



Standing Committee for Youth Justice

Childhood criminal records: Undermining positive developments across youth justice

The criminal records system in England and Wales allows widespread, lengthy disclosure of childhood records, anchoring young people to their past. In its current form it actively entrenches a child's criminal identity and specifically impedes progress at pivotal opportunities for a child or young person to move away from crime, namely when trying to advance in education, obtain housing, or employment. Compared to similar international jurisdictions, criminal records in England and Wales are by far the most punitive. Recently, there have been small, welcome moves towards a childhood criminal records system that ensures a better balance between public protection and allowing children to grow up and move on from their past. The government has at last responded to the 2019 Supreme Court ruling that elements of the current system are disproportionate and unlawful, announcing plans to stop the automatic disclosure of youth cautions, and the arbitrary rule that all of an individual person's convictions are disclosed on the basis that they have more than one conviction in total.

However, there remains a great and pressing need for a wider review of the entire criminal records system. The Youth Justice Board (YJB) has recently released its [Business Plan for 2020-2021](#), setting out their areas of strategic focus, with priorities including a child first approach, custody and resettlement, 'serious youth violence', and over represented children. They also state their intention to define the YJB position on the reformation of childhood criminal records and thereby 'improving life chances and positive outcomes for children by pushing for reform of the current criminal records regime.' This timely commitment to reform of criminal records is wholeheartedly welcomed by the SCYJ and is critical to achieve a system that is child-specific, fair and actively promotes rehabilitation and reintegration of children who have offended. Indeed, the criminal records regime in its current format acts as a fundamental barrier to the youth justice system achieving the YJB's stated objectives, as we explore in more detail below.

Child First

The work carried out by the YJB is guided by their 'child first, offender second' approach which intends to recognise the needs, capacities and rights of every child that comes into contact with the criminal justice system. As stated in their Business Plan, the YJB hopes to materialise this 'child first' principle by adopting a holistic and collaborative approach to 'improve the experiences and outcomes for children.' The SCYJ is also a strong advocate for this stance and works to ensure the youth justice system is consistently [treating children as children](#) at all times. However, the criminal record system entirely undermines the child first approach by overlooking evidence on child development and crime. Children are not developmentally mature enough to properly understand and assess situations, regulate impulses, and realise the consequences of their actions, particularly in the long-term. These issues are further exacerbated by England and Wales' unacceptably low age of criminal responsibility, which is currently just 10 years old. Children are not mature enough to understand the criminal justice process and its often lifelong implications. Criminal records are therefore a highly punitive outcome which ignores the evidence that many children naturally mature out of crime, instead tying them to childhood mistakes. As SCYJ member the [Youth Justice Legal Centre](#) explains, 'young people who commit crime typically stop doing so by their mid-20s' however, those attempting to positively turn their lives around are wickedly blocked to do so by their criminal records. A true child first approach is one which coincides with a developmental approach. As stated by Shadow Justice Secretary [David Lammy](#), 'People can change quickly but their criminal record does not.'



Custody and Resettlement

The YJB is considering where community sentences could be better utilised over custody, and wishes to see improved standards in custody and better resettlement outcomes, accommodating the complex needs of children in the youth secure estate and giving each child the best chance of a positive future. The SCYJ believes [custody for children should be a last resort](#) and supports efforts to reduce the number of children in custody, as well as those which will lessen the harm time spent in custody has on children. Minimising the use of custody for children is particularly important given that these sentences attract the most punitive criminal records, often with lifelong consequences. This further detrimental impact on children, beyond the obvious harms of custody for children, must be considered in any analysis of the appropriateness of custody compared to community sentencing.

Rooted in work with Beyond Youth Custody (BYC) and its [resettlement framework](#), the YJB has developed a model for '[Constructive Resettlement](#)'. The SCYJ welcomes this focus - current resettlement outcomes show children leaving custody are being failed by the system. However, criminal records are a clear barrier to this aim, impeding access to everything we know contributes to effective resettlement, such as education, employment, and secure housing. Core to constructive resettlement is supporting children in moving away from an offending identity towards a prosocial identity. This is very difficult to do when young people are carrying around the burden and stigma of a criminal record that entrenches and reinforces a criminal identity. Until the criminal record system is reformed, the YJB's goal of constructive resettlement will be hard to achieve.

'Serious Youth Violence'

The YJB has acknowledged the devastating and lasting impacts that violence and child criminal exploitation (CCE) have on child victims and their communities alike, and the need to enhance understanding, response and collaboration to bring about a much needed reduction in violence. The [SCYJ supports a public health approach to preventing and addressing violence](#) and advocates for a shift to an approach that identifies those at risk as early as possible, maximises protection from harm and addresses the root causes of violence. However, reality is far from this approach, with many young people feeling unsupported and unprotected, and too many vulnerable children continuing to become involved in serious violence. Criminal records for offences categorised as violent are most often not filterable under the current system, meaning many children will have to disclose details of their involvement, and reliving the trauma that comes with it, for years to come. Children are facing potentially lifelong penalisation for what is ultimately often a failure of the welfare and justice systems to tackle the root causes of violence and support children and communities facing adversity.

The YJB acknowledges that CCE is 'inextricably linked' to violent crime, and that CCE takes many forms, but is not fully understood. As a result, we know many children receive criminal records for behaviour that is a direct result of exploitation, or a response to the trauma that violence brings with it. Not only is society failing to protect these children from the psychological and physical harms of exploitation, they are then punished further by a justice system that fails to recognise them as victims, and by the long-term consequences of criminal records.

Criminal records for children involved in and affected by violence, which will often need to be disclosed far into adulthood, not only fail to recognise their victimisation and exploitation, but actively work to cut off routes out of violence and crime, working against the efforts of many partners designed to obtain and retain participation in prosocial endeavours like employment or education.



‘Overrepresentation’

The YJB has also made ‘overrepresented groups of children’ a priority in their new business plan with the aim of taking a holistic approach and widening understanding around why certain groups are overrepresented in instances before, during and after contact with the youth justice system. An integrated approach to tackling overrepresentation, particularly regarding minority ethnic communities, is key when considering criminal records as it reminds us of how transitional overrepresentation really is. Black children, for example, are [twice as likely](#) to be sentenced to custody than white children, which ultimately results in the harshest and most problematic criminal records. SCYJ member [Unlock](#) highlights how ‘black teenage boys are more likely to be charged with murder than manslaughter and more likely to receive a higher or maximum sentence than white boys.’ White boys are also more likely to receive a sentence of fewer than 4 years which, as expressed by Unlock, ‘is particularly striking within the context of the criminal records regime, where any sentence of more than 4 years in prison can never become spent under the Rehabilitation of Offenders Act 1974.’ The SCYJ is concerned about the [added burden](#) that criminal records bring to the livelihoods of Black, Asian and Minority Ethnic (BAME) young people who are already discriminated against on the basis of race, and how these multiple discriminations create barriers that impact access to education, employment, housing, and healthcare. This taxing weight of criminal records is likely to be a contributory explanation to the fact that last year [47% of black children reoffended](#) within 12 months compared to 39% of white children.

To combat the effects of criminal records on overrepresented groups, the YJB aims to ‘raise employer awareness of the positivity they can offer to some overrepresented groups that have acquired a criminal record.’ While this is welcome, we question whether efforts would be better spent concentrating on eliminating biased attitudes and outcomes from professionals in the criminal justice system that perpetuate negative outcomes for BAME children and young people. As BAME people continue to face racialised targeting and disproportionate policing, the SCYJ calls [for distinct and tightened legal restrictions](#) on the use of custody which would apply more equitably to all children and minimise the influence of a range of biases. The earlier that overrepresentation is halted in the criminal justice process, the better chance BAME children and young people will have at a life unburdened by harsh criminal records.

The need for a wide-ranging review

Justice for children and young people requires a broad, holistic, strategic analysis of the criminal record system, with a view to significant reform. Criminal records are so clearly intertwined with a range of further issues in the wider criminal justice system, and are actively impeding the efforts of government and civil society to tackle pressing issues like racial disparity and reoffending. Reform is long overdue and urgently needed, but the timely opportunity for a comprehensive review of the criminal records system must not be missed. Previous reforms were rushed following litigation, and this tinkering around the edges has resulted in the broken system we have now. If we get it right this time, there will be no need for countless more court cases challenging the system. By reforming criminal records we can break down one of the key barriers to positive developments across the youth justice system, and unlock the potential of so many young people to contribute positively to our communities.

