Children in conflict with the law: an overview of trends and developments – 2010/2011

Dr Tim Bateman

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Introduction

The youth justice system is an ever changing landscape. Shifts in legislation, policy and practice generate corresponding transformations in the treatment of children who come to the attention of criminal justice agencies. Substantial variation in responses to youth crime owes little to changes in children’s offending behaviour or to a growing
awareness of ‘what works’ (itself a contested issue)\textsuperscript{1} but is largely a function of political and financial considerations. The National Association for Youth Justice (NAYJ) believes that an understanding of these changes provides an important contextual base for those who wish to argue for reform of the current arrangements for dealing with children in trouble in favour of a child friendly youth justice system. Such an understanding is also a prerequisite of providing child friendly services within that system.

This briefing paper aims to provide an overview of what is known about the nature and extent of youth crime in England and Wales and presents an analysis of trends suggested by the figures.\textsuperscript{2} The paper also offers an assessment of the treatment of children who come to the attention of the youth justice system, and considers the extent to which recent developments take adequate account of children’s rights and interests. The paper focuses on children aged 10 – 17 years. To allow comparison, trends are for most purposes traced from 1992 onwards.\textsuperscript{3}

The NAYJ welcomes some of the developments described, in particular:

- the fall in the use of custody for children
- an increased use of diversion and the reduction in the numbers of children coming into the youth justice system for the first time, and
- the proposal to replace the rigid final warning scheme with a more flexible system of youth cautioning.

At the same time, the organisation is concerned that the underlying approach to children in trouble continues to be predicated on a punitive ethos, rather than one that takes full account of their best interests. The NAYJ would advocate the establishment of a rights based, child friendly, youth justice framework, enshrined in law to ensure that any shifts in policy are determined by issues of principle rather than pragmatic or political considerations.

**Assessing trends in youth crime**

**Measures of crime and recent trends**

The British Crime Survey (BCS) is a large scale self-report study that asks respondents about their experiences as victims of crime during the previous twelve months. The survey was first conducted in 1981 and latest figures relate to 2010/2011. In recent years, data from BCS has been published in a single volume alongside figures for crime recorded by the police.\textsuperscript{4}

The survey has notable exclusions: it provides no information on commercial or white collar crime; offences that have no direct victim (such as possession of drugs) are not included; those living in institutions or group residences are not surveyed. Until 2009, children below the age of 16 years were excluded, but since that date estimates of crime against those aged 10 – 15 years are reported on separately in an appendix to the main report. Despite these omissions, the BCS is regarded as a good indicator of

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\textsuperscript{3} The Criminal Justice Act 1991 extended the age range of the youth court to include young people aged 17 years who were previously treated as adults. The legislation was implemented during 1992


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personal and household crime which draws on a large sample – 46,754 respondents in 2010/2011. Importantly it takes account of incidents that are not reported to the police and is not susceptible to changes in police recording or practice.

The BCS suggests that victimisation peaked in 1995 and has fallen consistently in the intervening period. Data for 2010/2011 show a slight – but not statistically significant – rise over the previous year, from 9.5 to 9.6 million offences. Despite this increase, the BCS suggests that crime is close to the lowest level since the survey began, standing at 50% below the peak in 1995.\(^5\)

Police recorded crime covers a broader range of offence types than the BCS but, because of a considerable shortfall in reporting by victims for a variety of reasons, it captures a significantly smaller volume of offending.\(^6\) It is also subject to variation as a consequence of changes in recording practice or policing more generally. According to this measure, crime peaked somewhat earlier, in 1992, before falling until 1998. From that latter year to 2003/04, there was an increase in recorded offences, but the Home Office ascribes this rise to changes in the counting rules and guidance on what should be recorded.\(^7\) More recently, the downward trend has continued with police recorded crime falling from 5.6 million in 2004/05 to 3.8 million in 2010/11.\(^8\)

**Youth crime is falling**

As indicated above, both official measures of overall crime point to a substantial reduction in offending in recent years, but this pattern is not automatically reflected in public perceptions. In 2010/11, 60% of adults believed that crime in England and Wales had risen in the past two years. The equivalent figure for those who thought that crime had risen in their local area was considerably lower at 28%.\(^9\) While these proportions are lower than in some previous years, they demonstrate a disconcerting lack of public awareness as regards crime trends. This misunderstanding is also manifested in a tendency for people to overstate the risk of victimisation: for instance, 13% of respondents considered that they were fairly or very likely to be a victim of a violent offence within the next twelve months, while the actual risk was 3%.\(^10\)

Much public concern in relation to crime and disorder is focussed on the behaviour of young people. Thus, in 2009/10, 65% of respondents indicated that they considered a lack of parental discipline to be a major cause of crime. More than a third also believed that family breakdown and a lack of school discipline were important contributory factors.\(^11\) Such considerations relate specifically to youth offending. While worries about anti-social behaviour have declined, more than one in four respondents still identify teenagers hanging around on the street to be a problem, closely behind concerns about drug dealing and litter.\(^12\)

The publication *Crime in England and Wales* does not provide a direct indication of the extent of youth crime since, unless the episode results in an arrest, the age of the perpetrator is not known. Figures for detected youth offending however suggest consistent falls in youth crime since at least the early 1990s. As shown in figure 1, the

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\(^6\) The most common reasons cited by victims for not reporting offences to the police are: they regard the incidents as too trivial; they suffered no, or little, material loss; they did not think that the police could, or would, do anything to resolve the offence. Osborne, S (2010) ‘Extent and trends’ in Flatley, J, Kershaw, C, Smith, K, Chaplin R and Moon, D (eds) *Crime in England and Wales 2009/10*. London: Home Office
\(^8\) Parfrement-Hopkins, J (2011) *op cit*
\(^10\) Ibid
\(^12\) Innes, J (2011) *op cit*
number of children given a pre-court disposal or convicted at court adopted a marked downward trajectory from 1992 onwards. For reasons discussed below, there was a sharp rise in detected offending over a four year period commencing in 2004, but from 2007, the data suggest a return to the longer term trend. During 2010, 73,700 children received a substantive disposal for an indictable offence, 49% fewer than in 1992.\textsuperscript{13}

**Figure 1:**
Children cautioned, reprimanded, warned or convicted of an indictable offence –1992 –2010

Since 2002, the Youth Justice Board (YJB) (and more recently the Ministry of Justice) has published statistics specific to the operation of the youth justice system. The figures for detected youth crime vary from those shown in the above chart, reflecting their different origins\textsuperscript{14} and the fact that they include summary offences.\textsuperscript{15} Nonetheless, the pattern shown is broadly the same. In 2002/03, there were 166,925 substantive youth justice disposals recorded; by 2009/10, the equivalent figure stood at 155,855, a fall of almost 7%. The overall decline was partially offset by a sharp increase between 2003/04 and 2006/07. The most recent publication in this series, shows a further reduction to 120,921 for the year 2010/11 but the figures are not directly comparable with those in earlier editions.\textsuperscript{16}

Figures for detected offending inevitably understate the extent of children’s lawbreaking for a number of reasons. In 2010/11, just 38% of offences revealed by the BCS were reported to the police, a fall of 7% by comparison with the previous year.\textsuperscript{17} Where offences are reported, detection rates remain low: during 2009/10 for instance, just 20% of robberies and 13% of burglaries were ‘cleared up’.\textsuperscript{18} Such processes of ‘attrition’ mean that figures for detected youth crime do not offer a comprehensive reflection of children’s underlying offending behaviour. A failure to apprehend children

\textsuperscript{13} Figures derived from the relevant editions of *Criminal Statistics England and Wales* to 2009 and *Criminal Justice Statistics, England and Wales* for 2010
\textsuperscript{14} Until 2010/11, Youth Justice Board data derived from returns by youth offending teams. *Criminal Statistics* draw on figures provided by the police and courts
\textsuperscript{15} Summary offences are less serious matters which cannot be heard in the Crown court in the case of an adult
\textsuperscript{16} From 2010/11, to ensure ‘a consistent narrative’, figures in *Youth Justice statistics* for pre-court disposals and court convictions *statistics* are derived from Ministry of Justice sources rather than, as in previous years, from youth offending team returns
\textsuperscript{17} Parfrement-Hopkins, J (2011) *op cit*
who break the law cannot however account for the pattern of decline shown in figure 1. Clear up rates did fall during the early part of the 1990s and it might be argued, therefore, that this might explain some of the reduction in recorded children’s offending. Between 1993 and 1999, however, there was an upturn in rates of detection, so this particular phenomenon could not have contributed to the continued downward trend in recorded youth crime in those years. From 2003/04 to 2009/10 (after a period of further decline), the proportion of offences cleared up by the police rose again, by 4.5%, while detected youth crime fell by almost a third.18 It is accordingly not possible to explain trends in youth crime as simply a function of changes in the proportion of offences detected by the police.

Moreover, we do have good evidence, registered in both the BCS and police recorded figures, that overall levels of crime have dropped since at least the mid-1990s. While these figures cannot distinguish between adult’s and children’s behaviour, there are no reasons to think that the latter would have followed a markedly different path to the former. Moreover, a self report survey of children aged 11 – 16 years in mainstream school indicates that just 18% admitted committing an offence within the past 12 months in 2009 compared with 26% in 2004.20 It thus appears probable that the reduction in youth crime shown in the figures for detected offending reflects a genuine decline.

The impact of government targets

Three issues stand out from the above analysis of recent trends.

- First, the overall pattern is one of a long term fall in detected youth crime, which in all probability is representative of an underlying decrease in offending by children.

- Second, the years 2004 to 2007 witnessed a departure from this general picture in the form of a pronounced, but short term, rise in detected offending. Thus in 2007, the number of substantive youth justice disposals was 20% higher than in 2003.

- Third, the period since 2007 has been characterised by a drop in youth crime that is significantly sharper than that at any point since at least the early 1990s. The decline was so steep that the fall during 2008 alone was sufficient to compensate for the cumulative rises in the previous four years.

The question arises as to whether these abrupt oscillations since 2003 mirror changes in children’s offending behaviour or whether other factors play an explanatory role.

It is intuitively implausible that children’s criminal activity should fluctuate so markedly over such a short period of time. Certainly, self-report surveys do not suggest a sharp escalation in such behaviour during the period when detected offending registers an increase. Indeed, the MORI youth survey shows a significant reduction in the proportion of children in mainstream schooling who self-report offending within the previous year from 26% in 2004 to 23% in 2008.21 While the same survey suggests that there was a continuation of this trend over the next 12 months, the decline reported is nowhere near large enough to account for the fall in detected offending registered in this period.22

19 Ibid
Following other commentators, the NAYJ considers that a convincing case can be made that the anomalous rise, and subsequent fall, in substantive disposals shown in youth justice statistics are both largely a consequence of changes in police practice to accommodate different performance indicators. In 2002, the Government established a target to narrow the gap between offences recorded and those ‘brought to justice’ by increasing the number that resulted in a ‘sanction detection’, consistent with New Labour’s determination to appear tough on crime. The indicator required a growth in annual sanction detections by almost a quarter of million by March 2008 against a March 2002 baseline. The target was met a year early. However, there was no improvement in the clear up rate. Instead, the rise in sanction detections was a function of formal disposals being imposed for ‘behaviour that would previously not have attracted such an outcome’. In other words, the imposition of a performance indicator led to an artificial expansion in the number of people drawn into the criminal justice system.

While the target applied both to adults and children, there was inevitably a disproportionate impact on the latter population since adult offending would have been more likely to be met with a formal response in any event. So while between 2003 and 2007, the number of adults entering the criminal justice system rose by less than 1%, the equivalent figure for those below the age of 18 years was 22%. Among children, those groups who might previously have been expected to benefit from a degree of informality were particular adversely affected, including younger children, girls, and those apprehended for relatively petty transgressions. The introduction of the sanction detection target accordingly led directly to the unnecessary criminalisation of large numbers of children.

The target was justly criticised for being ‘inflexible and clumsy in the seemingly rigid use of criminal justice sanctions against what the public sees as a varied basket of minor offences’. Perhaps more significantly, the burgeoning workloads associated with the rapid rise in the numbers of children coming into the youth justice system proved unsustainable. Although a focus on increasing sanction detections accorded with New Labour’s determination to appear tough and its philosophy of early criminal justice intervention, pragmatic considerations ensured that the performance measure was not renewed. In 2005, in an attempt to counter the inflationary impact of expanding sanction detections, the YJB had already introduced a contrary, and in the view of the NAYJ a much preferable, target to reduce the number of children entering the criminal justice system for the first time. The government moved to adopt this new indicator in 2008, committing itself to a reduction in first time entrants of 20% by

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24 Sanction detections for children include: reprimands, final warnings, penalty notices for disorder, convictions, and offences taken into consideration
28 Bateman, T (2008) op cit
29 ibid
2020.\textsuperscript{33} It has subsequently been retained by the coalition government as one of its three high level outcomes for youth justice.\textsuperscript{34}

If the sanction detection target promoted the criminalisation of minor delinquency, the indicator which replaced it had the opposite dynamic, encouraging the police to respond in an informal manner to children who have had no previous contact with the youth justice system. The commitment to formal early intervention, which had characterised youth justice policy for more than a decade, was to be replaced by increased diversion from the formal mechanics of the criminal justice system. As shown in table 1, this new target was also met early with the number of first time entrants falling by 55% between 2007/8 and 2010/11.\textsuperscript{35}

Far from the fluctuations in detected youth crime since 2003 reflecting changes in children’s criminal activity, it seems clear that they are a predictable outcome of the successive implementation of two contradictory targets by central government.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of first time entrants</th>
</tr>
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<tbody>
<tr>
<td>2000/01</td>
<td>90,180</td>
</tr>
<tr>
<td>2001/02</td>
<td>89,277</td>
</tr>
<tr>
<td>2002/03</td>
<td>83,621</td>
</tr>
<tr>
<td>2003/04</td>
<td>88,635</td>
</tr>
<tr>
<td>2004/05</td>
<td>96,252</td>
</tr>
<tr>
<td>2005/06</td>
<td>107,680</td>
</tr>
<tr>
<td>2006/07</td>
<td>110,815</td>
</tr>
<tr>
<td>2007/08</td>
<td>100,444</td>
</tr>
<tr>
<td>2008/09</td>
<td>80,314</td>
</tr>
<tr>
<td>2009/10</td>
<td>62,504</td>
</tr>
<tr>
<td>2010/11</td>
<td>45,519</td>
</tr>
</tbody>
</table>

Most youth offending is relatively minor

Perhaps inevitably, public concern in relation to youth crime tends to focus on more serious forms of offending, such as robbery or violence against the person. That focus detracts attention from the fact that the majority of offences committed by young people are directed against property. In 2010, for instance, theft and handling offences accounted for 40% of all indictable youth offending. That proportion has moreover declined somewhat in recent years, in large part as a consequence of the fall in first time entrants, many of whom would have been arrested for offences of this nature. By contrast, as shown in figure 2, violence against the person was less common (15% of the total) and robbery relatively rare (4.9% of the total). While such offences may be serious incidents, it would be a mistake to assume that they all are. In 2010, 44% of violent offences attracted a pre-court disposal, indicating that they were of a less serious nature.

The figures shown in figure 2, overstate the gravity of youth crime since the chart excludes summary, offences.\textsuperscript{36} It is also important to note that the majority of serious

\textsuperscript{33} Home Office (2008) Youth crime action plan. Home Office
\textsuperscript{34} Ministry of Justice (2010) Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing. London: the Stationery Office. The other two high level outcomes are: reducing reoffending and reducing custody numbers
\textsuperscript{35} Ministry of Justice (2012) op cit
\textsuperscript{36} Figures derived from Ministry of Justice (2011) op cit
crimes are not committed by children: in 2010, adults were responsible for five times as many violent offences and one and half times as many incidents of robbery as were children.

**Figure 2**
Children receiving a reprimand, final warning or conviction by offence type as a proportion of all indictable offences: 2010

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**Children grow out of crime**

Self report surveys confirm that lawbreaking among teenagers, although predominantly minor, is nonetheless relatively common. For instance, the 2006 *Offender Crime and Justice Survey* found that 30% of 10 – 17 year old boys reported committing an offence within the past year.\(^{37}\) Indeed, children are more likely to offend than adults. During 2010, the peak age of male offending was 18 – 20 years and 15 – 17 years for females.\(^{38}\)

It is important to note, however, that if offending is more prevalent among children, adults are nevertheless responsible for a larger volume of crime because they outnumber the 10 – 17 population. As shown in figure 3, during 2010, children aged 10 – 17 were responsible for fewer than one in ten detected offences (summary and indictable). By contrast, more than 80% of crime was committed by adults aged 21 years and above. At the same time, criminal victimisation of children is significantly higher than that of adults.\(^{39}\)

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Furthermore, while offending does escalate quickly during the teenage years, it then tails off equally rapidly in line with the natural maturation process. This pattern, shown in figure 4, is frequently described as ‘growing out of crime’.\textsuperscript{40} Nor is this process of desistance with age a recent phenomenon, or one confined to England and Wales. As long ago as 1983, Hirschi and Gottfredson, two eminent American criminologists, referred to the ‘age–crime’ curve as ‘one of the brute facts of criminology’.\textsuperscript{41}

\textbf{Figure 4:}
\textit{Detected indictable offences per 100,000 population for selected age groups – 2010}

\textsuperscript{40} See for instance, Rutherford, A (1992) \textit{Growing out of crime: the new era}. Basingstoke: Waterside press
\textsuperscript{41} Cited in Newburn, T (2007) \textit{Criminology}. Cullompton: Willan
Despite this obvious pattern, in introducing its reforms of the youth justice system, the New Labour administration asserted bluntly that ‘the research evidence shows that [growing out of crime] does not happen’. The evidence on which they relied was the Audit Commission’s influential Misspent youth, published in 1996. The report contained two arguments to this effect.

First, it was argued that the known rate of offending of young adult males was increasing, indicating that desistance was not occurring at the same rate as previously. No evidence was offered for this claim which is contradicted by the official data showing a fall in detected offending by young adults between 1984 and 1996. Second, Misspent Youth contended that the peak age of detected offending by males had risen from 15 years in 1986 to 18 years in 1994, implying a progressive rise over time in the age at which desistance kicks in. In fact, the peak age of offending had already risen to 18 years by 1988, where it has remained ever since. Moreover, the earlier increase cited by the Audit Commission was not indicative of a failure of children ‘to grow out of crime’ as they approached later adolescence. In essence, it reflected a more rapid decrease in offending by younger children below the age of 15 years rather than a fall in detected crimes committed by those in the older age range. This trend has continued in subsequent years: between 2000 and 2010, there was 57% reduction in detected offending for children aged 10 – 14 years; the equivalent reduction for those aged 15 – 17 years was a more modest 22%.

The contention that children are less likely to stop offending as they progress to adulthood is accordingly unsustainable and New Labour policies predicated on such a misreading of the evidence – such as the necessity of intervening early to ‘nip offending in the bud’ – are accordingly vulnerable to criticism.

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47 See for instance, Goldson, B (2010) op cit
Children in conflict with the law, disadvantage, and risk

As Joe Yates has argued, children who come to the attention of criminal justice agencies are ‘disproportionately drawn from working class backgrounds with biographies replete with examples of … vulnerability’. The correlation with disadvantage becomes more pronounced in relation to children who are subject to higher levels of intervention and, in particular, those deprived of their liberty. In 2008, more than half of children in custody were assessed by their youth offending team (YOT) worker as coming from a deprived household, compared with 13% of the general youth population. Almost 40% had experienced abuse and more than a quarter were living in care at the point of incarceration. Bereavement in the form of death of parents and/or siblings was three times as high as that in the general population; one fifth of those in custody had self harmed and 11% had attempted suicide.

In recent years, this evidence of extensive welfare need has been recast in the form of ‘risk factors’ that are thought to be predictive of involvement in criminal activity. Such factors include the twelve domains captured by Asset, the standard assessment tool for the youth justice system. The risk factor paradigm, as it generally known, also underpins the YJB’s ‘scaled approach’ which requires that the intensity of intervention – or more accurately, given that the child is required to comply by order of the court, the intensity of punishment – is determined by the risk of reoffending, as measured by the child’s Asset score, rather than by the seriousness of any offences that he or she has already committed. Such an approach contradicts the principle of proportionality, that the extent of punishment should be limited by the crime, and replaces it with a presumption that those children with the highest level of need should be subject to the most onerous forms of intervention.

More generally, risk based practice has been criticised for treating children as ‘crash test dummies’ whose fate is largely determined by risk factors, rather than regarding them as active individuals with a capacity to make choices, albeit that their options may be constrained by their socio-economic position. The YJB’s intervention framework, for example, requires that where any of the twelve areas assessed using Asset generates a score of two or more, work to address that issue will be part of the intervention, irrespective of the views of the child. Conversely, there is no place within the framework for children to contribute meaningfully to their supervision plan. As a consequence, risk led intervention inevitably tends to undermine engagement between children and their supervisors since it focuses attention on correcting supposed deficits rather than adopting a future orientation that aims to equip young people to achieve their entitlements. In this context, opportunities are missed for more effective forms of supervision underpinned by the establishment of high quality relationships. A focus on ‘desistance’, by contrast, understands children as ‘subjects with whom youth justice workers should engage in their own interests’ and involves an explicit recognition that...

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51 The ‘scaled approach’ was implemented for offences sentenced after 30 November 2009
children in trouble may have done wrong but are also likely themselves to have been victims of injustice in various guises.\textsuperscript{55}

The risk paradigm also involves targeting the supposed deficiencies of individual children and their families rather than understanding that the risk factors themselves are frequently the ‘effects of other social and economic causes’.\textsuperscript{56} Research suggests that regarding the range of risk factors as being of equal weight significantly understates the impact of socio-economic disadvantage. In one American study, boys with no identifiable risk factors from the most disadvantaged neighbourhoods were fifteen times as likely to have committed serious offences as those from the most affluent areas. As shown in table 2, the presence of additional indicators of risk was accordingly likely to play a much bigger role in explaining the offending of boys residing in the latter type of neighbourhood than in the former.\textsuperscript{57}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
Number of risk factors & 0 & 1 - 2 & 3 - 6 \\
\hline
Most disadvantaged neighbourhood & 3.4\% & 32.8\% & 56.3\% \\
\hline
Least disadvantaged neighbourhood & 51.3\% & 53.1\% & 83.9\% \\
\hline
\end{tabular}
\caption{Percentage of boys committing serious offences by socio-economic status of area residence and number of risk factors}
\end{table}

Despite such evidence indicating that poverty is a more important determinant of coming to the attention of the youth justice system than other forms of risk, the \textit{Asset} process treats all factors as equally weighted. Moreover, it is apparent youth justice practitioners tend to prioritise types of risk that focus on the individual child in preference to those that reflect structural concerns. In 2008/09, 72\% of children subject to YOT supervision were assessed as displaying a moderate to substantial risk (\textit{Asset} score 2 - 4) in relation to their thinking and behaviour; 58\% in relation to their lifestyle; and 45\% in relation to their attitudes to offending. By contrast, just over one in five children was allocated an \textit{Asset} score of two or higher as a consequence of the neighbourhood in which they lived. This focus on the individual is probably encouraged by the fact that any identification of a risk factor as a feature that explains the child’s offending should be addressed in the supervision plan: attitudinal change may be more easily addressed than structural disadvantage. Yet the reoffending rate for those children where neighbourhood of residence was recognised as a problem was higher than that for the other three categories of risk.\textsuperscript{58}

To its credit, the YJB has acknowledged the force of such criticism and has moved to develop a new assessment framework to replace \textit{Asset}. Implementation is however

\textsuperscript{56} Knuutila, A (2010) \textit{Punishing costs: how locking up children is making Britain less safe}. New Economics Foundation
\textsuperscript{58} Ministry of Justice (2012) \textit{op cit}

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dependent on capital funding being agreed by the Ministry of Justice to facilitate the required changes to YOT case management systems. It is unclear what will happen is such funding is not forthcoming.

The characteristics of children in conflict with the law

Age
The peak age of detected offending, discussed above, has remained broadly stable since the mid 1990s. Given that offending is more prevalent among those towards the top of the youth justice age range, it is not surprising that the majority – three quarters – of those processed by the system in 2010 were aged between 15 and 17 years. Conversely, less than two percent were below the age of 12 years in the same year.

Nonetheless, at different points in time, shifts in the treatment of children in trouble have had a considerable impact on younger children drawn into the system. One of the reforms introduced by New Labour’s Crime and Disorder Act 1998 was to abolish ‘doli incapax’. The doctrine afforded a measure of special protection to children over the age of criminal responsibility but below the age of fourteen years. In such cases, the prosecution had been required to aduc evidence not only that the child had committed the act alleged, but also that he or she knew that the behaviour in question was seriously wrong, rather than just naughty or mischievous. Following abolition, all children from the age of ten years were considered ‘unequivocally responsible and accountable for choices made and harm caused’ and subject to punishment accordingly.\(^59\)

The impact was immediate: in 1999, the number of 10–14 year olds criminalised for indictable offences was 29% higher than it had been in the year prior to implementation, whereas for older children there was a 2% fall.\(^60\) The influence continued to be felt over the longer term. Between 1997 and 2007, there was an 87% rise in convictions for 10–12 year olds and a 55% increase for those aged below fifteen years. The growth in respect of children aged 16–17 years was by comparison just 8%.\(^61\)

More recently, changes in police practice consequent to the introduction of performance indicators described earlier in the paper, have impacted on the age profile of those in the youth justice system. The sanction detection target had a disproportionate effect on younger children since this group was more likely to have benefited from informal responses to their offending before the target was introduced. So the number of children aged 10–14 years receiving a reprimand, warning or conviction for an indictable offence rose by 31% between 2003 and 2007; the equivalent figure for those aged 15–17 years was 20%. Conversely, the first time entrant target has led to greater diversion from the system for those below the age of 15 years because children in that age range are less likely to have received a previous substantive disposal. As shown in figure 5, the decline for children aged 15–17 years is much more modest.

Figure 5
Changes in detected offending relative to 2003 baseline by age: Indictable offences


The potential for younger children to be drawn into the youth justice system is in any event a function of the relatively low age of criminal responsibility in England and Wales. At 10 years, it is considerably below that in most European jurisdictions: in Belgium and Luxemburg, the age at which children become criminally liable is 18 years; in Portugal and Spain it is 16; in Finland and Norway, 15; and in Italy, Germany, Lithuania and Romania, it is 14 years. The United Nations Committee on the Rights of the Child has consistently criticised the United Kingdom in this regard, and the NAYJ considers that the age of criminal responsibility should be raised to 16 years.

### Gender

In spite of what have been called ‘recurrent panics about apparent increases in [their] offending’, girls have been consistently less likely than boys to come into contact with the youth justice system. During 2010, almost 80% of those receiving a substantive youth justice disposal for an indictable offence were male. Girls also tend to stop offending at an earlier age than their male peers.

The common public perception that girls involvement in criminal activity has risen is recent years is not supported by the evidence: between 1992 and 2002, the number of girls processed receiving a disposal for an indictable offence fell from 33,700 to 23,300, a decline of almost 31%. However, over the same period, court convictions of girls rose sharply from 4,200 to 6,000. This contrast was a direct result of a declining use of pre-court measures for females, reflecting an increasingly interventionist stance towards girls’ offending. It seems likely that the increased visibility associated with such a rapid expansion in the female court population, has contributed to the perception that girl’s criminality was a greater concern than it had previously been.

The sanction detection target and its replacement by a commitment to reduce first time entrance have both had a greater impact on girls. From 2003, coinciding with the introduction of the former measure, there was a rise in detected female youth offending. The expansion up to 2007 was considerably sharper than that for boys (35% increase relative to 2003 baseline).

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62 Goldson, B (2009) ‘Difficult to understand or defend. A reasoned case for raising the age of criminal responsibility’ in Howard Journal 48(5)
64 Smith, D (2006) Social inclusion and early desistance from crime, report number 12 of the Edinburgh Study of Youth Transitions and Crime, University of Edinburgh
compared to 16%) and generated a raft of headlines depicting an ‘*unprecedented crime wave among teenage girls*’.\(^{66}\) As the first time entrants target began to kick in, there was a marked decline in detected offending of both groups, but that for girls was more pronounced. (This fall did not, it would appear, garner much press attention.\(^{67}\) The pattern shown in figure 6 is, accordingly, a predictable outcome of the two targets, reflecting in the first instance a reduction in informal responses to female misbehaviour and more recently by an expansion in the use of informal mechanisms. The shift from one performance measure to another has had a gendered impact precisely because the more limited, less serious, nature of girls’ criminality (as well as the persistence of sexist attitudes) provides greater potential for outcomes to be influenced by the extent to which police have discretion to respond informally to instances of misbehaviour.

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**Figure 6**

*Changes in detected offending relative to 2003 baseline by gender: Indictable offences*

![Graph showing changes in detected offending relative to 2003 baseline by gender: Indictable offences.](image)

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**Race**

The overrepresentation of black and minority ethnic (BME) young people within the youth justice system has long been recognised as problematic. It is less commonly recognised that representation varies by ethnic group: relative to their make up in the general 10–17 population, children classified as Asian or Asian British are *under-* represented among those receiving a substantive youth justice disposal; by contrast black and black British children are significantly *over-* represented, as are children of mixed heritage. Between 2006/07 and 2010/11, the proportion of those supervised by YOTs, who are recorded as white, has fallen from 88% to 82% with a corresponding rise in the BME caseload from 12% to 16%.\(^{68}\) It seems probable that this worrying trend is a consequence of the reduction in first time entrants being less pronounced for

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\(^{67}\) Sharpe, G (2012) *op cit*  
\(^{68}\) Ministry of Justice (2012) *op cit*
minority ethnic children, but figures are not broken down in a manner that would allow this hypothesis to be tested.

An issue of further concern is that for those groups who are disproportionately represented in the youth justice system, the extent of overrepresentation increases in line with the level of youth justice intervention. As shown in table 3, while in 2009/10, black / black British children made up 6.2% of the offending population, they accounted for almost one in four of those deprived of their liberty for two years or longer.

<table>
<thead>
<tr>
<th></th>
<th>Asian / Asian British</th>
<th>Black / Black British</th>
<th>Mixed heritage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10 – 17 population</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth offending population</td>
<td>6.4%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Court population</td>
<td>3.9%</td>
<td>7.6%</td>
<td>5.1%</td>
</tr>
<tr>
<td>Custodial sentences</td>
<td>5.4%</td>
<td>12.2%</td>
<td>7.5%</td>
</tr>
<tr>
<td>Sentences of long term detention</td>
<td>9.1%</td>
<td>23.3%</td>
<td>7.6%</td>
</tr>
</tbody>
</table>

Table 3
Representation of BME groups in the general 10 –17 population and at various stages of the youth justice system: 2009/2010

No doubt, discrimination in various forms helps to explain the statistics, but the Home Affairs Committee inquiry into young black people and the criminal justice system concluded that the primary cause of over-representation was social exclusion. Minority ethnic young people are more likely than their white counterparts to be raised in disadvantaged circumstances and experience poverty. More recent research has confirmed that black, and in particular mixed heritage, children within the youth justice system have significantly higher levels of need than their white counterparts.

**Diversion from the youth justice system and diversion from court**

The NAYJ considers that the criminalisation of children should be minimised through diverting them from the formal mechanisms of the youth justice system into suitable mainstream provision wherever possible. Where children are processed formally, opportunities to divert them from prosecution should be maximised. To a large extent,

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69 Figures are given for 2009/10 as the latest edition of Youth Justice statistics does not allow analysis at this level
such an understanding informed the treatment of children in trouble from the latter part of the 1970s through to the end of the 1980s. For instance, Home Office guidance to the police, issued in 1985 indicated that prosecution of juveniles should not be undertaken:

*without the fullest consideration of whether consideration of whether the public interest (and the interests of the juvenile concerned) may be better served by a course of action which falls short of prosecution.*

The guidance went on to say that when a child was arrested, there should be no presumption that any formal response was required, *'as against a decision to take less formal action or no further action at all'*.

That commitment to diversion waned rapidly from the early 1990s onwards, as part of a process of repoliticising youth crime that has subsequently become known as the ‘punitive turn’. The shift in mood was given statutory expression in New Labour’s Crime and Disorder Act 1998 which mandated that informal action was to be used only in exceptional circumstances. The Act also introduced a ‘three strikes’ mechanism in the form of reprimands and final warnings which replaced police cautioning for those below the age of 18 years. Henceforth, prosecution would be required on the third offence at the latest, irrespective of the nature of the circumstances of the child or behaviour involved.

The evidence presented for change was far from compelling, consisting largely of assertions that cautioning did not work and that early intervention was necessary if youth crime was not to spiral out of control.

Nonetheless, the legislative change acted to reinforce a trend of increased prosecution. As shown in figure 7, between 1992 and 2002, the rate of diversion for indictable offences fell from 73% to 54%.

**Figure 7**

Rate of diversion 1992 to 2010: indictable offences

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74 Ibid

75 Muncie, J (2008b) ‘The “punitive turn” in juvenile justice: cultures of control and rights compliance in Western Europe and the USA’ in *Youth justice* 8(2)


77 The rate of diversion is used to mean the proportion of pre-court disposals – ie cautions, reprimands, and warnings - as a proportion of all substantive youth justice outcomes.
The impact of the sanction detection target can be seen in the chart in the four year period from 2002. As large numbers of minor offences that would not previously have warranted a formal response, were disposed of by means of a formal sanction, the use of reprimands and final warning grew more rapidly than convictions.

The chart also shows that from 2007, as sanction detections came to have less impact on police decision making, there has been a reversion to the earlier trend of a falling rate of diversion. This picture is somewhat misleading, however, since the dramatic reduction in first time entrants during this period has almost certainly been achieved, in large part, by dealing informally with children who would otherwise have received a reprimand or final warning. According to one estimate:

if just half of the fall in first time entrants in 2010 represents children who would otherwise have received a formal pre-court disposal, the rate of diversion for that year would, in the absence of the new outcome measure, have been higher than at any point since 1993.\(^78\)

Indeed, the focus on reducing the numbers coming into the youth justice system for the first time has seen something of a rediscovery of diversion in its widest sense. A range of pre-court mechanisms in addition to reprimands and warnings are now available. These include outcomes that are not reflected in the figures for detected offending, such youth restorative disposals\(^79\) and recording no further action in areas where there is a system of 'triage' in place that facilitates a process of diversion in appropriate cases following a YOT assessment.\(^80\) It seems likely that this resurgence of diversionary activity might continue. The coalition has confirmed its commitment to the further reduction in first time entrants being one of three high level outcomes by which the performance of the youth justice system will be measured. The Legal Aid, Sentencing and Punishment of Offenders Bill, before Parliament at the time of writing, also contains provision for abolishing the final warning scheme in favour of youth cautioning which will allow significantly more discretion to the police to avoid prosecution in appropriate cases.

The NAYJ broadly welcomes these recent developments as being consistent with the research evidence that contact with the youth justice system is itself 'criminogenic'\(^81\). At the same time, it is a matter of concern that the rediscovery of diversion appears to be a largely pragmatic response to workload and financial constraint rather than a principled recognition that the youth justice system should be used as a mechanism of last resort.\(^82\) In particular, there has been little or no attempt to redirect the capacity to work with children in trouble towards mainstream services. Such a shift in resources is a prerequisite of effecting a substantial rise in the age of criminal responsibility

**Children in court**

Where prosecution ensues, the NAYJ considers that any sentences imposed by the court, or delivered by youth justice agencies, should be governed by the principle of minimum necessary intervention. Sentencing should be proportionate to the

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\(^78\) Bateman, T (2012) ‘Who pulled the plug. Towards an explanation of the fall in child imprisonment’ in *Youth Justice* 12(1)


\(^80\) The system of ‘triage’ has been rolled formally out in the 69 *Youth crime action plan* areas, but similar arrangements exist elsewhere


\(^82\) Pitts, J and Bateman, T (2010) op cit
seriousness of the offending behaviour rather than reflecting assessed risk; intervention should be directed to maximising the child’s long term potential rather than confining itself to the restricted, and negative, ambition of attempting to avoid particular forms of illegal behaviour.

The referral order was implemented on a national basis from April 2002. It is, in most instances, a mandatory disposal where a child appears in court for a first offence and pleads guilty. Since April 2009, a second order has been available to the court in particular circumstances. As a consequence, the disposal has rapidly established itself as the most frequently used sentencing option and during 2010/11 accounted for more than one in three of all youth penalties imposed by the court.

The referral order has inevitably displaced a range of other disposals, particularly those below the community sentence threshold. Between 2000/1 and 2010/11, the use of the reparation order declined from 6.3% of all disposals to 2.8%. Of greater concern, perhaps, is the continued decline in the use of discharges: in 2000/1, absolute and conditional discharges constituted more than one in five penalties imposed on children but, by 2010/11, constituted just 14%. Children who would previously have received discharges are now subject to statutory intervention, under the referral order, for a period of between three months and a year. The NAYJ accordingly welcomes the provision in the Legal Aid, Sentencing and Punishment of Offenders Bill that would allow courts to impose a conditional discharge as an alternative to a referral order where they consider it appropriate to do so.

The existing range of community sentences was replaced by a single for offences committed after 30 November 2009. In making a youth rehabilitation order (YRO), the court can, in principle, select from a menu of 18 different forms of intervention, in 2010/11 just 2% had five or more requirements; more than two thirds had just one or two requirements attached. Forty percent of all requirements imposed were for supervision, suggesting that in many cases, the youth rehabilitation order has become a functional replacement for the supervision order. Nonetheless, significant numbers of children were also subject to electronically monitored curfews, whose use has risen progressively each year since 1998. During 2010/11, 15% of all YRO requirements – 3,518 in total – involved a curfew. In addition, in 2010, 1,495 curfew orders were imposed (presumably for offences committed prior to November 2009). In this context, the NAYJ considers it is a matter of concern that the Legal Aid, Sentencing and Punishment of Offenders Bill contains provision to extend the maximum duration of a curfew requirement from six to 12 months and the maximum daily curfew period from 12 to 16 hours.

**Children deprived of their liberty**

One of the manifestations of the ‘punitive turn’ was that for more than a decade child incarceration expanded rapidly. In recent years however there has been a considerable decline. As shown in figure 8, custodial sentences began to fall from 2001. During 2010, 4,219 children were given a custodial disposal, representing a 45% reduction from the highpoint of 7,653 in 1999. At the same time, the number deprived of their liberty remains higher than the 4,000 who were given sentences of detention in 1992. The number of orders for long term imprisonment (extended sentences, detention for public protection and sentences under sections 90 /91 of the Powers of Criminal Courts (Sentencing) Act 2000) have also fallen, albeit less dramatically, from 582 in 2000 to 462 in 2010.

**Figure 8**
**Custodial sentences imposed on children: 1992 – 2010**
The reduction in sentences of imprisonment was not immediately reflected in an equivalent decline in the population of children held in the secure estate. Indeed, as a consequence of an expansion in custodial and secure remands, and an increase in average sentence length, the population continued to grow until 2008 in spite of the tailing off in custodial sentences. More recently, as indicated in table 4, the number of children deprived of their liberty at any one time has fallen, by almost one third since 2008.\textsuperscript{83} The riots that occurred in parts of England during August 2011 interrupted that trend, with an increase of 129 in the number of children locked up during that month. It would appear however that the rise was relatively temporary since the population of the secure estate continued to fall in three out of the four months to December 2011.

Table 4
Under 18 population of the secure estate for children and young people:
August of the relevant year

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>2,968</td>
<td>2006</td>
<td>3,067</td>
</tr>
<tr>
<td>2001</td>
<td>2,928</td>
<td>2007</td>
<td>2,991</td>
</tr>
<tr>
<td>2002</td>
<td>3,104</td>
<td>2008</td>
<td>3,019</td>
</tr>
<tr>
<td>2003</td>
<td>2,833</td>
<td>2009</td>
<td>2,504</td>
</tr>
<tr>
<td>2004</td>
<td>2,785</td>
<td>2010</td>
<td>2,099</td>
</tr>
<tr>
<td>2005</td>
<td>2,930</td>
<td>2011</td>
<td>2,106</td>
</tr>
</tbody>
</table>

While welcoming the reduction in the use of imprisonment for children, the NAYJ considers that the level of child custody remains far too high and that incarceration is not used as 'a measure of last resort and for the shortest appropriate period of time' as required by the United Nations Convention on the Rights of the Child.\textsuperscript{84} It is accordingly appropriate that the coalition government should select a reduced reliance on custody as one of three indicators by which the performance of the youth justice system will be measured. The NAYJ considers that the powers of the court to imprison children should be limited by tightening the legislative criteria as a mechanism for

\textsuperscript{83} Ministry of Justice (2012) \textit{Youth custody data}. London: Ministry of Justice
\textsuperscript{84} Article 37b
achieving that target. Moreover, as demonstrated in figure 9, there is an important link between the custodial outcome measure and that to reduce first time entrants, since there is a marked correlation between the number of children coming into the system and population of the secure estate from the point at which the former began to fall. Increased diversion is one of the primary mechanisms for effecting a reduction in custody.

Figure 9
Population of the secure estate against first time entrants to the youth justice system: 2004/05 – 2001/11
(Figures for the secure estate population given for last day of March in each year)

While the trend in terms of overall numbers provides grounds for optimism, there are other reasons to be concerned. The NAYJ supports the abolition of penal custody: the few children who need to be in secure provision, because they represent a serious risk to others, should be placed in settings that prioritise their wellbeing rather than in prisons and establishments that exist to make profit. At March 2011, 79% of the population of the secure estate were detained in young offender institutions and a further 13% were held in secure training centres (STCs). Secure children’s homes (SCHs) by contrast – residential child care establishments whose primary orientation is care based rather than correctional – accommodated just 8% of children in custody. The decline in the custodial population might have provided an opportunity to place a

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86 Bateman, T (2012) [op cit](#)
higher proportion of those detained in child friendly facilities. It has instead been accompanied by a decommissioning of SCHs. This is consistent with a longer term shift in provision from SCHs to STCs: in April 2002, for instance, more than one in ten of the custodial population was placed in the former type of establishment, while just 4% were held in STCs.\textsuperscript{88} Since 2003, 12 secure children’s homes have lost their contract with the YJB.\textsuperscript{89}

**Avoiding a cycle of reoffending**

The third high level target proposed by the coalition government, as a measure of the performance of the youth justice system, is the rate of reoffending.\textsuperscript{90} A third of children who received a substantive youth justice disposal in the year ending March 2010 reoffended within twelve months of that disposal. When figures are adjusted to take account of the relevant characteristics of the cohort, this represents a rise of 2.4% over the equivalent figure for 2000 following falls in 2006/7 to 2008/9.\textsuperscript{91} Recidivism varies significantly according to the nature of disposal to which young people are subject. As shown in table 5, pre-court disposals are associated with the lowest level of reoffending while custody generates the highest. For children who have never been imprisoned the rate of proven reoffending is 31.9%; for those who have experienced six or more episodes of incarceration, the rate rises to 87.8%. Curfew orders (which have now been abolished but replaced by the curfew condition of the YRO) have the highest rates of reoffending of any community penalty, raising a question as to the wisdom of the government’s plans, noted above, to increase the powers of the court to impose longer curfews.

**Table 5**

*Proven rates of reoffending by type of disposal 2009/10*

<table>
<thead>
<tr>
<th>Disposal</th>
<th>Percentage reoffending within 12 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reprimand / final warning</td>
<td>23.5%</td>
</tr>
<tr>
<td>First tier</td>
<td>45.1%</td>
</tr>
<tr>
<td>Community sentence</td>
<td>65.9%</td>
</tr>
<tr>
<td>Custody</td>
<td>69.7%</td>
</tr>
<tr>
<td>Total</td>
<td>33.3%</td>
</tr>
</tbody>
</table>

One would naturally anticipate that disposals associated with greater restrictions on liberty would be associated with higher levels of reoffending since children subject to higher end penalties are likely to be those whose offending is more serious or persistent. However, previous analysis by the Ministry of Justice, in relation to adults, has suggested that when relevant factors are controlled for, conditional discharges are associated with lower levels of reoffending (in the region of 5%) than community sentences. Adult offenders subject to community penalties are also between 5.9 and 8.3% less likely than similar offenders given custody to come to the attention of the criminal justice system again in the next year.\textsuperscript{92} There is no reason to suppose that


\textsuperscript{90} *Breaking the Cycle: effective punishment, rehabilitation of offenders and sentencing*. London: the Stationery Office

\textsuperscript{91} Is it likely that the pattern of reoffending rates are a further manifestation of the shifts in government targets. For a discussion of recorded recidivism and the sanction detection target, see Bateman, T (2010) ‘Reoffending as a measure of youth justice intervention: a critical note’ in *Safer Communities* 9(3)


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equivalent analysis conducted in relation to children would show a different pattern. In that context, the data would appear to support a youth justice policy and practice that maximises diversion from court and from custody, and promotes a strategy of minimum intervention within the court arena.