



Standing Committee for Youth Justice

Ensuring custody is the last resort for children in England and Wales

May 2020

Table of Contents

About this paper and the SCYJ	2
1. Background.....	3
2. The rationale for the principle of last resort	5
<i>The harms of detention</i>	5
<i>Characteristics of children in custody</i>	8
<i>The duty to promote children's welfare and prevent harm</i>	8
<i>Principles for responding to childhood offending behaviour</i>	10
3. Evidence that the principle of last resort is not being adhered to.....	11
4. New legislative criteria to ensure sentencing to custody is a last resort.....	12
<i>What the principle of last resort might look like in legislation</i>	13
5. Children remanded to custody	15
6. Ensuring the criteria for custody are adhered to in practice	17



About this paper

The principle that custody should only ever be used as a last resort for children is enshrined in domestic law and international human rights conventions. This paper sets out evidence that this principle is not currently applied as such, and recommends potential legislative criteria that could ensure sentencing or remanding children to custody is used as a last resort in future practice.

Children in custody are extremely vulnerable, and their experience of detention exacerbates and compounds this vulnerability. Custody is unsafe, and public bodies have a duty to protect children from such harm. Custody is irrefutably incompatible with the clear evidence on desistance from offending, and there are viable options for meeting children's needs and managing their behaviour in community settings.

The suggested legislative criteria in this paper would ensure that custody is only available for the most serious crimes, where the child poses a serious and continuing risk to the public, and where there is genuinely no way of managing that risk in the community.

About the Standing Committee for Youth Justice

The Standing Committee for Youth Justice (SCYJ) is an alliance of over 60 not-for-profit organisations working to improve the youth justice system in England and Wales. SCYJ pools its members' expertise to advocate for child-focused responses that tackle underlying causes of offending, reduce criminalisation and imprisonment, and promote positive long-term outcomes. Such a system would serve the best interests of children and the wider community. Our [members](#) range from large national charities to grassroots service providers.



1. Background

- England and Wales has one of the highest rates of child imprisonment compared to similar jurisdictions.ⁱ
- There was a substantial increase in the use of custody during the 1990s and 2000s, and the number of children in custody reached a peak of 3,200 in October 2002.ⁱⁱ
- There has since been a welcome and significant decrease in the numbers, falling to an average of around 800 in 2019.
- The number of children in custody in England and Wales decreased by 73% from 2008 – 2019,ⁱⁱⁱ and the number of children sentenced to custody decreased by 78% between 2008 and 2019.^{iv}
- However, since the peak in 2002 there have been several periods where the number of children in custody has increased; for example, there was a concerning increase (3%) in 2017/18. Over the last four or so years, the rate of decrease in child imprisonment has slowed.^v
- As the number of children in custody has declined, the rate of decrease has been slower for Black, Asian and Minority Ethnic (BAME) children than for white children. Disproportionality has therefore worsened, such that 2019 saw more BAME children in custody than white children for the first time.
- Children accused of a crime can be remanded to custody before their trial if bail is refused. Legislation in 2012 aimed to set a higher threshold for custodial remand for children, but the number remanded to custody has increased since 2016, such that almost a third of children in custody are now unsentenced.^{vi}
- Since 2008 the proportion of children appearing in court who are sentenced to custody has remained roughly the same, at around 6%.
- At ten years old, England and Wales have the lowest age of criminal responsibility in Europe, along with just one other country (Switzerland, where it is important to note that children under 15 cannot be sent to custody for committing a crime). Children as young as ten in England and Wales can be placed in custody for serious offences, and those as young as 12 for persistent offences.^{vii}
- It is broadly accepted that the drop in custodial numbers is largely attributable to changes in culture and practice around children in trouble with the law (policing and Youth Offending Team (YOT) practices, diversion and prevention) and decreasing numbers of children appearing in court, rather than to changes in the legal criteria for the use of custody.^{viii}
- Although the legal framework governing the circumstances in which a child can be sent to custody has not changed significantly, legislative changes during the 1990s and 2000s such as the removal of Doli Incapax, introduction of Detention and Training Orders, and creation of Secure Training Centres, in effect expanded possibilities for child custodial sentencing.^{ix} There have been no substantive legislative changes since that would narrow this criteria, meaning the significant progress made in reducing the number of children in custody could be reversed with a shift in practice around children in trouble with the law.



The SCYJ, alongside international human rights bodies, maintain that it is not the case that children are only ever sent to custody as a last resort. Longstanding concerns remain about the number of children sentenced or remanded to custody, particularly given the inappropriate and harmful nature of penal institutions for children. Research shows a clear consensus that children's developmental needs cannot be met in a custodial environment, and there are significant risks of children suffering emotional, psychological and physical harm, as well as clear long-term impacts on education, employment, family life, mental health and wellbeing.

There are many ways the number of children in custody could and should be reduced. The flow of children into the formal criminal justice system could be reduced through investment in prevention and early help, children's and youth services, and by ensuring (in line with the YJB national standards) that point-of-arrest diversion is appropriately used. For children in the youth justice system, reductions in the number sentenced to custody could be achieved through improving specialist legal practice, ensuring high quality pre-sentence reports and bail applications, and coordinated work with Youth Offending Teams, local partners and sentencers to raise awareness of, and access to, a range of community-based alternatives.

Primary legislation is one of the most powerful tools with the potential to minimise the use of custody to a last resort in practice. Creation of a clear legislative framework restricting the use of custody for children in all circumstances is necessary to ensure the positive downward trajectory of the last decade continues, and to guard against future rises. Distinct and tightened legal restrictions on the use of custody would apply more equitably to all children and minimise the influence of a range of biases, that can see disproportionately negative outcomes for certain children, particularly BAME children and those in local authority care. This paper sets out proposals for new legislation to ensure that custody for children is only ever used as a genuine last resort.^x



2. The rationale for the principle of last resort

This section provides the rationale behind why sentencing or remanding children to custody must be a last resort. Domestic law enshrines the principle that a court must only impose a custodial sentence as a last resort if a fine or community sentence cannot be justified.^{xi} If a custodial sentence is imposed, it must be for the shortest term possible.^{xii} For children, the law states that the principle aim of the criminal justice system must be to prevent reoffending.^{xiii} Sentencing Council guidelines for sentencing children, which sentencers are legally obliged to follow, also state that custodial sentences must be a last resort for all children.^{xiv}

Article 37 of the UN Convention on the Rights of the Child (UNCRC) states that imprisoning children should only ever be used as a “measure of last resort and for the shortest appropriate period of time”. The UK is consistently found to be in violation of this requirement by the UN Committee on the Rights of the Child^{xv} and other international human rights bodies. In 2019 the UN Committee on the Rights of the Child made clear that States party to the UNCRC “should immediately embark on a process to reduce reliance on detention to a minimum”.^{xvi}

It is evident that children in custody are already extremely vulnerable and their custodial experiences exacerbate and compound this vulnerability. Custody for children is unsafe, and local authorities and courts have a duty to protect children from such harm. The detention of children is incompatible with the growing body of evidence as to what brings about desistance from offending. There are viable options for meeting children’s needs and managing their behaviour in community settings that are less damaging to the child and in line with evidence on promoting desistance.

The harms of detention

Using custody as a last resort is a requirement of the UNCRC – and is crucial for the UK to adhere to – because of the abundant evidence that imprisonment is extremely harmful to children and disrupts their healthy long-term development.

- In the 2017 HM Inspectorate of Prisons (HMIP) Annual Report, HMIP could not classify any Secure Training Centre (STC) or Young Offender Institution (YOI) as safe enough to hold children.^{xvii} While there have since been some improvements noted in inspection reports, the model remains fundamentally flawed and a number of conditions, outlined below, are deteriorating. While the assessment by HMIP did not apply to Secure Children’s Homes (SCHs), which are generally agreed to provide a safer environment for children than STCs and YOIs, only a small proportion of children are accommodated in SCHs (10% in 2018-19^{xviii}). On a related note, SCYJ is concerned about the underuse of already purchased SCH places in lieu of placing children in more dangerous STCs and YOIs.
- The use of force (including restraint) against children in custody increased by 20% between 2017-18,^{xix} and again by 16% between 2018-19, to 7,200 incidents. There were an average of 59.6 incidents per 100 children per month in the year ending March



2019. These led to 230 medical warning signs and 60 injuries requiring treatment, including 9 serious injuries requiring hospital treatment.^{xx} Prisons are the only establishments where staff are trained and authorised to deliberately inflict pain on children as a form of restraint. A large number of human rights bodies and other organisations, including the UN Committee Against Torture^{xxi}, the UN Committee on the Rights of the Child, and the Royal College of Paediatrics and Child Health^{xxii} urge the withdrawal of these pain-inducing techniques.^{xxiii} In February 2019 the Independent Inquiry into Child Sexual Abuse (IICSA) found them to be a form of child abuse and recommended their legal prohibition.^{xxiv}

- The 2019 report by IICSA estimated that there were 1,070 alleged incidents of child sexual abuse in custodial establishments between January 2009 and December 2017, including 205 in 2017. The majority of allegations were against members of staff.^{xxv} The Inquiry Chair stated: “The harrowing accounts of non-recent child sexual abuse within custodial institutions were some of the worst cases this Inquiry has heard. But I am also deeply disturbed by the continuing problem of child sexual abuse in these institutions over the last decade. It is clear these children, who are some of the most vulnerable in society, are still at risk of sexual abuse.”^{xxvi}
- Levels of violence are very high and assault rates have continued to increase over the last five years. In 2018/19 there were 62.9 assaults per 100 children in STCs and SCHs, and 32.5 per 100 children in YOIs.^{xxvii} In 2019 the government was forced to suspend placing children at Feltham YOI, and send police in, because of conditions.^{xxviii} Placements were resumed despite the most recent inspection report finding an “appalling” decline in standards including a 45% increase in violent incidents in six months.^{xxix}
- Incidents of children held in solitary confinement have been increasing, and while in 2018-19 separation incidents in STCs and SCHs decreased for the first time since 2015, rates of segregation remain far higher than five years ago, at 88.5 incidents per 100 children.^{xxx} Children in YOIs have been found confined to their cell for up to 23 hours a day^{xxxi}, with a 2020 review by HMIP finding that “many children separated from their peers in young offender institutions (YOIs) are effectively held in harmful solitary confinement, with little human contact and in conditions which risk damaging their mental health.”^{xxxii} Solitary confinement for children has been condemned by public health bodies including the British Medical Association, Royal College of Psychiatrists and Royal College of Paediatrics and Child Health, who have warned of the risk to children of profound and long-lasting damage to health and wellbeing.^{xxxiii}
- Less than half of children in custody receive weekly visits from family, carers or friends.^{xxxiv}
- Over a third of children in STCs and YOIs report they have felt unsafe in custody, and nearly half report some form of victimisation by their peers. 42% of children report victimisation by members of staff.^{xxxv} Girls are more likely than boys to report feeling unsafe (80%) and experiencing victimisation (80%).^{xxxvi}
- HMIP inspection reports consistently find that children do not have access to the education and activities they are entitled to.
- At least 38 children have died in English and Welsh YOIs, STCs and SCHs since 1990, five in the last decade.^{xxxvii} Between 2000 and 2014 two children died following



incidents of restraint, and 69% of those who died were at some point subject to a care order.^{xxxviii}

- Ten days before release from custody, almost 14% of children do not know where they will be living. Suitable services are not available at an appropriate time before release 44% of the time for accommodation; 76% for Employment Training and Education; 52% for substance use; and 54% for mental health.^{xxxix} A 2019 Criminal Justice Joint Inspection report on resettlement concluded children leaving custody are being “set up to fail”.^{xl}
- Children released from custody and still below the school leaving age experience great difficulties in re-accessing mainstream education.^{xli}

Custody is particularly harmful for BAME children:^{xlii}

- Conscious and unconscious stereotyping of BAME children affects how they are perceived and responded to by the justice system, impacting decisions leading to their trajectory into custody, and subsequently impacting placement decisions, interventions, risk assessments, progression, and punishments within the secure estate.^{xliii}
- Across different age groups, BAME children are more likely to be placed in less welfare-based, more penal institutions than their white counterparts.^{xliv}
- BAME children face additional racist bullying, unfair treatment and structural discrimination throughout their time in custody. Black children in particular are often labelled and stereotyped as being gang-affiliated or more violent than white children in custody.^{xlv}
- Compared to their white peers, BAME children are significantly less likely to report being treated with respect by staff (63% compared with 74%), feeling cared for by staff (35% compared with 58%), and feeling that rewards and sanctions schemes are fair (28% compared with 40%). They are significantly less likely to report that staff offer them help, and to feel that complaints are sorted out fairly (28% compared with 47%) or promptly (22% compared with 46%).^{xlvi}
- BAME children are significantly more likely than white children to report being verbally abused by staff (38% compared with 28%) or threatened or intimidated by staff (25% compared with 16%).^{xlvii}
- The use of force is more common on Black children than any other ethnicity in custody, at 61.1 incidents per 100 children^{xlviii}, and BAME children are particularly affected by the use of separation.^{xlix}

This represents an unacceptable environment within which to place children. To make matters worse, there is no evidence that it contributes towards rehabilitation or promoting positive long-term outcomes. Although the use of binary reoffending rates as a key performance indicator should be treated with much caution, it is important to note the consistently high reoffending rates associated with custodial sentences: just under 70% of children are reconvicted within a year of release.^l Simple measures of recidivism alone are likely to understate the full extent of the negative impact of custody, as they do not capture the complexities of continued longer-term contact with the criminal justice system, frequency or seriousness of offending, or the child’s longer-term development and outcomes.



Characteristics of children in custody

While it is clear that custody is a damaging environment for children, it is also apparent that the population is extremely vulnerable.

- Boys received the overwhelming majority (94%) of the 1,287 custodial sentences given to children in 2018/19. Overall, 97% of the child custody population are boys.^{li} Girls find themselves in a diminished minority, exacerbating the marginalisation of their needs.^{lii}
- In the year ending March 2019 almost one in three children in custody were on remand (children who have been refused bail and are held, or 'remanded', in custody awaiting their trial and sentencing). This has increased from one in five a decade ago.^{liii}
- In court, 13% of cases involving Black child defendants result in a custodial sentence, while for white children the figure is 10%.^{liv} Around half of children in custody are BAME, and in 2019 BAME children outnumbered white children for the first time.^{lv}
- Around half (52%) of children in custody have been in care.^{lvi}
- The majority of children entering custody are not engaging in education. It is estimated that around a quarter have been permanently excluded from school, while around 90% have a history of persistent absence and exclusions.^{lvii}
- Around a third of children in custody have a learning disability or Special Educational Needs.^{lviii}
- Trauma is common amongst children in custody, including experiencing and/or witnessing physical, emotional and sexual abuse, domestic abuse, serious injury, neglect, abandonment, and bereavement.^{lix} Girls in custody are more likely to have experienced abuse, with around 60% of girls admitted to custody assessed as having a history of or being at risk of sexual exploitation. Girls are also twice as likely to be assessed as having a history of or being at risk of suicide or self-harm than boys (63% compared to 30%).^{lx}
- About a third of children in custody report a known mental health disorder and about a third show concerns relating to suicide or self-harm.^{lxi} In 2018/19 the rate of self-harm was 13.7 incidents per 100 children.^{lxii} By contrast, the rate of self-harm in the general population of 10-19-year-olds is 12.3 per 10,000 boys, and 37 per 10,000 girls.^{lxiii}
- Around 45% of children entering custody have substance misuse problems.^{lxiv}
- About 60% of children in the wider youth justice system have speech, language and communication difficulties that adversely affect their ability to participate in certain elements of the custodial regime.^{lxv}

The vulnerabilities present in the custodial population compound the damage of imprisonment. The vast majority of children entering custody either were formerly receiving, or are eligible to receive, specialist child health, education and social care services. Yet placement into custody often removes children from services and professionals who have the expertise and training to tackle the root causes of their offending behaviour, instead placing them into environments largely focussed on containment and deemed not fit for the purpose of rehabilitating children or keeping them safe.



The duty to promote children’s welfare and prevent harm

Local authorities and courts alike have a duty to promote the welfare of children and prevent the harm to children that is caused by deprivation of liberty.

- Local authorities in England and Wales have a statutory duty to safeguard and promote the welfare of children, to make arrangements to improve the well-being of children, and to identify and support children with special educational needs or a disability (see for example Section 17, Children Act 1989; Part 2, Children Act 2004; and Part 3, Children and Families Act 2014).
- Local authorities have a statutory duty to prevent children suffering harm, neglect and abuse, set out in Schedule 2 of the Children Act 1989. In particular, for looked after children, paragraph 7 of Schedule 2 sets out the responsibility Local authorities have to take reasonable steps to prevent children entering the criminal justice system and care system, and to avoid the need for children to be placed in secure accommodation.
- Section 44 of the Children and Young Persons Act 1933 sets out the duty of a court to have regard to the welfare of the child, and to take steps to remove any child from undesirable surroundings.
- The UNCRC and Human Rights Act set out obligations for the state to intervene to protect children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 39 of the UNCRC sets out the state’s duty to promote the recovery and reintegration of children who have been victims of such neglect, exploitation, or abuse.

Local authorities have a responsibility to have services in place that could prevent and respond to a child’s offending behaviour through the provision of support in the community. Children should never be sent to custody as a result of failures by statutory bodies to fulfill their legal duties to protect children and provide such services.

When children are sent to custody and it is not a last resort, this contravenes the responsibility to protect children in their community. Given the evidence about the way that children experience custody, its use is a clear violation of the duty to prevent harm.



Principles for responding to childhood offending behaviour

The following principles should underpin any sentence imposed on a child, read in conjunction with Sentencing Council definitive guidelines for sentencing children.^{lxvi} Responding to childhood offending behaviour in ways that encompass the following principles would best reflect the evidence on what works to support children away from crime,^{lxvii} support the government's aim to reduce offending, and fulfil the government's duty to protect children from harm. It is evident that custodial sentences for children do not model these principles.

- Childhood offending often reflects unmet needs. Successful approaches must see and relate to the whole child, rather than just react to their behaviour.
- Contact with the criminal justice system is criminogenic.^{lxviii} It creates and reinforces criminal identities in children and should therefore be minimised. Opportunities for diversion should be continuously explored.
- The focus must be on meeting children's needs, with child welfare services being made available to those children who have experienced, or are at risk of, abuse, serious and persistent neglect and other trauma.^{lxix}
- The intention must be rehabilitation, integration and desistance, not deterrence or retribution.
- The learning process for some children will inevitably require sustained efforts and intensive support. Patience and persistence is key.

Any criminal justice response for children should:

- Take account of trauma and be delivered in trauma-informed environments.
- Be informed by contextual safeguarding.
- Understand and respond to the nature of adolescent development.
- Be culturally competent to support BAME children and meet their needs.
- Provide gender-informed and distinct support for girls.
- Focus on shifting a child's identity away from one associated with offending.
- Nurture and model pro-social relationships and conduct.
- Support consistent and strong relationships.
- Be flexible to respond to individual needs, rather than overly prescribed.
- Involve children in decisions about their future, so that the imposition of a sentence may feel more legitimate.
- Focus on positive and preventative elements, rather than overly punitive and restrictive measures. Restrictions must not be too complex to comply with.
- Provide support with a view to enabling and promoting access to opportunities.
- Be underpinned by children's rights to education, training, good quality health and social care.



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

There is clear evidence that custody is not currently used as a last resort, and as such, the number of children in custody could be reduced significantly.

- In spite of the substantial decline in the use of custody, which has filtered out some less serious offences, at least 30% of the sentenced population and a similar proportion of the remand population of children in custody continue to be there for non-violent alleged or actual offences.^{lxx}
- Variation in custodial sentencing rates between different areas suggests a postcode lottery in how likely it is a child is sent to custody.^{lxxi} Spreading best practice and ensuring fair treatment of children across the country would reduce custody numbers.
- Two thirds of children remanded to custody do not go on to receive a custodial sentence. Around a third of children on remand are acquitted (32%) while a third receive a non-custodial sentence. The number of children on remand increased by 12% last year, such that unsentenced children in custody now account for almost a third of the entire custodial population. The proportion of children in custody on remand is at an all time high, despite provisions in Legal Aid, Sentencing and Punishment of Offenders Act 2012, which were designed to reduce the use of remand for children.^{lxxii}
- The classification of an offence as “violent” is often used to justify the necessity of a custodial sentence, but the category of Violence Against the Person (VAP) encompasses a broad range of offences varying widely in their gravity, including common assault and weapon possession.^{lxxiii} Analysis of custodial sentencing data for girls found that less serious assaults (such as common assaults) were the most common, accounting for 42% of VAP offences, and one fifth of the offences overall.^{lxxiv}
- Over three quarters of children sentenced to custody in 2018/19 were sentenced to Detention and Training Orders (DTO). Two thirds of these custodial episodes last less than three months (the minimum DTO sentence is four months: two months in custody and two months supervision in the community). Overall, the majority of children leaving custody have been in there for three months or less, and almost three quarters have been in custody for six months or less, suggesting that the offences which led to the sentence were not particularly serious and the risk to the public was limited.^{lxxv}
- The overall proportion of First Time Entrants (FTEs) to the youth justice system receiving a custodial sentence has increased over the last decade, and between 2009 and 2019, the proportion of children sentenced to custody who were FTEs more than doubled (from 6% to 14%). The proportion of those sentenced to custody with only 1-2 previous cautions or convictions has also risen (from around 15% to 20%). These data suggest that in such cases there has been little opportunity to provide the child with the requisite support in the community.^{lxxvi}
- There are as many children in custody for a breach (breaching conditions of a statutory order or license or supervision conditions) than for burglary, each making up about 8% of the custodial population.^{lxxvii} Children can be sentenced to custody for a breach of a community or civil order where the original offence could not have led to a custodial sentence.^{lxxviii}

Even where a serious crime is committed, community-based measures should always be fully explored, taking into account that the defendant is a child.



4. New legislative criteria to ensure sentencing to custody is a last resort

While the law states that custody should only be imposed as a last resort and if alternatives cannot be justified, it is not sufficiently prescriptive to make this a reality.

SCYJ considers that, for the detention of children to be used only as a last resort, legislation must preclude the imposition of a custodial sentence unless a strict series of criteria have been met.

Deprivation of liberty should only be available for the most serious crimes. A relatively objective measure of offences regarded by society as the most serious are those that can attract a maximum sentence of life imprisonment. Even in such cases, however, the particular instance of the offence may not warrant a custodial sentence.

Custody will only be a last resort where the child is assessed as posing a serious and continuing risk to the public, and where there is genuinely no way of managing that risk in the community.

The criteria for custody should accordingly also require courts to obtain an assessment of the child, considering their particular circumstances, and a report on arrangements that could be put in place in the community, to determine whether any sentence other than a custodial one would be sufficient to protect the public.

The criteria should be understood as statutory limitations on the use of child imprisonment rather than allowing the use of custody where they pertain. Even where a case meets the statutory criteria, a presumption against the use of imprisonment should apply unless the court can demonstrate that no viable alternative is available. The criteria can also be understood to preclude the use of mandatory custodial sentencing for children.

If the criteria for custody are met and the court considers imposing a custodial sentence on a child, further principles enshrined in children's rights must be upheld. In particular, the UN Convention on the Rights of the Child states that custody must only be used 'for the shortest appropriate period of time' (Article 37). Due consideration must also be made to, amongst other things, the best interests of the child (Article 3), the need for regular review of the child's treatment (Article 25), access to education (Article 38), the right to leisure, play and culture (Article 31), protection from inhumane treatment and detention, being treated with respect and care (Article 37), and recovery from trauma and reintegration into society (Article 39).



What the principle of last resort might look like in legislation

1. A court shall not impose a custodial sentence in respect of an offence committed by a person under the age of 18 ('the child') unless:
 - a) The child is convicted of an offence punishable with life imprisonment,^{lxxxix} and ^[11]_{SEP}
 - b) The court is satisfied that the particular circumstances of the offence, or the combination of the offence and one other associated offence, is so serious that a custodial sentence could be justified;^{lxxx} and
 - c) The court is satisfied that there is a significant risk of serious harm in the event of the commission by the child of further offences punishable with life imprisonment; and
 - d) The court is satisfied that there is no alternative mechanism for dealing with the risk specified in 1(c) with a community-based sentence, and as such no sentence other than a custodial sentence is adequate to address that risk.

2. Before imposing a custodial sentence in respect of an offence committed by a person under the age of 18 ('the child'):
 - a) The court must have satisfied itself that the requirements set out in sections 1 (b)-(d) have been fully explored. If the sentencing court is not satisfied it should call for inquiries to be made.
 - b) The court must give cogent reason why a community-based sentence is not appropriate.
 - c) The court must obtain a report from the relevant children's services and Youth Offending Team indicating how they would manage the risk posed by the child in the community, including what services have been made available to the child to meet the child's needs, including physical, emotional and educational needs.
 - d) In considering whether it is satisfied of the issues in section 1(b-d), the court must obtain an assessment of the child, including assessment of behavioural, social, and emotional development needs, educational, physical and mental health needs. The court must take into account all information as is available about the circumstances and background of the child, including any mitigating factors, and analysis of how these factors have contributed to their behavior, and of the child's reasons for committing the offence and response to it. The court must also take into account the considerable developmental capacity for a child to change in line with maturity, greater than is generally present in an adult.

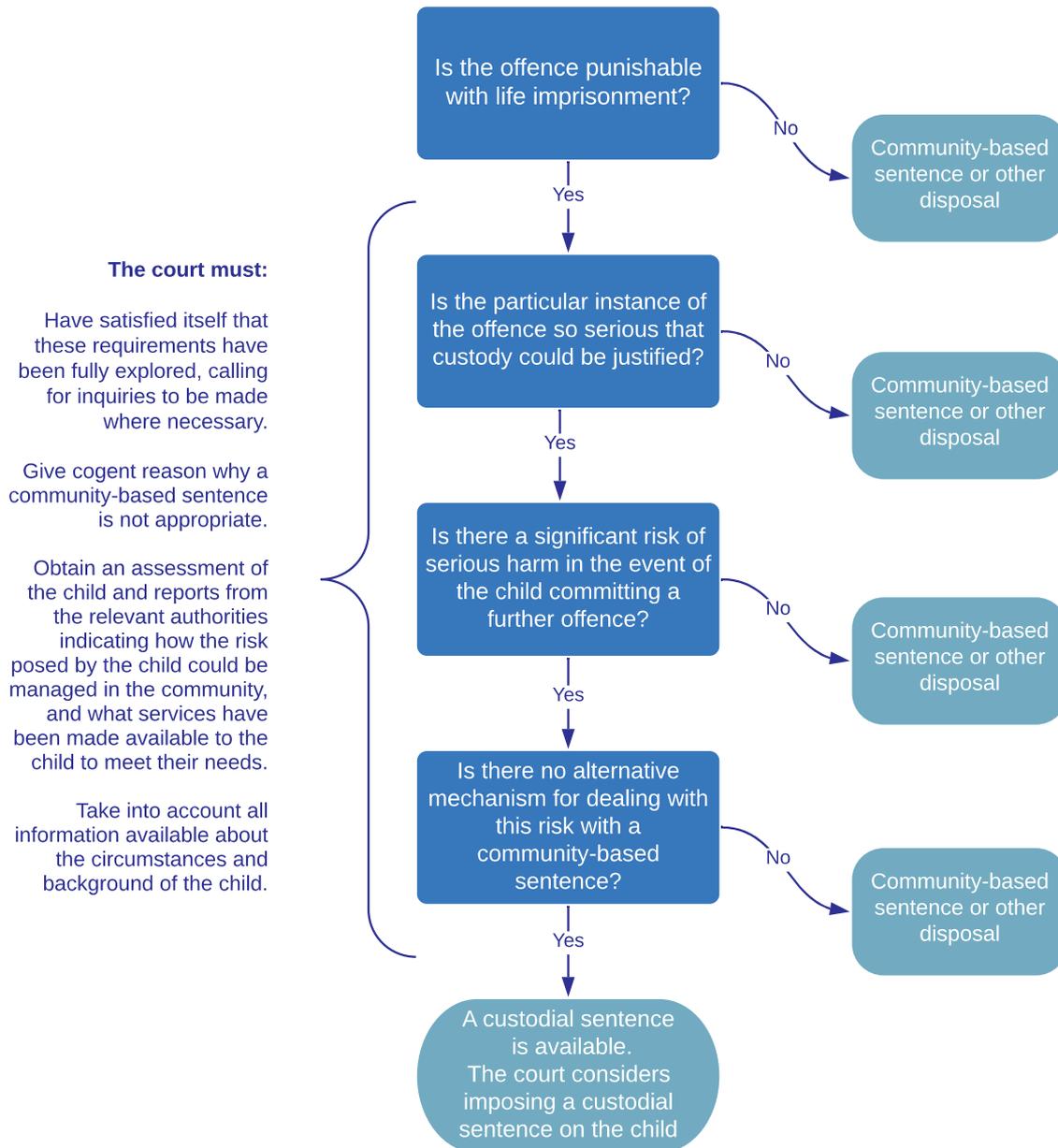
3. A court shall not impose a custodial sentence on a child unless they are legally represented at that hearing.



4. Once the court is satisfied that requirements in sections 1-3 are fulfilled and has decided it will impose a custodial sentence, the court must, in determining the appropriate term, pay due consideration to the United Nations Convention on the Rights of the Child and to Section 11 of the Children Act 2004, including:
 - a) The best interests of the child and the need to safeguard and promote the welfare of child must be a primary consideration;
 - b) The custodial sentence must be for the shortest possible appropriate time, including a clear mechanism for regular review of the sentence to determine whether custody remains the only available option for the child;
 - c) The court must pay careful consideration to the long-term impact of the custodial sentence on the child, including but not limited to education, provisions for looked after children, release provisions, notification requirements, and rehabilitation periods.

5. For the purposes of section 2(d), mitigating factors may include, but are not limited to:
 - a) The age and maturity of the child;
 - b) The effect of any abuse or other trauma on the child's actions and development;
 - c) The child's culpability in relation to the offence or offences; ^[1]_[SEP]
 - d) The particular role played by the child in the offence or offences; ^[1]_[SEP]
 - e) The contribution of the child's background to his or her offending behaviour; ^[1]_[SEP]
 - f) The child's best interests and their long term developmental needs;
 - g) The child's understanding of the harms caused by the offence or offences;
 - h) The circumstances of any guilty plea entered;
 - i) The capacity of the child to change.





5. Children remanded to custody

When courts decide whether a child is granted bail or remanded in custody until their sentencing hearing takes place, courts will be less likely to remand a child where ultimately sending the child to custody would not be an available sentencing option. A likely and desirable consequence would be that the number of children remanded to custody would decrease if the criteria for sentencing a child to custody were revised as set out above. However, most children who are imprisoned on remand are acquitted or given a community sentence. Therefore, to fulfil the UN Convention's principle of the use of custody as a last resort and for the shortest possible time, it is also necessary to reform legislation around the remand of children to Youth Detention Accommodation.

We propose that criteria for custodial remand would closely follow those for sentencing a child to custody, such that a court shall not remand a child to custody unless:

- a) The child is accused of an offence punishable with life imprisonment; and ^[L]_[SEP]
- b) The court is satisfied that the particular circumstances of the offence, or the combination of the offence and one other associated offence, is so serious that a custodial sentence could be justified; and
- c) The court is satisfied that there is a significant risk of serious harm in the event of the commission by the child of further offences punishable with life imprisonment; and
- d) The court is satisfied that there is no alternative mechanism for dealing with the risk specified in 1(c) with a community-based sentence, and as such no sentence other than a custodial sentence is adequate to address that risk.

As above, the court must obtain an assessment by a qualified individual in relation to point (c). SCYJ also believes that all children must be legally represented before a decision to remand a child to Youth Detention Accommodation can be authorised, and that consideration should be given to setting a minimum age of custodial remand of 14.



6. Ensuring the criteria for custody are adhered to in practice

Under the new criteria for custody as a last resort, further development and expansion of high quality community provision for children in the youth justice system will be required to ensure that children's needs are met in the community and that public protection is maximised.

All local authorities and their partners must provide services for managing children in community settings. The availability of appropriate support should not be a postcode lottery. The reason given to the court for there being no option other than a custodial sentence for a child must not be that the local authority simply is not providing services it has a duty to provide.

This will require the rebalancing of investment in youth justice towards community-based provision. Savings achieved through the reduction in custody numbers should be reinvested into Youth Offending Teams and other community services, as well as into improving the environment for the small number of children who continue to be deprived of their liberty. These few children should be held in small, child-centred secure settings that are close to their community and support networks.^{lxxxi}



This paper was written by Millie Harris, SCYJ Senior Policy Officer, developed with an expert group of SCYJ members, with wider input from SCYJ membership. The contents of this document do not necessarily reflect the views of all member organisations.

Endnotes

- ⁱ See House of Commons Justice Committee (2013) "Youth Justice: Seventh Report 2012-2013" <https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/339.pdf>; and Howard League for Penal Reform (2013) "Submission to the UN Committee against Torture and other cruel, inhuman or degrading treatment or punishment: fifth periodic review of the United Kingdom of Great Britain and Northern Ireland"
- ⁱⁱ HMPPS (2020) "Youth custody report: March 2020" <https://www.gov.uk/government/statistics/youth-custody-data>
- ⁱⁱⁱ HMPPS (2020) "Youth custody report: March 2020" <https://www.gov.uk/government/statistics/youth-custody-data>
- ^{iv} Youth Justice Board/Ministry of Justice (2020) "Youth Justice Statistics: 2018 to 2019" <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^v HMPPS (2020) "Youth custody report: March 2020" <https://www.gov.uk/government/statistics/youth-custody-data>
- ^{vi} HMPPS (2020) "Youth custody report: March 2020" <https://www.gov.uk/government/statistics/youth-custody-data>
- ^{vii} Sentencing Council (2017) "Sentencing Children and Young People" <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>
- ^{viii} See for example: Bateman, T. (2012) "Who pulled the plug? Towards an explanation of the fall in child imprisonment in England and Wales", Youth Justice, 12(1), pp. 36-52; Allen, R. (2011) "Last resort? exploring the reduction in child imprisonment 2008-11" <http://www.prisonreformtrust.org.uk/Portals/0/Documents/lastresort.pdf>; and Crest Advisory (2019) "Examining the youth justice system: What drove the falls in first time entrants and custody, and what should we do as a result?" <https://www.crestadvisory.com/post/examining-the-yjs-what-drove-the-falls-in-first-time-entrants-and-custody>.
- ^{ix} This is not so much the case for custodial remand numbers, where the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 introduced more stringent criteria for child remand. For more analysis of child remand and the impact of this legislation see: Transform Justice (2018) "Path of little resistance: is pre-trial detention of children really a last resort?" http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf
- ^x For recommendations around improving practice to ensure custody is used as a last resort for children, see the Howard League for Penal Reform guide for lawyers, youth justice professionals, social workers and other supporting adults, aimed at enabling better understanding of roles and responsibilities during sentencing: Howard League (2018) "A guide for adults supporting children facing sentence in the criminal courts in England and Wales" https://howardleague.org/wp-content/uploads/2018/03/D_ADULT_Guide.pdf
- ^{xi} Criminal Justice Act 2003 s.152(2) <http://www.legislation.gov.uk/ukpga/2003/44/contents>
- ^{xii} Criminal Justice Act 2003 s.153 <http://www.legislation.gov.uk/ukpga/2003/44/contents>



- ^{xiii} Crime and Disorder Act 1998 s.37 <http://www.legislation.gov.uk/ukpga/1998/37/contents>
- ^{xiv} Sentencing Council (2017) “Sentencing Children and Young People” Section 1.3 <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>
- ^{xv} The UN Committee on the Rights of the Child (CRC) is the body of independent experts that monitors implementation of the [UN Convention on the Rights of the Child](#) (UNCRC), and the Optional Protocols to the Convention, by the States that have ratified the Convention. The CRC examines the UK’s implementation progress every five years and addresses its concerns and recommendations in the form of “concluding observations”. In its 2016 concluding observations the CRC raised concerns that: “The number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care, and children with psycho-social disabilities, and detention is not always applied as a measure of last resort.” https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en
- ^{xvi} UN Committee on the Rights of the Child (2019) “General comment No. 24 on children’s rights in the child justice system” https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en
- ^{xvii} HMIP (2017) “HM Chief Inspector of Prisons for England and Wales Annual Report 2016–17” https://www.justiceinspectores.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2017/07/HMIP-AR_2016-17_CONTENT_201017_WEB.pdf
- ^{xviii} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^{xix} Youth Justice Board/Ministry of Justice (2019) “Youth Justice Statistics: 2017 to 2018” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf
- ^{xx} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^{xxi} The UN Committee Against Torture (CAT) is the body of independent experts that monitors implementation of the [UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (UNCAT) by State that have ratified the Convention.
- ^{xxii} RCPCH (2019) “Letter to Charlie Taylor: Pain inducing techniques” https://www.rcpch.ac.uk/sites/default/files/2019-07/rcpch_letter_to_charlie_taylor_review.pdf
- ^{xxiii} Read more on SCYJ’s position on pain-inducing restraint here: SCYJ (2019) “Call to end the use of pain inducing techniques in the children’s secure estate” <http://scyj.org.uk/wp-content/uploads/2019/06/SCYJ-Review-of-pain-inducing-restraint-FINAL.pdf>
- ^{xxiv} IICSA (2019) “Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report” <https://www.iicsa.org.uk/publications/investigation/custodial>
- ^{xxv} IICSA (2019) “Sexual Abuse of Children in Custodial Institutions: 2009-2017 Investigation Report” <https://www.iicsa.org.uk/publications/investigation/custodial>
- ^{xxvi} IICSA (2019) “Inquiry publishes report on Children in Custodial Institutions” <https://www.iicsa.org.uk/news/inquiry-publishes-report-children-custodial-institutions>
- ^{xxvii} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>



- xxviii HM Chief Inspector of Prisons (2019) “Urgent Notification: HMYOI Feltham A” <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/07/22july-SofS-Urgent-Notification-FelthamA.pdf>
- xxix HMIP (2019) “Report on an announced inspection of HMYOI Feltham A Children’s Unit” <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/10/Feltham-A-Web-2019.pdf>
- xxx Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- xxxi Joint Committee on Human Rights (2019) “Youth detention: solitary confinement and restraint Nineteenth Report of Session 2017–19” <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/994.pdf>
- xxxii HMIP (2020) “Separation of children in young offender institutions: A thematic review by HM Inspectorate of Prisons” <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/01/Separation-of-children-thematic-Web-2019.pdf>
- xxxiii RCPCH, RCPSYCH, BMA (2018) “Joint position statement on solitary confinement of children and young people” <https://www.bma.org.uk/media/1859/bma-solitary-confinement-in-youth-detention-joint-statement-2018.pdf>
- xxxiv HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- xxxv HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- xxxvi HMIP/Youth Justice Board (2019) “Children in Custody 2017–18: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/6.5164_HMI_Children-in-Custody-2017-18_A4_v10_web.pdf
- xxxvii Youth Justice Board (2014) “Deaths of Children in Custody: Action Taken, Lessons Learnt” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/362715/deaths-children-in-custody.pdf; Goldson, B., Coles, D. (2005) “In the Care of the State? Child Deaths in Penal Custody in England and Wales”; Prison Reform Trust and INQUEST (2012) “Fatally flawed: Has the state learned lessons from the deaths of children and young people in prison?” <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Fatally%20Flawed.pdf>; Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; Prisons & Probation Ombudsman Annual Reports <https://www.ppo.gov.uk/document/annual-reports/>
- xxxviii Youth Justice Board (2014) “Deaths of Children in Custody: Action Taken, Lessons Learnt” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/362715/deaths-children-in-custody.pdf
- xxxix HMI Prisons/HMI Probation (2019) “Joint Thematic Inspection: Youth resettlement work - Interim report into work in custody” <https://www.justiceinspectrates.gov.uk/cjji/wp-content/uploads/sites/2/2019/08/Youth-resettlement-work-Web-2019.pdf>
- xl CJJI (2019) “Youth resettlement – final report into work in the community: A thematic inspection” <https://www.justiceinspectrates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/10/Youth-resettlement-%E2%80%93-final-report-into-work-in-the-community-4.pdf>



- ^{xii} See for example: CJI (2019) “Youth resettlement – final report into work in the community: A thematic inspection” <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/10/Youth-resettlement-%E2%80%93-final-report-into-work-in-the-community-4.pdf>; Houses of Parliament POST (2016) “Education of Young People Leaving Custody” https://dera.ioe.ac.uk/28005/2/POST-PB-0023_Redacted.pdf
- ^{xiii} See more information here: Clinks (2020) “Clinks response: The Justice Committee’s inquiry into children and young people in custody” <https://www.clinks.org/sites/default/files/2020-01/Clinks%20Response%20-%20youth%20justice%20inquiry.pdf>; and SCYJ (2019) “Standing Committee for Youth Justice (SCYJ) response: Justice Committee inquiry on children and young people in custody” <http://scyj.org.uk/wp-content/uploads/2019/10/SCYJ-children-custody-JSC-response-FINAL.pdf>
- ^{xiii} Clinks (2020) “Clinks response: The Justice Committee’s inquiry into children and young people in custody” <https://www.clinks.org/sites/default/files/2020-01/Clinks%20Response%20-%20youth%20justice%20inquiry.pdf>; Lammy, D. (2017) “The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
- ^{xiv} HMPPS (2020) “Youth custody report: March 2020” <https://www.gov.uk/government/statistics/youth-custody-data>; SCYJ (2019) “Standing Committee for Youth Justice (SCYJ) response: Justice Committee inquiry on children and young people in custody” <http://scyj.org.uk/wp-content/uploads/2019/10/SCYJ-children-custody-JSC-response-FINAL.pdf>; Goodfellow, P. (2019) “Outnumbered, locked up and overlooked? The use of penal custody for girls in England & Wales” <https://www.thegriffinsociety.org/outnumbered-locked-and-overlooked-use-penal-custody-girls-england-wales>
- ^{xiv} See for example: Youth Justice Board (2010) “Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/354686/yjb-exploring-needs-young-black-minority-ethnic-offenders.pdf;
- Beyond Youth Custody (2015) “Ethnicity, faith and culture in resettlement: A practitioner’s guide” <http://www.beyondyouthcustody.net/wp-content/uploads/Ethnicity-faith-and-culture-in-resettlement-a-practitioners-guide-1.pdf>; Clinks (2020) “Clinks response: The Justice Committee’s inquiry into children and young people in custody” <https://www.clinks.org/sites/default/files/2020-01/Clinks%20Response%20-%20youth%20justice%20inquiry.pdf>; Lammy, D. (2017) “The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf; HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- ^{xvi} HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- ^{xvii} HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- ^{xviii} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^{xix} Joint Committee on Human Rights (2019) “Youth detention: solitary confinement and restraint Nineteenth Report of Session 2017–19” <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/994.pdf>



-
- ⁱ Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ⁱⁱ Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ⁱⁱⁱ Goodfellow, P. (2019) “Outnumbered, locked up and overlooked? The use of penal custody for girls in England & Wales” <https://www.thegriffinsociety.org/outnumbered-locked-up-and-overlooked-use-penal-custody-girls-england-wales>
- ⁱⁱⁱⁱ Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^{liv} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
- ^{lv} HMPPS (2020) “Youth custody report: March 2020” <https://www.gov.uk/government/statistics/youth-custody-data>
- ^{lvi} HMIP (2020) “Children in Custody 2018–19: An analysis of 12–18-year-olds’ perceptions of their experiences in secure training centres and young offender institutions” <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>
- ^{lvii} Ministry of Justice/Department for Education (2016) “Understanding the educational background of young offenders Joint experimental statistical report from the Ministry of Justice and Department for Education” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577542/understanding-educational-background-of-young-offenders-full-report.pdf
- ^{lviii} See for example: Kroll, L., Rothwell, J., Bradley, D., Shah, P., Bailey, S., and Harrington, R. C. (2002) “Mental health needs of boys in secure care for serious or persistent offending: A prospective, longitudinal Study”. The Lancet, 359, 1975–1979; Rayner J., Kelly T. P. and Graham F. (2005) “Mental health, personality and cognitive problems in persistent adolescent offenders require long-term solutions: a pilot study” Journal of Forensic Psychiatry and Psychology. 16: 248–62; Gyateng, T. et al (2013) “Needs and Interventions” London: Youth Justice Board; Hughes, N. et al. (2012) “Nobody Made the Connection: The Prevalence of Neurodisability in Young People Who Offend” London: Office of the Children’s Commissioner; Youth Justice Board/Ministry of Justice (2017) “Key Characteristics of Admissions to Youth Custody: April 2014 to March 2016” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf
- ^{lix} See for example: Allen, R. (2011) “Last resort? exploring the reduction in child imprisonment 2008-11” <http://www.prisonreformtrust.org.uk/Portals/0/Documents/lastresort.pdf>; Jacobson, J. et al (2010) “Punishing Disadvantage: A Profile of Children in Custody” <http://www.prisonreformtrust.org.uk/portals/0/documents/punishingdisadvantage.pdf>; and Beyond Youth Custody (2016) “Trauma and young offenders: A review of the research and practice literature” <http://www.beyondyouthcustody.net/wp-content/uploads/Trauma-and-young-offenders-a-review-of-the-research-and-practice-literature.pdf>
- ^{lx} Youth Justice Board/Ministry of Justice (2017) “Key Characteristics of Admissions to Youth Custody: April 2014 to March 2016” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf
- ^{lxi} Youth Justice Board/Ministry of Justice (2017) “Key Characteristics of Admissions to Youth Custody: April 2014 to March 2016” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf; Jacobson, J. et al (2010) “Punishing Disadvantage:



A Profile of Children in Custody”

<http://www.prisonreformtrust.org.uk/portals/0/documents/punishingdisadvantage.pdf>

lxii Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019”

<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>

lxiii Morgan, C., Webb, R., Carr, M. et al (2017) “Incidence, clinical management, and mortality risk following self harm among children and adolescents: cohort study in primary care” <https://www.bmj.com/content/359/bmj.j4351>

lxiv Youth Justice Board/Ministry of Justice (2017) “Key Characteristics of Admissions to Youth Custody: April 2014 to March 2016”

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf

lxv Royal College of Speech & Language Therapists (2009) “Locked up and Locked out: Communication is the key” http://www.rcslt.org/about/campaigns/Criminal_justice_campaign_briefing

lxvi Sentencing Council (2017) “Sentencing Children and Young People”

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

lxvii See for example the government’s own guidance on desistance: HMPPS (2019) “Desistance: An evidence based summary explaining what desistance is, and how to help someone desist from crime.”

<https://www.gov.uk/guidance/desistance>

lxviii McAra, L., McVie, S., Edinburgh Law School (1998-current) “Edinburgh Study of Youth Transitions and Crime” <https://www.edinstudy.law.ed.ac.uk/publications/>

lxix See for example McAra, L., McVie, S., Edinburgh Law School (1998-current) “Edinburgh Study of Youth Transitions and Crime” <https://www.edinstudy.law.ed.ac.uk/publications/>

lxx Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019”

<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; and Freedom of Information Request data obtained by SCYJ on the number of children in custody in 2018 by Offence

lxxi Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019”

<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; Analysis by SCYJ of local level youth justice data, relative custodial sentencing rates, offence data and deprivation indices.

lxxii HMPPS (2020) “Youth custody report: March 2020” <https://www.gov.uk/government/statistics/youth-custody-data>;

Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019”

<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; and Transform Justice (2018)

“Path of little resistance: is pre-trial detention of children really a last resort?”

http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf

lxxiii Jacobson, J. et al (2010) “Punishing Disadvantage: A Profile of Children in Custody”

<http://www.prisonreformtrust.org.uk/portals/0/documents/punishingdisadvantage.pdf>

lxxiv Goodfellow, P. (2019) “Outnumbered, locked up and overlooked? The use of penal custody for girls in

England & Wales” <https://www.thegriffinsociety.org/outnumbered-locked-and-overlooked-use-penal-custody-girls-england-wales>

lxxv Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019”

<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>; and Youth Justice Board/Ministry of Justice (2018) “Length of time spent in Youth Custody: 2016 to 2017”

<https://www.gov.uk/government/statistics/length-of-time-spent-in-youth-custody-2016-to-2017>



^{lxxvi} Youth Justice Board/Ministry of Justice (2020) “Youth Justice Statistics: 2018 to 2019” <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>

^{lxxvii} HMPPS (2020) “Youth custody report: March 2020” <https://www.gov.uk/government/statistics/youth-custody-data>

^{lxxviii} SCYJ is extremely concerned that new Knife Crime Prevention Orders (KCPO) will lead to a large increase in the number of children sent to custody for a civil order breach. Once piloted, KCPOs will be imposed on children as young as 12 on the basis of probability, and allow severe, lengthy and potentially unlimited restrictions to be placed on a child. The punishment for breach of up to 2 years in custody is inappropriate, particularly given the standard of proof required. Imposing onerous restrictions on children as part of civil orders is likely to be particularly difficult for children to understand and comply with, and risks setting them up to fail. SCYJ members report that such prohibitions are viewed by children as punitive and working against them, and often lead to resentment and repeated breaches. See more here: SCYJ (2019) “SCYJ Submission to Consultation on Knife Crime Prevention Orders Guidance” <http://scyj.org.uk/wp-content/uploads/2019/09/FINAL-SCYJ-Submission-to-Consultation-on-Knife-Crime-Prevention-Orders-Guidance.pdf>; and SCYJ (2018) “Offensive Weapons Bill (2017-19) Standing Committee for Youth Justice - Written Evidence Submission” <http://scyj.org.uk/wp-content/uploads/2018/09/FINAL-SCYJ-Offensive-Weapons-Bill-evidence-submission.pdf>

^{lxxix} Offences that can attract a life sentence are a relatively objective measure of offences regarded by society as the most serious. A broad range of offences that sit within disparate pieces of legislation fall into this category, and are set out in Schedule 15 of the Criminal Justice Act 2003 <http://www.legislation.gov.uk/ukpga/2003/44/schedule/15>. Section 226 of the Criminal Justice Act 2003 sets out the criteria for detention for life for children. See more on child sentencing here: <http://yjlc.uk/youth-sentences/> and <http://yjlc.uk/grave-crimes/>

^{lxxx} This criteria ensures that a child is not sent to custody due to the seriousness of their offending being derived from the aggregation of offences, where the individual offences themselves would not be so serious as to justify a custodial sentence. The use of ‘one other associated offence’ in legislation was originally included in the Criminal Justice Act 1991, which introduced the current statutory framework around the ‘seriousness’ of offences, and was aimed at reducing the use of custody. An ‘associated offence’ is generally an offence that was commissioned at the same time and/or is being considered for sentencing at the same time (Section 161 Powers of Criminal Courts (Sentencing) Act 2000).

^{lxxxi} See more information here: End Child Imprisonment (2019) “Principles and minimum expectations for children deprived of their liberty” <https://article39.org.uk/wp-content/uploads/2019/04/ECI-Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf>

