

Public Bill Committee examination of the Police, Crime, Sentencing and Courts Bill

**Additional Evidence by the Youth Justice Board for England
and Wales**

June 2021

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The Youth Justice Board for England and Wales

Vision

Working to ensure a youth justice system that sees children as children, treats them fairly and helps them to build on their strengths so they can make a constructive contribution to society. This will prevent offending, and create safer communities with fewer victims.

Youth Justice System Aims

Our Board have established the Youth Justice System Aims which are not only for the YJB to work towards but for the youth justice community as a whole. They are:

- 1) To reduce the number of children and young people entering the youth justice system
- 2) To reduce reoffending from children and young people in the youth justice system
- 3) To improve the safety and wellbeing of children and young people in the youth justice system
- 4) To improve the positive outcomes of children and young people in the youth justice system

Our role

The role of the YJB is to oversee the youth justice system in England and Wales. The statutory responsibilities of the YJB include:

- Advising the Secretary of State on the operation of, and standards for, the youth justice system;
- Monitoring the performance of the youth justice system;
- Identifying and promoting good practice;
- Commissioning research and publishing information

While the YJB is responsible for overseeing the performance of youth justice services including multi-agency youth offending teams (YOTs), the YJB does not directly deliver or manage these services.

Introduction

As a non-departmental public body (NDPB) with a unique focus on children and young people in the youth justice system (YJS), the Youth Justice Board for England and Wales (YJB) welcomes the opportunity to provide further information to the Public Bill Committee on your examination of the Police, Crime Sentencing and Courts Bill. Our statutory responsibilities along with the expertise of our Board enable us to set standards for, and monitor the operation of, the youth justice system. Our work with Youth Offending Teams (YOTs) gives us an operational focus, which allows us to inform national policy and maintain a focus on the continuous performance improvement of youth justice services.

The YJB is the only official body to have oversight of the whole youth justice system and so is uniquely placed to guide and advise on the provision of youth justice services.

This submission does not seek to provide comment on all sections of the bill, rather it focusses on the most pertinent elements relating to children, examining the impacts of proposals within Part's 7, 8, 9, 10 and 11 of the Bill.

Over-arching comments on the bill

Equality Impacts of the Bill

The YJB is concerned that several of the proposals, particularly in part 7 of the bill, will disproportionality impact on children from Black, Asian and Minority Ethnic backgrounds. The government itself has recognised this impact within their equality assessment, however, they state that they 'believe that the principle of public protection and the overarching aim of the youth justice system to prevent offending by young people justify the changes outlined.'¹

Evidence demonstrates that contact with the youth justice system can increase the likelihood of children re-offending², and unless a 'child first', future focussed approach is being taken to support the child on their desistance journey, longer custodial sentences are highly unlikely to support the aim of the youth justice system, and will more than likely exacerbate an already worrying issue.

We are also concerned that the Government's equality assessment identifies a disproportionate impact on Black, Asian and Minority Ethnic Children as an outcome of the measures outlined in the bill, however, they do not attempt to outline any mitigations for these outcomes. We would strongly advise that appropriate mitigation is put in place to ensure any known, unintended or indirect negative impacts on over-represented groups are minimised when any new proposals are put into practice. We wish to seek assurance that these changes will be monitored for disproportionate effects on Black, Asian and Minority Ethnic children so that any changes aren't creating a further aspect of disparity for Black, Asian and Minority Ethnic children.

Comments by Bill Sections

Part 7: Sentencing and Release

Move the automatic release point to two-thirds (from halfway) only for those who receive a standard determinate sentence of 7 years or more for the most serious violent offences relating to homicide and for all serious sexual offences (with a maximum penalty of life) to ensure that 'time spent in custody reflects the seriousness of the offence committed'.

The YJB do not support this proposal. Longer in custody does not automatically result in improved rehabilitation and in some cases, it can result in worse outcomes and a cementing of a 'pro-criminal' identity. Successful rehabilitation will depend on the level of support made available to the child during their custodial sentence, including the employment of the principles of Constructive Resettlement and multi-agency wrap around support during custody and following release.

It is not clear how a blanket increase in the length of time before automatic release directly supports rehabilitation and resettlement. This is particularly important to considering the primary aim of the youth justice system is to prevent offending and re-offending by children.

¹ [Overarching equality statement: sentencing, release, probation and youth justice measures - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614441/Overarching_equality_statement_sentencing_release_probation_and_youth_justice_measures.pdf)

² Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). 'Formal system processing of juveniles: Effects on delinquency.' Campbell Systematic Reviews, 1, pp 3-80

Change how discretionary life sentence minimum terms are calculated meaning that those serving a discretionary life sentence will not be eligible for Parole Board consideration earlier than those serving an equivalent Extended Determinate Sentence (EDS) (as is currently the case).

This proposal will only affect a small number of the youth cohort as only a very small number of discretionary life sentences are handed down to children (7 between 2015 and 2019). However, as with the previous proposal, it is not clear how a blanket increase in the length of time before release directly supports rehabilitation and resettlement and, on this basis, the YJB does not support this proposal.

Change the minimum term starting points for murder committed as a child (currently 12 years). More serious offences, and those committed when the child is closer to the age of 18, will have higher tariffs, while younger children will have lower tariffs. (Full list of tariffs on page 91).

The YJB recognises that this proposal attempts to address the distinction in cognitive development and maturity between younger children (10-14 year olds) and older children (15-17 years old) by creating two separate minimum term starting points for each age group, however, we do not support this proposal.

We recognise the logic of the proposal of tapering tariff starting points based on age, however, this proposal fails to recognise that all children (U18) have a distinct set of rights and vulnerabilities and also the nature and length of time over which children and young adult's development takes place. Evidence points firmly to brain development continuing on past age 18 until approximately 25 years of age. Recent policy changes in other areas recognise this lack of maturity and continuing vulnerability beyond the age of 18, such as extensions to entitlements for care leavers and children with special educational needs up to the age of 25. As such, based on legal status and children's development, we would advocate that tapering begins at 18 years of age upwards.

Children should retain their unique legal status until they reach the age of 18 and as such measures intended to safeguard children should remain fully in place until this time.

The proposed minimum tariffs are longer than 12 years (current length) in nearly all circumstances and in both age ranges, and in some cases are significantly higher. There are low numbers of children committing the most serious offences, however, those children who do commit these offences are usually in the 15-17 category, meaning they will receive significantly longer sentences under this proposal.

It is worth emphasising that proportionally to their life any sentence imposed upon children will be more onerous than upon an adult. 10 years for a child of 15 constitutes two thirds of their life when significantly less proportionally for an adult. This will impact upon how individuals perceive a sentence and the impact upon them psychologically.

Reduce the number of opportunities for individuals who committed murder as a child to have their minimum term reviewed after they turn 18.

We do not support this proposal and believe this reduces the opportunity for rehabilitation.

Part 8: Youth justice

In terms of our broad view of the proposals surrounding remand in the bill; we are supportive of any measures which reduce the numbers of children remanded into custody, particularly given that only a third of remanded children go on to receive a custodial sentence.

We have some reservations as to the whether the measures will achieve the desired impact in isolation, without first tackling some of the suspected root causes of the rise

in remand; i.e. the impact of exploitation on vulnerable children and their communities, limited time available to build a comprehensive bail package and misalignment in pace and in part priorities of the criminal court and children's social care for example around accommodation, available resources to provide round the clock support.

We believe the government should collect and publish data on the reasons bail is or isn't granted. This would help us to understand the recent patterns we are seeing in remand data, as well as support us to find solutions.

We recognise that some of the proposals elsewhere in the bill look to tackle some of these issues, particularly around serious youth violence. However, the YJB do not believe that measures such as Knife Crime Prevention Orders and Serious Violence Reduction Orders will be effective in tackling the issue and risks drawing children further into the youth justice system (further information on our views on SVROs can be found in our comments on Part 10 of the Bill).

We welcome the Ministry of Justice's recent focus on assessing options for specific youth resettlement and remand accommodation and believe this could go some way to support a reduction in children on remand. We stand ready to work with MoJ to support the recommendations from the remand review.

We welcome the intention of the proposals to strengthen support available to children in the community and in doing so divert children from custody and more so if the proposals might help address the disproportionate numbers of Black and Mixed-race heritage children in custody.

Amend the real prospect of custody test, to raise the threshold when custodial remand is suitable and require courts to record their rationale

We welcome the proposal to provide a statutory duty for the court to consider the welfare and best interest of the child when applying the prospect of custody test and believe that, in principle, this aligns with our child first ethos and presents a step towards a more 'child first' remand process.

We are also aware that Debbie Abrahams (Labour – Oldham East and Saddleworth) and Jackie Doyle-Price (Conservatives – Thurrock) have tabled an amendment to this section of the bill to remove the power of the court which allows the refusal of bail in circumstances where the court is satisfied that the defendant should be kept in custody for their own protection, or for their own welfare where the defendant is a child or young person. The YJB would support such an amendment on the basis that we hold the view that no child should be secured through the criminal court for welfare matters. There are welfare options available if there are concerns regarding the safeguarding of a child.

Amend the history conditions, so only 'recent and significant' history of breach or offending while on bail or remand can result in a custodial remand

We welcome this proposal and believe it will help support a reduction in the number of children who are held on remand unnecessarily. However, we think it would be helpful to make an amendment to this section of the bill which clearly sets out the definition of 'recent' and 'significant' and recommend that 'recent' be no longer than within a six-week period and 'significant' be violence with the potential to cause serious harm or injury.

Changes to Detention and Training Orders

We broadly welcome the changes to DTO's outlined in the bill. The changes will offer increased flexibility to sentencers and potentially support resettlement and meanwhile simplify calculation of sentence length.

The proposed flexibility in the structure of DTOs should allow for the sentence length to accurately account for remand episodes already served, electronically monitored bail or a guilty plea, rather than the nearest permissible length based on the fixed tariffs that currently exist. Changing the structure means that time spent on remand or electronically monitored can be subtracted solely from the custodial time

Previously the fixed lengths of the DTO sentences held the potential to create a barrier to resettlement. For example, where sentence length might mean a child would be released just beyond September therefore missing the intake of new school/college year leaving them out of education for longer than necessary so a more flexible approach would be welcomed in this scenario.

However, we have some concern at the findings of the impact assessment carried out on this change which states: Removing the fixed-length nature of DTOs means that individuals receiving early guilty plea discounts may receive longer sentences than they currently do. While there will be no additional children sentenced to DTOs under this option, we anticipate that the increase in average sentence length may lead to a steady state increase in the youth custody population of around 30 to 50 places, costing around £5.3m to £8.5m per year. There would be an equivalent uplift in the number of children supervised in the community at any one time at a cost of around £0.4m to £0.6m per year. We would want to see safeguards in place to avoid the possibility of children spending longer than necessary in custody, which could mean also an increase in the number of children in a secure establishment at any one time.

Having a more flexible approach to setting the term and allowing time on remand or bail to be subtracted from the overall custodial element appears to be sensible.

We are mindful of the impact assessment which states: Time spent on remand will be taken away from time to serve in custody as opposed to from the overall sentence length. There will be some individuals that spend longer on supervision in the community under this option, which would incur additional YOT costs. It has not proved possible to quantify these additional costs. Whilst it may be beneficial for children to spend longer with the support of the YOT as opposed to in custody we would be concerned on the impact on YOT budgets as they are already stretched, particularly if other proposals across the entirety of the Bill also impact on YOT costs.

The impact assessment has not been able to show any evidence of a potential positive impact on reoffending. Some children may spend longer on the community part of the order which gives YOTs more time to work with them but there is no evidence to support this as a benefit. We would want to see cost vs benefit taken into account for this, and all proposals.

Abolish the Reparation Order

The YJB agrees with this proposal based on low usage and that reparation can be included in other sentences, both the referral order and youth rehabilitation order.

Reparation orders are the least used orders. In the year ending March 2020 there were just under 16,900 occasions where children were sentenced at court; only 51 of these were reparation orders. Usage of the order has dropped significantly, from 3,279 in the year ending March 2010. It is not clear why the use of this disposal has fallen so significantly, but we can speculate that it may be at least partly due to changes in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which removed restrictions on the use of cautions and conditional cautions. Possibly children who may have proceeded to court are now receiving out of court disposals.

We would welcome the opportunity to input into how restorative justice processes might be improved.

To increase the maximum daily curfew to 20 hours while retaining a weekly maximum of 112 hours (current maximum is 16 hours per day)

While we agree that a more flexible approach to use of curfews should be encouraged, we believe that imposing curfews for up to 20 hours per day is overly punitive.

The rationale for this proposal is that increasing the maximum number of hours per day that a curfew can be imposed with a YRO will increase the flexibility of the curfew system, as it will allow for longer curfews on certain days (e.g. weekends) when individuals may be more prone to breaches etc. However, the Youth Justice Board have previously flagged concerns regarding this proposal to the government, citing the risk that this will pose regarding potential increased exposure to interfamilial violence. We can draw parallels between this proposal to the increased instances of domestic interfamilial violence seen during the COVID-19 lockdown, during which time children were required to spend more time within the family home. This concern has been echoed by other across the sector.

We believe that the 16 hours maximum curfew is more than enough, especially if used creatively. We would propose that the maximum daily curfew time should remain at 16 hours per day.

To introduce location monitoring as a standalone requirement that can be imposed in YROs. This measure would be piloted.

According to the Sentencing White Paper, the rationale for this proposal is that it will 'reduce the likelihood of breach; provide information to support services; and provide an additional protective factor'. There is evidence to support this rationale which demonstrates that EM can often have a positive impact on the safety of the child.

However, EM is quite an intrusive measure and can be seen to be at odds with our Child First principle if applied punitively. We have questions as to the benefit of a standalone monitoring requirement as generally where children's behaviour may be seen to warrant such restriction the child is also likely to need support through supervision. Without adequate support there is also to be an increased risk of EM violations through children failing to charge their tag.

To make youth offending teams or probation staff the Responsible Officers in cases where electronic monitoring requirements are imposed.

We welcome the proposal to make YOTs the responsible officers to determine the response to violation of electronic curfews and where appropriate instigate breach action. This offers discretion to YOTs who will have a fuller understanding of the child in decision making and in turn encouraging the child to engage with the curfew.

This provision has also been broadly welcomed by the sector and is believed to have the potential to save YOT staff valuable time in the long run.

To increase the maximum length of an extended activity requirement of a YRO with Intensive Supervision and Surveillance (ISS) to 12 months and add a location monitoring requirement as a mandatory element of the ISS. These measures would be piloted.

The proposal to increase the maximum length of the extended activity requirement from 6 to 12 months will enable children to benefit from increased contact time and

support from the YOT. This is positive, especially as we know that short interventions/activities tend to be less effective. It may be that this will encourage courts to use ISS in place of longer custodial sentences, diverting children from custody thereby increasing the likelihood of a positive outcome.

However, children are less likely to be able to engage with longer periods of time subject to very stringent requirements and there is likely to be an increased likelihood of non-compliance and resulting breach action. Consequently, lengthier sentences of this kind may possibly just delay a child entering custody.

We are also aware of concerns from the sector regarding the resource implications of this proposal - delivery of high quality individually tailored ISS provision is costly and has potential to reduce YOT capacity for intervention further upstream.

In terms of mandatory location monitoring, we know there are demonstrated benefits of EM, however again this is an intrusive measure which needs to be carefully and sensitively managed if this is to be effective.

To raise the age limit of the education requirement so that it is the same as the age of compulsory education and training, rather than compulsory school age.

We believe that it makes sense to bring the YRO education requirements in line with the Education and Skills Act 2008 and are supportive of this move.

However, we would flag that education requirements are seldom used as part of a YRO (just 1% of YRO's included an education requirement in the previous year), and there is a risk that by increasing the amount of children who can have an education requirement applied, we are also increasing the amount of children we may end up criminalising for breaching their education requirement when there are other routes available to ensuring education attendance.

Part 9: Secure children's homes/ academies

Secure Schools are essential to obtain a step change in the effectiveness of custody - the YJB continues to support the Ministry of Justice to successfully deliver the first Secure School in Medway.

We welcomed the announcement that Oasis Academy Trust will open the first secure school. The YJB were involved in the selection process and were impressed by the vision and commitment of this successful multi-academy trust and charity to transform custody for children. We are meeting regularly with Oasis as work progresses.

Secure Schools are the way in which we can transform the concept of custody, by placing the needs of children at their heart. Children will be given relational, social, medical, physical and academic support they need in order that when they are released, they have developed the skills and attributes they need to go on to succeed. Creating opportunities to enable children to succeed and achieve positive outcomes is at the heart of our Child First principle.

We have been disappointed by the number of delays to the roll out of secure schools so far and are keen that the Government prioritises the delivery of the second secure school. In the long term, we would like to see a network of secure schools which replaces most existing youth custodial provision, as set out in Charlie Taylor's review. We would like to see a secure estate comprised of small locally based establishments with education and a child's health at their heart including clear constructive pathways back into the community.

We recognise that whilst there are pockets of good practice across the estate, the current custodial provision falls short of the standards set out in the secure school vision. We would like to see a secure estate comprised of small locally based

establishments with education and a child's health at their heart including clear constructive pathways back into the community. There will continue to be a need for more specialist provision for the youngest and most vulnerable children remanded or sentenced to custody.

Provide a statutory power for the temporary release of children detained in Secure Children's Homes.

Temporary release is an essential part of the rehabilitation of children sentenced to custody. Some objectives of a child's sentence plan will require them to attend meetings or participate in activities outside the secure establishment.

The temporary release powers essentially put into statute practice that is already taking place. We are encouraged by the government providing further support for children to be released temporarily and welcome conferring autonomy to the secure school provider. Allowing children to be released temporarily supports their constructive resettlement into their community both in maintaining family ties and allowing children to start or maintain education placements.

Allow 16-19 academies to provide secure accommodation and allow for the establishment and running of a secure 16 to 19 academy to be treated as a charitable purpose.

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Insert secure 16 to 19 academies into the definition of youth detention accommodation and apply the provisions of the Children's Homes (England) Regulations 2015 to secure 16 to 19 academies.

The current legislative landscape suggests the best approach for the secure school to be developed is along similar lines to Academies and therefore we would support anything that encourages and allows existing academy trusts to run these new schools.

However, we do have some concerns that this limits the delivery of secure schools and colleges to the academy sector. We are also concerned about the links to children entering the youth justice system from practices such as off-rolling children. We note, for example, the high prevalence of expelled children within the children's secure estate, for example at HMYOI Feltham in 2018 89% of children had been excluded from school (HMIP,2018).

We would be keen to seek assurance that through the tendering process any academy trusts selected to open or run a secure school have got the necessary skills, expertise, structures and ethos to support children in a secure setting.

We are supportive of the Government's longer-term vision to replace YOI's and STC's with secure schools and smaller units.

We would also advocate for an increase in high quality alternative provision across the school and academy estate, so that children who are struggling in mainstream settings have access to high quality provision that meets their needs rather than being excluded and thus removing the protective factor of education in the risk of offending or being vulnerable to exploitation.

Part 10: Management and rehabilitation of offenders

Introduce Serious Violence Reduction Orders (SVROs).

We welcome the decision not to apply SVRO's to children, however, we are concerned that this remains under review by the government. We do not believe that SVRO's should ever be applied to children as

We are also concerned about the potential displacement effect that SVRO's could cause for children; There may be a risk that in order to avoid further criminalisation, adults could coerce children to carry knives and other offensive weapons on their behalf – which may result in the subsequent criminalisation of the child. We recommend that adequate safeguards for this are considered as part of the development of the SVRO pilot.

Part 11: The rehabilitation of offenders

Amend the Rehabilitation of Offenders Act 1974 (rehabilitation periods for particular sentences) to provide for some custodial sentences of over 4 years to become spent after a certain period of time and reduces existing rehabilitation periods for certain other disposals.

Although a reduction in the length of rehabilitation periods is welcome, it is not clear how the government has arrived at the new rehabilitation timeframes for children that are proposed in the bill – it appears that they may have simply halved the new rehabilitation periods that are being proposed for adults, in line with current practice.

The YJB would advocate for any new rehabilitation periods for children to be based on evidence of reoffending, rather than an application of timeframes based on the adult model. We would welcome consideration be given to developing a separate model for rehabilitation periods for children, based on evidence of what works to rehabilitate children.

Measures to reduce re-offending

During our oral evidence session on 18 May, we committed to sharing some further information with the committee on what helps to reduce re-offending. The below sets out some evidence and current work which we hope supports the committee's understanding in this area.

The YJB's vision is for a youth justice system that treats children as children. This vision lies at the heart of who we are and what we stand for as an organisation. As adults, we have a moral responsibility to protect children in our society from all harms that might hinder their growth and their ability to realise their potential. If we fail in this responsibility, children will almost inevitably fail to thrive. In some cases, they will be drawn towards negative influences and behaviours to feel self-worth and value. In such circumstances, contact with the youth justice system, the subsequent impact upon their sense of self, and the stigmatisation that follows will all hinder their ability to constructively move forwards. The YJB wants to break this cycle. We want to make sure that wherever possible, children are prevented from having contact with the youth justice system. In cases where contact is unavoidable, any interventions that are deployed create constructive opportunities for children to realise their potential. This will benefit both the child as an individual, and society. Evidence tells us that this works in preventing offending and reoffending³. This is our core principle and what we regard as Child First. The YJB wants to ensure that the whole youth justice sector can respond to children's differing levels of vulnerability and need to ensure less contact occurs with the system.

In line with our child first principle, we would advocate any proposals in the Police, Crime, Sentencing and Courts Bill to recognise those under 18's as children, with distinct vulnerabilities and legal protections set out in law. We must recognise their needs are different from adults and that they are still developing neurologically.

³ For example, in relation to resettlement from custody, see <http://www.beyondyouthcustody.net/>

We also recommend that the Bill should recognise the structural barriers that exist for some children, and we acknowledge and recognise our responsibilities as adults to children and to ensuring they are able to grow and fulfil their potential.

The evidence base tells us contact with the youth justice system, and formal interventions too early, can lead to children being drawn into the system. This is why early identification, help and prevention is so key and why we are advocating that the Bill and its proposals should not result in more children being pulled into the system.

More information on the evidence base for a child first youth justice system can be found in a recent report by Loughborough University, commissioned by the YJB, [Child First Justice: the research evidence-base](#).

In September 2018, the YJB published [How to make resettlement constructive](#), which sets out the evidence base for successful resettlement of children post custody, and introduces the concept of 'Constructive Resettlement' to the wider sector.

Constructive Resettlement translates the research on resettlement into a common policy and practice framework for all agencies to work with a consistent understanding, language and aim. We define Constructive Resettlement as collaborative work with a child in custody and following release that builds upon their strengths and goals to help them shift their identity from pro-offending to pro-social. This approach enables all agencies to adopt the ways and principles of working that are necessary to improve outcomes and ultimately reduce re-offending.