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The Custodial Detention of Children and the Youth Justice Review

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Introduction

The 'Review of the Youth Justice System in Northern Ireland' (Youth Justice Review Team 2011) offers a unique opportunity to address the challenges of caring for children in custody. This briefing assesses the Review Team's recommendations within the context of international human rights standards and draws upon previous research conducted by Convery and Moore (2006) for the Northern Ireland Human Rights Commission (NIHRC)¹. The material presented relates to the minimum age of criminal responsibility; delays; the use of custody as a last resort; the prevention of reoffending; transition from custody back into the community; the social and mental health care needs of children in custody; conditions in Hydebank Wood Young Offenders Centre and girls in custody.

The United Nations Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) establishes rights for all children less than 18 years of age (Article 1), and includes special protections for children in conflict with the law. Through ratifying the Convention, the state has made a commitment 'to respect, to protect and to fulfil' the rights contained therein (Zermatten 2013). Of particular note, Article 3 of the Convention includes the fundamental principle that the best interests of the child must be a primary concern in decision-making processes that affect children. This principle, however, has not been incorporated into legislation governing the youth justice system and the Youth Justice Review Team has recommended legislative amendments to fully reflect the best interest principle.

Alongside the CRC, other international instruments for youth justice include the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency 1990 (the Riyadh Guidelines), the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (the Havana Rules) and the UN Standard Minimum Rules for Non-custodial Measures 1990 (the Tokyo Rules). Taken together these provide the basis for a youth justice system based on prevention of offending through early intervention to meet children's needs; diversion and alternatives to prosecution; fair trial and respect for children's privacy; restorative measures; minimal use of detention with provision of appropriate alternatives; rehabilitation and resettlement of the child into the community on release.

The Minimum Age of Criminal Responsibility

The Youth Justice Review Team recommended the minimum of age of criminal responsibility (MACR), which was set at 10 under the Children and Young Persons (NI) Act 1968, be raised to 12 with immediate effect. It also recommended that following a period of review of no more than three years, consideration be given to

¹ The authors would like to thank the Northern Ireland Human Rights Commission for its support in commissioning this research. Any views expressed in this paper may not be attributed to the NIHRC.

raising the age to 14 and that, during this period, appropriate local services should be developed to meet the needs of children and young people diverted from the criminal justice system as a consequence of the change to the MACR. The significance of diverting children under 14 years old from the criminal justice system and detention is highlighted by the Youth Justice Review Team's recognition that the criminal justice process can further damage children. Rather than reflect a non-interventionist approach or condoning children's behaviour, this change would facilitate an alternative, more appropriate and effective response. As explained by the European Network of Ombudspersons for Children (2003):

'It is essential to establish responsibility for crimes. ... But this process does not have to lead to criminalising children ... [states] should aim to progressively raise [the age of criminal responsibility] to 18, developing innovative systems for responding to all juvenile offenders below that age which genuinely focus on their education, reintegration and rehabilitation'.

The MACR in Northern Ireland, as noted by the Review Team, is not considered by the UN Committee on the Rights of the Child to be internationally acceptable. In 2007 the Committee recommended that in jurisdictions where the MACR is set below 12 years, this be increased immediately to an absolute minimum of 12 years with subsequent increases to a higher age level.

Delays

The Children and Young People's Strategy (OFMDFM 2006) found that the average time taken to process a child from the date of summons until the date of disposal was 20.7 weeks and established as a target that delays should be reduced. A commitment was expressed for all agencies involved in criminal justice to work to reduce levels of offending by children and young people and it was noted that a 'wider range of community alternatives' had been provided to the courts to reduce the need for custodial disposals (p.65). Targets included a reduction in the number of children entering the youth justice system; a reduction in children's offending; and fewer children sentenced to custody (OFMDFM 2008). However, the Criminal Justice Inspection Northern Ireland (CJINI, 2010) found that delays in the processing of children's cases remain a problem and the Youth Justice Review Team found that there can be delays of some 37 weeks within the youth justice system. The Review Team recommended a statutory time limit from arrest to sentence/disposal, suggesting 120 days (approximately 17 weeks) as 'a necessary (but not sufficient) condition for reform' (p.12).

The Use of Custody as a Last of Resort

To comply with international children's rights standards custody should be used as a last resort and for the shortest possible period of time. To this end, greater provision of alternatives is required. However the over-use of custody for children in Northern Ireland raised in our research for the NIHRC (Convery and Moore 2006), was identified as an issue by the Youth Justice Review Team. The Review Team noted that most admissions of children to Woodlands are under the Police and Criminal Evidence (NI) Order 1989 (PACE), and that this rate is increasing. The Review Team also noted the over-representation of children coming from the care system into custody through PACE, querying why these children should require a 'place of safety' when they were already living in the care of the state. The proportion of

remands in Woodlands, on average three-quarters of children detained on any one day, is significantly higher than in adult prisons or in other comparable countries. The Criminal Justice Inspection (CJINI 2011: vii) also found that the majority of children in the JJC are there only for brief periods and do not receive a custodial sentence, making this a costly and ineffective option, 'from which they are unlikely to gain much benefit'.

The Review Team reinforced the principle 'that remand in custody should only be used as a last resort and specifically not in those cases where, if found guilty, the young person cannot be committed to custody' (p.52). It also acknowledged that the inappropriate use of custody 'threatens the capacity' of the JJC to ensure that sentenced children 'have the best possible chance of stopping offending on release' (p.76). Its concerns are highlighted by experiences described by two young people in a submission to the Review by Include Youth and the Youth Safety Network (2011):

'I've been in here [JJC] 15 times but I've never been sentenced here. I've done 165 days on remand, then I just got two years probation and a suspended sentence, a conditional discharge' (p.32).

'I've been in the JJC 18 times but I've never been sentenced here. I've got 32 convictions, but no JJCOs [sentence]. If I do, I'll have my time done and all' (p.33).

Its recommendations to address the over-use of custody included: the development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice to reduce to an absolute minimum the use of Woodlands as a place of safety for children under PACE; strict adherence to the presumption of bail; bail support; the application of relevant, proportionate and realistic bail conditions, but only where necessary; participation of children and their parents in setting any bail conditions, the availability of an appropriate mix of suitable accommodation; and an end to the custodial disposal of looked after children where this would not be the response to children in the general population.

Preventing reoffending

Research suggests that custody is expensive and ineffective in preventing reoffending. The 'hard truth' is that 'juvenile penal institutions have minimal impact on crime' and 'if most prisons were closed tomorrow, the rise in crime would be negligible ... incapacitation as the major tenet of crime control is a questionable social policy' (Miller 1991, cited in Goldson and Muncie 2006, p.149). Professor Jaap E. Doek (2005), former chairperson of the UN Committee on the Rights of the Child, has stressed that meeting international obligations, including reducing the use of custody, would not only promote the health and well-being of children, it would also have a positive impact on youth offending rates.

The CJINI and the Youth Justice Review Team have both praised conditions in Woodlands commending the work of staff there, particularly in terms of children's education. However, while noting the positive initiatives taking place at Woodlands the fact is that the reconviction rate for children leaving custody in Northern Ireland is high at levels of 72.9% for custody, 49.6% for probation order and 44.3% for court ordered restorative conferences (MacQuarrie 2010). CJINI (2011) notes the difficulties in developing statistical evidence on reoffending following release from the

JJC given the small number of sentenced children. However it cites figures showing that of 31 sentenced children released from Woodlands in 2006, over three-quarters reoffended within one year and over half within a month of being discharged. Desisting from crime can present significant difficulties for some young people. As a young person interviewed in research (Martynowicz et al 2012, p.73) for the Children's Commissioner (NICCY) said:

'My old lifestyle - if I wanted to change, I had to move away from it. And to move away from my family and that was so hard, that was so, so hard to do'.

Transition from Custody to Community

The Youth Justice Review Team concluded that the high reconviction rate for children leaving custody is a 'reflection, in part, of the lack of adequate preparation for release, from day one of entry, and continuity of support post-release' (p.17). A report for NICCY (Martynowicz et al 2012) documented the range of difficulties facing young people in conflict with the law including mental health issues, family break-down, violence and abuse, accommodation problems, poverty, unemployment and difficulties in accessing appropriate training and education. All of these present problems for young people leaving custody, and provision of appropriate support is vital in promoting desistance. An ngo-worker interviewed for the NICCY study emphasised the need for appropriate and safe housing for young people on release:

'The hostels – with what the young people say and what the volunteers then relay back – is that they're not appropriate for young people. They're putting a young person leaving the criminal justice system in an environment where adults are also vulnerable. The adults that they may be living and sharing a hostel with are very high risk. They then witness and see things that they shouldn't witness' (p.54).

In our research for the NIHR (Convery and Moore 2006) staff warned of the pressures facing young people on release: 'we're sending them back to ten mates who all steal cars every night and take drugs every night. That peer pressure is massive'. They recognised the need to understand children's offending behaviour in the context of their overall needs: 'We need to address offending behaviour, but we need to look at the bigger picture at the welfare of children, their right to be safe and cared for.'

Social and mental health care needs of children in custody

Writing on the situation in England and Wales, Professor Barry Goldson (2006, p.146) noted that 'child prisoners are routinely drawn from some of the most structurally disadvantaged and impoverished families, neighbourhoods and communities'. The same holds true in Northern Ireland but more in-depth research is needed here on the lives of young people in custody. In the NIHR study (Convery and Moore 2006) we highlighted concerns about the detention in custody of children with serious mental health problems. The CJINI (2011, p.39) inspection of Woodlands found that:

'many of the children who entered the JJC were in poor physical and mental health as they had limited access to, and uptake of healthcare services in their own community. The healthcare interventions and health promotion provided within the JJC were vital for these children'.

In a 'snapshot' of children held in Woodlands on 30 November 2007, out of 30 children, 20 had a diagnosed mental health disorder, 17 had histories of self-harm and eight had previously tried to take their own life (CJINI 2011, p.5). The CJINI report on early intervention further found that 82% of children in the JJC in November 2011 came from single-parent families, 34% had experienced domestic violence; 38% had a statement of educational needs and 14% had a recognised learning disability (CJINI 2012, p.v). Many of the young people had experienced trauma including family members or friends taking their own lives, a history of sexual, physical and emotional abuse, parental substance misuse and/or mental health difficulties, bullying and paramilitary threats. A report for NICCY (Martynowicz et al 2012, p.22) stated that there are:

'significant concerns about how children's and young people's needs are addressed (or not), before they come into contact with the criminal justice system; the capacity of the criminal justice system to provide appropriate support while they are in custody and also how such unaddressed difficulties contribute to children getting into conflict with the law in the first place'.

In recognition of the levels of speech, language and communication difficulties among young people in custody in England (70% of young people are affected), the Youth Justice Agency (2012) has piloted a study in Woodlands to identify the extent of communication difficulties among young people there.

Under 18's in prison service custody

Both the Youth Justice Review Team and the Prison Review Team, as well as the CJINI and the NIHR, have recommended the transfer of all children to the Juvenile Justice Centre in 2011 and Minister of Justice, David Ford, announced on the 28th June 2012 that detention of under-18s will cease in all but the most exceptional circumstances from 1 November 2012 (DoJ 2012). Article 37c of the CRC requires that children should not be held in custody along with adults and in 2008 the UK withdrew its reservation to this article.

Conditions in Hydebank Wood

Hydebank Wood Young Offenders Centre (YOC) raises significant concerns regarding the care of children and young people in custody (see for example reports by the CJINI, Independent Monitoring Board, Prison Review Team). However, issues regarding the treatment of children in the YOC form only part of much broader concerns about the general treatment of young adult men in the facility. The most recent inspection noted serious concerns in areas such as safety and security (including insufficient support for prisoners who self-harmed); severe punishments for disciplinary offences; poor assessment of health needs and poor healthcare delivery; lack of opportunities to spend time in fresh air and poor levels of meaningful activity; and poor quality of educational provision. A report by the non-governmental organisation Include Youth (2010) recorded young people's frustrations at the nature of the regime in Hydebank. Education and vocational opportunities were limited and children and young people could be locked up for long periods. Young people said, 'Some days you can be lucky to get out for breakfast'; 'boys like us get locked all the time because we've no job'. Boys reported that although some staff were good, often relationships could be negative. The Prison Review Team (2011, p.72) described young men at Hydebank as 'in many ways a forgotten group' and recommended that

the YOC be transformed into a 'secure college' focused on young people's education, training and employment needs.

Girls in custody

Girls make up a very small percentage of the custodial population, locally, nationally and globally. Their small numbers mean that their needs are sometimes neglected. Research on the particular needs of girls and the development of gender-specific strategies are important and should be developed.

Conclusion

The issues raised and recommendations put forward by the Youth Justice Review Team in relation to the detention of children, evidence previous state failures to address a range of concerns including the incorporation of the principle of the best interests of the child into youth justice legislation, the internationally unacceptable low minimum age of criminal responsibility, delays, the over-use of custody particularly for remands, PACE admissions, non-violent and non-persistent offences, children from looked-after care, children with social and mental health care needs and the use of custody in the adult prison system. To address these concerns, policy and practice must be underpinned by an inter-departmental commitment to children's rights and investment in adequate and appropriate community-based provision to address the needs of children and divert them from custody.

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