

# cjm

## update

### Young offenders

Government proposals to change the arrangements for imprisoning 18-20 year olds were published at the end of August. *Detention in a Young Offender Institution for 18-20 Year Olds: A Consultation Paper* suggests that the age of 20 is an arbitrary cut-off point and that many over 21s in the prison system have characteristics and needs shared by the 18-20 year old population. Views are invited on:

- the abolition of the sentence of detention in a Young Offender Institution and its replacement with the same sentencing arrangements as apply to convicted defendants aged 21 and over;
- whether, if detention in a Young Offender Institution is abolished, it would be desirable to make special arrangements for young adult offenders regardless of whether they be under or over 21, to cater for the characteristics they share;
- the retention of a minimum of three months post-release supervision for 18-20 year olds;
- a revision of the Prison Rules to reflect the extension downwards in the age of prisoners to 18+. These revised rules would replace the Young Offender Institution Rules;
- the creation of a single separately designated type of Prison Service accommodation for under 18s and separate rules to regulate its operation;
- the replacement of the sentence of Custody for Life which currently applies to 18-20 year olds with the same life sentence arrangements as apply to adults.

In advance of the implementation of the detention and training order for under 18s in April 2000, the Prison Service is currently developing a separate juvenile estate with regimes designed to meet their specific needs. The consultation document argues that it will be difficult to meet the needs of the estimated 6500 sentenced 18-20 year olds within the remaining YOI estate once the juvenile estate is fully established. This smaller number means that they are likely to be placed far from home and that a limited range of programmes and opportunities will be open to them. The document suggests that by developing provision for young adults from 18 and with a flexible upper age limit a regime can be created to suit their levels of energy and maturity, and the particular need to develop employability of this age group. Some commentators have expressed fears that the ending of special provision for 18-20 year olds will result in an erosion of resources and opportunities made available to them.

The consultation document is available from: Neil Underwood, Sentencing and Offences Unit, Home Office, or from the website: [HYPERLINK http://www.homeoffice.gov.uk/index.htm](http://www.homeoffice.gov.uk/index.htm)  
Responses are to be received by 22nd October 1999.

### Women and crime

In August the Home Office published a comprehensive review of women and the criminal justice system as offenders, victims and criminal justice practitioners. The main findings on women as offenders are that:

- women constitute 17% of known offenders;
- women have shorter criminal careers than men;
- 15% of those arrested are women; the proportion of women arrestees is greater for less serious offences of dishonesty like shoplifting and fraud;
- women are more likely to be cautioned, discharged or given community punishments than men;
- between 1993 and 1998 the population of women in prison almost doubled;
- in 1998 ethnic minority groups made up nearly 25% of the women's prison population;
- over half of women in prison are estimated to have a child under 16;
- women are less likely to be reconvicted than men.

On women as victims of crime the review found that:

- 35% of homicide victims are women;
- nearly 50% of these women were killed by a current or former partner (compared with 8% of male homicide victims);
- 90% of rapes were committed by acquaintances according to a 1996 study reported in the review.

### Rehabilitating cautioned offenders

The *Rehabilitation of Offenders Act 1974* provides for offenders convicted of a criminal offence and sentenced to less than two and half years in prison to be regarded as 'rehabilitated' after a specified period with no further convictions. The original conviction then becomes 'spent'. Unfortunately a loophole in the law means that cautions, reprimands and final warnings have been excluded from this. A consultation process seeking to redress the anomaly is well underway, and offenders cautioned, reprimanded and finally warned may be able to expect to be 'rehabilitated' soon.

### Foreign nationals in prison

The Middlesex Probation Service Foreign Nationals Unit has an excellent reputation for providing services to offenders arrested as they enter Britain at Heathrow. Their work has developed from a pilot project designed to test the feasibility of providing social enquiry reports on drug traffickers. A permanent service has now been established offering preparation of pre-sentence reports and prison throughcare to foreign nationals imprisoned for a wider range of offences, and the promotion of good practice in working with foreign national offenders both within the Middlesex Probation Service and beyond.

The Unit has now produced two research papers. *Working with offenders from abroad: probation practice issues* outlines the work of the unit and the way it has developed. *Drug smuggling: an analysis of the traffickers 1991-1997* provides profile information from the 1715 cases prosecuted for trafficking through Heathrow airport during those years and examines the changes in sentencing traffickers.

Both reports are available from: The Foreign Nationals Unit, Uxbridge Probation Office, The Court House, Harefield Road, Uxbridge UB8 1PQ. Tel: 01895 231972



# comment

## Youth justice in context

**Kate Akester** assesses the possible limitations of the Youth Justice and Criminal Evidence Act.

**T**he *Youth Justice and Criminal Evidence Act* reveals a sea-change in thinking about young people and offending; and has significant implications for the system as a whole. It marks a decisive move from the 'justice' versus 'welfare' debate that has dominated discussion since the 1908 *Children Act* and reflects the influence of international theory and practice in seeking to introduce restorative justice.

The Act's passage through both Lords and Commons was remarkable for the degree of consensus it demonstrated for the new philosophy and procedures. Lord Williams of Mostyn explained the government's proposals:

"We are expanding the principles of restorative justice into the youth court. We believe that this is the proper approach in the Bill. We think that young people early in their criminal careers are more likely to respond positively to the panel approach and to be successfully diverted from crime... I believe I have made it plain that in the policy we have arrived at we are looking to a fundamental shift in the way the youth court deals with young, first time offenders..."<sup>1</sup>

The essence of the new arrangements consists in the compulsory referral of all first time offenders who plead guilty in the youth court to a Youth Offender Panel. Such panels are likely to consist of two lay members and a member of the Youth Offending Team. The latter will be working with the young person, and possibly with any victim there may be also. Parents or

other adults will attend, as will the victim or anyone affected by the offence, if they wish to do so.

Discussion will be aimed at reaching an agreement on a programme of behaviour (lasting from three-twelve months) that will help to prevent re-offending. There are three imperatives: to make reparation to the victim; to achieve reintegration into the community; and, to take responsibility for offending behaviour. The possible options to which the panel can refer young people include mediation, attendance at school or work, curfews, counselling, financial reparation, and community work. Once agreement is reached a Youth Offender Contract will be drawn up detailing its terms. Its performance will be supervised by the youth offending team, and progress meetings with the panel may be required. If the contract is not completed or otherwise breaks down, young people will be referred back to court.

This is the briefest of outlines: but we should examine it in terms of the international principles deriving from the Conventions of the 1980s, which themselves underpin the quiet global revolution that has resulted in similar changes in many other parts of the world.

### International law

The key international principles are to be found in *The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)* 1985, the *UN Convention on the Rights of the Child* 1989, the *UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)* 1990, and the *UN Rules for the Protection of Juveniles Deprived of their Liberty* 1990. *The International*

*Covenant on Civil and Political Rights* 1966, and *The European Convention on Human Rights* 1950 are also of some significance.

What these instruments do is set minimum standards. They provide fair trial guarantees and basic procedural safeguards such as the presumption of innocence, the rights to be notified of charges, to remain silent, to legal representation, to cross-examine witnesses, to appeal, to the presence of a parent or guardian, to privacy, to non-discrimination, to freedom of expression, for young people to have their views taken into account, and to separate treatment from adults. All provisions are to be read in the light of the primary concern for the best interests or the well-being of young people.

The desirability of promoting rehabilitation and reintegration; the assumption of a constructive role in society, together with the necessity to enhance the child's sense of dignity and worth; reinforcing respect for the human rights and fundamental freedoms of others, are seen as essential.

These objectives are to be achieved by encouraging States to deal with young offenders without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected" (Article 40(3) *UN Convention on the Rights of the Child*). Courts are a last resort, along with detention, either on remand or as a sentence. Police, prosecution, and other agencies should be able to dispose of cases at their discretion. Diversion from court is a proportionate response in many instances, and there should be community programmes to facilitate both the child's development and education, as well as restitution and compensation to victims.

### Domestic practice

With these tenets in mind we can look back at the Act and recognise its limitations in terms of aspirations and basic principles. It does seem extraordinary, with the wealth of examples and material available, that there is no overall guide to interpretation such as the 'best interests' or 'well-being' of the child. This means that there is only the statutory aim (introduced by the *Crime and Disorder Act*) of the prevention of offending. This is not an arena in which we yet have much experience or expertise, and it leaves a confused feel to the legislation.

We are also left with an unsatisfactory use of courts (which should be a 'last resort' instead of diversion). The use of courts - with their potential to stigmatise - is not only likely to be unhelpful, but it also has the effect of triggering human rights standards. Once courts are in play, safeguards and the requirements of due process must be met.

In this context it is an open question whether some of the more difficult cases will therefore require legal representation before the panel, a situation that is not expressly provided for. Panels will unquestionably be public authorities within the meaning of the *Human Rights Act 1998* and will therefore be under a duty to act compatibly with the Convention.

The inclusion of the victim in the process is central to restorative justice and a dialogue between victim and offender is the dynamic by which it operates. It envisages this dialogue as taking place with people known to each, rather than in front of a panel of strangers. Family group conferences in New Zealand and victim offender mediation in Austria and Germany are examples of this approach.

But the role of the victim is unclear in this Act. If s/he attends the panel will it be as observer or as a participant? Should s/he be asked to leave if personal information is discussed which it is not appropriate for outsiders to hear? And if the victim participates and is deemed to be giving evidence, this again raises the spectre of legal representation for the offender as a necessary safeguard.

So while the ideas behind this legislation may be welcome, there are many possible pitfalls; and it does not conform with the new human rights culture by being accessible and comprehensible to children. Nevertheless, there is a great challenge in terms of implementation; and if the Youth Justice Board can supply imaginative and sufficiently resourced options (and continuing research, training, and guidance on good practice) for panels and youth offending teams we may hope that the landscape does indeed come to reflect the fundamental shift that the government is claiming.

**Kate Akester** is Criminal Justice Director at JUSTICE

### Reference:

1. Hansard 2 March 1999

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