettlementthematic/>

HMI Probation (2017) *The Work of Youth Offending Teams to Protect the Public* HM Inspectorate of Probation
https://www.justiceinspectrates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/10/The-Work-of-Youth-Offending-Teams-to-Protect-the-Public_reportfinal.pdf

Home Office (2001) *Making punishments work: report of a review of the sentencing framework for England and Wales* Appendix 6, Impact of sentencing on crime, Home Office
https://books.google.co.uk/books/about/Making_Punishments_Work.html?id=XD_gMqEACAAJ&redir_esc=y

Home Office (2017) *Police powers and procedures, England and Wales, year ending 31 March 2017* Second Edition, Home Office
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/658099/police-powers-procedures-mar17-hosb2017.pdf

Lammy Review (2017) *The Lammy Review*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

McAra L and McVie S (2007) *Youth justice? The impact of system contact on patterns of desistance from offending* European Journal of Criminology, 4:3, 2007, pp315-45
<http://journals.sagepub.com/doi/abs/10.1177/1477370807077186>

MoJ (2018a) *Knife and Offensive Weapon Sentencing Statistics, England and Wales – Year ending March 2018* Ministry of Justice
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716277/knife-offensive-weapon-sentencing-jan-mar-2018.pdf



MoJ (2018b) *Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?* Ministry of Justice

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706597/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf

Nagin, D (2013) *Deterrence in the Twenty-first Century: A Review of the Evidence* Pittsburgh: Carnegie Mellon University

<https://pdfs.semanticscholar.org/c788/48cc41cdc319033079c69c7cf1d3e80498b4.pdf>

NAYJ (2017) *The State of Youth Justice 2017: An Overview of Trends and Developments* National Association of Youth Justice

<http://thenayj.org.uk/wp-content/uploads/2017/09/State-of-Youth-Justice-report-for-web-Sep17.pdf>

NAYJ (2018) *Child-friendly youth justice? A compendium of papers given at a conference at the University of Cambridge in September 2017* <http://thenayj.org.uk/wp-content/uploads/2018/05/NAYJ-Child-friendly-youth-justice-May-18.pdf>

<http://thenayj.org.uk/wp-content/uploads/2018/05/NAYJ-Child-friendly-youth-justice-May-18.pdf>

Palasinski, M., and Riggs, D. (2012) *Young White British Men and Knife-Carrying in Public: Discourses of Masculinity, Protection and Vulnerability* Damien Riggs

<http://www.damienriggs.com/blog/wp-content/uploads/2013/09/Young-white-British-men.pdf>

Sentencing Advisory Council (2011) *Does Imprisonment Deter? A Review of the Evidence* State Government Australia

<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf>

Sentencing Council (2017) *Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery Definitive Guideline*

https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf

von Hirsch, A., Bottoms, A E., Burney, E., and Wikstrom P-O. (1999) *Criminal deterrence and sentence severity: an analysis of recent research* Hart Publishing

<https://www.bloomsburyprofessional.com/uk/criminal-deterrence-and-sentencing-severity-9781841130514/>

Willow, C. (2015) *Children Behind Bars: Why the Abuse of Child Imprisonment Must End* Policy Press <https://www.amazon.co.uk/Children-Behind-Bars-Abuse-Imprisonment/dp/1447321537>

Wilson, D., Brennan, I., and Olaghere, A. (2018) *Police-initiated diversion for youth to prevent further delinquent behaviour* Campbell Collaboration

<https://campbellcollaboration.org/library/police-initiated-diversion-to-prevent-future-delinquent-behaviour.html>

YJB (2003) *Tough community penalties offer more help to young offenders than short DTOs'*, press release, 27 January 2003, Youth Justice Board

YJB (2018) *Youth Justice Statistics 2016/17 England and Wales* Youth Justice Board/Ministry of Justice

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf



ⁱ See for example Redthread oral evidence to the Home Affairs select committee serious violence inquiry available here: <http://bit.ly/2NZBc9H>. A study by Miranda Bevan (2016), that aimed to shed more light on this perception by holding focus groups of young people, concluded that “the majority of young people had substantial deficits in their knowledge of the criminal justice system.” Their low level of awareness raised concerns that “the majority of the participants appear to be ill-equipped to make reasoned judgements around certain offending”.

ⁱⁱ Many children involved in the justice system have mental health and learning difficulties (Carlile 2014), or problems with drug and alcohol abuse. Children have “limited capacity to determine the consequences of their decisions, and are “both more suggestible (‘the tendency to change one’s mind as a result of pressure or suggestion from others’) and compliant (‘the tendency to go along with others’ propositions or instructions without internal agreement’)” (Farmer E, Gudjonsson G H, cited in Centre for Social Justice, 2012). The National Institute of Mental Health has found changes in adolescent brains that alter behaviour, with studies (Blakemore & Choudhury 2006) suggesting that adolescent frontal lobes experience excess production of grey matter. As the frontal lobe is associated with rational thinking, this change impacts on decision making, organisation, self-control, emotional and impulse regulation, and risk-taking behaviours.

ⁱⁱⁱ See for example Palasinski, M and Riggs, D (2012) Young White British Men and Knife-Carrying in Public: Discourses of Masculinity, Protection and Vulnerability

^{iv} One Australian study cites a judge who stated: “In the case of a youthful offender rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending. Thus, for example, individualised treatment focusing on rehabilitation is to be preferred.” (Sentencing Advisory Council 2011).

^v From NAYJ’s the State of Youth Justice (2017): “analysis by the Ministry of Justice suggests that, even when relevant factors such as these are controlled for...children who receive custodial sentences of between six and 12 months are significantly more likely to reoffend than a comparison group sentenced to a high level community penalty” (MoJ 2012, cited in NAYJ 2017: 56). More recent MoJ analysis again finds that, for similar cases, community sentences have lower rates of reoffending than short-term custodial sentences, and this effect is stronger for younger defendants (18-to-20-year-olds, as the analysis looks only at adults) (MoJ 2018b).

^{vi} See for example Wilson, Brennan, and Olaghery (2018); and Lesley McAra’s essay in NAYJ’s “Child-friendly Youth Justice?” compendium of papers (2018).

^{vii} In 2017 the HM Chief Inspector of Prisons found not a single dedicated child custody institution to be safe to hold children (HMI Prisons 2017). While there have been steps taken to improve conditions since then, and the most recent inspection reports do recognise some positive developments, outcomes in terms of safety, resettlement, respect and purposeful activity largely remain unchanged or declining (HMI Prisons 2018), levels of violence are still increasing, and the conditions in which children are held remains unacceptable by international human rights standards.

^{viii} SCYJ member the Howard League for Penal Reform regularly challenges the treatment of children in custody in court, including advocating for children who are routinely held in solitary confinement for over 22 hours a day, or who have had harmful restraint techniques inflicted on them. For more information see: <https://howardleague.org/news/felthamsolitaryconfinementhighcourtjudgment/> and <https://howardleague.org/news/howard-league-gets-green-light-to-challenge-use-of-adult-restraint-techniques-on-children-at-feltham-prison/>

^{ix} See: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-02-27/130254/>

^x See for example Gavin (2014), Goldson (2005), and Gooch (2016)

^{xi} Participation is important if such work is to be effective; children will have some of the best insights into why they carry knives and how this can be prevented. Working to improve relationships between children and the police may also help; children who don’t feel protected by the police may be likely to carry a knife for their own protection.

^{xiii} SCYJ has sought clarification on whether there will be any further specification or guidance published with the new legislation, but has yet to receive further information.

