

## Young Offenders

The Crime and Disorder Act 1998 made major changes to the ways in which the courts in England and Wales deal with young offenders. The Youth Justice Board was established to set national standards for youth justice services and Youth Offending Teams were created in every local authority area. All police forces were required to cooperate within this “integrated” system. This new system had a single, declared aim – the prevention of offending by children and young persons.

A decade later, the number of “juveniles” aged 10-17, sentenced by the courts had increased by 23% to 97,387 while the number of female juveniles sentenced had increased by 56.4%. Meanwhile, the number of “young adults” aged 18-20, sentenced to community or custodial sentences by the Magistrates and Crown Courts in England and Wales had increased to 140,276. As worrying, 83% of the juveniles sentenced for “indictable” or more serious offences had one or more convictions in the courts or “cautions”- formal warnings by the police for offences.(1)

While the 1998 Act attempts to make an integrated system for young offenders with key objectives, such as the swift administration of justice, the legislation concerning young offenders is spread across many statutes. Moreover, the definitions used in the many statutes are very varied. “Juvenile” and “youth” are used interchangeably, sometimes for those aged 14-18 and at other places for all under 18. Up to the age of 13, “child” is usually used and for those 14-17 “young person”. For those aged 18-21 “young adult” is often used while the law moves towards the criminal law applying to adults aged 21 and over. Similarly, “young offender” sometimes refers to “a person of any gender convicted of a criminal offence or cautioned” (2) and sometimes means “those aged 17 or under, who have been convicted of an offence” (3). All these terms are in use by the Home Office.

Until challenged by the Howard League for Penal Reform in 2002, the Prison Service Orders stated that the Children Act 1989, the comprehensive legislation setting out the legal duties upon the government, local authorities and others to children and young people “does not apply to under 18 year olds in prison establishments”. Perhaps this reflects the uncertain place of the young in British society

– are the young of all ages to be treated as children or as adults? They have no clear place in the criminal law of England and Wales.

The United Kingdom criminal legal systems recognise there must be an age of a child below which the child cannot be considered “criminally responsible”. The age is presently 10 years in England and Wales and when this age or above, a child may be dealt with by the police and the rigour of the courts. The age of 8 years in Scotland is the lowest for criminal responsibility among the European states. Both ages attract criticism, most times as too high but sometimes as too low. In England and Wales, the operation of the age of criminal responsibility was changed as recently as 1998 when the legal principle of “Doli Incapax”, “incapable of crime”, was abolished after reconsideration following the murder of a toddler, James Bulger, in 1993 by two other children. The principle held that no child below the age of 10 was capable of being responsible or accountable for any crime. The Doli Incapax presumption was “rebuttable”, or able to be set aside where the child was 10 -13 and the prosecution showed the court that the child knew that the offence was “seriously wrong”. In the Bulger case, which as murder could only be heard in the Crown Court, the dates of the two offenders’ ages were to be considered when the defendants first appeared before the court on “indictment”. It was alleged at the time that the prosecution delayed the appearances until both defendants had passed their tenth birthday. The prosecution were then able to rebut the presumption.

The United Kingdom was criticised for the abolition of the “Doli Incapax” legal presumption in 1998 and, more generally, for its low ages of criminal responsibility. In October 2008, the UN Committee on the Rights of the Child, while making major criticisms concerning the treatment of children in the UK, recommended the minimum age of criminal responsibility should be no lower than 12 years and ideally should be raised to 14 or 16 years as in most European countries (4). The devolved government in Scotland responded to the criticism and announced plans in March 2009 to raise the age of criminal responsibility from 8 years (although no child of such age had been prosecuted for many years) to 12 (5).

Whether they “require” the age of criminal responsibility to be different from young offenders in other countries, there is evidence that children in England and Wales face a range of problems worse than children in other countries. UNICEF carried out a major survey during the years 2000-2003 which was published in 2007 as “Child Poverty in Perspective: An Overview of Child Well-being in Rich Countries” and

acknowledged as the first study of childhood across the world's industrial nations. Having looked at 40 indicators including poverty, family relationships and health, the UK was placed at the bottom of a league table of 21 industrialised countries (6).

The majority of both juveniles and young adults convicted of indictable offences in 2007 were convicted of violence against the person, robbery, theft or handling stolen goods. Why has there been a surge in the number of offences involving the use of weapons by young offenders? In London, there were 16 fatal stabbings of teenagers in 2007 and 22 in 2008. Research by a prison governor of Pentonville Prison, Nicola Marfleet, indicates that children now carry weapons from an early age and, in London, from as young as 11 years. Reasons for carrying knives given by the young people interviewed were based around protection, fear and the anticipation of being attacked and victimisation. Gangs with strong social ties offered protection where the young people felt there was inadequate protection by their parents, teachers or the police. Moreover, the risk of serving long prison sentences was no deterrent (7).

The range of sentencing options available to courts dealing with young offenders has broadened greatly over the past 20 years although the Home Office description is hardly encouraging – "After the age of 14 years, young people are considered to be fully responsible for their own actions - in the same way as an adult would. However, there are some differences in the type of sentencing young offenders will receive." (8).

In fact, there is now a very large number of "disposals" of criminal cases available for young offenders and young adult offenders even before charges are made by police officers and courts become involved. The pre-court disposals start with the "cannabis warning" given by a police officer on the street in return for a signature of admission and the destruction of the drug. Most young offenders in a police station are given a formal and recorded "reprimand" or "final warning" for a first or second minor offence and are not required to attend a court. After appearing in Youth Court and pleading guilty to a first offence, a young offender should be given a "Referral Order" referring him or her to a Youth Offending Panel which advises the court on the best course to prevent him or her offending further. The advice is usually then built into a sentence from the wide range of community sentencing "disposals" in the Youth Court available for all but most the serious cases which are dealt with in the Crown Courts. The sentences in the Youth Court start with discharges and go through

fines, Reparation Orders, Community Punishments, Community Rehabilitation Orders, Curfew Orders and Drug Treatment and Testing Orders and are often given in combination.

Now some figures. In 2007, the total number of juveniles aged 10 – 17 sentenced in the courts of England and Wales amounted to 97,387 while the figures for young adults aged 18 -20 amounted to 140,276. Of the juveniles, 54,873 or 66% received community sentences while 22,462 or 17% young adults received “community orders” within which the requirements such as a curfew were set out. In 2007, 5,361 juveniles and 13,487 young adults were sentenced to immediate custody (9).

At the end of March, 2009, the Howard League for Penal Reform reported that there were 2,679 children below the age of 18 years, 2,509 boys and 170 girls, in custody in England and Wales. Secure children’s homes run by local authorities held 201 while secure training centres run by private companies for the Prison Service held 250 (10). The remaining 2,228 children were held in prisons for young persons and young adults aged 15 – 21, the Young Offenders Institutions. Save for Russia and Turkey, the United Kingdom imprisoned more children than the other states in Europe in 2007. In terms of young offenders as a percentage of the total prison populations, the United Kingdom incarcerates double the numbers of any other state in Europe (11). The number of children imprisoned doubled between 1997 and 2007 despite no increase in the amount of crime committed by children. The average period of immediate custody for young offenders sentenced in Youth and Magistrates Courts doubled from 3 months in 1997 to 6 months in 2007 (12). The figures for young adult offenders are generally similar.

Reoffending rates for young offenders in the United Kingdom, despite major changes in the statistical methods used by the Home Office in an apparent effort to show the rates are falling, are very high. For young offenders released from custodial sentences, about 80% reoffend within 12 months (rather than 24 months used for calculations for other released offenders). For those young offenders completing community sentences, the comparable figure is about 70%. Studies suggest the reasons relate to the complex personal backgrounds and the current problems of the young offenders as they leave custody or finish their community sentences. More than 80% have used illicit drugs, about 40% have diagnosed mental health problems, less than 30% live in the community with both parents and about 45% have experience of care with local authorities.

Moreover, the reoffending rates occur despite the average expenditure each year on education, training and maintenance of a young offender in a secure home of £60,000, in a secure training centre of £200,000 and in a Youth Offenders Institute of £40,000. These figures compare with a less than £5000 average spent each year on the education by the state of a young person in the community (13).

Is it evident that “prison does not work”, particularly in the case of young offenders? It seems likely the very rapid expansion of numbers entering custody has overwhelmed the facilities. Might the major expansion of the prison estate now underway by the United Kingdom government bring down the rates of crime and reoffending by young offenders?

A recent study by Professor Carol Hedderman, formerly Assistant Director of Research and Statistics at the Home Office and now Professor of Criminology at the University of Leicester, suggests the opposite effect (14). “Every time we build a new Titan prison, we’ll see thousands more people offending again....Most boys mature out of offending but if you don’t wait for them to mature out of it you stigmatise them with a criminal record and then they don’t stand much chance much chance of getting back into society.” Enver Soloman, deputy director of the Centre for Crime and Justice Studies at King’s College, London, who commissioned the study concludes – “It’s clear that incarceration causes immense social and economic damage to individuals and their families, and as a result it’s a crime generator. People go to prison and go on to commit many further offences. Prison will never be an effective crime-control tool because the evidence clearly demonstrates that it actively creates or compounds the factors that contribute to offending.”

What could you do?

Support the “Growing Up-Shut Up” campaign by the Howard League for Penal Reform for -

- Government policy for all children, including those in trouble with the police and the courts, to be based in one ministry, the Department for Children, Schools and Families,

- the minimum age of criminal responsibility to be raised,

- all local authorities to introduce Children's Panels and to take the lead on youth justice.

Footnotes:

1. Ministry of Justice "Sentencing Statistics, 2007 England and Wales".
2. Wikipedia (from Home Office).
3. see [www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Thejudicialsystem/DG](http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Thejudicialsystem/DG)
4. Report of UNCRC 49<sup>th</sup> Sessions, UK 20 Oct. 2008.
5. BBC News-see <http://news.bbc.co.uk/1/ni/Scotland/7916561.stm>
6. BBC News-see <http://news.bbc.co.uk/go/pr/fr/-/uk/6359363.stm>
7. "Why carry a weapon?" – Nicola Marfleet, 2008 see [www.howardleague.org](http://www.howardleague.org)
8. see 3. above.
9. see 1. above.
10. see [www.howardleague.org](http://www.howardleague.org)-Weekly Prison Watch, 27 Mar.09
11. Council of Europe, 2007 Space 1 Penal Statistics.
12. see 1. above.
13. see [www.dscf.gov.uk/consultations/Backgroundpaper](http://www.dscf.gov.uk/consultations/Backgroundpaper)
14. see [www.independent.co.uk/news/uk/crime/reoffending](http://www.independent.co.uk/news/uk/crime/reoffending)