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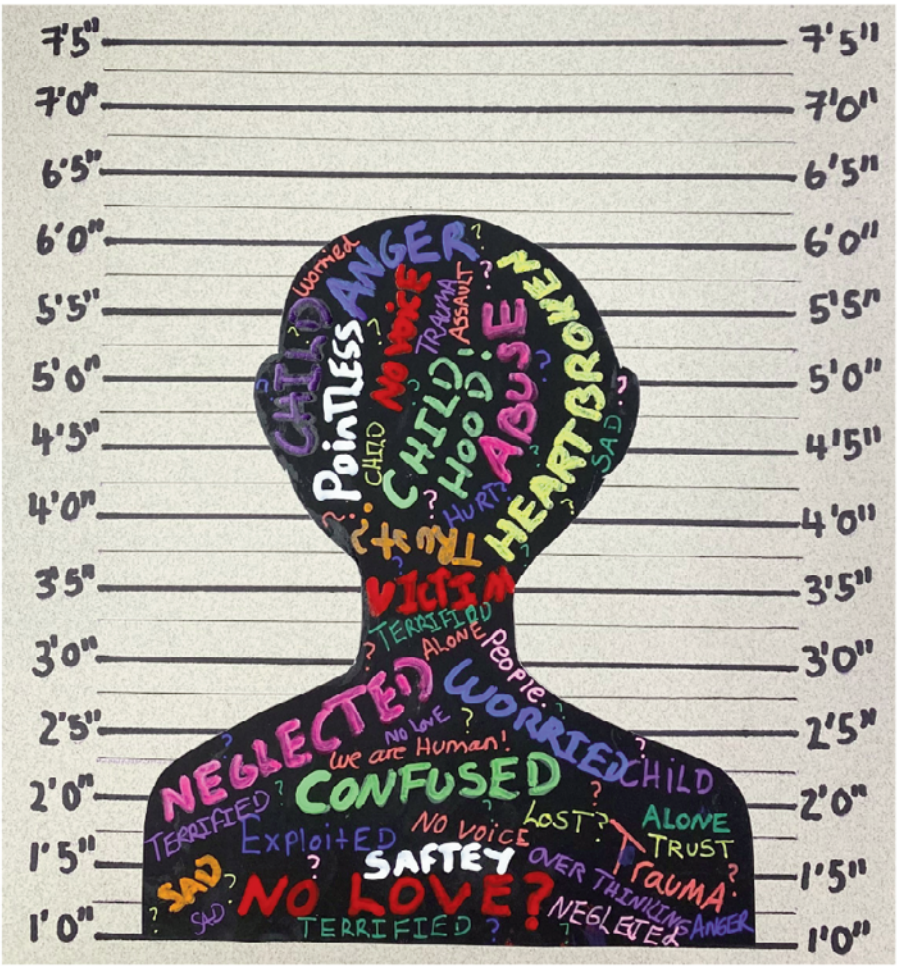

european youth Justice

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Editorial

Youth Justice in Europe

Dr Jamie Bennett *is a group director in HMPPS and formerly Chief Operating Officer of the Youth Justice Board,* ***Dr Ellie Brown*** *is the Director of Impact at Get Further, and* ***Dr Amy Ludlow*** *is Chief Executive of SHiFT.*

While the adult prison population across the UK has been growing and reaching record highs, a quiet revolution has taken place in youth justice. Twenty years ago, there were 3000 children in custody in England and Wales but from 2007 there has been a steady decline, and by 2024 there were fewer than 500 children in prison. This special edition seeks to explore this change and place it in the context of a wider set of developments in youth justice across Europe. As well as understanding what has happened and why it has happened, the articles also consider what needs to be done next to sustain and build upon the progress of recent years.

The opening article is a survey of youth justice in Europe, written by distinguished scholar **Frieder Dünkel**. Dünkel describes the contested ideologies of youth justice including welfare, minimum intervention, punitiveness and managerialism. Although there are disagreements and debates about the best approach, there has been a trend for European countries towards welfare and minimum intervention, recognising the wider social causes of crime and the potential harmfulness of drawing children into the criminal justice system. There are significant differences between countries, including in the scope of youth justice, with variations in the minimum age of criminal responsibility, and a growing movement calling for a raise in the upper age limit, reflecting a better understanding of neuroscience and brain development. Dünkel's work encapsulates the similarities and differences amongst European nations and highlights the incomplete and ongoing nature of progress in youth justice.

Jasmina Arnež and **Mojca Plesničar** provide an in-depth assessment of the implementation of welfare orientated youth justice in Slovenia. This is a nation that has embraced the dominant welfare and minimum intervention approaches in framing law and policy, yet by examining the reality of practice in courts, prosecution and the administration of sanctions, Arnež and Plesničar expose a gap between the lofty rhetoric and the reality of a system that does not consistently understand or engage with children. From the authors' perspective, Slovenian youth justice is a partial and unfinished project. Although examining a specific national jurisdiction, the observations are equally important in identifying challenges experienced in many countries.

In their examination of youth courts in UK and Europe, **Stewart Field** and **Stefan Machura**, describe different practices and highlight common problems including the lack of specialised legal advice and judicial expertise. They nevertheless also identify some promising developments, including attempts to improve the understanding of the needs of children and promote the use of diversionary approaches that seek to help children outside of the formal court system. Field and Machura argue that the future lies in the development of problem-solving approaches in which courts work more collaboratively with children and professionals over a period of time to provide better support and encouragement. These approaches have been piloted in various countries and in different ways, such as community courts or drug courts, and could be equally beneficial in working with children, who often have complex and multiple needs.

Although the number of children in custody is declining, these institutions continue to be criticised for their harmfulness and ineffectiveness. **Fiona Dyer** provides an account of reforms in Scotland, which have sought to end the use of Young Offenders' Institutions for children and instead replace them with 'secure care'. This system-wide approach has seen a reduction in the use of custody and the creation of a more child-focussed and supportive approach to manage the most vulnerable children who need to be in a secure setting. Dyer's article shows that substantial systemic change is possible.

An issue that pervades criminal justice in European settings is that of vulnerability and social

marginalisation. In his challenging survey of European youth justice, **Colin Webster** exposes that youth justice systems disproportionately draw in children from minority ethnic communities and those who live in poverty. In this account, the justice system reflects inequality in society and the solutions lie not only in reforming the legal system but in addressing economic, social, and educational inequity.

The final contribution to this edition is an interview with **Stephanie Roberts-Bibby,** the Chief Executive of the Youth Justice Board for England and Wales. In this, she describes the development and transformational impact of the evidence-based 'Child First' approach, while also candidly describing the continuing gaps and failures in the youth justice system.

The book review section includes **William Payne's** review of *The Impact of Youth Imprisonment on the Lives of Parents* by Daniel McCarthy and Maria Adams. The subject matter of this book draws attention to the wider impacts of youth justice, in this case on parents.

This special edition has been inspired by recent developments in England and Wales but has sought to take a wider perspective. It has sought to understand the changes in youth justice across Europe and identify a broader pattern in criminal justice practice and in society. The articles have also sought to question whether a more child-friendly or child first approach is really emerging in practice, examining the gap between rhetoric and reality. This edition has also sought to encourage better practice, sharing ideas and promoting a commitment to children in the criminal justice system. In common with the *Prison Service Journal's* broader aims, this edition seeks to disseminate knowledge and also promote positive change in youth justice and in the lives of children. The quiet revolution is unfinished and this edition is a call for further action.

5. Women in Prison. (2022) The Value of Women's Centres.

New horizons in youth justice — European and international developments[1]

Frieder Dünkel *is Professor Emeritus at the University of Greifswald/Germany and was previously Chair of Criminology between 1992 and 2015.*

The comparison of youth justice systems has a long tradition with an increasing number of publications since the end of the 1990s. Across Europe, policies based on the notions of the subsidiarity and proportionality of state interventions against young people involved in crime are remaining in force or emerging afresh in most, if not all, countries. In the 1990s and early 2000s, however, in several European countries, we witnessed the adoption of a contrary approach. These developments intensified youth justice interventions by raising the maximum sentences for youth detention and by introducing additional forms of secure accommodation (see for example the Netherlands, France or England and Wales).[2] The causes of the more repressive or 'neo-liberal' approach in some countries are manifold. It is likely that the punitive trend in the United States, with its emphasis on retribution and deterrence, has had considerable impact in some European countries, particularly in England and Wales. However, many continental European jurisdictions have resisted punitive turns, often in contrast to the penal law legislation concerning adults over 18 or 21 years-of-age. A large comparative study on 36 jurisdictions in Europe has not found evidence that more repressive answers were the dominant orientation of European youth justice policy in the early 2000s.[3]

In addition, after a period of 'neo-liberal' orientations, changing trends are visible in the Anglo-American world: a revitalization of the educational ideal in the US, abandoning or at least tempering the repressive orientation towards retribution and deterrence, and even expanding the scope to young adults, reducing waiver transfers to adult courts and abolishing life without parole for minors, and more.[4] An example from the UK of a changing climate in youth justice policy can be seen in the strong orientation to restorative justice measures such as family group conferencing in Northern Ireland since 2001.

These developments at the national level, which is the primary focus of the present article, have to be understood against the background of international and regional instruments that set standards for youth justice. Most important in this regard is the 1989 UN Convention on the Rights of the Child (CRC), a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the 'best interests of the child'—with 'child' defined for the purpose of this convention as a person under the age of 18 years—and to provide education, support, and integration into society for children. These ideas are developed further in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (so-called Beijing-Rules) and at the European level in the recommendations of the Council of Europe, in particular, the 2003 recommendation regarding new ways of dealing with juvenile offending (Rec. [2003] 20) and the 2008 rules for juveniles involved in crime subject to sanctions or measures, ERJOSSM (Rec. [2008] 11).[5]

The developments in Eastern Europe deserve special attention. The more lenient approach of youth

1. The present paper is a shortened, actualised and modified version of earlier publications of the author, see Dünkel, F. (2015). Juvenile Justice and Crime Policy in Europe. In F. E. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile justice in Global Perspective* (pp. 9-62). New York University Press; Dünkel, F. (2016). Juvenile Justice and Human Rights: European Perspectives. In H. Kury, S. Redo, & E. Shea (Eds.), *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (pp. 681-719). Springer International Publishing; Dünkel, F. (2022). Youth Justice: European and international developments and (good) practices. In D. Nelken, & C. Hamilton (Eds.), *Research Handbook of Comparative Criminal Justice* (pp. 30-48). Edward Elgar Publishing.
2. Cavadino, M., & Dignan, J. (2006). *Penal Systems: A Comparative Approach*. Sage; See footnote 1: Dünkel (2015).
3. Dünkel, F., Grzywa, J., Horsfield, P., & Pruin, I. (2011). *Juvenile Justice Systems in Europe – Current Situation and Reform Developments* (2nd ed). Forum Verlag Godesberg; See footnote 1: Dünkel (2015).
4. See footnote 1: Dünkel (2015); Bishop, D. M., & Feld, B. C. (2012). Trends in juvenile justice policy and practice. In B. C. Feld, & D. M. Bishop (Eds.), T*he Oxford Handbook of Juvenile Crime and Juvenile Justice* (pp. 898–926). Oxford University Press.
5. See footnote 1: Dünkel (2016).

justice reforms may be influenced by the political will to abandon the old Soviet style of 'reformatories' or 'labour colonies' and to consider Western human rights standards, inspired by the desire to improve integration with EU through progressive legislation (e.g. Estonia, Lithuania or Romania).

In the past few years, a remarkable shift can be observed in countries that adopted neo-liberal ideas in the 1990s and first decade of the 21st century, such as England and Wales.[6] From outside Europe, a comparable revival of the traditional youth justice ideas can be observed in the US as well.[7]

Youth justice models

If one classifies youth justice systems according to typologies, the 'classical' orientations of both the justice and the welfare models can still be differentiated.[8] However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems of welfare and justice, for instance within German and other continental European youth justice legislation.

Youth justice policy in recent decades has demonstrated a tendency to strengthen the justice model by establishing or extending procedural safeguards (supported by Council of Europe and EU initiatives such as the EU directive 2016/800) and providing welfare measures. This tendency also includes a strict emphasis on the principle of proportionality, thereby moving away from sentences and educational measures that are disproportionately harsh (see e. g., the Council of Europe's ERJOSSM of 2008).

An emphasis on the justice model also denotes a clear differentiation of the kind of misbehaviour that is subject to youth justice interventions. Most European youth justice laws rely on criminal behaviour defined by the general criminal law, whereas other forms of problematic behaviour that could endanger the juvenile and its future development are dealt with by separate welfare or family laws. A unified welfare and justice approach (as in the classic welfare model) in Europe is only to be found in Belgium and Poland and, for those under 16 in Portugal and Scotland.

Recently some states have passed legislation related to certain misbehaviour ('anti-social' behaviour), which is addressed by civil law, but with a 'hidden' form of criminalisation in case of civil law order violations. (Bulgaria, England and Wales, Ireland, and Northern Ireland). For instance, with anti-social behaviour orders in England and Wales, a violation of civil injunction constituted a criminal offence, and therefore a young person could have been subject to criminal punishment even if he/she had only violated a civil law obligation. The concept is so wide that any behaviour can be criminalised on the basis of relatively vague evidence. In contrast, in continental European youth justice systems, status offences, such as truancy or running away from home, are dealt with in separate civil or welfare laws and therefore cannot be 'punished' by youth courts.

On the other hand, restorative justice and minimum intervention policies, as well as 'neo-liberal' tendencies towards harsher sentences and 'getting tough' on youth crime are not necessarily based squarely on 'justice' or 'welfare,' and it is also difficult to view them as independent models of youth justice, as e. g. minimum intervention is an orientation enshrined in both, welfare and justice systems, as is the ever-widening net of restorative justice.[9] The same is true for the 'neo-correctionalist model' described by Cavadino and Dignan,[10] which held sway in England and Wales in the early 2000s, which saw increased criminal justice intervention justified on welfare grounds.

Here, too, there are no clear boundaries for the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies, but also minimum intervention (as is especially the case in Germany),[11] restorative justice and elements of neo-correctionalism (for example, increased 'responsibilisation' of people involved in crime and their parents, tougher penalties for recidivists and secure accommodation for children). The differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European youth justice is moving towards a mixed system that combines welfare and justice elements, which are further shaped by the trends mentioned above.

Restorative justice

Over the past few decades, numerous countries across Europe have introduced restorative justice into

6. Case, S., & Hazel, N. (2023). *Child First. Developing a New Youth Justice System*. Palgrave Macmillan.
7. See footnote 1: Dünkel (2015); See footnote 4: Bishop & Feld (2012).
8. Doob, A. N., & Tonry, M. (2004). Varieties of youth justice. In M. Tonry, & A. N. Doob (Eds.), *Youth Crime and Youth Justice*: *Comparative and Cross-National Perspectives* (pp. 1-20). University of Chicago Press; See footnote 1: Dünkel (2015).
9. Dünkel, F., Grzywa-Holten, J., & Horsfield, P. (2015). R*estorative Justice and Mediation in Penal Matters in Europe – A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries.* Forum Verlag Godesberg; Dünkel, F., & Păroşanu, A. (2022). Restorative justice in European youth justice systems – Contextual, legal, practice-related and analytical aspects. In A. Wolthuis, & T. Chapman (Eds.), *Restorative Justice from a Children's Rights Perspective* (pp. 137-156). Eleven Publishers.
10. See footnote 2: Cavadino & Dignan (2006).
11. Dünkel, F. (2016). *Youth Justice in Germany.* Oxford Handbooks; Dünkel, F., & Heinz, W. (2017). Germany. In S. Decker, & N. Marteache (Eds.), *International Handbook of Juvenile Justice* (2nd ed., pp. 305-326). Springer International Publishing Switzerland.

their criminal justice systems, often particularly in the context of youth justice. Various international standards have increasingly highlighted and supported the application of restorative justice (see the Recommendation No. R (99)19 on Mediation in Penal Matters and recently the Rec. (2018) on Restorative Justice in Criminal Matters). Although there exists a body of other international human rights instruments of the UN and the EU, the definition of 'Restorative Justice'(RJ) is not always clear, and practices vary considerably. A deeper look inside reveals uncertainties, e.g., if the personal involvement of victims and contacts with perpetrators are an indispensable component of RJ, if in a wider sense community service is also 'restorative' etc.[12] However, there is a consensus that in practice, community service is used as a more or less repressive sanction, not based on the voluntariness of the perpetrator and without any restorative quality with regards to the victims.

Victim-perpetrator mediation has become the dominant restorative measure. Recently, in some countries, different forms of conferencing were implemented in some jurisdictions (Belgium, Northern Ireland etc.) and some projects have also been established in prisons (Belgium, Germany, Hungary etc.) altogether in 23 of 48 European jurisdictions,[13] to motivate people convicted of crime to make reparation or efforts for mediation with victims and to resolve conflicts between prisoners and prisoners and prison officers.

The practice in Europe seems to be rather diverse. Major importance is given to mediation and RJ in Belgium, Finland, Northern Ireland, France and Germany, whereas the experience in Eastern Europe remains only 'symbolic' in most cases, a fact which is related to an only marginal infrastructure of mediators and restorative justice facilitators. The results are encouraging on the one side, as RJ more and more becomes an integral part of youth (and adult) criminal justice systems, but there is also a justified concern that in most jurisdictions the numbers remain marginal and in some countries (often in Eastern Europe) practitioners are still reluctant and concerned about the new approach. In a large overview on RJ in the (at that time 28) EU-member states three countries were identified as examples of best practice: Belgium and Finland because of the large scale of RJ-practices including in prison settings (Belgium) and Northern Ireland because of its youth conferencing system as a leading orientation in youth justice.[14] A recent survey of 48 European jurisdictions (2023/2024) confirms the expansion of restorative justice measures overall in Europe, but also the quantitatively moderate, often marginal importance in practice.[15] Evaluation results indicate that RJ-measures have a great potential to satisfy victims, improve people convicted of crime in terms of desistance and social reintegration and reduce reoffending.[16]

> Many continental European jurisdictions have resisted punitive turns, often in contrast to the penal law legislation concerning adults over 18 or 21 years-of-age.

Diversion, minimum intervention, and community sanctions

There has been a clear expansion of the available means of diversion applicable to young people involved in crime. However, these are often linked to educational measures or merely function to validate norms by means of a warning.[17] Sometimes, however, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in Belgium about 80 per cent, in Germany more than 75 per cent.[18] In some countries,

12. See footnote 9: Dünkel, Grzywa-Holten, & Horsfield, P. (2015).
13. Dünkel, F., Păroşanu, A., & Pruin, I. (2023). Restorative Justice im Strafvollzug. *TOA-Magazin,* 2/2023, 4-8.
14. Dünkel, F., & Păroşanu, A. (2022). Restorative justice in European youth justice systems – Contextual, legal, practice-related and analytical aspects. In A. Wolthuis, & T. Chapman (Eds.), Restorative Justice from a Children's Rights Perspective (pp. 137-156). Eleven Publishers.
15. Dünkel, F., Păroşanu, A., Pruin, I., & Lehmkuhl, M. (2023): Restorative Justice – Aktuelle Entwicklungen wiedergutmachungsorientierter Verfahren im europäischen Vergleich. Neue Kriminalpolitik, 35, 146-171.
16. Shapland, J., et al. (2008). Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. Ministry of Justice; Sherman, L. W., & Strang, H. (2007). Restorative Justice: the Evidence. The Smith Institute; Sherman, L. W., et al. (2015). Twelve Experiments in Restorative Justice: The Jerry Lee Program of Randomized Trials of Restorative Justice Conferences. Journal of Experimental Criminology, 11, 501-540; See footnote 14: Dünkel & Păroşanu (2022).
17. See footnote 3: Dünkel, Grzywa, Horsfield, & Pruin (2011).
18. See footnote 1: Dünkel (2015); See footnote 3: Dünkel, Grzywa, Horsfield, & Pruin (2011); See footnote 11: Dünkel and Heinz (2017).

such as Croatia, France, the Netherlands, Serbia, and Slovenia, this is a direct consequence of the long-recognised principle of allowing the prosecution and even the police a wide degree of discretion—the so-called expediency principle. Exceptions, where such discretion is not allowed, can be found in some Central and Eastern European countries, but in these cases, one should note that, for example, property offences that cause only minor damage are not always treated as statutory criminal offences and there exist further possibilities of an 'exemption from guilt or punishment'. Italy, to take a Western European example, provides for a judicial pardon that is similar to diversionary exemptions from punishment but is awarded by the youth court judge. So, there is a large variety of forms of non-intervention or of imposing only minor (informal or formal) sanctions.

Empirical evidence reveals that diversion is not less effective than formal sanctions; in many cases it is better at preventing reoffending.[19] Constructive measures, such as social training courses (Germany) and so-called labour and learning sanctions or projects (The Netherlands), have also been successfully implemented as part of a strategy of diversion. Most countries explicitly follow the ideal of education, while at the same time emphasising prevention of reoffending, that is, special prevention (as is done by the Council of Europe's 2003 recommendation on new ways of dealing with juvenile delinquency and the role of youth justice).

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Deprivation of liberty 'as a last resort and as short as possible'

Everywhere it is proclaimed that deprivation of liberty should be a measure of last resort. In practice, the level of what is meant by 'last resort' varies across time and in cross-national comparison. England and Wales, for example, experienced sharp increases of the juvenile prison population in the 1990s until the mid-2000s, but a dramatic reduction in immediate custody since then: the monthly average population of 10- to 17-year-old young people in custody declined from 2007/08 to 2020 by 75 per cent.[20]

Spain and a few other countries also showed increases in the use of youth custody in the 1990s and early 2000s, but in general, recent developments go in the other direction. This is particularly true for Central and Eastern European countries. In some of these countries, such as Croatia, the Czech Republic, Hungary, Latvia, Romania, Slovenia and recently Russia, the high level of diversion and community sanctions and the low level of custodial sanctions characteristic of Western European and Scandinavian countries has been achieved. In Russia, the number of young people aged under 18 years in youth custody declined from 18,677 in 2001 to only 946 in 2021.[21]

In Germany, the numbers of 14- to 20-year-old people involved in crime (dealt with by youth courts) from 2007 to 2019 declined by 54 per cent. The main reason was the decline in serious crimes. The youth prison population rate, composed of 14- to 25-year-olds declined by 54 per cent as well from 2001 to 2022. Interestingly, the recidivism rates are also declining.[22] This can be seen as an indicator that the moderate trend in sentencing has had no negative effects on crime rates.

One recent example of a youth justice reform is the Youth Justice Act in Estonia from 2018. The reform law expanded alternative youth sanctions, in particular restorative justice measures and aimed at a reduction of youth imprisonment. The reform was a great success, by 2020 the number of juveniles in youth custody had reduced by 87 per cent.

19. Heinz, W. (2019). Sekundäranalyse empirischer Untersuchungen zu jugendkriminalrechtlichen Maßnahmen, deren Anwendungspraxis, Ausgestaltung und Erfolg. Gutachten im Auftrag des Bundesministeriums für Justiz und Verbraucherschutz. Universität Konstanz; McAra, L., & McVie, S. (2019). Transformations in youth crime and justice across Europe. In B. Goldson (Ed.), Juvenile justice in Europe. Past, Present and Future (pp. 74-103). Routledge.
20. Youth Justice Board (2021). Youth Justice Statistics 2019/2020 – England and Wales. Ministry of Justice; See footnote 19: McAra & McVie (2019); This development is in sharp contrast to the general prison population in England and Wales: newest data from World Prison Brief (see https://www.prisonstudies.org/world-prison-brief-data) reveal an overall stable rate at the highest level of prison population rates in Western Europe. There is no political will to reduce the prison population rate for adults, on the contrary successive governments plans to expand the prison capacities.
21. See the data at https://www.prisonstudies.org/world-prison-brief-data
22. Dünkel, F., Geng, B., & Harrendorf, S. (2023). „Systemsprenger*innen"? Junge Menschen im Strafvollzug – Entwicklungsdaten zu Belegung, Öffnung und Merkmalen der Gefangenenstruktur im Jugendstrafvollzug. In D. Kieslinger, M. Dressel, & R. Haar (Eds.), Systemsprenger*innen. Ressourcenorientierte Ansätze zu einer defizitären Begrifflichkeit (2nd ed, pp. 115-160). Lambertus Verlag.

International human rights standards require that youth imprisonment should be 'as short as possible' (e.g., Rule 10 of the ERJOSSM 2008; similarly Rule 17.1b of the UN-Beijing Rules 1985), thus aiming to prevent indeterminate (and possibly disproportionate) detention and its prolongation for educational purposes beyond what the principle of proportionality would justify. The range of youth prison sentences varies considerably. Systems allowing for longer sentences than two years regularly do not provide for transfer to adult courts in, for example, serious murder cases. Continental European jurisdictions provide in these cases for up to 5 or 10 years of imprisonment (Austria, Croatia, Czech Republic, Germany, Russia, Slovenia, Spain etc). An exception is Switzerland, which provides a maximum sentence of 4 years without the possibility of transferring juveniles to adult courts. The common law tradition, but also the youth justice system in the Netherlands, provide only for short youth prison sentences of up to 1 (12-15-years olds) or 2 years (16-17-years-olds), but also to transfer 16-years-old juveniles to adult courts in order to manage very serious offending by imposing adult criminal law sentences.

At first glance contradictory to the principle that youth imprisonment should be as short as possible, is the exclusion of short-term youth imprisonment in some European jurisdictions by setting an elevated minimum term for youth imprisonment of 6 months as it is the case in Croatia, Germany, Greece, Serbia and Slovenia.[23] The reason behind is that the legislator believes that less than 6 months is not are counterproductive as regards the educational/rehabilitative aim of youth imprisonment. Indeed, youth prison administrations report that a rehabilitative programme, the preparation for release and aftercare would be difficult to organise for short-term prisoners.

It is difficult to assess the severity of youth justice punishments in practice as the age groups covered are so different. Campistol and Aebi tried to evaluate youth justice statistics of 45 European jurisdictions for the year 2010.[24] Their main conclusion was that the existing data are hardly comparable across countries. The main reasons were that the definition of 'a minor' is not harmonised, the rules applied for the construction of the statistics are not the same, and there are differences in the legal procedures for minors as well as on the type of sanctions that can be imposed on them. Looking at the sanction of imprisonment in youth prisons is problematic as different forms of deprivation of liberty (prisons, close residential care, young people in mental health institutions) are interchangeable and in most cases are not fully covered by youth justice statistics.

The scope of youth justice

Although on the basis of comparative research, one may speak, albeit cautiously, of a common European philosophy of youth justice, which includes elements of education and reintegration (apparent in, for example, the recommendations of the Council of Europe), the consideration of victims through mediation and restoration, and the observance of legal procedural safeguards for victims and perpetrators, there are some issues on which such a development is not as clear. In this regard, we consider the age of criminal responsibility and its corollary, the age at which people cease to be regarded as juveniles and are treated as adults as a core problem. The latter issue also raises the question of whether there should be some mechanism for the converse, namely, allowing juveniles to be tried in adult courts.

> With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures.

Target groups of welfare- and justice-oriented systems

The differences between welfare- and justice-oriented youth justice systems are based on different target groups: welfare-oriented systems deal with any behaviour indicating a danger for the well-being of the child including different forms of problematic, antisocial or criminal behaviour. Justice-oriented models (prevailing in continental Europe) are focussed on criminal behaviour defined by the general penal law. This implies a dualistic approach characterised by civil and social welfare law interventions (in particular family law and family court magistrates) for children below the age of criminal responsibility, and on the other, a youth justice system represented by criminal procedures and

23. In the Czech Republic and Slovakia the minimum term is 1 year. See footnote Dünkel et al. (2011).
24. Campistol, C., & Aebi, M. F. (2018). Are juvenile criminal justice statistics comparable across countries? A study of the data available in 45 European nations. European Journal on Criminal Policy and Research, 24(1), 55-78.

youth courts dealing with youth crime. Civil and criminal law systems are interconnected, but they follow distinct approaches. The reality is becoming more complicated as systems are converging. The distinction is difficult if anti-social behaviour is made a criminal offence (see, for example, England and Wales) and if the youth judiciary in a multi-agency approach work closely together with the youth welfare agencies, which organise and execute youth court sanctions.

Age limits — Minimum age of criminal responsibility (MACR)

Although international human rights organisations such as the Council of Europe follow an inherent policy of harmonising youth justice policy and legislation, which is certainly acceptable when discussing minimum standards, harmonisation should not be the primary aim of comparative youth justice research. More may be learned from under which societal and cultural conditions different approaches work or perhaps fail. Therefore, varying age limits and forms of social control of youth delinquency can be seen as a natural experiment.

There is an assumption that low ages of criminal responsibility (as in England and Wales with 10 years) are an expression of harsh, punishment-orientated youth justice systems, whereas elevated minimum ages (as in Belgium with 16/18, see below) symbolise a more lenient approach, which emphasises education instead of punishment. This argument is easily rebuttable when looking at Switzerland with a low age of criminal responsibility of 10, which follows a rather lenient educational approach and excludes youth imprisonment until the age of 15. Further examples are Scandinavian experiences with possible harsh reactions under the flag of 'welfare' (e.g. in closed residential homes, see the Swedish Secure Youth Care sanction). This shows the other side of the successful policy of very low and decreasing numbers of juveniles in prison.[25]

International youth justice standards, not only in Europe (see the UN-Beijing Rules of 1985, Rule 4; the UN Model Law, see UNODOC, 2013, commentary to Article 9), are rather weak in their statements about the age of criminal responsibility. The 2008 ERJOSSM recommend no particular age, stating only that some age should be specified by law and that it 'shall not be too low' (Rule 4). This vagueness is reflecting the large differences in the minimum age of criminal responsibility (MACR) worldwide.[26] It varies in Europe between 10 (England and Wales, Northern Ireland, and Switzerland), 12 (Netherlands, Scotland, and Turkey), 13 (France), 14 (Austria, Germany, Italy, Spain, and numerous Central and Eastern European countries), 15 (Greece and the Scandinavian countries), and even 16 (for specific offences in Russia and other Eastern European countries) or 18 (Belgium). Including the developments in Central and Eastern Europe after the break down of the 'Iron Curtain', the most common age of criminal responsibility is 14 years. The actual overview on 41 European jurisdictions revealed the minimum age of criminal responsibility was at least 14 in 31 cases, of them six have introduced the age of 15 as minimum age. Only seven countries/jurisdictions provide for possibilities to apply the criminal law for juveniles at the age of 10 or 12, one further at the age of 13.[27]

> Everywhere it is proclaimed that deprivation of liberty should be a measure of last resort. In practice, the level of what is meant by 'last resort' varies across time and in cross-national comparison.

The ages of criminal responsibility have to be defined further: whereas one can talk of a really low age of criminal responsibility, for example, in England and Wales, in some countries only educational sanctions imposed by the family and youth courts are applicable at an early age. In Switzerland, the youth court judge can only impose educational measures on 10- to 14-year-olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are restricted to those aged at least 15 with a maximum sentence of one year for 15- and 4 years for 16- and 17-years-olds. The same approach of banning youth imprisonment for the younger age groups of youth justice can be observed in Ireland and the former Yugoslavian republics of Croatia, Kosovo, Serbia, and Slovenia for 14- and 15-years-olds.

Further still, some countries, such as Lithuania, Russia and Ukraine, employ a graduated scale of

25. Lappi-Seppälä, T. (2019). Youth Justice and youth sanctions in four Nordic states. In B. Goldson (Ed.), Juvenile justice in Europe. Past, Present and Future (pp. 104-127). Routledge.
26. Cipriani, D. (2009). Children's Rights and the Minimum Age of Criminal Responsibility – A Global Perspective. Ashgate.

criminal responsibility, according to which only more serious and grave offences can be prosecuted from the age of 14, while the general MACR lies at 16. Such a graduation of the age of criminal responsibility is problematic, as it is contrary to the basic philosophy of youth justice that sanctions should refer to the individual development of maturity or other personality concepts rather than to the seriousness of the offence.

Whether these notable differences can in fact be correlated to variations in sentencing is not entirely apparent. For, within a system based solely on education, under certain circumstances the possibility of being accommodated as a last resort in a home or in residential care (particularly in the form of closed or secure centres as in England and Wales and France) can be just as intensive and of an equal or even longer duration than a sentence of juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs considerably from the language used in the reform debates.[28] Despite the dramatisation of events by the mass media that sometimes leads to changes in the law, there is often, in Germany for instance, a remarkable continuity and a degree of stability in youth justice practice.[29]

The reforms of the last few decades in raising or decreasing the MACR were clearly connected to more punitive or lenient policies: The abolition of *doli incapax* in England and Wales in 1998, de facto lowering the MACR from 14 to 10, is an example, another the lowering from 15 to 14 in Slovakia combined with increasing penalties for recidivists and people convicted of violent crime. Hungary (under a populist right-wing government) followed in the same line making 12 and 13-year-old perpetrators of serious crimes criminally responsible. The contrary reform orientation is evident elsewhere: the MACR increased from 10 to 14 in Cyprus, from 13 to 15 in Greece, from 10 to 12 in Ireland (with restricting youth imprisonment to juveniles aged at least 16), and finally from 8 to 12 in Scotland.[30]

The reforms of the last few decades in raising or decreasing the MACR were clearly connected to more punitive or lenient policies.

The case of 18-20-year-old young adults involved in crime and the impact of neuroscientific and other empirical evidence

Empirical evidence on emerging adulthood

There are also interesting developments in the upper age limits of criminal responsibility (the maximum age at which juvenile criminal law or juvenile sanctions can be applied). In Germany, a flexible system of applying youth or adult criminal law sanctions on young adults was introduced as early as 1953.[31] The decision of the youth court is based on an estimation of the maturity of the young adult or the nature of the crime being a typical youth delinquent behaviour.

This tendency is rooted in criminological understanding of the transitional phases of personal and social development from adolescence to adulthood and a recognition that such transitions are taking longer. The criminological evidence of the so-called age-crime-curve indicates that it is a global phenomenon, although the peak age may vary.[32] For Europe one can state that the peak age of young persons involved in crime is between 16 and 21 with the observation that in the last decades the peak has moved to the elder age groups of 18 years and more.[33] There is a coincidence with sociological and developmental psychological evidence about maturing and integration into adult life.[34] The phases of school and professional education and of integration into working and family life (the establishment of one's 'own family') have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties.[35]

27. Dünkel, F. (2024). Youth Justice – European and International Developments. Alenka Šelih's Contribution to Comparative Youth Justice. In Pravnik (Ljubljana) 141 (5-6), 253-294, at p. 272 f. (Table 1).
28. See footnote 8: Doob & Tonry (2004).
29. See footnote 11: Dünkel (2016), and Dünkel and Heinz (2017).
30. See footnote 1: Dünkel (2015).
31. See footnote 1: Dünkel (2015); See also the more recent reforms in Austria, Croatia, Lithuania, and the Netherlands.
32. Loeber, R., & Farrington, D. P. (2014): Age-Crime Curve. In G. Bruinsma, & D. Weisburd (Eds.), Encyclopedia of Criminology and Criminal Justice (pp. 12-18). Springer.
33. See footnote 19: Heinz (2019).
34. Moffitt, T. E. (2018). Male antisocial behaviour in adolescence and beyond. Nature Human Behavior, 2, 177-186
35. See footnote 1: Dünkel (2022).

Sociological indicators such as the age of marriage or founding family life have increased from 23-24 years in the 1970s to 30-31 in the 2000s. In parallel, the birth of the first child has also been delayed by a decade, which — with regional variations — is true for the whole of Europe.[36] Maturation from the developmental psychological point of view is not a linear and equal process in comparison of individual adolescents, but it becomes clear that higher cognitive capacities of self-control are developing until the mid-twenties and in some cases even beyond.

Furthermore, new neuroscientific evidence indicates that maturity and psychosocial abilities are fully developed only in the third decade of life.[37] Neuroscientific research on 'brain maturation' revealed that different brain areas develop at different age periods, resulting in an imbalance between the subcortical limbic areas (responsible for impulsive behaviour and immediate needs to be satisfied, the reward system), and the prefrontal cortex (responsible for self-control and moderating impulsivity). The limbic area develops in early adolescence, whereas the prefrontal cortex fully develops only in the mid-twenties. This means that higher executive functions of the brain, such as the capacity for structured forward planning, the perspective of time, and the capacity to anticipate the consequences of certain (problematic) behaviour and psychological functions that are relevant in the context of criminal culpability and responsibility, such as inhibition (constraining impulses) and the suppression of interferences (risk-taking behaviour) are not fully developed until the mid-twenties.[38] Therefore, in affective/emotional situations the limbic system gains the upper hand over the underdeveloped capacities of impulse-control. The typically elevated risk-behaviour during adolescence may be explained by that imbalance in brain maturation.

Steinberg et al.,[39] in an international comparative empirical study, could show that the 'maturity gap' concerning intellectual and psycho-social maturity is a global phenomenon independent of cultural and contextual social factors. Their study covered samples of adolescents between the ages of 10 and 30 in Columbia, Cyprus, India, Italy, Jordan, Kenya, the Philippines, Sweden, Thailand, and even in China.[40]

The neuroscientific evidence on brain maturation and evidence on cognitive and psychosocial development chime with criminological findings on the age-crime-curve mentioned above. These findings justify a youth justice policy either enlarging the upper limit of the scope of youth justice to the age of 21 or even 24 or of considering those over 18-23/25 as a distinct group of juveniles with diminished culpability and responsibility compared to older adults.[41] The core question remains which court should be responsible: 'Because of their immaturity, young adult offenders are more likely to benefit from the developmental approach taken in the juvenile justice system than from the adult system, which lacks this approach'.[42] Therefore, the youth court with its specialised and (in developmental questions) more experienced judges seems to be the better solution. This argument is underlined by the Dutch experiences. The government in 2014 extended the scope of youth justice to the age of 23 (see below under 7.3.2). One of the weaknesses of the Dutch reform with a rather low application rate of youth sanctions for young adults (about 5 per cent in 2016) is that the competence to deal with young adults remained with the adult and not the youth court and that the decision to proceed in a juvenile or adult sentencing process is made by a (general) public prosecutor.[43]

Youth justice reform movements in the US are mainly based on new neuroscientific arguments. Steinberg further reports that the jurisprudence of the Supreme Court, on banning capital punishment *(Roper v. Simmons, 2005)* and abolishing, or at least largely restricting, life without parole *(Graham v. Florida,* 2010; Miller v. Alabama 2012; *Montgomery v. Louisiana,* 2016), was strongly influenced by neuroscientific evidence.[44]

36. See https://www.bib.bund.de/DE/Fakten/Fakten_formular.html
37. Weijers, I., & Grisso, T. (2009). Criminal responsibility of adolescents: Youth as junior citizenship. In J. Junger-Tas, & F. Dünkel (Eds.), Reforming Juvenile Justice (pp. 45-67). Springer; Bonnie, R. J., Chemers, B. M., & Schuck, J. (2012). Reforming Juvenile Justice: A Developmental Approach. National Research Council of the National Academies; Loeber, R., et al. (2012). Overview, Conclusions, and Policy and Research Recommendations. In R. Loeber, et al. (Eds.), Persisters and Desisters in Crime from Adolescence into Adulthood. Explanation, Prevention and Punishment (pp. 335-412). Ashgate.
38. See in summary Steinberg, L., et al. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. Developmental Science, 21, 1-13; See footnote 1: Dünkel (2022); See footnote 37: Loeber et al. (2012).
39. See footnote 38: Steinberg et al. (2018).
40. Icenogle, G., Steinberg, L., et al. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a 'maturity gap' in a multinational, cross-sectional sample. Law and Human Behavior, 43(1), 69-85.
41. Steinberg, L. (2017). Adolescent Brain Science and Juvenile Justice Policymaking. Psychology, Public Policy, and Law, 23(4), 410-420.
42. Van der Laan, A. M., Beerthuizen, M. G. C. J., & Barendregt, C. S. (2021). Juvenile sanctions for young adults in the Netherlands: A developmental perspective. European Journal of Criminology, 18(4), 526–546.
43. See footnote 42: Van der Laan et al. (2021).
44. See footnote 41: Steinberg (2017).

International human rights and national developments in dealing with young adults involved in crime

The Council of Europe has taken these considerations about the prolongation of the transitional phase of young adults into account in its recommendation on 'new ways of dealing with juvenile offenders and the role of juvenile justice' of 2003 (Rec. [2003] 20) and in the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM) of 2008 (Rec. [2008] 11). Rule 11 of Recommendation (2003) 20 reads as follows: 'Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.'[45]

Rule 17 of the ERJOSSM states that 'young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.' The commentary to this rule states that: 'it is an evidence-based policy to encourage legislators to extend the scope of youth justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation' (p. 42).[46]

This widespread European consensus about the role of young adults in youth justice legislation is reflected by more national legislators, in the most far-reaching manner by the Dutch youth justice reform from 2014.

The United Nations' so-called Beijing Rules in Rule 3.3 state: 'Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.' In its proposal for a Model Law on Juvenile Justice of 2013 the UN follows this line with the statement in the commentary: 'States should note that a majority of European States have extended the applicability … of their juvenile justice laws to the age of 21 as neuroscientific evidence and brain development studies have indicated that it is difficult to distinguish between the brain of an older child and that of a young adult' (UNODOC 2013: 57).

In a comparative view there exist two models of dealing with young adults: on the one hand to provide the application of youth justice disposals to young adults; on the other, to mitigate sentences within the general penal law to this age group. The first model reflects either the maturity or immaturity of the individual concerned or simply that just the disposals of youth justice are more appropriate for young adults compared to adults of over 20 (in the Netherlands: over 22). This variant of dealing with young adults existed in 20 out of 35 jurisdictions covered by the survey of Dünkel et al.[47] In the meantime Georgia in 2015 and Estonia in 2018 have introduced the possibility of applying youth justice dispositions on young adults. A specific mitigating factor in sentencing young adults existed in 17 jurisdictions and in eight jurisdictions regulations in both youth and adult criminal law could be found. Only in Bulgaria, Latvia, Romania, Spain and Turkey no specific rules for young adults involved in crime were provided.

Beyond Europe, there exist a few examples of widening the scope of youth justice in that way, as e. g. in Japan or in Brazil and Uruguay.[48] Salaymeh identified an elevated maximum age of youth justice between 19 and 21 in eight out of 47 Muslim-majority states in Near and Middle-East and Africa.[49] In the USA, the project of 'emerging adulthood' of the Columbia University in New York has initiated and furthered reform movements in several Federal States to expand the upper limit of youth justice. In consequence of new neuroscientific and developmental psychological evidence Vermont raised the upper age to 20, and there have been model or pilot projects to widen the scope of youth justice to 19, 21 or 24 years in several states.[50]

Applying adult penal law on juveniles and transfers of juveniles to adult courts (waiver procedures)

While raising the upper limit of the definition of juvenile may be seen as a way of imposing more appropriate sentences on immature young adults, there is also an opposite trend, most prominent in the United States,[51] but also found in a few European countries, of referring children for trial in adult courts. Such referrals

45. This rule was strongly influenced by § 105 of the German Youth Justice Act giving the youth court the power of a discretionary decision (based on a psychiatric or psychological expert opinion) to impose youth or adult criminal law sanctions, for detail see footnote 11: Dünkel (2016).
46. Council of Europe (2009). European Rules for juvenile offenders subject to sanctions or measures. Council of Europe Publishing.
47. See footnote 3: Dünkel et al. (2011); See footnote 27: Dünkel (2024) for recent reforms in further jurisdictions (e. g. Estonia, and Georgia).
48. See footnote 1: Dünkel (2015).
49. Salaymeh, L. (2015). Juvenile Justice in Muslim-Majority States. In F. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), Juvenile Justice in Global Perspective (pp. 249-287). New York University Press.
50. See the report of the Emerging Adulthood-Project under https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Washington%20State%20-%20January%202021.pdf
51. See footnote 4: Bishop and Feld (2012).

often, but not always have a distinctively punitive purpose, as the range of youth justice sanctions is seen as too limited to adequately sentence serious (violent) offences committed by young people.

In some European countries, juveniles can be transferred from the youth to the adult court, where so-called waiver or transfer laws provide for the application of adult criminal law to certain offences. This is in fact a qualified limitation of the scope of youth justice and a lowering of the minimum age for the full application of adult criminal law.

In Belgium and the Netherlands, 16- and 17-year-old juveniles can be sentenced according to adult criminal law in cases of serious (violent) crimes. Since its 2006 reform, the waiver in Belgium is not to adult courts, but to so-called Extended Juvenile Courts. The same very restrictive application of adult criminal law against 16- and 17-year-olds can be seen in the Netherlands, the youth court remains competent as well, but the general criminal law can be applied. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law, but this is the case only in about 1-2 per cent of the cases.

In England and Wales, juveniles, even at the age of 10, can be transferred to the adult criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adults carry a maximum term of imprisonment of more than 14 years). Similar exceptions are provided for in Ireland (in practice less than 5 per cent of judgments), Serbia and in Northern Ireland, transfers are limited to juveniles who have been charged with homicide, in Ireland, to exceptional cases such as treason or crimes against the peace of nations, but also for murder or manslaughter.

The application of adult law to juveniles through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it. Whereas normally the application of (juvenile) law depends on the age of the person involved in crime, transfer laws or waivers rely on the type or seriousness of the committed offence. The justification for special treatment of juveniles (as an inherent principle of youth justice) is challenged by such provisions. The fundamental idea is to react differently to offences that are committed by people up to a certain age, on the basis of their level on maturity or their abilities of discernment. Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility should signify — independently from the type of offence — from which age on a young person is deemed 'mature enough' to receive (adult) criminal punishment. On the other hand, however, the introduction of 'transfer laws' makes exactly those people fully responsible who often lack the (social) maturity to abstain from crime or even fully to differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be regarded as not fully mature when charged with a 'normal' offence but fully criminally responsible for a serious offence. As Weijers and Grisso have put it, 'An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits'.[52] A systematic approach would treat all offences equally.

> Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juveniles involved in crime. Additionally, they claim that waivers are needed as a 'safety valve' for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases. However, so far criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.

In practice, transfers are of declining significance in Europe, but even if waivers and transfer laws are of little significance in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juveniles. Therefore, the UN Committee on the Rights of the Child recommends abolishing all provisions that allow people involved in crime under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years.[53]

52. See footnote 37: Weijers and Grisso (2009).
53. Committee on the Rights of the Child (2007). General Comment Nr. 10: Children's rights in juvenile justice. CRC/CGC/10 (25 April 2007). http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en (paragraphs 34, 36, 37, and 38).

Concluding remarks

Youth justice systems in Europe have developed in various forms and with different orientations. Looking at sanctions and measures, the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve compliance with law ('norm validation'). Mediation, victim-perpetrator reconciliation or family group conferences are good examples of such diversionary strategies. On the other hand, from an international comparative perspective, systems based solely on child and youth welfare are on the retreat. This is not so evident in Europe where more or less 'pure' welfare-oriented approaches exist only in Belgium and Poland (or for juveniles under 16 in Portugal and Scotland) compared with, for instance, Latin American countries, which traditionally were oriented to the classic welfare approach,[54] and countries influenced by the Anglo-American welfare model, such as India.

Across Europe elements of restorative justice have been implemented.[55] In addition, educational and other measures, such as social training courses and cognitive-behavioural training and therapy, have been developed more widely. These developments are in line with international youth justice standards. The 2003 Recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasises the development of new and more constructive community sanctions for recidivist and other problematic groups. This maintains the traditional idea of youth justice as a purely special 'educational' system of intervention designed to prevent re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been hailed as desirable across Europe, it cannot be denied that in some countries 'neo-liberal' orientations have influenced youth justice policy and, to a varying extent, also practice in the 1990s and early 2000s.[56] Indeed, the increase of youth imprisonment in England and Wales and other Western European countries at that time confirmed the impression of the 'punitive turn' associated with the notion of incapacitation, retribution, individual responsibility and accountability. However, the trend of bringing juveniles to courts for harsher punishments has been reversed in the last two decades. Noteworthy downward trends in youth crime and youth imprisonment can be observed in many jurisdictions. The examples of England and Wales and Russia as former high incarceration countries, but also Germany,[57] Slovenia and the Scandinavian countries as low-level incarceration countries,[58] demonstrate a remarkable shift in youth justice policies and practice. Youth justice policy in the USA follows the same line of reinventing educational and restorative orientations of youth justice and furthermore widening the scope towards over 18-year-old young adults by at the same time asking for fewer transfers of juveniles to adult courts (waiver procedures).

> Another player is the European Union, which has strengthened the rights of juveniles involved in crime as well as of victims in youth justice procedures.

Nevertheless, one has to be careful in judging systems as punitive or lenient. When incarceration rates and other forms of juvenile social control (e.g. sending juveniles to closed residential care in welfare institutions) are taken into consideration, there may be less distinction between at first glance very different youth justice policies (see for example the lenient policy in Italy compared to England and Wales).[59]

The notion of a punitive turn in youth justice in Europe has always reflected only one facet of the full reality. A different reality emerges when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare agencies and projects such as mediation schemes. These have continued to operate in a reasonably moderate way and thus resisted penal populism.[60] Sonja Snacken has explained why

54. Beloff, M., & Langer, M. (2015). Myths and Realities of Juvenile Justice in Latin America. In F. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), Juvenile Justice in Global Perspective (pp. 198-248). New York University Press.
55. See footnote 14: Dünkel & Păroşanu (2022).
56. Muncie, J. (2008). The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and in the USA. Youth Justice, 8, 107-121.
57. See footnote 11: Dünkel & Heinz (2017).
58. See footnote 25: Lappi-Seppälä (2019).
59. Nelken, D. (2019). Understanding and learning from other systems of juvenile justice in Europe. In B. Goldson (Ed.), Juvenile justice in Europe. Past, Present and Future (pp. 186-206). Routledge.
60. See footnote 3: Dünkel et al. (2011).

many European countries have resisted penal populism and punitiveness given their strong orientation towards the social welfare state,[61] democracy and human rights. International human rights instruments and the jurisprudence of the ECtHR serve as 'protective factors' against penal populism,[62] which can be found most clearly in many continental Western European states, particularly in Scandinavia.[63] More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand. Another player is the European Union, which has strengthened the rights of juveniles involved in crime as well as of victims in youth justice procedures.

Apart from varying approaches to youth justice, this article has highlighted three areas that are seen as crucial for the future of youth justice. The demographically declining age group of under 18-year-old juveniles and their decreasing crime rates will pose a question about the existence of a distinct youth justice system with educationally experienced, specialised police, prosecutors and judges.[64] The reason would be that the group of persons under consideration is small.

- ❏ One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15, while at the same time establishing or preserving human rights guarantees and fair civil law procedures and interventions for those under the age of criminal responsibility.
- ❏ A second step would be to build on initiatives to increase the maximum age at which young people involved in crime can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and to divert them from a career of adult crime. The reform of 2014 in the Netherlands increasing the scope of youth justice up to the age of 23 and of similar initiatives in some Federal states in the USA may be seen as the forerunner in youth justice reform in this respect. The positive experiences of Germany to apply youth justice measures and sanctions to a wide extent to 18-20-year-old young adults (and thus moderating harsh punishments in serious crime cases) may encourage other countries as well. Such a policy is justified by new neuroscientific evidence on brain maturation and its consequences for a restricted maturity diminished culpability.
- ❏ Thirdly, the possibilities of trying juveniles as adults should be resisted. Only a small minority of European countries provide such a waiver procedure, but it must be clear that this is not only doctrinally dubious (and contrary to the CRC of 1989) but also holds the risk of increasing the impact of the worst features of the adult criminal justice system on young people.

Youth justice in the majority of European countries has revealed a moderate approach to young people in the difficult process of maturing to adult life. Therefore there is some evidence that the ideal of social inclusion and reintegration will be the *Leitmotiv* for youth justice law and practice of the 21st century in Europe and other continents as well.

61. Snacken, S. (2010): Resisting punitiveness in Europe? Theoretical Criminology, 14, 273-292; Snacken, S., & Dumortier, E. (2012). Resisting Punitiveness in Europe? Welfare, human rights and democracy. Routledge.
62. Pratt, J. (2008). Scandinavian Exceptionalism in an Era of Penal Excess: Part I and II. British Journal of Criminology, 48, 119-137 and 275-292.
63. See footnote 25: Lappi-Seppälä (2019).
64. See footnote 19: McAra & McVie (2019).

Confronting Normative Frameworks with Practical Realities: Redefining Juvenile Justice in Slovenia

Jasmina Arnež *is a Research Fellow at the Institute of Criminology at Faculty of Law, University of Ljubljana, Slovenia and Research Associate, Centre for Criminology, University of Oxford, UK.* ***Mojca M. Plesničar*** *is a Senior Research Fellow at the Institute of Criminology and Associate Professor of Criminology at Faculty of Law, University of Ljubljana, Slovenia.*

There are many reasons for the differential treatment of young people within criminal justice.[1] They are believed to differ significantly from adults convicted of crime in several aspects that are crucial for criminal justice treatment, especially in their physical and mental development. Recent studies in neuroscience and psychology have found that the human brain, especially in the parts concerned with impulse control and anticipating consequences, is still developing into a person's twenties.[2] Young people's capacity for moral judgement may also not be fully developed,[3] and children are thought to be significantly more prone to be influenced by their environment and peers than adults.[4]

Over time, two different systems for treating young people involved in crime have developed globally: the welfare and justice approach. The welfare model stemmed from the first specialised courts in the USA and was originally characterised by an understanding of young people's offending behaviour as a consequence of inadequate living and family conditions. According to the welfare approach, juvenile justice treatment aimed not to punish the child but to address the causes of their delinquent behaviour. The model has spread throughout Europe and the US;[5] however, particularly in the US, it has mainly developed outside criminal law and thus suffered from a lack of procedural guarantees. It has also been criticised for combining the often contradictory concepts of education and punishment.[6] The justice model thus developed in the US mainly as a response to — and critique of — the welfare model, seeking to increase procedural safeguards and rights for young people and their parents. In parallel with acquiring rights, the child gradually also assumed greater responsibility,[7] which has — again, especially in the US context — led to a markedly stricter system and more repressive treatment of young people involved in crime.

Modern countries are still broadly grouped into these two categories, although most jurisdictions and their juvenile justice systems use a mix of both. Contemporary welfare models almost necessarily include procedural guarantees, partly mandated by international instruments to protect children's rights. On the other hand, current justice models are not exclusively punitive but also entail welfare elements. At the same time, additional trends have developed which depart from the two classical models: more recent concepts of restorative justice and diversion are greatly emphasised in contemporary juvenile justice systems.[8] The discourse of child-friendly justice,

1. Filipčič, K. (2013). Mladoletniško kazensko pravo [Juvenile criminal law]. In L. Bavcon, A. Šelih, D., Korošec, M. Ambrož, & K. Filipčič (Eds.), *Kazensko pravo* [*Criminal law*], (pp. 495–544). The Official Gazette of the Republic of Slovenia, Ltd.; Scott, E., & Steinberg, L. (2008). Adolescent Development and the Regulation of Youth Crime. *The Future of Children, 18*(2), 15-33.
2. Barendregt, C., & Laan, A. (2019). Neuroscientific insights and the Dutch adolescent criminal law: A brief report. *Journal of Criminal Justice, 65.*
3. Ashkar, P., & Kenny, D. (2007). Moral Reasoning of Adolescent Male Offenders. *Criminal Justice and Behavior, 34,* 108-118; Romeral, L. F., Fernandez, J. S., & Fraguela, J. A. G. (2018). Moral reasoning in adolescent offenders: A meta-analytic review. *Psicothema, 30*(3), 289–294.
4. See, for example, Cullingford, C., & Morrison, J. (1997). Peer Group Pressure Within and Outside School. *British Educational Research Journal, 23,* 61-80; Walters, G. (2018). Resistance to Peer Influence and Crime Desistance in Emerging Adulthood: A Moderated Mediation Analysis. *Law and Human Behavior, 42,* 520-530; or for a different view, Ungar, M. (2000). The myth of peer pressure. *Adolescence, 35*(137), 167-180.
5. Dumortier, E. (2018). Under pressure? The foundations of children's courts in Europe. In V. B. Goldson (Ed.), *Juvenile Justice in Europe: Past, Present & Future* (pp. 3-23). Routledge.
6. See footnote 1: Filipčič (2013).
7. See footnote 1: Filipčič (2013).
8. *Završnik,* A. (2008). Konceptualne zagate restorativne pravičnosti – nova paradigma modernega odzivanja na kriminaliteto? [Conceptual dilemmas of restorative justice - a new paradigm for modern responses to criminality?]. *Revija za kriminalistiko in kriminologijo* [*Journal of criminal investigation and criminology*], *59*(2), 125-140; McAra, S., & McVie, L. (2010). Youth crime and justice: Key messages from the Edinburgh study of youth transitions and crime. *Criminology & Criminal Justice, 10*(2), 179-209.

promoted mainly by the Council of Europe,[9] is also greatly important, particularly from a procedural perspective.

However, the reality of juvenile justice often does not fully reflect the ideas debated at the conceptual and principled levels of juvenile criminal law. Goldson distinguishes between the shared youth justice narratives at the conceptual level and the differences that arise between countries upon a finer-grained analysis.[10] In this sense, he finds that European systems are very similar and ambitious at the level of concepts and ideas, where key issues include respect for human rights and moderation in sanctioning on the one hand and the issue of punishment and penality on the other. At the level of implementation, however, referring to Dünkel,[11] he argues that countries appearing very similar at the conceptual level can differ greatly, so significant differences in the treatment of young people emerge in the European area in practice.

This article identifies how a similar gap between discourse, at the conceptual level, and practice can exist within one individual system, as exemplified by the Slovenian juvenile justice system. In Slovenia, a welfare model of juvenile criminal law with moderate sanctions, aimed at helping minors who find themselves in criminal proceedings, is considered the norm.[12] However, few studies have examined how young people involved in crime are treated in proceedings on the ground. This article aims to fill this gap using the country as an example by, first, briefly outlining the normative framework of juvenile criminal law in Slovenia. It then presents the results of a recent empirical study into the functioning of Slovenian juvenile justice in practice, explaining its methodological approach and main findings. Through the discussion and conclusion, the article conceptualises the differences between ideas and their implementation. Last, it offers some possible directions for treating young people differently in Slovenia and lessons which can be learned from it and applied elsewhere.

The treatment of young people involved in crime in Slovenia: A normative view

The foundations of the Slovenian juvenile criminal law — focused on the welfare and needs of the child — were laid mainly in the 1950s in the then-progressive Yugoslav criminal law. The 1951 Yugoslav Criminal Code divided young people into two age groups: younger (14-15 years) and older (16-17 years) juveniles. More importantly, it required that the criminal procedure against young people focused on their personality, needs, and personal and family circumstances. According to the 1959 amendments to the Yugoslav Criminal Code, the court could only impose educational measures on younger adolescents involved in crime (14-15 years old), while older young people (16-17 years old) could be sentenced mainly to educational measures and exceptionally to penalties; a fine or juvenile imprisonment.[13]

> Over time, two different systems for treating young people involved in crime have developed globally: the welfare and justice approach.

Since Slovenia's independence in 1991, the treatment of young people has been part of the general Criminal Code (CC) and Criminal Procedure Act (CPA).[14] Under the CC, the age of criminal responsibility is 14 years, and young people are classified into three groups:

1. children under 14, who are not dealt with by the courts but by social welfare authorities;
2. minors aged 14 and 15, upon which the court can only impose an educational measure;
3. older minors aged 16 and 17, upon which the court will usually impose an educational measure, exceptionally sentence them with a penalty (fine or juvenile imprisonment).

9. Liefaard T., & Kilkelly, U. (2018). Child-friendly justice: past, present and future. In V.B. Goldson (Ed.), *Juvenile Justice in Europe. Past, Present and Future* (pp. 57-73). Routledge.
10. Goldson, V, B. (2018). Reading the Present and Mapping the Future(s) of Juvenile Justice in Europe: Complexities and Challenges. In V. B. Goldson (Ed.), Juvenile Justice in Europe: *Past, Present and Future* (pp. 209-253). Routledge.
11. Zimring, V, F., Langer, M., & Tannenhaus, D. S. (2015). Juvenile Justice in Global Perspective. In F. Dünkel (Ed.), *Juvenile Justice and Crime Policy in Europe* (pp. 9-62). New York University Press.
12. Filipčič, K. (2015). Mladoletniško prestopništvo [Juvenile Delinquency]. In A. Šelih & K. Filipčič (Eds.), *Kriminologija* [*Criminology*] (pp. 405–432). GV založba in Inštitut za kriminologijo pri Pravni fakulteti [GV and Institute of Criminology at the Faculty of Law]; Filipčič, K., & Plesničar, M. (2017). Slovenia. In S. H. Decker, & N. Marteache Solans (Eds.), *International handbook of juvenile justice* (pp. 395–419). Springer.
13. See footnote 1: Filipčič (2013).
14. Criminal Code (KZ-94) (1995). Uradni list RS [The Official Gazette of the Republic of Slovenia, Ltd.;] (Nb. 95/04 and following.); Criminal Procedure Act (ZKP) (2021). Uradni list RS [The Official Gazette of the Republic of Slovenia, Ltd.;] (Nb. 176/21 and following.).

According to Article 73 of the CC, the purpose of educational measures and penalties for young people is to ensure their education and re-education through protection, assistance, supervision, training, and the development of their personal responsibility. Article 453 of the CPA states that all authorities dealing with young people shall consider their mental development, sensitivity, and personal characteristics in all proceedings. According to Article 461 of the CPA, all authorities involved in proceedings against a minor from which reports or opinions are requested must act quickly to bring the proceedings to a conclusion as promptly as possible.

Despite an amendment to the Slovenian CC in 2008, which envisioned a separate law dealing only with young people involved in crime, Slovenia has not (yet) adopted such a law — despite several failed attempts. The most recent attempt was the draft Liability of Minors for Criminal Offences Act,[15] which did not pass the legislative process due to challenges that could not be adequately addressed,[16] resulting in the old CC's continued use for young people.

The police and prosecutorial levels

In Slovenian criminal proceedings, the 'legality principle' applies to adult and young defendants.[17] More specifically, this means that the police must forward any criminal complaint recorded against a young person to the public prosecutor. This way, diversion at the police level is not possible and the prosecutor as a legal professional always investigates the complaint, adding an extra layer of protection for young people in conflict with the law.

If there is evidence that a young person has committed a criminal offence, the public prosecutor must generally request that criminal proceedings be initiated based on the principle of legality. However, there are four exceptions under the current CPA when the prosecution can act without a request to initiate criminal proceedings, which reflects the ideas of diversion in the Slovenian system:[18]

1. Expediency principle: for minor offences (up to three years imprisonment or a fine), the public prosecutor can decide not to prosecute if they consider official action unnecessary.
2. Minor significance of the offence: if there is a discrepancy between the minor seriousness of the offence and the potential adverse consequences of prosecution for the child, the prosecutor can dismiss the charge.
3. Alternative procedures: for offences punishable by up to five years of imprisonment, the prosecutor may opt for a settlement or deferred prosecution, where the young person must carry out certain tasks (repairing damage, donating, or doing community service).
4. Enforcement of a sentence or educational measure: if the enforcement of a sentence or educational measure is already underway, the public prosecutor may decide not to request that criminal proceedings be brought for the young person's second offence if these would not be sensible.

The judicial level

No specialised juvenile criminal courts exist in Slovenia. Like in criminal cases against adults, District courts are responsible for first-instance decisions on juvenile offences, Courts of Appeal adjudicate in criminal complaints against first-instance judicial decisions, and the Supreme Court deals with extraordinary measures filed against decisions at lower levels.

At the first level, juvenile criminal court proceedings are divided into two phases: the preparatory proceedings and the panel session or main hearing. If the court does not dismiss the case due to the expediency principle, minor significance of the offence, or an ongoing educational measure or sanction and imposes a criminal sanction on the young person, there is a third phase, namely the enforcement and monitoring of the criminal sanction. Some specialisation exists in Slovenian youth justice and is two-fold. First, semi-specialised juvenile judges decide — depending on their caseload — in cases against adults, but are also permanently assigned juvenile criminal cases. At the level of District Courts, holding jurisdiction over serious adult criminal offences, punishable by three years of imprisonment and more, a panel of judges, composed of one professional and two lay judges, decides in juvenile criminal cases. Formally, lay judges, who are typically educators or experts in juvenile matters, cooperate with the professional judge equally when deciding on the verdict and the educational measure or sentence. In practice, the lay judges tend to follow the professional judge's reasoning and decision-making.

15. Predlog Zakona o mladoletnih storilcih kaznivih dejanj [Draft Young Offenders Act] (ZOMSKD). (2019). EVA: 2018-2030-0046 – predlog [draft], 24. 12. 2019.
16. Council of Europe (2021). *Improving the Juvenile Justice System and Strengthening the Education and Training of Penitentiary Staff* (Inception Report Component I: 21SI10). Strasbourg: Council of Europe – Children's Rights Division.
17. Šugman Stubbs, K., Gorkič, P., & Fišer, Z. (2020). Temelji kazenskega procesnega prava [The Foundations of Criminal Procedural Law]. GV Založba [GV].
18. See footnote 8: McAra & McVie (2018).

Second, the professional judge deciding in juvenile criminal cases receives training in proceedings against young people in conflict with the law and topics related to child development and mental health alongside prosecutors, police officers, and mediators. The training was introduced by the recently amended Article 452.b of the CPA and is run by the Slovenian Centre for Judicial Education.

The juvenile chamber decides whether the young person has committed an offence and, if so, imposes one (or more) of the sanctions in Table 1.

Table 1: Sanctions against juveniles convicted of crime (CC, 1994)[19]

Educational[20] measure	(I) Non-residential (a) reprimand, (b) instructions and prohibitions (11 different options),[21] (c) supervision by a social welfare authority, (II) Residential (d) placement in an educational home, (e) placement in a correctional home, (f) placement in an institution for physically and mentally disabled youth.
Penalty	(a) a fine,[22] (b) juvenile imprisonment[23] (as the main penalties), (c) prohibition from driving a motor vehicle, (d) expelling an alien from the country (as secondary penalties).
Safety measure	(a) compulsory psychiatric treatment and care in a medical institution, (b) compulsory psychiatric treatment at liberty, (c) deprivation of driving licence, (d) confiscation of objects.

19. There are four types of sanctions according to Slovenian penal law and the CC: sentences (e.g. prison and fines), admonitory sanctions (e.g. suspended sentence), safety measures (e.g. compulsory psychiatric treatment), and educational measures. For juveniles, the court may only use different types of educational measures and, in exceptional circumstances, the sentence of juvenile imprisonment or a fine. Under certain conditions, the court can also impose upon juveniles some safety measures.
20. When deciding which educational measure to apply, the main criterion for the court is the juvenile's resocialisation, followed by the seriousness of the offence. Six educational measures may be imposed on juveniles. The reprimand, instructions and prohibitions, and supervision by a social welfare authority are non-residential and carried out in the community, whereby the juvenile stays in their existing home environment. Placement in an educational home, correctional home, or an institution for physically and mentally disabled youth are residential and exclude the juvenile from their home environment when this is assessed by the court as necessary for the young person and their development. Courts are restrictive in using residential educational measures. In over 90% of cases when an educational measure is imposed, courts apply one of the non-residential educational measures, so the juvenile continues living in their home environment and carries out the educational measure in the community under the supervision of social services and the court. Non-residential educational measures can be imposed for up to one year. There is no fixed term for the child to spend in the educational institution, correctional home, or institution for physically and mentally disabled youth as the court does not set the duration of these sanctions in their final decision. The minimum length of a residential educational measure is set by the CC to one year, while the maximum is three years. After the educational measure's first year, the juvenile may be conditionally released from a residential placement, and in that case, the court may decide the young person be supervised by social services.
21. The court may issue the following instructions and prohibitions to a juvenile perpetrator: 1) to make a personal apology to the injured person; 2) to reach a settlement with the injured person by means of payment, work or otherwise in order to recover the damages caused in the course of committing the offence. 3) regular attendance at school; 4) to take up a form of vocational education or to take up a form of employment suitable to the perpetrator's knowledge, skills and inclinations; 5) to live with a specified family or in a certain institution, etc; 6) to perform community service or work for humanitarian organisations; 7) to submit themselves to treatment in an appropriate health institution; 8) to attend sessions of educational, vocational, psychological or other consultation; 9) to attend a course of social training; 10) to pass an examination on the traffic regulations; 11) under conditions applying to adult perpetrators, prohibition from operating a motor vehicle may be enforced; (Article 77 of the CC (94)).
22. A fine can only be imposed on a juvenile if they have their own income or other financial means and can pay the fine by themselves. If the young person does not pay the imposed fine, the fine cannot be substituted by a prison sentence. In case of non-payment, the fine is converted into one of the non-residential educational measures. In practice, fines are rarely used for juvenile offenders. According to data from the Statistical Office of the Republic of Slovenia, between 98% and 100% of all juvenile cases where the young person receives a court-imposed sanction, the court chooses an educational measure.
23. Before imposing a sentence of juvenile imprisonment, the court must justify its use in detail, i.e. explain why a less severe sanction is not applicable. Imprisonment is rarely imposed upon juveniles in Slovenia. On average, 0.55 % of juveniles are sentenced to juvenile imprisonment. In the last few years, just one juvenile per year was imprisoned, or there were no juvenile prisoners. According to data from the Statistical Office of the Republic of Slovenia, the sum of imprisoned juveniles in the last 11 years is just 15. Juvenile imprisonment is only possible for older juvenile offenders aged 16-17 and, under particular conditions, for young adults aged 18-21. A juvenile prison sentence can only be imposed in the case of a serious offence for which a sentence of five years of imprisonment or more is prescribed in the CC for adults. The court considers the seriousness of the offence and the level of the juvenile's criminal responsibility, as well as the juvenile's maturity and the time necessary for their rehabilitation and vocational training. A juvenile may be imprisoned between a minimum of six months and a maximum of five years. In the case of criminal offences punishable by thirty years of imprisonment for adults (e.g. aggravated murder), the maximum prison sentence for juveniles is ten years.

The chamber decides at a panel session or main hearing without the public being present. This is an exception from the principle of open justice that the CPA proscribes to protect the child's identity and wellbeing. The juvenile chamber may impose a fine, juvenile imprisonment, or a residential educational measure only at the main hearing. The court may impose any of the selected safety measures on the young person if certain conditions are met.

The child's age is a crucial factor in the choice of educational measure or punishment. The court may impose a penalty only on older young people (16 and 17 years of age) and in exceptional cases (if the offence is severe, the level of criminal responsibility is high, etc.). In deciding on the appropriate sanction, particularly in the case of educational measures, the judge considers the young person's personality, maturity, and needs, and not so much the seriousness of the committed offence. The severity of the offence becomes more important when the court decides whether the young person should be committed to a correctional home or imprisoned.

Once the court has imposed the sanction, the social welfare authority (in the case of non-residential measures) or the educational or correctional home (in the case of residential educational measures) must report to the juvenile court judge every six months on the success of the educational measure as part of the judicial review of the sanction's enforcement. Juvenile judges can suspend or modify the educational measure to better achieve its purpose in case of positive enforcement results, the child's changed needs, or if new circumstances arise that did not exist or were not known when the judicial decision was made (Article 83 of the CC).

The treatment of young people involved in crime in Slovenia: A practical view

Following the presentation of Slovenian juvenile justice, its normative ideas, and principles, the second part of the article outlines the main findings of the empirical research conducted to explore the system's practical functioning and welfare orientation. This is based on a case file analysis of 150 prosecutorial and 170 judicial files, conducted between 2021 and 2023 as part of an EU and CoE co-funded project on improving the juvenile justice system.[24] The study aimed to identify and investigate the practical problems in juvenile justice in Slovenia and make recommendations for further research, policy, and practice. The results are grouped into three parts, covering:

- The dynamics of prosecutorial diversion,
- Selected issues during the trial,
- Sanctioning people convicted of crime and monitoring sentence execution.

Along with the results, the following analysis considers possible solutions to the problems that arise in practice.

> In Slovenia, a welfare model of juvenile criminal law with moderate sanctions, aimed at helping minors who find themselves in criminal proceedings, is considered the norm.

The dark side of prosecutorial diversion

In Slovenia, diversion is often used in juvenile criminal law cases but not always applied following the abovementioned legal provisions. Prosecutors divert young people from the criminal justice system in almost half of all criminal complaints by the police. Since Slovenia's independence in 1991, youth crime has been low, and steadily decreasing for more than 30 years. According to Police data and the Statistical Office of the Republic of Slovenia, the number of juveniles involved in crime has more than halved from 1,912 in 2004 to 903 in 2022. The number of registered criminal offences committed by young people has dropped from 3,349 in 2004 to 1,192 in 2022. In the same time, the number of juveniles in custody decreased from 1,827 in 2012 to 1,192 in 2022.[25]

In 2020, for example, 830 young people in Slovenia were charged, that is registered by the police, while only 193 or 23 per cent of those received a court-imposed sanction: a non-residential educational measure in 91.7 per cent and a residential educational

24. The study was carried out in the framework of the project *Improving the juvenile justice system and strengthening the education and training of prison staff,* funded by the EU and the Council of Europe, the results of which are collected in Plesničar, M. M., Balažic, M., Arnež, J., Ramuž Cvetkovič, I., Skočir, M., & Filipčič, K. (2023). *European Union – Council of Europe joint project on improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia:* National research and gap analysis. Strasbourg: Council of Europe – Children's Rights Division.; and Arnež, J. (2023). *Improving the juvenile justice system in Slovenia: Analysis of the case law related to juvenile justice with a focus on young offenders* (Lot 2 Report). Council of Europe.
25. See footnote 24: Plesničar et al. (2023), and Arnež (2023).

measure in 8.3 per cent, and no young person received a prison sentence or fine.[26] That year, prosecutors dismissed over 50 per cent of cases; approximately 25 per cent due to the minor significance of the offence, 15 per cent due to withdrawal of prosecution by the injured party; 15 per cent due to deferred prosecution; and less than 2 per cent due to successful mediation.

However, the inspected case files revealed that diversionary practices were plagued by inconsistencies: prosecutors did not always prosecute all similarly serious crimes or divert equally minor offences, and it was often not clear from the prosecutorial case files or final decisions why the prosecutors pursued a prosecution, especially where the cases (based on the description of the offence) did not seem complex. On the other hand, prosecutors sometimes used diversion in cases where the gravity of the offences appeared to be (at least) equal to those for which they had previously requested criminal proceedings, again without further explanation in their decisions or case files.

Apart from considering the lesser severity of the offence, the CPA prescribes that diversion must be in the child's best interests, based on what the prosecution knows about their personal and family circumstances. It was thus surprising that the inspected prosecutorial files contained little information on the young people and their families. In 93 per cent of diverted cases, the prosecution did not obtain a report from the social welfare authority, although obtaining information on their personal, familial, and extra-familial circumstances is essential for an informed prosecutorial decision. Further, prosecutors did not ask the young person's parents for information about the child or invite the families, social workers, or other professionals to an interview as possible, according to Article 466 of the CPA.

The case file analysis also revealed that diversion was sometimes unequally distributed geographically. Specifically, mediation was unevenly used by prosecutors in different districts, mainly due to different practices and accessibility of mediators. In the case of deferred prosecution, some inconsistencies were found between different prosecutors' offices regarding the amount of community work required, the time available for young people to complete the tasks assigned, and the young people's income in terms of the obligation to make reparation or other types of payment. In addition, the types of cases where prosecutorial diversion based on the expediency principle was used overlapped with cases where the court dismissed the proceedings on the same grounds after a preparatory procedure had been carried out. However, analysing these practices in more detail was difficult, as the prosecutorial and court statistics did not distinguish between the different categories and levels of dismissals.

The practical barriers to a fair trial

In parallel to the prosecutorial test of whether diversion is in the child's best interest, courts in Slovenia have a legal obligation under Article 469 of the CPA to carry out and update the young person's holistic individual assessment. Only a thorough individual assessment can be a sound foundation for the judicial decision and appropriate educational measures or penalties. In the inspected case files, courts diligently carried out the individual assessment as part of the preliminary proceedings by interviewing the young person and their parents and obtaining a report from the social welfare authorities.

No specialised juvenile criminal courts exist in Slovenia.

However, the problematic length of judicial proceedings in Slovenia necessitated a new individual assessment and information gathering from the young person, their parents, social services authorities, and other institutions as part of the panel session or main haring. More specifically, 69 per cent of the court proceedings in the sample lasted more than a year, which meant that the young person's circumstances might have changed significantly in the intervening period, and a new individual assessment had to be conducted. A thorough but rapid one-off individual assessment of the child in a more expeditious judicial procedure would be more beneficial for the child. It would also save energy, costs, and time.

26. In Slovenia, there are ten educational institutions, designed for juveniles and young people in need of care. A child can be placed into such an institution based on a decision of the family court (e.g. if parents cannot take proper care of the child; if the child often runs away from home; or does not go to school) or based on the decision of the criminal court if the juvenile has committed a crime. With a total capacity of 400 children, fewer than 5% of the occupants in educational homes are juveniles who have committed a crime. There is one correctional home in Slovenia, correctional home Radeče, that can house 47 young people. It accepts those who have committed serious offences and require intense specialised supervision and support. Only one prison in Slovenia, namely the prison in Celje, accepts juveniles involved in crime.

In practice, delays accumulate in court proceedings against young people in Slovenia; however, this is not because any institution acts particularly slowly compared to others. Many of the problems with the length of court proceedings arise because there are no juvenile judges *per se*. As mentioned above, judges who decide in juvenile cases deal with both proceedings against adults involved in crime (sexual offences, domestic violence) and proceedings against young people. The specialisation of judges, prosecutors, and perhaps social workers could allow a more succinct, focused, and coherent decision-making system, enabling swift assessments of juveniles and ensuring a system of more expeditious follow-up during criminal proceedings and the subsequent phase of the enforcement of sanctions.

Another sore spot of the Slovenian juvenile justice system is the use of pre-trial detention. In Slovenia, pre-trial detention is rarely applied against juveniles;[27] when it is, courts adequately explain and justify their decision based on the conducted case file analysis. In the 170 inspected judicial files, pre-trial detention was used in only 7 per cent of cases. However, 64 per cent of the detained young people were placed with adults and only 18 per cent with other children. In 18 per cent of cases, the information on the young person's placement was unknown from the case file.[28] The need for a judge to issue a written order to detain a young person with adults, after obtaining the opinion of the prison administration, is now part of an amended Article 473 of the CPA (2021). This is a welcome and necessary normative change. However, in the long term, the number of juvenile pre-trial detentions should be reduced even further, and the focus should be on alternatives to detention, which are now non-existent. In addition, children should not be detained together with adults, and a detention centre or unit should be set up for young people only.[29]

Since Slovenia's independence in 1991, youth crime has been low, and steadily decreasing for more than 30 years

The pitfalls of sanctioning and monitoring sanction execution

The sentencing policy of Slovenian courts concerning young people is generally consistent with the system's welfare orientation. On average, 92 per cent of young people involved in crime are subject to non-residential and 7.5 per cent to residential educational measures. Imprisonment of young people is used as a measure of last resort and has not been imposed in more than 0.5 per cent of cases in the last five years.[30] According to the case file analysis, the court's reasoning for the final decision is also satisfactory and roughly reflects the requirements of the normative framework. However, while final court decisions refer to the objectives of educational measures set out in the CC, they are not always sufficiently individualised based on the young person's personal and family circumstances. To some extent, this reflects one of the system's greatest weaknesses: the role of social services and their (in)ability to advise the judiciary on the most appropriate educational measure for a particular young person.

Another practical difficulty in Slovenian juvenile justice practice is that courts rarely modify educational measures because of a minor's cooperation, non-cooperation, or changed circumstances, adapting the measure to the child's needs. In such cases, they often do not convene a hearing or a session following Article 490 of the CPA to address the non-cooperation of the young person or the changed circumstances and, if necessary, to modify the educational measure imposed. Judicial monitoring of the enforcement of educational

27. Since 2014, the absolute number of juveniles in pre-trial detention has dropped from an average of 16.7 (2005-2014) to an average of 6.6 (2015-2022) per year, but the percentage of young people detained for longer than three months has risen substantially, amounting to an average of 39.6 % between 2015 and 2022 (21 juveniles in total). Further research is needed to explore the exact drivers of such trends. It seems possible to assume that the drop in the absolute number of young people detained signals the court's practice of detaining juveniles who committed serious offences only, which could also explain why these young people are then detained for a longer time. The court might take longer to decide in complex cases involving serious crimes. Hence, the juvenile defendants might therefore be detained for longer.
28. See footnote 24: Arnež (2023).
29. This may, however, sound more feasible than it is. There is only a handful of young people in detention every year and judges are often faced with the dilemma of either placing them with adults involved in crime or placing them in isolation. Hence the need for alternatives to pre-trial detention is crucial.
30. See footnote 24: Plesničar et al. (2023).

measures is difficult due to the number of cases that judges deal with and the expiry of the maximum period of the educational measure allowed by law before a hearing can be convened, especially in non-residential educational measures that can be imposed for up to a year. Perhaps if judges dealt only with juvenile criminal cases, they could consult social welfare authorities more frequently and thus start replacing the educational measure as soon as they become aware of the child's breach of the educational measure or their changed circumstances. This cooperation could be more effective if some social workers dealt only with juvenile criminal cases and if they were in regular contact with young people and their families to check the implementation of educational measures. Following Article 489 of the CPA, social welfare authorities, educational homes, and the correctional home report to the court regularly (every six months) on the progress of the educational measures imposed. However, the case file analysis revealed that the reports on implementing educational measures are sometimes too generic and not sufficiently detailed about the specific tasks imposed by the court. In practice, problems also occur with enforcing particular types of educational measures. Although courts often impose educational measures of instructions and prohibitions according to Article 77 of the CC, social welfare authorities sometimes carry out these educational measures as supervision by the social welfare authority (Article 78 of the CC). They also often start enforcing the instructions and prohibitions long after the courts have imposed them, sometimes even beginning the execution of this educational measure close to their one-year maximum duration. More research is needed to determine the precise organisational difficulties social services and courts face in executing and monitoring the imposed instructions and prohibitions.

In some cases, meetings between social workers and minors, under the supervision of the social welfare authority, are infrequent; instructions and prohibitions can also be made on short notice, and each depends on the willingness of the individual social worker. While some social workers consistently meet with the young people and establish a relationship in which they can positively influence their development and desistance, others are in contact with the child only by telephone. Such inconsistent practices are not satisfactory. The social worker should regularly be in close contact with the minor. Last, the court should formally suspend any educational measure in line with Article 490 of the CPA if the juvenile does not need the treatment or assistance they are receiving anymore due to changed circumstances, development, or needs. The court should also suspend the educational measure if the legally permitted period of the educational measure has expired. Nevertheless, in a significant proportion of the cases in the sample, the court did not hold a closing session at the end of the measure, particularly in the case of non-residential educational measures, nor did they issue a decision to suspend the educational measure formally, as required by law. As a consequence, non-residential and residential educational measures formally exceeded the proscribed maximum in 8 per cent and 24 per cent of cases, although it was not possible to determine from the inspected case files whether young people were also subject to these measures for longer than allowed in practice. Also, the courts sometimes merely informed the Ministry of Justice (MoJ) that the educational measure had been suspended due to the expiry of the time allowed by law, followed by sending a note about the expiry to the young person, parents, and their social worker. The absence of a proper conclusion of the proceedings sends the wrong message to juveniles — either they perceive it as a denial of the proceedings' importance, their own agency, or both. In line with ideas of procedural justice, which may be even more relevant for young people than adults,[31] this certainly does not contribute to their positive attitude towards the system and society at large, and very probably not to their rehabilitation, which should be the overarching aim of their treatment.

> ...diversionary practices were plagued by inconsistencies: prosecutors did not always prosecute all similarly serious crimes or divert equally minor offences.

Conclusion

Based on the analysis of prosecutorial and judicial case files, our research exposed a clear gap between juvenile justice discourse, at the level of concepts and norms, and practice within the Slovenian juvenile justice

31. Tyler, T. R. (2006). *Why People Obey the Law* (Revised edition). Princeton University Press; Tyler, T. R. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice, 30,* 283–357.

system. Although treating juvenile people is largely adequate at the normative level and leans towards a welfare model with sufficient procedural safeguards, the practical results of prosecutorial and judicial proceedings are often far from the normative ideal.

Although Slovenia — like other European countries — has seen a decline in juvenile offences and young people convicted of crime,[32] the appropriate treatment of juveniles is essential to modern legal regimes. Moreover, in times of a general drop in juvenile offending, the excuses of policymakers about how the system cannot be better regulated are less and less convincing. The Slovenian system rests on seemingly sensible yet somewhat outdated normative foundations. These, unfortunately, no longer offer (all) the answers to the issues of our time and whose application is a significant challenge.

It is thus crucial to address the identified practical issues in Slovenian juvenile justice as part of future policy considerations and amendments. An important step in the Slovenian context seems to be (more) specialised treatment of young people at all levels — certainly at the level of the courts and prosecutors' offices, but also more broadly, with improved cooperation between courts, prosecutors, schools, social services, and other relevant bodies that could contribute to a comprehensive, timely, and coordinated treatment of children with emotional and behavioural difficulties. Providing specialised knowledge to those dealing with juveniles involved in crime in proceedings on the ground is a prerequisite for their professional and fair treatment. Such a specialisation of judges, prosecutors, mediators, and defence lawyers is currently underway, but is insufficient.

More specifically, after the end of the European Union and Council of Europe's project 'Improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia' in 2023, the Slovenian MoJ was determined to use the produced research and gap analysis and case law analysis to review the existing draft Liability of Minors for Criminal Offences Act or draft a new specialised code for dealing with juvenile people according to a roadmap for implementing the recommendations. The roadmap offers short-, mid-term, and long-term implementation suggestions for the MoJ regarding the Liability of Minors for Criminal Offences Act, none yet underway.

Recently, the Slovenian Centre for Judicial Education has provided basic training in juvenile proceedings for judges, prosecutors, and mediators, which serves as a substantive juvenile justice specialisation. The Bar Association has also organised similar training for lawyers. However, the analysis above has shown that it would also be sensible to introduce specialised units for juvenile criminal cases at the level of courts and prosecutor's offices, which would be able to deal with young people more expediently, efficiently, and appropriately. It has been recommended to amend the Courts Act to establish specialised juvenile criminal departments and judges to better align with international juvenile justice standards,[33] but these amendments have, to the best of our knowledge, not yet been introduced. Also, despite Slovenia's willingness to promote child-friendlier practices of dealing with young people and designing a roadmap to implement the Liability of Minors for Criminal Offences Act, the act has not yet been put into effect or prepared, which is unsatisfactory. This seems especially problematic when considering the various attempts to implement the act in the recent decade and the general agreement of all actors in the field and the public for its implementation.[34]

> Many of the problems with the length of court proceedings arise because there are no juvenile judges per se.

Moreover, responding to recent incidents of violence involving young Roma people involved in crime, some conservative MPs have proposed a draft act amending the CC that contradicts the MoJ's preparation documents. The draft suggests widening the options to imprison young people for less serious offences and lowering the minimum age for imprisonment to 14. Despite evidence that such measures have proven to be ineffective in the past or in other jurisdictions, the proponents believe that harsher penalties will deter young people, particularly from the Roma community, from committing crime. Such attempts at politicising youth justice have not been a common practice in Slovenia in the past and present a concerning trend.

In addition to challenges for courts and prosecutor's offices, there are significant challenges for

32. See footnote 24: Plesničar et al. (2023).
33. See footnote 24: Arnež (2023).
34. Filipčič, K., & Prelič, D. (2011). Deprivation of Liberty of Juvenile Offenders in Slovenia. *The Prison Journal, 91*(4), 448–466.

social work centres, identified through the case files review. Social services play a vital role in juvenile justice proceedings at the level of information gathering, the enforcement of educational measures, and when they deal with children who commit crimes before they reach the age of 14. In their key tasks concerning juvenile justice proceedings, it has become apparent that the work of social services centres has been bureaucratised due to lack of funding and staff shortages, which is preventing in-depth and hands-on work with young people and their families, leading to unequal and unprofessional treatment that is not in the child's best interest. Although difficult, it is thus also urgent to consider the reorganisation of social welfare authorities and an optimisation of how the many roles of social services are divided between social workers to better cater to the needs of young people in conflict with the law.

Our findings on the Slovenian juvenile justice system are important for the system itself but may also offer insights that resonate across many European countries. The gap between normative ideals and practical implementation is not unique to Slovenia. It reflects a broader challenge that many countries face in aligning their juvenile justice systems with modern expectations and standards. Slovenia's experience underscores the importance of ongoing reform and specialisation to bridge this gap, providing insights for policymakers and practitioners.

In Slovenia, there is consensus among practitioners working in the field of youth justice to enhance professional and institutional specialisation with the hope of creating fairer responses to all young people in conflict with the law without hindering the ability of professionals to exercise discretion at the same time. In this task, Slovenia aims to follow its traditional youth justice orientation and focus on a welfare model with procedural safeguards, which also aligns with contemporary European principles of juvenile justice. However, the practical shortcomings identified in Slovenia remain to serve as critical points for reflection, urging other nations that cater to child-friendly youth justice discourses, in theory, to assess and refine the impact of their youth justice systems on the ground. By addressing these challenges, other systems can enhance their juvenile justice frameworks and improve youth justice practices, ensuring young people involved in crime receive the necessary support and guidance for rehabilitation and reintegration into society.

The Youth Court in England and Wales: Learnings from European contexts and local developments

Stewart Field *is a Professor of Law at Cardiff University, and* ***Stefan Machura*** *is a Professor in Criminology and Criminal Justice at Bangor University.*

The Youth Court in England and Wales is currently attracting a lot of discussion among practitioners, academics and policymakers as to how courts should deal with young defendants. The practices of other countries and the recent experience of the system in England and Wales may offer lessons as to how to adapt youth courts to the challenges of today.

In the first part of this article, we consider what we mean by 'youth courts' in Europe by comparing the scope and jurisdiction of specialist criminal courts in certain selected jurisdictions. We will point to the ways in which England and Wales bring younger children before the courts than elsewhere and adopts a cliff-edge approach to the upper limits of jurisdiction. This is despite the evidence that cognitive and emotional maturity is reached by young people at different ages. This is often at an age well beyond the jurisdictional cut-off point of 18 years of age operated in England and Wales. In the second part of this article, we consider the challenges and developments within the youth courts in England and Wales, which seek to recognise more fully the distinctive needs and capacities of young people by introducing a 'Child First' approach.

Throughout Europe there have been sweeping changes when it comes to youth justice.[1] First and foremost, youth crime has been falling for some years now in Europe and more cases are being dealt with by various measures of 'diversion'. Consequently, fewer young people are appearing in front of a youth court. The remaining cases in the youth court tend to be more serious or present more challenges.

The jurisdiction and structure of youth courts varies across Europe, as can be expected given that the countries have different legal systems and that youth courts operate in their national political environment. Some countries focus on retribution as the main objective of juvenile justice, whereas others focus mainly on the educational aspect of youth justice and the related goal of rehabilitation. The welfare of the individual who offended is often at the centre of the effort. In the following, we will first look at the age when children are considered criminally responsible and at its corollary, the age at which the jurisdiction of the youth court ends. In discussing the latter, we introduce key elements of the youth justice systems of selected countries. Only then does it become clear the extent to which opportunities are lost for young people who are turned over to the adult court on the day they become 18 years old. We will then reflect on where the youth court in England and Wales sits in comparison to some countries that extend the realm of their youth justice system to young adults.

In England and Wales, 10 years is the age of criminal responsibility. This is very early in comparison to most other European countries. The age of criminal responsibility was extremely low in Scotland, at 8 years, but has now been raised to 12 years. The Scottish Government provides the following reason: 'It is important that children under 12 are protected from the harmful effects of early criminalisation, while ensuring they receive the right support.'[2] The age of criminal responsibility is typically set at 14 to 16 years in European countries.[3] In Belgium it is 18 years for most cases.[4] England and Wales might do better to adjust its age of criminal responsibility to the higher age defined in most European countries, at least if one puts the needs of children truly first.

1. See, in this same PSJ edition: Dunkel, F. (2025). New horizons in youth justice – European and international developments.
2. Children and Families Directorate (n.d.). *Youth Justice.* Scottish Government, Children and Families Directorate.
3. Dünkel, F. (2022). Youth Justice: European and International Developments and (Good) Practices. In D. Nelken, & C. Hamilton (Eds.), *Research Handbook of Comparative Criminal Justice* (pp. 30-48). Edward Elgar Publishing; Comparing 39 jurisdictions: only Northern Ireland and Switzerland also have 10 years as the age of criminal responsibility. Ireland has 12 as age of criminal responsibility but with special rules for those 10- to 11-year-olds who commit murder, rape and similar severe crimes. Changes to raise the lower age limit are contemplated. See Irish Legal News (2023). Ireland Urged by UN Committee to Raise Age of Criminal Responsibility to 14. https://www.irishlegal.com/articles/ireland-urged-by-un-committee-to-raise-age-of-criminal-responsibility-to-14.
4. Dumortier, E., Christiaens, J., & Nuytiens, A. (2017). Belgium. In S. H. Decker, & N. Marteache (Eds.), I*nternational Handbook of Juvenile Justice* (pp. 239–265). Springer.

It is unusual to see very young children in the youth court and the older juveniles dominate in the dock. More young people are affected by the upper age limit of the youth court's jurisdiction. In England and Wales, it comes suddenly with the 18th birthday of a defendant. This is an early abrupt ending of the protections, and of the chance to cater the criminal justice response to the individual, which is provided by a specialist court with expertise in developmental and educational problems. As Frieder Dünkel argues: 'the youth court with its specialised and (in developmental questions) more experienced judges seems to be the better solution' (p. 40).[5]

In contrast to England and Wales, some European countries extend the jurisdiction of the juvenile court to young adults, and in others, the adult court dealing with them 'can impose some of the measures otherwise reserved for juveniles…' (p. 25).[6] The following introduces the gist of the institutional arrangements for young adults in Austria, Croatia, Germany, and the Netherlands.

Young adults between 18 and 21 years of age in Germany appear in front of a youth court when their maturity as an adult is in question, which is predominantly the case. Only minor offences are dealt with in the adult justice system by penalty order, such as simple traffic offences.[7] In the youth court, professional judges and prosecutors are expected to be experienced in the education of young people.[8] When a conviction may result in imprisonment of a young adult, as is the case for juveniles who are 14 to 17 years old, the youth court of lay assessors is employed in all but the most severe cases. This mixed court is presided over by a professional judge and the two lay judges are required to have pedagogical experience.[9] One of the lay members needs to be female, one male. Very severe crimes are brought before the grand youth chamber of the regional high court with three professional judges and two pedagogically experienced lay judges. Specialised youth social workers and youth pedagogues support prosecution and courts with reports on the juvenile or young adult's developmental and social situation. This Juvenile Court Assistance is part of the local authority's youth department which gives it a degree of independence from the courts. It also supervises if a young person engages with educational and other measures imposed by the judges.[10] The regulations in Germany demonstrate an emphasis on addressing the developmental needs of a juvenile or young adult defendant.

Youth crime has been falling for some years now in Europe and more cases are being dealt with by various measures of 'diversion'.

Reflecting the 'more … protective rather than punitive' approach to youth justice, young adults in Austria aged 18 to 20 years have their cases dealt with by pedagogically skilled judges and prosecutors.[11] In courts of lay assessors and juries involved in those cases, 'at least half of the laypersons must be experienced in dealing with juveniles as teachers or social workers in youth welfare', while 'at least one lay judge or two jury members, respectively, must be of the same gender as the accused' (p. 229).[12] The court or the prosecution can task the psychologists, social workers and pedagogues of the Juvenile Court Assistance, in Austria part of the justice administration, to report on the juvenile or young adult, similar to the German situation.[13]

Croatia follows a welfare and educational approach to youth justice.[14] It has no separate youth courts but young adults between 18 and 20 years of

5. See footnote 3: Dünkel, F. (2022).
6. Dünkel, F. (2017). Juvenile Justice and Crime Policy in Europe. In F. E. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile Justice in Global Perspective* (pp. 9-62). New York University Press.
7. Matthews, M., Schiraldi, V., & Chester, L. (2018). Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System. *Justice Evaluation Journal, 1*(1), 59–81.
8. Lennartz, O. (2016). *Erziehung durch Jugendschöffen?* Nomos.
9. Lieber, H. (2017). *Die Verantwortung der Gemeinden und Kreise bei der Schöffenwahl 2018.* Kommunal- und Schulverlag.
10. Gensing, A. (2014). J*ugendgerichtsbarkeit und Jugendstrafverfahren im europäischen Vergleich.* Forum Verlag.
11. Bruckmöller, K. (2017). Austria. In S. H. Decker, & N. Marteache (Eds.), *International Handbook of Juvenile Justice* (pp. 219-238). Springer; Pruin, I., & Dünkel, F. (2015). *Better in Europe? European Responses to Young Adult Offending*. Ernst Moritz Arndt Universität Greifswald.
12. See footnote 11: Bruckmöller, K. (2017).
13. Die österreichische Justiz (2023). Jugendgerichtshilfe. Bundesministerium der Justiz. https://www.justiz.gv.at/justiz/familien-und-jugendgerichtshilfe/jugendgerichtshilfe. 2c94848b51c98d610152cffee7e93500.de.html
14. See footnote 7: Matthews et al. (2018).

age at the time of the crime, and below 23 years at the time of the trial, can be treated according to youth justice procedures and the sanctions can be taken from those available for juveniles.[15] Municipal courts at larger towns have departments for juveniles and young adults, and the judges and prosecutors should be knowledgeable in matters concerning youth welfare and have knowledge of criminology and pedagogy.[16] Advice is available from social workers and psychologists based within the court system.[17] It is reported, though, that courts are sentencing young adults much more often according to adult law than juvenile law 'because the former is less intrusive than the 'educational sanctions' and more rehabilitative responses for juveniles' (p. 78).[18]

The Netherlands has also raised the point for when juvenile law no longer applies. 'As of 1 April 2014, young offenders aged 16 to 22 can be tried either as a juvenile or as an adult, under adolescent criminal law.'[19] 16 to 22-year olds at the time of the offence are processed in the regular adult court but with the option to sentence according to juvenile law.[20] The public prosecutor assesses if youth law can be applied and judges often follow their suggestion.[21] Again, the rationale includes that this age group needs interventions geared to their personal development which is in flux.[22] Courts in the Netherlands rarely sanction young adults based on juvenile law. Dünkel describes that it is because they are not specialised youth courts, and the prosecutors are not specialised in youth cases either.[23]

As these examples show, a country's juvenile justice provision can be extended beyond 18 years. Young adults may not only be treated according to juvenile criminal law, but the prosecutors, lay and professional judges involved may have youth-specific knowledge and expertise. Moreover, instead of appearing at an adult court, defendants beyond the age of 18 can have their cases heard by the youth court. Countries following this policy are recognising that personality and cognitive development does not reach full maturity with the 18th birthday. Rather, the educational and rehabilitative needs of this age group are similar to juveniles. Criminal behaviour peaks in adolescence and early adulthood and typically starts to decline thereafter.[24] Problems are stored up for society and young people if they are not addressed by the courts most qualified to deal with them.

Juvenile justice in England and Wales shares some characteristics with the countries introduced above.

- ❏ Like Austria, Croatia and Germany, there is a body of social workers, educational specialists and others who can inform judges about the personality and current situation of a young defendant. The Youth Offending Teams (YOT) are fulfilling this function in England and Wales. Their duties expand beyond the point of sentencing as they supervise the youth's engagement with any training and educational requirements imposed. YOT representatives can bring those who do not engage back to the youth court for re-sentencing.
- ❏ Prosecutors working in youth justice in England and Wales, as in the abovementioned three countries, should have a level of expertise and specialisation. At least, the requirement is established if not always met.[25] Some prosecutors in England and Wales exclusively work in the youth court.
- ❏ Like Austria and Germany, England and Wales draw on the expertise of lay judges with social work and pedagogical knowledge. This is a very practical way to include in the decision-making professionals like teachers and youth social workers as well as people engaged in the voluntary sector. They have a broader experience with young people, their developmental trajectories, the challenges they face and pedagogical opportunities than can be gained within the confines of the courts. For this reason, German youth court lay assessors are held in high esteem by professional judges.[26] Observations of youth courts in north Wales and London suggest that youth magistrates are fulfilling their more pedagogical role.[27]

15. See footnote 7: Matthews et al. (2018).
16. See footnote 7: Matthews et al. (2018).
17. See footnote 7: Matthews et al. (2018).
18. See footnote 7: Matthews et al. (2018).
19. Government of the Netherlands (n.d.). Penalties for Juvenile Offenders. https://www.government.nl/topics/sentences-and-non-punitive-orders/penalties-juvenile offenders#:~:text=The%20maximum%20sentence%20for%20juveniles, social%20skills%20and%20anger%20management.
20. Schmidt, E. P., et al. (2021). Young Adults in the Justice System: The Interplay between Scientific Insights, Legal Reform and Implementation in Practice in The Netherlands. *Youth Justice, 21*(2), 172-191.
21. See footnote 20: Schmidt et al. (2021).
22. See footnote 7: Matthews et al. (2018).
23. See footnote 3: Dünkel (2022).
24. E.g., see footnote 3: Dünkel (2022).
25. We will discuss the reality in the second part of the article.
26. Lennartz, O. (2017). Erziehung durch Jugendschöffen? *Richter ohne Robe, 17*(1), 3-5.
27. Machura, S. (2021). "… and My Right" – The Magistrates' Courts in England and Wales. In S. Kutnjak Ivkovich, S. S. Diamond, V. Hans, & N. Marder (Eds.), *Juries, Lay Judges, and Mixed Courts: A Global Perspective* (pp. 131-151). Cambridge University Press.

To summarise, a consideration of the parameters of youth justice in other jurisdictions in Europe, suggests that changes are needed to the jurisdiction of the youth court in England and Wales in relation to both upper and lower age limits. However, the courts' institutional arrangements have some elements that work effectively to address the issues raised by youth crime. In the second part of this article, we will discuss contemporary developments in England and Wales aimed at further recognising the distinctive needs of young people charged with criminal offences.

The Youth Court and the Rise of Children First Approaches in England and Wales

In recent years, the most striking development in official discourse in England and Wales around youth justice has been the rise of the 'Child First' or 'Children First' approach. This has now been officially endorsed by the Youth Justice Board of England and Wales (YJB) as the 'strategic approach and central guiding principle' that should underpin youth justice practice.[28] The original phrase was 'children first, offenders second'. This signposts a commitment to children's distinctive needs and capacities and to promoting positive outcomes, rather than concentrating more narrowly on children's offending and how to prevent, reduce or manage it. Indeed, the first of the four key tenets underpinning Child First approaches is exactly to treat children 'as children.' This signals not just an emphasis on the welfare principle (the need to act in the 'best interests' of the child) but also a recognition that the distinctive needs of young people mean that they have particular rights and entitlements under international and national law that need to be taken into account.[29] The second tenet develops the accent on actively promoting positive outcomes, seeing the building of pro-social identity as critical to both sustainable desistance and enabling children to fulfil their potential. The third tenet stresses the need to encourage the active participation of children and their carers through meaningful collaboration. The fourth and final tenet advocates the use of diversion and minimal intervention to avoid the stigma of criminal conviction.[30]

The adoption of such an approach clearly has implications for the operation of the Youth Court. But its application has proved more challenging in the court context than elsewhere in the youth justice system.[31] Children's dominant status before the criminal courts remains that of a party (defendant) to proceedings that are still primarily shaped by the English adversarial procedural tradition. Youth Courts in England and Wales are a part of the local Magistrates' Courts. The Youth Courts only deal with the criminal offences committed by young people (aged 10 to 17) (with separate Family Courts dealing with questions of care and protection). Some distinctive procedural variations have been made to standard practice in the adult Magistrates' Court to adapt it to children's needs.[32] But there remain fundamental challenges to a thorough application of the tenets of 'Child First'. These are even more substantial in relation to the minority of youth cases which are heard by the Crown Court (which typically deals with adults).[33] Here the young person is heard within a court where the architecture and procedure have been designed for adult cases and which is more formal and intimidating than the Youth Court.[34] While the starting point is that its jurisdiction is confined to certain 'grave' crimes, young people may also end up in the Crown Court because they are being tried with an adult or they turn 18 before first appearance and the resolution of the case. This last possibility is increasingly relevant because the average delay between these points is now over 200 days.[35]

Fewer young people are appearing in front of a youth court.

28. YJB England and Wales (2021). *Strategic Plan for 2021-2024*. Youth Justice Board; See, generally, Case, S., & Hazel, N. (Eds.) (2023). *Child First.* Palgrave Macmillan.
29. For example, UN Standard Minimum Rules on the Administration of Juvenile Justice (1985, the 'Beijing Rules'), UN Convention on the Rights of the Child (1989) and European Court of Human Rights decisions on the interpretation of Article 6 (right to fair trial) in the context of children and young people.
30. Youth Justice Board. (2022). *A Guide to Child First.* Youth Justice Board.
31. Hollingsworth K. (2023). Child First in the Criminal Courts. In S. Case & N. Hazel (Eds.), *Child First.* Palgrave Macmillan.
32. See Judicial College (2024). Y*outh Court Bench Book*. Judicial College. Examples (in Appendix A) are simplified language, proceedings closed to the general public with reporting restrictions and specified ways of making the court less intimidating.
33. Around 95% of cases leading to sentencing of children are heard before the Youth Courts: Youth Justice Board (2024). Y*outh Justice Statistics 2022-23*. Youth Justice Board.
34. Despite adaptations introduced by *Practice Direction Crown Court: Youth Defendants* [2001] WLR 659 and subsequently. For discussion, see footnote 31: Hollingsworth. (2023).
35. For 22/23, the average time between first appearance and resolution of a case was 207 days which was 104% higher than 10 years before: Youth Justice Board (2024). *Youth Justice Statistics 2022-23.* Youth Justice Board; For definition of 'grave crimes' see Sentencing Act 2020 s.249(1).

What follows is organised around some key issues in implementing Child First principles. First, we consider the extent to which the system successfully limits court involvement, promotes diversion and avoids the stigma of criminalisation. Secondly, we examine the extent to which the Youth Court has been able to recognise the distinctive rights and needs of young people by developing a specialist legal expertise. Thirdly, we consider how far young people and their carers are able to participate actively in court proceedings. Finally, we consider whether Youth Courts could become more effective in promoting personal change, positive outcomes and sustainable desistance if they become 'problem-solving' courts.

Rise of Diversion and The Fall in Youth Court Caseloads

Since 2007/8 there has been a striking reduction in the number of cases coming before the Youth Court.[36] This is a development compatible with the fourth and final Child First tenet which advocates the use of diversion and minimal intervention to avoid the stigma of a criminal conviction. It may be that the adoption of Child First principles will help to maintain and embed this reduction in cases going to the Youth Court. Yet, the decline significantly pre-dates the adoption of Child First principles by the YJB in 2018 and is more likely to be explained by other factors.[37] Victim surveys have suggested a decline in interpersonal offence rates from the mid-1990s onwards.[38] Given that some of these involve volume offence categories with a high proportion of youth perpetrators (for example burglary, criminal damage, robbery, inter-personal theft, theft of and from cars), that might suggest some decline in actual levels of offending by young people. But there are more direct and obvious explanations for the dramatic reduction in cases before the Youth Court rooted in shifts in British political economy.

High rates of formal intervention had developed from the 1990s and were a key element of the 'new' youth justice culture that emerged from the 'new' Labour Government of 1997. Central to this approach was the view that formal criminal justice procedures were essential to reinforce a sense of personal responsibility and address the defects in family, school and community relationships thought to underpin offending.[39] New legislation and administrative guidance limited the use of diversionary cautions and encouraged a process whereby young people could come before the courts even after a few relatively minor offences.[40] From 1994 to 2004, there was a significant shift to prosecuting children who would previously have been cautioned.[41] But this emphasis on the use of formal court process was dramatically reversed over the years between 2004-2007. Three factors seem to have provoked this: the remodelling of central government key performance indicators in relation to youth justice, a reduction in the political visibility of youth crime, and a financial crisis in the means of state intervention.[42] Together these elements changed the relationship between the politics of youth justice and the use of formal criminal proceedings. Youth crime and youth justice became less salient to central government policy. Greater independence of the YJB, the agency overseeing youth justice, from direct political pressures enabled local diversionary initiatives to be encouraged. A degree of independence was returned to youth justice workers, many of whom had retained doubts about the stigmatising effects of progressive intervention through the criminal justice process based on early and systematic conviction and sentence.[43] The combined effect was to promote the rise of diversion, informal voluntary interventions

> …changes are needed to the jurisdiction of the youth court in England and Wales in relation to both upper and lower age limits.

36. 16,600 children appeared in court in England and Wales in the year ending March 2023, a decrease of 72% compared with 10 years previously: Youth Justice Board. (2024). *Youth Justice Statistics 2022-23.* Youth Justice Board.
37. The 'children first, offenders second' approach was adopted in Wales, agreed by the Welsh Government and Youth Justice Board as part of the 'All Wales Youth Offending Strategy' in 2004. But in England, the approach was adopted in 2018, having been advocated by the Taylor Report: Taylor, C. (2016). *Review of the Youth Justice System in England and Wales.* Ministry of Justice.
38. Pople, L., & Smith, D.J. (2010). Time Trends in Youth Crime and in Justice System Responses. In D. J. Smith (Ed.), *A New Response to Youth Crime.* Willan.
39. Home Office. (1997). *No More Excuses.* Home Office.
40. Field, S. (2008). Early Intervention and the 'New' Youth Justice: A study of initial decision-making. *Criminal Law Review, 3,* 177-190.
41. Morgan, R., & Newburn, T. (2007). Youth Justice. In M. Maguire, R. Morgan, and R. Reiner (Eds.), T*he Oxford Handbook of Criminology* (pp. 1043-1045). Oxford University Press.
42. Smith, R. (2014). Reinventing Diversion. *Youth Justice, 14,* 109; Bateman, T. (2015). Trends in Detected Youth Crime and Contemporary State Responses. In B. Goldson, & J. Muncie. (Eds), *Youth Crime and Justice* (pp. 67-82). Sage.
43. Field, S. (2007). Practice Cultures and the 'New' Youth Justice in (England and) Wales. *British Journal of Criminology, 47*(2), 311-330.

without conviction and to provoke a dramatic fall in the number of cases coming before the Youth Court.

Enduring Problems of Lack of Access to Specialist Legal Advice

One of the paradoxical consequences of declining numbers of cases coming to the Youth Court is that it has become even more difficult to solve one of the enduring challenges in recognising the distinctive rights and needs of young people: the lack of specialist legal advice. The demands of Youth Court work are very different to that of adult court work: not only is there a very different legal framework but children also have distinctive (and often more challenging) needs in terms of support and child-appropriate communication. Hence the importance of specialist legal expertise. But the variability in the competence of lawyers practising in youth justice (both defence and prosecution) is a theme that has run through reports and the empirical research for many years.[44] Much of the work (for both defence and prosecution) is being done by non-specialists and the Youth Court is still being used as a training ground for young barristers. Lack of experience in the youth court is strongly associated with poor performance. Not surprisingly, those who do a lot of Youth Court work are seen as much more effective than those who have never done so or who are appearing occasionally. Yet many of those appearing before the Youth Court are doing such work as a small percentage of their practice. This is the problem that is aggravated by the very significant reduction in the volume of cases being heard in the youth court. There is simply much less youth court work to enable the development of a specialism. This is not just something that affects defence lawyers: standards amongst those prosecuting for the Crown Prosecution Service (CPS) are variable. The CPS has its own specialist youth justice prosecutors but much of the work is not being done by them.

The underlying issue is the absence of a system of required training and accreditation for lawyers who wish to do youth justice work. All that exists is a system of registration for barristers working in youth proceedings, but this is essentially based on self-accreditation. The Bar Standards Board has set out a list of expected competencies and identified some potential training providers but leaves it to individual barristers to self-certify that they have the specified competencies. There is no required training and no assessment to ensure minimum levels of competence.[45] The Law Society merely provides guidance to solicitors on working in the Youth Court.[46] Recommendations of mandatory accreditation have been made on several occasions, over several years, but the professional bodies have not so far been persuaded.[47]

> First of the four key tenets underpinning Child First approaches is exactly to treat children 'as children.'

A New Focus on Developing Participation

We have seen that one of the tenets of the 'Child First' approach is to encourage the active participation of children and their carers in the process of youth justice by meaningful collaboration with them. The European Court of Human Right's decision in V v UK [2000] clearly established a child's right to 'effective participation' in proceedings, which requires steps to be taken that recognise the distinctive intellectual and emotional characteristics of children.[48] As a result, magistrates in the Youth Court are expected to engage actively with children and to adapt their own tone and language to try to ensure that children understand what is happening.[49] But major challenges exist in going beyond that to enable active participation by children themselves and/or their families. The language of the

44. Lord Carlile, (2014). *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* (chapter 5). https://www.michaelsieff-foundation.org.uk/carlile-parliamentary-inquiry-youth-justice-system/; Wigzell, A., et al. (2015). *Youth Proceedings Advocacy Review: Final Report.* Bar Standards Board; See also footnote 37: Taylor, C. (2016) paras 92 and 104. Wigzell, A. & Stanley, C. (2015). The Youth Court: Time for Reform. In M. Wasik & S. Santatzoglou (Eds.), *Who Knows Best? The Management of Change in Criminal Justice* (pp. 241-258). Palgrave Macmillan; Youth Justice Legal Centre (2023). *It's a Lottery: Legal Representation of Children in the Criminal Justice System.* Youth Justice Legal Centre.
45. Bar Standards Board. (2017). *Youth Proceedings Competencies.* Bar Standards Board.
46. https://www.lawsociety.org.uk/topics/advocacy/advocacy-in-the-youth-court
47. Wigzell, A., et al. (2015) *Youth Proceedings Advocacy Review: Final Report.* Bar Standards Board; See footnote 44: Carlile Report (2014).
48. V v UK [2000] 30 EHRR 121. The UNCRC entrenches the child's right to participate in the form of Article 12's 'right to be heard'. Generally see Rap. S., (2016). A Children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court, I*nternational Journal of Children's Rights. 24,* 3.
49. Standards remain variable: Robin-D'Cruz, C. (2020). *Young People's Voices on Youth Court.* Centre for Justice Innovation/Institute for Crime and Justice Policy Research.

law is inherently difficult for them particularly given that many have speech, language and learning difficulties. The prospect of punishment brings fear, and the ritual of the court is intimidating. But defendants are specifically excluded in both the Crown and Youth Courts from the extensive range of statutory 'special measures' available to support the participation of vulnerable or intimidated witnesses.[50] Opportunities for child (and other vulnerable) defendants to use some special measures have been developed by statute and by the courts using their inherent jurisdiction to control proceedings. But they remain relatively limited in law and in practice because of resource constraints.[51] Tim Bateman concluded, in a preface to a 2019 report based on empirical observations and interviews of the Youth Court, that in most cases participation by young people was 'an aspiration rather than a reality' (p. 4).[52] Most can only manage 'yes or no' answers.

There are several ways to improve the potential for more active participation. The most important legal reform would be to give child defendants statutory access to all the relevant available special measures. But changes to institutional practices are also needed: the architecture and organisation of space in Youth Courts in England and Wales varies depending on local provision and some courts are far from ideal. In some areas, Youth Court magistrates are still looking down on children from a great height rather than having discussion organised on a single level around a table or tables. Frequently, listing practices mean that young people must wait at the courtroom for hours for their case to be heard. These waits are often experienced as long and traumatic. This is a particular issue for those who suffer from ADHD. If they are kept waiting for hours, they are not in a fit state to interact constructively with magistrates at the end of it. But more generally stress and intimidation around court appearance can affect participation: in some courts, children are waiting in the same space as others from whom they should be kept separate (adults and other young people with whom there are hostile relations). In rural areas, with the recent closure of satellite (temporary local) courts, travel times and lack of transportation are an issue for young defendants. The upshot is that many young people — when their case is finally heard — are not in a psychological state conducive to active participation.

There are examples of good local practices designed to diffuse anxiety and prepare children and their families to participate in proceedings in court. In some places, magistrates will meet with Youth Justice Service (YJS) team members who know the individual child, and their particular language and learning difficulties, to get advice as to how to help them participate. YJS team and defence lawyers may prepare carefully young people and their parents before the hearing, providing information and explaining to them the process and their part in it. For example, some YJS teams have created animated videos describing the process in child accessible terms. Pre-sentence reports (PSRs) are shared and discussed in advance with the young person and their parents. But local practice is variable across England and Wales: there is potential to improve by drawing all Youth Courts up to the standard of the best.

> One of the tenets of the 'Child First' approach is to encourage the active participation of children and their carers in the process of youth justice by meaningful collaboration...

The Youth Court: A Problem-Solving Future?

The second tenet of the Child First approach sets an ambitious goal: not just to prevent offending but actively to promote positive outcomes by building the pro-social identity critical to both sustainable desistance and enabling children to fulfil their potential. This goal is particularly ambitious given that those children who come to Youth Court are more likely to be severely disadvantaged and vulnerable.[53] How far does the Youth Court have the capacity to do this? In recent years, several reports (both public and third sector) have advocated for the development of 'problem-solving' approaches.[54] The concept is broad but envisages a

50. Youth Justice and Criminal Evidence Act 1999.
51. Fairclough, S. (2018). Speaking up for Injustice: Reconsidering the Provision of Special Measures through the Lens of Equality. *Criminal Law Review, 1,* 4-19.
52. Hunter, G., et al. (2019). *Time to Get it Right: Enhancing Problem-Solving in the Youth Court.* Institute for Crime and Justice Policy Research and Centre for Justice Innovation.
53. See footnote 52: Hunter, et al. (2019).
54. See footnote 44: Carlile Report (2014); Hunter, G., & Jacobson, J. (2021) *Exploring Procedural Justice and Problem-solving Practice in the Youth Court.* HMI Probation; See footnote 52: Hunter et al. (2019); See footnote 37: Taylor Review (2016).

process that shifts sentencing from a single event to an ongoing process in which the same child and the same specialist magistrate(s) meet periodically after the initial sentencing hearing to review progress and calibrate the state response. One argument for such an approach is that it provides an opportunity to improve the quality of dialogue. Despite some improvement in engagement and communication in the Youth Court, there remains a need to develop richer relationships and interactions between magistrates and young defendants. The same magistrates seeing the same young person several times over a period may bring benefits, particularly if magistrates with empathy, skill, commitment and charisma are involved. A richer dialogue could encompass broader aspects of what is going on in the child's life, dealing not just with their criminal offending but broader welfare issues and indeed engaging children themselves in the definition of their problems and how to solve them. Returning to meet the same magistrates might lead those children to feel that they were involved with a supportive justice community, that they mattered, and they were valued.[55] It is also envisaged by advocates that problem-solving approaches would enable magistrates to scrutinise the broader support provided to children by other agencies (health, education, housing, social services etc). Periodic reviews, they argue, might give magistrates the opportunity to call YJS management boards, other partner agencies and even parents to account for the support they were or were not giving to young people.

Two major reports on youth justice (the Carlile Inquiry in 2014 and the Taylor Review in 2016) have, in different ways, supported the introduction of problem-solving courts. They provide some potential to respond to the Child First principle that the primary goal should be to promote positive outcomes generally, rather than just aiming to reduce offending and thereby all too often failing to make a difference. Better communication with children, enabling them to participate more fully and providing a forum for monitoring the quality of interagency cooperation and support, could promote this. But if progress is made to develop problem-solving Youth Courts, it will be important to make sure that this does not undermine the current emphasis on out of court settlement and diversion, and move the balance of the system and its allocation of resources back towards post-conviction intervention.

55. See footnote 54: Hunter, G., & Jacobson, J. (2021) for links between problem-solving and procedural justice approaches. The latter sees providing the opportunity to express their side of the case, respect for their rights as well as perceived benevolence and neutrality of decision-makers as key factors in defendants' view of whether they have been treated fairly (which, in turn, is seen as affecting likelihood of reoffending). See e.g., Tyler, T. R. (1994). *The Psychology of Legitimacy.* American Bar Foundation Working Paper Series, 9425; Haller, V., & Machura, S. (1995). Procedural Justice at German Courts as Seen by Defendants and Juvenile Prisoners. *Social Justice Research, 8,* 197–215.

Reimagining custody for children in Scotland

Fiona Dyer, *Director of the Children and Young People's Centre for Justice, University of Strathclyde, Scotland.*

Over the last 20 years Scotland has made remarkable in-roads in reducing the number of children in custody. In 2010 the under-18 wing in HMPYOI Polmont opened with 120 boys. Today (August 2024) that figure stands at only 8 children, and there are plans, through new legislation in the Children (Care and Justice) (Scotland) Act 2024, to have no children under 18 in custody in Scotland by the end of the summer 2024. Furthermore, Scotland is also aiming to reduce the number of children in secure care settings in accordance with current policy directives and is undergoing a process of reviewing secure care within Scotland, to meet the recommendations of our Independent Care Review,[1] and the legal obligations under the United Nations Convention on the Rights of the Child (UNCRC). Although children continue to be held in police custody, alternatives are also an area under development in Scotland.

Drawing upon research evidence and policy documents, this article will explore the policy, practice and other changes over the past two decades in Scotland which have focused on a 'rights lens' and contributed to achievements and a new position for children in detention in Young Offender Institutions (YOI), secure care and police custody. Documents and evidence that have influenced change will be examined; the incremental steps to creating the necessary environment for policy and practice change; the tangible changes to practice on the ground; and the development of alternative provisions for children. In outlining the progress made and the lessons learned from these Scottish developments, this article will contribute to the knowledge base, as well as having relevance to scholars, practitioners and policymakers in many other jurisdictions who are concerned with children's rights, child-friendly justice, penal reform and alternatives to custody.

Deprivation of Liberty

'Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood' (p. 4).[2]

In Scotland, children are deprived of their liberty in numerous ways, for various reasons and within different establishments on both welfare and justice grounds. Deprivation of liberty includes police custody; detention awaiting trial and/or following sentencing within secure care or YOI; placement in a secure care or mental health facility for protection, assessment or treatment; or detention as part of the immigration or asylum system.[3] This section focuses on juvenile justice detention in Scotland in the form of YOI, police custody and secure care.

The best interests of the child must be at the heart of all decisions relating to children in the youth justice system (UNCRC article 3) which is also a priority under Scottish Government policy, Getting It Right for Every Child (GIRFEC), and deprivation of liberty only as a last resort (article 37b). The Whole System Approach (WSA), a specific youth justice policy, introduced in 2011, advocates that secure care should be used where possible rather than YOIs but that alternatives to secure care should always be considered first.[4] Children in conflict with the law, and especially those who cause the most harm, and deprived of their liberty, can have a variety of complex needs. Many have experienced trauma, adversity, abuse, exploitation, bereavement, loss and neglect, and been placed in very vulnerable situations:[5] 'Those who come persistently into contact with the justice system over time tend to be amongst the poorest and most vulnerable people in our cohort'.[6] Two recent studies show evidence that this is also the case for children in secure care. The majority have high levels of exposure to adverse childhood experiences,

1. https://thepromise.scot/what-is-the-promise/independent-care-review
2. Nowak, M. (2019). *The United Nations global study on children deprived of liberty.* United Nations.
3. Kilkelly, U. (2023). Child First and Children's Rights: An Opportunity to Advance Rights-Based Youth Justice. In S. Case, & N. Hazel (Eds.), *Child First: Developing a New Youth Justice System.* Springer International Publishing.
4. Scottish Government (2011). *Whole System Approach to Young Offending.* Scottish Government.
5. Vaswani, N. (2014). The Ripples of Death: Exploring the Bereavement Experiences and Mental Health of Young Men in Custody. *The Howard Journal of Crime and Justice, 58*(4), 341-359.
6. McAra, L., & McVie, S. (2022). *Causes and Impact of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35.* University of Edinburgh.

reside in areas of high deprivation and are living in relative poverty.[7]

Recent research in Scotland shows that many of these characteristics are shared with children aged 12-15 who are referred to the Scottish Children's Reporters Administration on offence grounds. Their study concludes: 'For many of the 400 children in this study, (79 girls, 321 boys), their lives were characterised by adversity, trauma, neglect, exposure to harmful behaviours by others, victimisation and exploitation (including criminal exploitation and sexual exploitation), often compounded by socioeconomic disadvantage' (p. 4).[8]

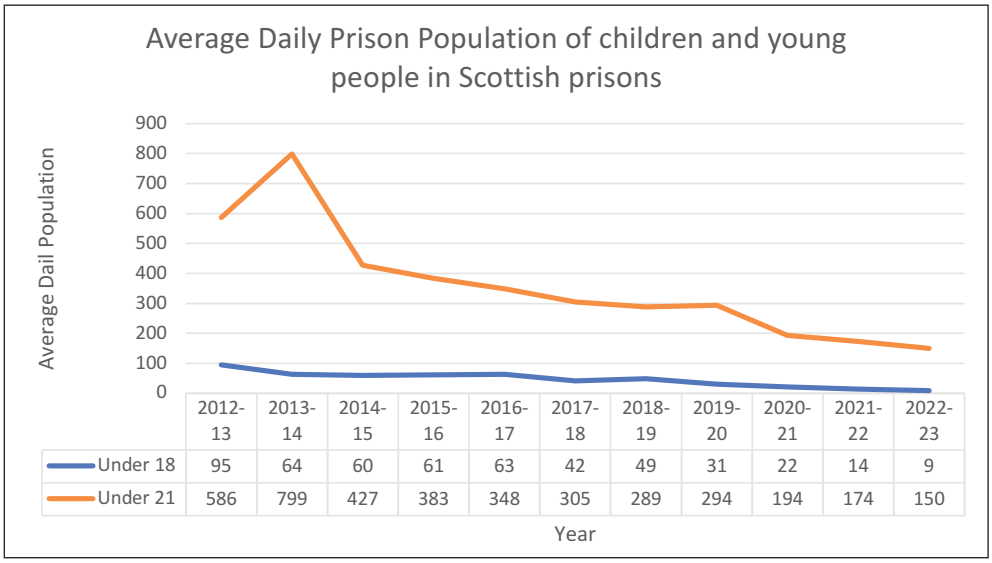
Young Offenders Institutions (YOIs)

The UNCRC explicitly recognises that children, by their very status, require further protections in addition to those enshrined in human rights statutes. Alternatives to depriving children of their liberty should be the default position, and detention should only be used for those who present a risk to themselves or others, as a last resort and for the shortest time possible (article 37b).

Research evidence highlights the detrimental long-lasting impact of YOI placement on children, negatively affecting psychological, social and physical developmental opportunities and having lasting adverse consequences to future life chances. A heartbreakingly stark fact is the number of children who have taken their own lives in YOI in Scotland,[9] which includes a child only last month (July 2024). The Expert Review of Provision of Mental Health Services at HMPYOI Polmont highlighted key areas of improvement including the social isolation of children in custody, and the need to support engagement with family and friends.[10] Working in a trauma informed way was also highlighted by evidence as being crucial when working with some of the most distressed children in custody. Research with over 200 prison officers in Scotland highlights this practice as being 'lacking' or 'unable to happen' within YOIs due to the conflict between care and control.[11]

This raises several questions of why children are in YOIs in the first place when research tells us it is detrimental and traumatising. It is debateable to say children coming out of YOIs are 'changed for the better' and that YOIs are only being used as a last resort after all other alternatives have been explored. Many organisations have been campaigning to change legislation within Scotland to prevent further deaths and the negative impacts and outcomes custody can have. This has led to a significant reduction in the use of custody over the past 10 years (see figure 1), and the imminent planned removal of children from YOIs through the Children (Care and Justice) (Scotland) Act 2024.

Figure 1. *Average daily prison population of prisoners aged under 21 in Scotland during the last 10 years*[12]



	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Under 18	95	64	60	61	63	42	49	31	22	14	9
Under 21	586	799	427	383	348	305	289	294	194	174	150

7. Gibson, R. (2021). ACEs, Distance and Sources of Resilience. CYCJ; Gibson, R. (2020). *ACEs, Places and Status: Results from the 2018 Scottish Secure Care Census.* CYCJ.
8. Scotland's Children's Reporters Administration (2022). *Children aged 12 to 15 years involved in offending and referred to the Children's Reporter and Procurator Fiscal in Scotland.* SCRA.
9. Lightowler, C. (2020). *Summary: Rights Respecting? Scotland's approach to children in conflict with the law.* CYCJ.
10. HM Inspectorate for Prisons in Scotland (2019). *Report on an Expert Review of the Provision of Mental Health Services for Young People entering and in Custody at HMP YOI Polmont.* HMIP.
11. Vaswani, N., & Paul, S (2019). 'It's Knowing the Right Things to Say and Do': Challenges and Opportunities for Trauma-informed Practice in the Prison Context. *The Howard Journal of Crime and Justice, 53*(4), 513-534.
12. https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/11/scottish-prison-population-statistics-2021-22/documents/scottish-prison-population-statistics/scottish-prison-population-statistics/govscot%3Adocument/scottish-prison-population-statistics.pdf

The first part of the Children (Care and Justice) (Scotland) Act 2024 to be enacted will be the removal of children from YOIs to secure care. This Act will prevent any child under age 18 being remanded or sentenced to a YOI or prison from this date. It recognises all children under the age of 18 as children, and by giving them this status, upholds their rights under the UNCRC.

Police custody

Unfortunately, not all areas of practice within Scotland uphold children's rights in line with the UNCRC.[13] The detention of children in police custody being a focus on this paper. Children have advised that police custody is the most traumatising aspect of their justice journey, impacting upon their mental health, wellbeing and overall development. This is not a unique position to Scotland:[14] 'I was crying myself to sleep, I was taking an anxiety attack, and I was an emotional wreck that night. Then I was just like crying all weekend, they would come in every so often and say 'are you alright?' and I'd be like 'aye' but even though I was greetin' they would just walk away…' (p. 7).[15]

Research evidence highlights the detrimental long-lasting impact of YOI on children.

In response, Police Scotland have given a public acknowledgement that police cells are not suitable Places of Safety for children to be detained. However, until there is a change in legislation to prevent children being 'required' to be taken to a police station to have their 'rights upheld' by having access to a solicitor, and more suitable places of safety available, there is currently no other option within Scotland.

The number of children detained in police custody in Scotland is extremely high, especially when compared to the number who end up being restricted of their liberty within secure care or YOI. This raises the question of why there are so many children being detained in police custody in the first place. The Scottish Police Authority highlighted that 4,261 children were detained in police custody in 2022/2023 including 33 children aged 12 and 1,268 children aged under 16.[16] Similar figures from Police Scotland over the same period indicate that 875 children detained in police custody were held overnight, and 268 for more than 24 hours.[17]

Indeed, Vaswani highlights that, despite such a promising policy context developed through GIRFEC, the WSA and more latterly through UNCRC incorporation and the Children (Care and Justice) (Scotland) Act, the experiences of children in police custody 'indicate a sizeable gap between the espoused vision and values of youth justice policy in Scotland, and the reality of lived experience' (p. 7).[18]

Alternative trauma informed environments are being explored on a small-scale basis in Scotland as an alternative to police custody. The hope is that the need to take children to a police station will be changed in future legislation, to ensure a more rights respecting response to all children in conflict with the law can be achieved.

Secure care

Secure care in Scotland is defined as: 'a form of residential care that restricts the freedom of children under the age of 18. It is for the small number of children who may be a significant risk to themselves or others in the community. Their needs and risks can only be managed in a secure setting. Secure care aims to provide intensive support and safe boundaries to help these highly vulnerable children re-engage and move forward positively in their communities.'[19] Secure care offers a controlled environment that provides safety and security for children referred through the Courts and Children's Hearings system. It has been described as 'the most containing and intense form of alternative care'.[20]

154 children were placed in secure care in 2022/23, which is a 3 per cent increase on the previous year. On average, 59 children were in secure care on any given day, 37 of which were from Scotland and 22 from outwith.[21] The Secure Accommodation Network

13. Together Scotland (2023). *Report reveals Police Scotland pulled tasers on 41 children last year.* Together Scotland; McCall-Smith, K. L. (2022). S*olitary Confinement, Torture and Children: Applicable minimum standards.* University of Edinburgh, School of Law.
14. Bevan, M. (2021). The pains of police custody for children: A recipe for injustice and exclusion? *The British Journal of Criminology, 62,* 1–17.
15. Vaswani, N. (2025). Children's experiences of police custody and the implications of trauma-informed policing, *Youth Justice, 25*(1), 108-125.
16. Scottish Police Authority (2022). P*laces of Safety for Children in Conflict with the Law - Delegates' Pack.* SPA.
17. See footnote 15: Vaswani, N (forthcoming).
18. See footnote 15: Vaswani, N (forthcoming).
19. Scottish Government. (2020). *Secure Care Pathway and Standards Scotland: Equality Impact Assessment.* Scottish Government
20. Gough, A. (2017). *Secure Care in Scotland: Young People's Voices.* Centre for Youth & Criminal Justice.
21. Scottish Government. (2024). *Children's Social Work Statistics 2022.* Scottish Government.

Scotland (SAN) indicated that on August 2, 2024, 57 children were living within secure care centres in Scotland. Scotland has reduced its secure care capacity over the past 15 years. Currently, there are four secure care centres in Scotland run by four independent charities providing 78 beds. Children can be placed in secure care on welfare or offence grounds through the Children's Hearing System (CHS), Courts or by Chief Social Work Officers.

As with police custody and YOIs, there has been much criticism of secure care from the children who have been placed there, many of whom have described their experience as being very traumatising.[22] This led to a secure care national advisor being appointed within Scotland to listen to the views of children, young people and young adults with experience of secure care and recommend how improvements could be made. Based on these views and recommendations, the Secure Care Pathway and Standards, were created to improve the experiences of children who are in, or on the edges of secure care, and embed a GIRFEC approach. These 44 standards were co-produced with children, young people and adults with experience of secure care, and set out what all children should expect before, during and after any stay in secure care. These standards made changes to practice within secure care to ensure a more trauma-informed rights-based approach. All four secure care providers in Scotland are now annually inspected by Scotland's Care Inspectorate against these standards.

In December 2022, the Children and Young People's Centre for Justice (CYCJ) was commissioned to undertake a review of secure care and alternatives to secure care and meet the calls from various reviews, including the independent care review, evidence and the plan to remove all children from YOIs through the Children (Care and Justice) (Scotland) Act: 'Scotland's response to the small number of children who need this level of security, care and protection must look radically different… There must be absolute clarity that the underlying principle of Secure Care is the provision of therapeutic, trauma-informed support' (p. 80).[23] The report for this work was published in September 2024.[24]

The first part of the Children (Care and Justice) (Scotland) Act 2024 to be enacted will be the removal of children from YOI to secure care.

Children in Secure Care

Many children currently in secure care have a wide range of complex needs, experiences of trauma and adversity, exploitation (sexual and criminal), health and mental health issues. Some children are there for their protection and others due to the risk of harm posed by aspects of their behaviour towards self, others, and, in some circumstances, a combination of harms presented through distressed behaviour.[25]

Research has suggested that over three-quarters of children in Scottish secure care are placed there as a consequence of welfare needs, rather than solely due to their involvement in offending behaviour.[26] However recent research demonstrates that many children who are accommodated on 'welfare' grounds also have a history of conflict with the law.[27] According to these authors, the level of harm caused by the 'welfare' population often surpasses that of those who enter via the criminal justice route, and ultimately, regardless of the grounds, the children within secure care have the same risks and needs.

Due to the evidence, and the ethos in Scotland of seeing children through a rights lens, looking at 'needs and not deeds', children requiring protection from themselves, and those who have caused harm to others, are all deemed to require care and protection and live alongside each other. This is not the same position taken in other parts of the United Kingdom, where children are kept separate depending on what grounds they have been detained.

Historic Review

Looking back on how Scotland has progressed to the position of taking a rights-based approach to children in conflict, this shift did not happen overnight.

22. Utting, E., & Woodall, T. (2022). From Care to Custody? In P. Willmot & L. Jones (Eds.), *Trauma-informed forensic practice* (pp. 93-110). Routledge.
23. See footnote 1.
24. Children and Young People's Centre for Justice (2024). R*eimagining Secure Care: A Vision for the Reimagined/Future World report.* CYCJ.
25. See footnote 7: Gibson, R. (2020).
26. Gough, A. (2016). *Secure Care in Scotland: Looking Ahead.* Centre for Youth and Criminal Justice.
27. Hart, D., & La Valle, I. (2021). *Secure children's homes: placing welfare and justice children together.* Department for Education.

In the early 20th century, and prior to the 1968 Social Work Scotland Act, there had been an explosion in 'approved' and 'correctional schools' — borstals, a form of deprivation of liberty, where children (overwhelmingly boys) were sent for education and training, often with a punitive element. Reports from adults who were sent to these establishments when they were children, described them as 'brutal', where they were treated very harshly and there was a lot of violence.[28] During this time, the number of boys in court and being sent to borstals was increasing, along with a post-war rise in the overall levels of youth crime.

In 1961 in response to these rising levels of youth crime, the Kilbrandon Committee was established to offer a solution. After reviewing the backgrounds and behaviour of the children appearing in court, the committee recommended taking a welfare-based approach that viewed children in conflict with the law as children in need of support. The committee recognised the 'needs' of these children and proposed a single system for dealing with all children. This included those who would otherwise have been brought before the courts for offending, and for those beyond parental control or in need of care and protection. The aim was to offer early support to general wellbeing to avoid criminalisation and stigmatisation.[29] This was the first step in Scotland of recognising children have rights, and punishment was not the answer. This led to the creation of the Children's Hearing System (CHS) in 1971, through the Social Work (Scotland) Act 1968. The CHS was founded on the key principle that the child's best interests should be paramount in decision-making and the welfare principle must be the key test guiding decisions concerning the necessity and extent of compulsory intervention. The CHS was very successful in diverting children from court process with a focus on community-based interventions as alternatives to secure care and remains today as the main judicial process for children in Scotland.[30]

Changes were also being made during the 1970s and 1980s, to where children were being detained. Correctional schools and borstals were replaced by secure accommodation, which focused on the welfare needs of the child and not punishment. This focus on welfare shifted by the mid-90s where Scotland saw a new statutory framework which placed public protection above 'the best interests of the child'. New legislation through the Children (Scotland) Act 1995, viewed children who caused the most harm as less deserving of their rights.

This more punitive approach continued into early 2000s, when Labour came to power in the UK, taking a 'tough on crime' stance.[31] Policymakers in Scotland soon followed suit, with the creation of the Antisocial Behaviour etc (Scotland) Act 2004. This Act further criminalised children and young people through the 'creation' of many new offences and as a result, more children experienced police custody and were detained in YOIs and secure care.[32] These developments were not popular with youth justice practitioners, who put pressure on the Scottish Government to respond differently to children.[33] In response, the Scottish Government undertook a review, leading to a more enlightened approach based on the original Kilbrandon principles — Getting it Right for Every Child: Proposals for Action (GIRFEC) was published. Although not solely in relation to youth justice, this was for all children's services and placed children at the centre of all decision making in relation to them. In 2007 GIRFEC was adopted by the incoming SNP Government and remains the central policy document for children in Scotland today.

> Alternative trauma informed environments are being explored on a small-scale basis in Scotland as an alternative to police custody.

GIRFEC is a way of working which focuses on improving outcomes for all children by placing them at the centre of thinking, planning and action. It applies to all services that work directly with children or make decisions that impact on children. Many of the principles of GIRFEC were given a legislative grounding with the passing of the Children and Young People

28. Vaswani, N., Dyer, F., & Lightowler, C. (2018). *What is Youth Justice? Reflections on the 1968 Act.* Social Work Scotland.
29. Burman, M., et al. (2006). The End of an Era? Youth Justice in Scotland. In J. Junger-tas & S. Decker (Eds.), *International Handbook of Juvenile Justice.* Springer Verlag
30. Burman, M., & McVie, S. (2016). Getting it Right for Every Child? Juvenile Justice in Scotland. In S. Decker (Ed.), *International Handbook of Juvenile Justice.* Springer International Publishing.
31. See footnote 28: Vaswani et al. (2018).
32. McAra, L. (2006). Welfare in Crisis? Youth Justice in Scotland. In J. Muncie and B Goldson (Eds.), *Comparative Youth Justice* (pp. 127-45). Sage.
33. See footnote 29: Burman, M., et al (2006).

(Scotland) Act 2014. Following a stakeholder consultation in 2021, the Scottish Government published a refreshed policy on GIRFEC. This refresh aligns GIRFEC with other areas of policy development, including the UNCRC and recommendations from Scotland's independent care review.

With a specific youth justice focus, the synergy created by shifting political attitudes, and a renewed value placed on evidence, Scotland was able to adopt a new approach. Research within Scotland highlighted that sustained and formal justice system contact including custody had a detrimental, rather than beneficial impact on desistance.[34] These studies showed that through early intervention, increasing diversion, minimal formal intervention and robust community alternatives to deprivations of liberty, were overall more effective, in reducing reoffending. These areas became part of a policy initiative and was called a Whole System Approach (WSA). The WSA was introduced in 2011, which along with GIRFEC, remains a youth justice priority today. At the core of this approach is the recognition that children are not 'mini adults' either in terms of their development or maturity,[35] and that children involved in offending, especially those involved in more serious and violent behaviour, are often extremely vulnerable with multiple, complex needs.[36] The WSA calls on those who support children in conflict with the law to take a holistic approach that focuses not only on the behaviour in question, but the wider ecological, environmental and family issues at play, to ensure children and young people receive the right help at the right time.[37]

With a specific youth justice focus, the synergy created by shifting political attitudes, and a renewed value placed on evidence, Scotland was able to adopt a new approach.

Under the WSA, alternatives to secure care and YOIs were to be priorities, which did, once embedded, see significant reductions in their use. For children who present with the greatest risk to themselves or others, where community measures were assessed as not being appropriate, either through the CHS or courts, secure care was to be prioritised over YOIs. For children under age 16, legislation was amended to prevent them going to YOIs and the age of prosecution was raised from 8 to 12 through the Criminal Justice and Licensing (Scotland) Act 2010. For children aged 16 and 17 in conflict with the law, there remained an anomaly in Scottish legislation. Children aged 16 and 17 on an order through the CHS were legally defined as a child and therefore eligible to go to secure care. Children aged 16 and 17 not on an order through CHS were defined as an adult and not eligible to go to secure care — a YOI being the only option. This led to a two-tier approach in Scotland, one that up-held children's rights, and one that did not.

Prior to the WSA, child prison numbers were at a record high in Scotland.[38] Through the implementation of WSA, and further reiterations within Government Policy — including advancing the WSA to age 21 and changes in practice, evidence in Scotland suggests that substantial progress was made in reducing youth offending in general and the overall numbers of children in secure care and YOIs.[39] Through this approach, the number of children being referred to the CHS on offence grounds, appearing in court and in YOIs substantially reduced placing Scotland was in a more progressive rights-based position for the next phase of policy and legislation.

'How' we made changes in Scotland

Scotland has seen increasing appetite for welfare-based Government policy and legislation in relation to children in conflict with the law over the past 15 years, returning to the ethos of Kilbrandon that was lost in the 2000s. This has led to an increase in the age of criminal responsibility (ACR) from 8 to 12 in 2021 through the Age of Criminal Responsibility (Scotland) Act 2019,[40] and a new Youth Justice Vision and Action Plan — 'Justice for children and young people — a

34. McAra, L., & McVie, S. (2010). Youth crime and justice: Key messages from the Edinburgh Study Youth Transitions and Crime. *Criminology & Criminal Justice, 10*(2), 179-209.
35. Nolan, D., Dyer, F., & Vaswani, N. (2019). Just a wee boy not cut out for prison - Policy and reality in children and young people's journeys through justice in Scotland. *Journal of Criminology and Criminal Justice, 18*(5), 533-547.
36. See footnote 6: McAra, L., & McVie, S. (2022).
37. Gibson, R., Vaswani, N., & Dyer, F. (2024). Supporting practice in Scotland: lessons from the Children and Young People's Centre for Justice. In J. Price & S. Creaney (Eds.), *Knowledge and Skills Partnerships in Youth Justice.* Routledge.
38. See footnote 35: Nolan, D., Dyer, F., & Vaswani, N. (2019).
39. Murray, K., McGuinness, P., Burman, M., & McVie, S. (2015). *Evaluation of the Whole Systeam Appraoch for children and young people who offend.* Scottish Government.
40. The ACR in Scotland may increase further in Scotland as a 3-year review was included in legislation that was enacted at the end of 2021.

rights-respecting approach' that aims to uphold the rights of children in conflict with the law, reduce the numbers of children in YOIs in 2021, to stopping using them altogether by 2024: 'We want Scotland to be the best place in the world to grow up, where all children and young people are loved, treated with respect, their voices are heard, their rights respected, and their outcomes improved'.[41]

This move in Government policy in Scotland to uphold children's rights has been a position that has developed over the years and influenced by stakeholders and practitioners within the youth justice field. The Children and Young People's Centre for Justice (CYCJ) published a report in 2020,[42] calling for Scotland to ensure its youth justice system was truly 'rights respecting', to uphold the terms of the UNCRC. 'Rights Respecting? Scotland's approach to children in conflict with the law' was the first report to translate the UNCRC into Scottish specific actions to improve policy, practice and experience in youth justice, and contributed to a change in Government policy and thinking in 2021.

This position of viewing children as children, and children in need, was enhanced further in Scotland by the Lord Advocates Guidelines which changed the presumption of children who were jointly reported to the Procurator Fiscal and CHS, in favour of keeping children out of criminal courts and when they did appear in Court, that their age and stage of development was taken into account, through new sentencing guidelines for young people up to age 26: 'Sentencing of younger people often requires a more individualistic approach, taking into account the particular personal characteristics of the young person concerned. For example, depending on the age and maturity of the young person, their culpability in relation to the offence might be lower than that of an adult…..In addition, we recognise that many young people who have committed offences have experience of trauma, including higher than average experience of traumatic bereavement, and we will consider how that should be taken into account in sentencing' (p. 1).[43]

These developments within sentencing practice and youth justice policy have greatly contributed towards Scotland taking a leading role within the UK in upholding children's rights. This has contributed to the position of legislation that directly incorporates the UNCRC into Scots law (UNCRC Incorporation (Scotland) Act 2024), and indirectly through legislation acknowledging all under 18s as children. This allows for the necessary changes within practice to ensure all children are treated as such, including removing them from YOIs and extending the CHS to all children under 18. Thus, further reinforcing the welfare position in Scotland, and correcting the previous disparity in law. The Children (Care and Justice) (Scotland) Act 2024 was passed by the Scottish Parliament in April 2024 and given Royal Assent on June 4, 2024.

Achieving a more progressive rights-based approach for children deprived of their liberty in Scotland has been achieved in part due to a shift in the paradigm within youth justice over the past 20 years and a willingness from our current Government.[44] Practice and policy changes on the ground have led to changes in legislation, and children been seen through a 'rights lens' when deprived of their liberty. Using a rights-based approach also allows us to clearly see where there are 'rights-breaches' for children in conflict with the law. As shown within this paper, we need to remove children from traumatising environments like police custody and achieve the UNCRCs recommendation of any deprivation of liberty truly being a last resort and for the shortest time. These are areas that still needs to be addressed in Scotland.

41. Scottish Government (2021). *Justice for children and young people - a rights-respecting approach: vision and priorities. Scottish Government.* Scottish Government.
42. Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law.* CYCJ.
43. Scottish Sentencing Council (2022). *Sentencing Young People: Sentencing Guideline.* Sentencing Council.
44. See footnote 3: Kilkelly, U. (2023).

Poverty, ethnicity and youth justice in Europe

Colin Webster *is Emeritus Professor of Criminology at Leeds Beckett University*

A very substantial contraction in entry, treatment and custody in youth justice in England and Wales in recent years is broadly celebrated. This decline has occurred from a position of unusually high rates of entry, treatment and custody compared to other European countries.[1] Not all children however have benefitted equally from these changes. Perversely, treatment has worsened and is harsher for some groups in ways not explained by different offending rates and offender profiles.

While white and non-looked after children in England and Wales have seen a sharp decline in them entering the system and in child imprisonment, the proportion of black and minority ethnic (BME) children in the system has increased relative to white children.

Furthermore, they have experienced unwarranted and excessive intervention compared to the white group. This appears to have happened because of unnecessary and early policing contact, an increase in the proportion of arrests of black children, failings in the care system, and ways that their looked after status accelerates involvement in the youth justice system.

European youth justice systems too have been pressured by varying degrees of austerity alongside burgeoning migration. This has created a crisis of poverty among minority and migrant children and young people that make exposure to delinquency and punishment more likely, accompanied by increasingly punitive contact with the police and juvenile justice systems across European countries.

While these pressures are discussed and applied to the position of black, minority ethnic and migrant children across European welfare and youth justice systems, identifying system dysfunctions, responses and effectiveness alone are insufficient. Without paying attention to some of the causes of child and youth offending, particularly the crisis of black, minority ethnic and migrant child poverty across Europe caused by austerity, explanation will be incomplete. Disproportionately poor conditions and transitions among black, minority and migrant children greatly increase the likelihood of children and young people having contact with the police and juvenile justice systems across European countries.

The article argues that, depending on different national balances and mixes between citizenship rights, welfare and youth justice in response to delinquency, one consequence of economic crisis is that some children and young people living in Europe are doubly punished for being minority/migrant status and poor, linking ethnicity and poverty.

Political economy approach

Youth justice systems are adversely or positively changed or stymied by the historical and national influences and contexts in which they are placed and are interdependent upon. A particular national or cluster of countries' balance and mix of education, care, welfare, policing and punishment are in turn influenced by conjunctures, confluences and crises of policies and political economy.[2] European societies and their welfare and youth justice systems cluster and diverge according to social democratic, '(neo)liberal' and corporatist approaches leading to different patterns and emphasises of the relationship between citizenship, punishment and welfare.[3]

It is these sorts of approach and considerations that underly the discussion that follows.

Some peculiarities of English youth justice

To begin this review of youth justice in Europe we begin from perhaps more familiar territory, the peculiarities of the youth justice system in England and Wales, of which the most peculiar feature has been having the highest rate of youth custody in Europe.

1. Although strict comparisons are complicated by an array of factors, not least the low age of criminal responsibility in England and Wales at 10 years, although Scotland raised the age from 8 to 12 years in 2019.
2. Farrall, S., Gray, E., & Jones, P. M. (2020). The role of radical economic restructuring in truancy from school and engagement in Crime, *British Journal of Criminology, 60*(1), 118–140; Farrall, S. (2021). *Building complex temporal explanation of crime: History, institutions and agency.* Palgrave Macmillan; Webster, C. (2023). *Rich Crime, Poor Crime: Inequality and the Rule of Law.* Emerald Publishing.
3. Esping-Anderson, G. (1989). *The Three Worlds of Welfare Capitalism.* Polity Press; Webster, C. (2018). Race, Ethnicity, Class and Juvenile Justice in Europe. In B. Goldson (Ed.), *Juvenile Justice in Europe: Past, Present and Future?* Sage.

England and Wales saw a downward trend of children in youth custody from a peak of over 3,000 in 2003 to an average of 440 in 2023, the lowest number on record. Nevertheless, this remarkable progress has been patchy in not benefitting all children equally. Despite black children experiencing the largest decrease in custody of any ethnicity over the last two years, they remain overrepresented in custody. Accounting for 26 per cent of the youth custody population compared with 6 per cent of the 10 to 17 population. Moreover, while the custody population overall has decreased over the last ten years, this fall has been greater for white children than minority children, which have increased as a proportion of children in youth custody. This has left white children making up less than half of the youth custody population for the first time since records began.[4]

Key is that just as over half of all children in youth custody have care experience, so over half of all children in youth custody had ethnic minority backgrounds compared to 25 per cent in 2008. There is considerable if a somewhat complex crossover between these groups. The Laming Review estimated that 44 per cent of all children in custody who had experienced care came from an ethnic minority background.[5] Katie Hunter in this journal in 2022 persuasively explains how this reduction of the absolute numbers has perversely affected an increasing disproportionate representation of black and minority ethnic (BME) children and looked after children, intensifying their vulnerability and disadvantage.[6] It appears that BME looked after children are particularly exposed to failings in the care system, where they are disproportionately represented as well as among youth justice cohorts, and are more likely to be criminalised within care placements that accelerate them through the youth justice system. In other words, BME looked after children experience compounded disadvantage in both systems of care and justice, welfare and punishment.

Instability in the care system, including an English obsession with privatisation, can impact upon children's behaviour, leading to the use of police intervention (calling the police) as a method of discipline in some children's homes and ultimately, to criminalisation. Instability also involves wider issues with both the availability and quality of provision to the point that the care system may be described as on the point of collapse.[7] This crisis of the privatisation of children's care has resulted from profit-making corporations having come to own 83 per cent of children's residential care paid by local authorities, exacerbated by the impacts of austerity. Because companies provided accommodation where land and property is cheapest, children are sometimes moved hundreds of miles, routinely ripping children from their roots, severing belonging and trust, and they are once more cut adrift.[8]

Austerity alongside burgeoning migration. This has created a crisis of poverty among minority and migrant children and young people.

Leaving aside for the moment these ways that a crisis in the child welfare system indirectly feeds entry to the youth justice system, BME children and young people have experienced unwarranted and excessive intervention directly by the criminal justice system for many years. For example, looking at robbery offences in England and Wales, racist stereotyping distorted the criminalisation of BME children and young people — especially black and mixed ethnic young males — particularly in respect of robbery charges, leading to youth custody. Black and ethnically mixed young males are ten times more likely than white young males to be arrested for robbery. Although robbery arrest rates for black and mixed ethnic males are high, outcomes pertaining to trials, convictions and sentences appear to be like the white group. Therefore, disproportionality in child and youth imprisonment for the offence of robbery can be traced primarily to disproportionate arrest rates.[9]

Similarly, although the imposition of custodial sentences in respect of children and young people convicted of drug offences has been relatively low,

4. Youth Justice Board (2024). *Youth Justice Statistics 2022/2023*. Ministry of Justice.
5. Hunter, K. (2022, April 12). Exploring ethnicity, care experience and justice systems involvement. *ADR UK*. https://www.adruk.org/news-publications/news-blogs/exploring-ethnicity-care-experience-and-justice-systems-involvement/
6. Hunter, K. (2022). 'Out of place': The criminalisation of Black and minority ethnic looked after children in England and Wales. *Prison Service Journal, 258,* 13 – 18.
7. Tickle, L. (2024, October 18). Meet Becky, aged 14, suicidal, alone and unwanted. Victim of a cruel, uncaring state. *The Observer.*
8. Monbiot, G. (2024, May 18). How can a child in care cost £281,000 a year? Ask the wealth funds that have councils over a barrel, *The Guardian*.
9. Uhrig, N. (2016). *Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales.* Ministry of Justice.

there has been a striking disproportionality in penal detention for BME young people convicted of such offences. This too can be traced back to a combination of disproportionate arrest and disproportionate custodial sentencing at the Crown Court.[10]

If this known different, disproportionate and discriminatory treatment of BME children and young people in England and Wales, is replicated in the rest of Europe, the implications are profound for Europe's claims to uphold human rights and disallow discrimination. The European Union's adoption of rules for justice-involved juveniles based on human rights and the unanimous endorsement of the United Nations Convention on the Rights of the Child (UNCRC) in every country of Europe, censures the illegitimate and unnecessarily harsh treatment and punishment of children.

As described above, between 2008 and 2017 there was 75 per cent reduction in the numbers in juvenile custody in England and Wales and a 66 per cent reduction in Scotland. Similar significant reductions in Northern Ireland, Greece, Belgium, Spain, Netherlands, Norway and Denmark, can be contrasted with significant increases in Italy, Ireland and Sweden. The key though overall is the prevalence and mix of child welfare protectionist versus punitive models of juvenile justice, and the relationship between welfare spending and rates of imprisonment. Muncie notes that the cluster of social democratic Scandinavian countries have kept youth imprisonment to an absolute minimum with custody populations in single figures or tens (Finland more but a reduction of 90 per cent since 1960), in stark contrast with neoliberal country clusters worldwide.[11]

BME looked after children experience compounded disadvantage in both systems of care and justice, welfare and punishment.

Austerity: crisis of child poverty in Europe and the UK

In the UK, 500,000 additional children have been pushed into absolute poverty. Twenty-two per cent of the UK population are in poverty amounting to 14.5 million people of which 4.3 million are children. There has been a big rise in destitution with more than a million households (including 550,000 children) experiencing destitution in 2019, a rise of 35 per cent since 2017, with further increases during the pandemic.[12] According to the Resolution Foundation the main reasons for the scale and distribution of these social and cost of living crises are the lack of support for low-income families and the third major fall in real wages over a decade, amounting to a £11,500 wage loss for the average worker projected between 2008 and 2027.

In 2022, in the EU,[13] a quarter of children were at risk of poverty or social exclusion, ranging from Romania (41.5 per cent) to Denmark (13.8 per cent). Children generally, were at a higher risk of poverty or social exclusion compared with adults in 18 out of the 27 EU Member States. Across the EU — and especially the Nordic countries of Finland, Sweden, Denmark and Norway — the poverty rates among the children of foreign-born parents are twice that of the children of native-born parents, at 40 per cent. As for young people, despite recent reductions, in 2018 official youth unemployment still stood at 43 per cent in Greece, 36 per cent in Spain and 33 per cent in Italy.

Causes: poverty effects on child and youth offending

The British Birth Cohort Studies (BCS conducted 1946-2000), alongside cohort studies in Norway, Sweden, Netherlands and New Zealand found that children who grow up in persistent poverty encounter difficulties and troubles doing well in school, enjoying good health and realising their full potential later in life.[14] They face a higher risk of becoming unemployed, underemployed and poor as adults. The implications for welfare, care and education systems are that early

10. See footnote 10: Uhrig (2016).
11. Muncie, J. (2021). *Youth & Crime* (5th edition). Sage.
12. These and the following data are from: Resolution Foundation (2022, March 24). Lack of support for low-income families will see 1.3 million people pushed into absolute poverty next year. https://www.resolutionfoundation.org/press-releases/33284/; https://www.jrf.org.uk/data/overall-uk-poverty-rates; https://www.jrf.org.uk/report/uk-poverty-2022; For discussion of the crime implications see Webster, C. (2023). *Rich Crime, Poor Crime: Inequality and the Rule of Law.* Emerald Publishing.
13. Eurostat (2022). Children in poverty or social exclusion. https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20221027-2
14. See my UK and EU reviews of survey and whole population cohort study findings in respect of child and youth poverty predicting delinquency and youth crime in Webster (2018) and (2023) (footnotes 2 and 3).

childhood preventative interventions, childcare and support for parents are likely to ameliorate disadvantage.

If poverty is a structural cause of these difficulties making it more likely children will struggle on every score, those born into disadvantage are not necessarily destined to fail, as other contingencies — especially parents, school and place — come into play. In other words, although the BCS identified specific ways a child who had endured a tough childhood, or any childhood at all, might prosper and thrive as an adult, disadvantage at birth, does on average, have a profound effect on the way that the rest of life plays out, deeply influencing all the years that follow. In addition, migrant and minority children and young people are particularly vulnerable to the stresses, anxieties and insecurities brought by impoverishment and therefore are most at risk of offending, discrimination and criminalisation — coming to the attention of police and juvenile justice officials.[15]

According to Hay and Forrest, the chances of being a persistent young offender increases by 45 per cent for those experiencing poverty at age 9, and by 80 per cent for those experiencing enduring poverty throughout the first decade of life.[16] Hay and colleagues argue that the effects of poverty on juvenile crime are apparently most evident in respect of serious rather than lower-level offending.[17] And, that this relationship holds between and within countries.

Direct poverty effects on juvenile crime and criminalisation in Europe can be illustrated by a cohort study by Hällsten and colleagues,[18] which followed two cohorts of children in Stockholm — one native Swedes and the other children of immigrants — up to their thirties. The study explained the differences in recorded crime between the groups according to parental poverty and neighbourhood segregation (itself an expression of economic disadvantage) rather than by culture or significant differences in rates of crime between immigrants and natives. The study concluded that although parental poverty and neighbourhood segregation go some way to explaining differences in recorded crime between native and the children of immigrants, they also argued that selection processes in the juvenile justice system, or outright discrimination (selective criminalisation), may also explain such variations.

In Europe generally, legal citizenship status can make a huge difference in a person's economic and social status and in their rights when associated with a crime (paradoxically as well, citizens are sent to prison whereas foreigners are deported). This is compounded when the significance of the ameliorative or detrimental effects on income poverty of national immigration and welfare policy towards migrant and minority children and the unemployed are considered.

Finally, it is worth remembering that the vast majority of the 800,000 imprisoned across Europe are impoverished young men, often with histories of childhood poverty and youth unemployment.

> Children who grow up in persistent poverty encounter difficulties and troubles doing well in school, enjoying good health and realising their full potential later in life.

Differences and racialization among European youth justice systems

The discussion thus far is reflected in European juvenile justice systems that are marked by different and shifting balances of citizenship rights, welfare and justice between clusters of countries, with different sorts of immigration, political and economic systems.

European youth justice systems in some ways reflect these shifting balances and mixes of rights, welfare and justice, and varying national political and economic contexts. Juvenile justice in several countries became more repressive. For example, the Netherlands limited penal capacity with rehabilitation and reparation in the tolerant 1970s then increased prison populations from the mid-1980s onwards. In 2002 Dutch City Councils gave the police new powers to stop, search and criminalize poor and black neighbourhoods, targeting Moroccan youth. Between 1995 and 2001 youth custodial places more than doubled and

15. See footnote 3: Webster (2018).
16. Hay, C., & Forrest, W. (2009). The implications of family poverty for a pattern of persistent offending. In J. Savage (Ed.), *The Development of Persistent Criminality.* Oxford University Press.
17. Hay, C., Fortson, E. N., Hollist, D. R., Altheimer, I., & Schaible, L. M. (2007). Compounded risk: The implications for delinquency of coming from a poor family that lives in a poor community, *Journal of Youth and Adolescence, 36*(5), 593–605.
18. Hällsten, M., Szulkin, R., & Sarnecki, J. (2013). Crime as a price of inequality? The gap in registered crime between childhood immigrants, children of immigrants and children of native Swedes, *British Journal of Criminology, 53(*3), 456–81.

intervention effectively lowered the age of penal responsibility from 12 to 10 years old.[19]

In France, since the 1980s, there has been greater convergence of French and English crime prevention approaches, which in the 1990s took zero tolerance police led approaches that marginalised migrant children, particularly from Africa, Asia and Eastern Europe. Since the return to power of the right in 2002, expanded police powers, custodial sentences for public order offences, lowering the age at which young people can be imprisoned and new benefit sanctions for parents of children who offend, extended punitive state power towards children and young people. Followed in 2007 by a weakening or dismantling of welfare and educational rationales for juvenile justice. Belgium was similarly fuelled by a fear of youth crime and places as disparate as Spain, Sweden and Denmark took punitive turns.[20]

Overall, the 2000s saw youth custody increase in Greece, while decreasing in Scotland, Germany and England and Wales, while there was a consistently low rate in Denmark, Norway, Sweden, and Finland.[21]

Juvenile justice systems across Europe through austerity have tended to more punitive approaches, especially towards minority and immigrant children and young people, particularly towards Roma and traveller children and young people across the entire EU.[22] Different styles of youth justice have been described as repressive in Slovakia and Hungary, welfarist Belgium, exclusionary Germany, assimilationist France, and multicultural Netherlands, which cluster around different approaches to immigrant incorporation (ranging from unrestricted birth right citizenship — 'jus soli' — to detailed restrictions and high barriers),[23] involving different degrees of political and economic opportunity and integration.

Of course, these characterisations shift, and the shares and sources of immigrants vary between countries, but the easier the process of legal integration of parents and children in the host society (residency and naturalization), the less the criminalisation process. Conversely, the harder the process of legal inclusion, the higher the numbers of criminalised foreigners. The relationship between the inclusiveness of immigration policies and the criminal involvement of aliens suggests that the more restrictive the policy, the greater the criminalisation of foreigners.

Theorising the racialization of juvenile crime and justice in Europe

Unlike the US, European countries are different according to historical (colonial) experiences of immigration (UK, France and the Netherlands) and those never experiencing immigration in their recent historical past (Southern Europe) and who are less predisposed and benign towards immigration. It is the latter more socially and culturally conservative countries, with an established social stratification, integrating migrants — at best — at the bottom, which are more likely to marginalise and criminalise first- and second-generation migrants.

> Migrant and minority children and young people are particularly vulnerable to the stresses, anxieties and insecurities brought by impoverishment.

The EU, marked by some attempts to ease the legal status of migrants reducing their criminalisation, is likely to lead to a reduction of migrants' participation in criminal enterprises and therefore, and reduced formal social control on migrants. We might say that exclusionary, assimilationist and pluralist states roughly correspond to political economic regimes that cluster as varieties of welfare capitalism.[24] In which, systems can serve to perpetuate or deepen inequality whilst others have a mitigating effect.

The nature, extent and distribution of vulnerability and disadvantage in Europe is that low income is endemic amongst young people and young adults across Europe but appears to be higher in 'post-communist' and 'Mediterranean' (south European) welfare systems.[25]

19. Muncie, J. (2021), Youth & Crime (5th edition). Sage.
20. See footnote 19: Muncie (2021).
21. Caution is required here because of different counting rules.
22. See footnote 19: Muncie (2021).
23. Only thirty countries grant citizenship by unrestricted jus soli, including the US but no EU countries. Almost all European, African, Asian, and Oceanic countries grant their citizenship through the principle of jus sanguinis, meaning "right of blood," whereby children inherit citizenship through their parents but not their birthplace. For a discussion see footnote 3: Webster (2018).
24. Esping–Anderson, G. (1990). *The Three Worlds of Welfare Capitalism.* Polity Press.
25. Fahmy, E. (2014). The Complex Nature of Youth Poverty and Deprivation in Europe. In L. Antonucci, M. Hamilton, & S. Roberts (Eds.). *Young People and Social Policy in Europe: Dealing with Risk, Inequality and Precarity in Times of Crisis.* Palgrave.

Next, we examine the interplay between the state, the family, schooling and labour market opportunities in shaping young people's transitions into adulthood.

Antonucci employs the concept of 'welfare mixes' to show how Greece, Spain and the UK each reveal that the distribution of social risks (and ultimately the likelihood of criminalisation) is linked to the changing shape in the balance between family, state (and we might add 'criminal justice') and labour market as key sources of welfare support.[26] Principally, this has included the substantial retrenchment of the welfare state and a corresponding increasing reliance on family as a source of welfare. Again, for migrant and minority children and young people the deleterious effects of such processes are amplified.

Child and youth transitions across European countries continue to emphasise the hold that not being in education, employment or training (NEET) has over young people 'living and surviving out of sight of systems which record all recognised forms of economic and educational participation' (p.5).[27] This remains too, a major recruiting ground for youth offending. Neoliberal regimes having by far the highest NEET levels in both 15-19 and 20-24 age groups and Social Democratic regimes have by far the lowest.[28] The upshot is that despite important differences between countries, young people's transitions across Europe have become more extended, non-linear, fragmented and precarious.

Maestripieri and Sabatinelli show how increased work precariousness across European cities, together with scant welfare protection, has had particularly severe effects on young people who face situations of acute instability that serve to compound their social vulnerability, especially as young people are usually not entitled to welfare benefits.[29] The cumulative effect of such processes compounds insecurities and vulnerabilities and, as ever, it is the poorest and most disadvantaged children and young people — including many minority ethnic young people — who suffer most.

Conclusion and discussion

We end with a sense of commonalities rather than radical departures across Europe, albeit with England and Wales having been something of an outlier in its punitive approach to juvenile and youth justice, only relatively recently relinquishing this approach and its attitudes to child imprisonment. This and other changes have not however been wholly applied to benefit all children and young people equally, so we have been left with BME children not only trailing behind progress made towards entry, treatment and youth custody for white children, but in some ways their comparative treatment has worsened.

English exceptionalism in these and other respects discussed above has diverged from, but also converged with other European juvenile systems, at different times. The situation regarding looked after children and early police intervention are particularly troubling, especially for BME and migrant children, in providing conduits to the youth justice system in England and Wales. Failings in the care system in England and Wales are particularly serious and demand immediate overhaul away from treating the care of children as a for-profit business.

Child poverty caused by austerity particularly impacts on BME children in England and Wales, and migrant children and children with foreign born parents in Europe. This crisis of poverty among minority and migrant children and young people is more likely to expose them to delinquency, punishment and custody, accompanied by increasingly punitive contact with the police and juvenile justice systems across European countries. These disproportionately poor conditions and transitions among black, minority and migrant children explains their disproportionate entry to the juvenile justice system through early and unnecessary, unwarranted and excessive police intervention and arrest. Their treatment by juvenile justice and the courts appears to be unequal and unfair and this requires remedying despite some significant progress in some respects in the last few years.

Across Europe, juvenile custody has seen very significant reductions in many countries. This progress now needs to be extended to other aspects of youth justice, but particularly preventative work and early years intervention and support of children and their parents. Earlier child experiences, particularly of persistent poverty, strongly predict troubled lives later, including delinquency.

The key overall is the prevalence, balance and mix of child welfare protectionist versus punitive models of juvenile justice, and the relationship between welfare spending and rates of imprisonment. Paying attention to some of the causes of child and youth offending rather than limiting the discussion and policies to consequences and outcomes in youth justice seems essential.

26. Antonucci, L., & Hamilton, M. (2014). Youth Transitions, Precarity and Inequality and the Future of Social Policy in Europe. In L. Antonucci, M. Hamilton, & S. Roberts (Eds.), Young People and Social Policy in Europe: *Dealing with Risk, Inequality and Precarity in Times of Crisis.* Palgrave.
27. Fergusson, R. (2016). *Young people, welfare and crime: Governing non-participation.* Policy Press.
28. Pemberton, S. (2015). *Harmful societies: Understanding social harm.* Policy Press.
29. Maestripieri, L., & Sabatinelli, S. (2014). Labour Market Risks and Sources of Welfare among European Youth in Times of Crisis. In L. Antonucci, M. Hamilton, & S. Roberts (Eds.), *Young people and Social Policy in Europe: Dealing with Risk, Inequality and Precarity in Times of Crisis.* Palgrave.

Child First Systems Change — A View from the Youth Justice Board in England and Wales

An interview with Stephanie Roberts-Bibby

Stephanie Roberts-Bibby *is Chief Executive of the Youth Justice Board (YJB), a non-departmental public body responsible for overseeing the Youth Justice System in England and Wales. She is interviewed by*
Dr Amy Ludlow, *Chief Executive of SHiFT, a systems change charity committed to breaking the destructive cycle of children caught up in, or at risk of, crime.*

Stephanie Roberts-Bibby became Chief Executive of the Youth Justice Board (YJB) in 2023, having joined the YJB initially in 2018 as the organisation's Chief Operating Officer. She came to the YJB with 21 years' experience of working in, and leading, prisons, her passion for youth justice reform sparked when she started her career as a Prison Officer in HM Young Offenders Institution (YOI) Feltham, in Greater London. This interview took place in January 2025.

Could you start by telling us your story. Who are you, what makes you spring out of bed in the morning, and how does any of that relate to youth justice?

I started here at YJB in another role thinking it might only be for one year in 2018, and I'm still here six and a half years later, so that probably talks to my passion for children and young people and trying to drive system change.

I've always been passionate about children. When I was younger, I was going to be a PE teacher. I love children and I like sport, so that was what I was going to do. That shifted when I was doing an A-level project which happened to be at Feltham Young Offenders Institute, where my mum was a Prison Visitor.

I have always been acutely aware that we were lucky as children. There were four of us growing up and both my parents come from working-class backgrounds. My maternal grandparents were Irish immigrants. My Dad's side think of themselves as proper East End people but actually they were Welsh — my Dad's Granddad literally walked from the Welsh Valleys to Bermondsey to find his fame and fortune in London! My Dad's Mum died when he was 11, and my Dad worked all the hours God sends. We only saw him at weekends and holidays, and our holidays were normally at Christmas because he ran his own business. We didn't want for anything, but I grew up knowing that what I had at home was quite different to other people and that was, in part, because of the childhoods my parents had experienced and that they wanted the very best for us.

Anyway, back to Feltham and my Mum. When we were all old enough to not need her to do everything for us and she felt she had time, she saw an advert in the paper and became a Prison Visitor there. At that time Prison Visitors were allocated to wings, and my Mum was allocated to the long-term wing that worked with children. She was there every day of the week, making staff tea, listening to their problems and talking to the boys who didn't have families. She raised money for football kits, set up a charity, got an MBE and a Butler Trust award. She was, and is, amazing. And so, when I needed to do a project for my A-levels it wasn't surprising that I found myself spending time in Feltham too. While I was there one of the Governors asked me what I was going to do when I finished at college. I'd always said PE teacher, so I went to Loughborough University, did PE and then in my final year she (the Governor I'd met at Feltham) sent me an application form for the graduate fast track scheme for HMPPS (His Majesty's Prison and Probation Service). At the time my plan was either to do a PGCE, study for a Masters in the sociology of sport, or get a paid a job, and so when I read about the fast track, I thought I'd go for it to stop sponging off my parents! But what had also stayed with me from that A-level project I did was the sense of helplessness for everything that was there in Feltham — children and staff. Everything seemed bleak and miserable, and I thought, there is more to life than this, everyone deserves more than this. So, I guess that had hooked me a bit, and the idea that I could do something to make a difference inspired me.

Fast forward to 1997 and I found myself starting as a prison officer on the fast track scheme back in

Feltham. I went native. I worked every hour I could trying to do things for boys to the point where I would be restrained by staff for trying to unlock them at times when other staff didn't want to, mostly I'm sad to say because they believed that 'happiness is door shaped' (meaning when people who are imprisoned are locked up). I got in trouble too for stopping one morning after I'd been on nights for a young boy with an empty bag stood on his own at the top of the road. He'd just been released a day early to be able to go to his Dad's funeral and he didn't know how to get to the train station, so I stuck him in my car and drove him to the station. Someone saw me and the next day I got in trouble. I really tried to mother those children, even though I was only 21 at the time myself.

From there I went to HMP Belmarsh (a High Security adult prison in Greater London). I was there about four years. I did an investigation into racism at HMP Brixton (a Local prison, mostly serving the courts or holding adult men on short sentences in Greater London) and then went to Private Office where I worked closely with Martin Narey (then Chief Executive of the National Offender Management Service — the name of the government body then overseeing prisons and probation services) for a year. And then to Holloway (a women's prison, in Greater London, which was closed in 2016) where I was responsible for girls and young adults. That reignited my passion for working with younger people. Girls were being kept at that time in terrible conditions in Holloway and my work involved influencing the YJB to invest in building a specific unit for girls at HMP Downview (another prison for women, in Surrey), which I was really pleased eventually opened. I then moved to HMP Woodhill (a High Security prison in Milton Keynes) and was Head of Reducing Reoffending. Interestingly, at that time, they'd had a number of children placed who were Restricted Status Category A (assessed as children whose escape would be highly dangerous to the public) and I ended up responsible for them and influencing the YJB for them to be relocated because I didn't think Woodhill was an appropriate environment. I became Deputy Governor and then Acting Governor at Woodhill before going to Brinsford. The YJB had just decommissioned the 110 beds there for children and we were just re-rolling (converting the prison) to be young adults only. Then on to HMP Hewell, a prison for adult men in Worcestershire, where I didn't have any engagement with children. Then I led on 'through the gate' (resettlement) as part of Transforming Rehabilitation and on after that to HMP Winchester where again, we had young adults.

If I'm honest, by then I was getting to a point where I was questioning my moral leadership. I was wanting to make more change and was feeling hamstrung in my role at Winchester. It was a poor performing prison, and I was trying to make it a better performing prison, but I didn't really have the levers in my control to make it what I wanted it to be. I was feeling frustrated, possibly to the point where I was a bit cynical, and up popped the secondment opportunity at the YJB. So, I applied, was offered it and took it, and have been here ever since. This is the longest I've ever worked anywhere in my adult career, and I really feel like its where I'm meant to be.

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Tell us more about what the YJB was like when you arrived. What was happening in youth justice at that time?

I came in 2018, which was just on the back of 'the divorce' as I call it where, because of the success of the YJB since its inception in 1998, everything relating to children and justice had got sucked into it, to a point where potentially you could say that the original intent of having an oversight body that gave advice on preventing offending by children had diminished because the YJB was too operational. That coincided with a series of reports about the poor performance of justice for children, particularly the secure estate. The then Chief Inspector was saying there was nowhere that could keep children safe, you had the Taylor Review of the Youth Justice System, and the Panorama expose at Medway. This culminated in a number of recommendations going to Ministers that said that the original intent of the YJB should be reset so that it can honour its statutory functions. That led to the creation of Youth Custody Service in 2017 as well as the creation of a Policy Unit within the Ministry of Justice. Actually, at that time it wasn't just policy it was policy and commissioning, sitting with the Ministry of Justice. This commissioning function later moved to the Youth Custody Service, so in some ways now we've gone back full circle, to the commissioner and the provider in the same organisation.

I arrived at a time in 2018 where I think we had a different intent and context to now. At that time the Board and Ministers had really wanted us to drive system change in preventing children offending and the

agreement was that this would be done through driving change through targeted funding and us influencing strategically across the system. That meant that a lot of our resource and capacity was in change and programmes. At that point the evidence base was evolving, but we hadn't created the strong narrative that we now have in Child First (more on that later), based on what we know prevents offending.

Coming into the YJB, I knew what our statutory functions were from the Crime and Disorder Act and it was really clear that the principal aim of this system is to prevent offending by children and that we are accountable to Ministers and Parliament to monitor and oversee the system and provide advice on its effectiveness. It took me a bit of time to really understand that our role was both about overseeing day-to-day operational effectiveness and turning that into advice, and bigger picture advice about how the Youth Justice System can best pursue its principal aim to prevent children offending. So, the YJB is responsible for creating the Standards for Children in Youth Justice, and administering and distributing grants to enable Local Authorities to set up their Youth Justice Teams with the statutory partners — police, probation, education, health and children's services. And alongside that we're also responsible for three other critical elements. First, providing assistance across the system to enable the exchange of information on those children. Second, really importantly, collating and publishing information on the system, especially data and best practise, where we know that's working and then trying to replicate that elsewhere. And then finally, commissioning and publishing research. Over the last five years or so we have dialled down on commissioning research and our focus is more on working with others rather than duplicating what's being done, to make us an efficient and effective organisation.

We have translated decades and decades of evidence and international research on what works in preventing children offending

To summarise, I would say we provide leadership support and challenge to the sector. We collate all our intelligence and information and use that to provide advice to those in frontline services including, critically, the third sector, policymakers and Ministers on what more could be done to prevent children offending. And what really makes us special is that we are the only organisation that oversees the whole system and has an end-to-end perspective, and we do everything, except for the terms and conditions of our grants to Local Authorities, through relationships, soft power and influence. We are overseeing what are place-based autonomous partnerships who are coming together to deliver services to children, victims, and communities. It's this that makes the system work so effectively — our power comes from partnership.

I hear in that both power and effectiveness, but also presumably some challenge — it's hard work to drive effectiveness through soft power. And that is also quite a different position for you to be in personally, as a leader, compared to your previous role as a prison Governor, isn't it?

Absolutely. Yes, really different because in my other roles, not because I've wanted to, but I had significant formal power. The reason I feel more comfortable here is I don't really like hierarchy. I experienced that early on in my career. I can remember being on the High Security Unit at HMP Belmarsh, for example, and introducing myself by my first name to a High Risk Category A prisoner and then being pulled in by the then Principal Officer of the unit saying 'we don't tell them our first name here'. And I said, 'I'd much rather tell them my first name actually than them know my surname, and I am a human being, and I want to work like that'. I don't really like the term 'prisoner'. Call me 'Steph'. I'd come to Belmarsh from working with children, and although everyone else at Feltham at that time was known by Miss or Mr, I was more than happy for those children to call me Steph. I had no problem with that, and I find I work better in a relational way with people rather than relying on my perceived position of power in an organisation. Governing a prison is similar in some ways to being a Chief Executive but in my role now at the YJB there's a big difference that I don't have the full force of a framework behind me or the Agency of HMPPS. I have the full force of a Board of experts and Ministers, but there can be a response of 'so what, you can't tell us what to do', so you have to use an evidence base that you know is effective, and you have to answer the question 'why', rather than saying 'because I said' or 'because that PSO (Prison Service Order) or PSI (Prison Service Instruction) says'.

If we zoom out a bit further, what are some of the features of the YJB or features of youth justice in England and Wales that might be especially striking for people working in other jurisdictions?

There's been a quiet evolution of success in the system. By success, I mean first the significant reduction of first-time entrants, and the reduction we've seen in the number of children in custody. But set against that, others might be fascinated and alarmed by our age of criminal responsibility, so, when you look at us compared to Cuba, Argentina, Hong Kong, Tanzania, Finland, Denmark, Spain, Italy, Turkey, all of these countries have a higher age of criminal responsibility than ours in England and Wales at ten. We are such an outlier. This also includes the enduring impact of convictions on children as criminal records. For a system that says in the Crime and Disorder Act that we are set up to prevent children offending, alongside honouring children's rights and adults' responsibilities to them, there's a real disconnect with saying we're holding you criminally responsible from the age of ten. England and Wales has quite rightly been criticised about this by the UN Committee on the Rights of the Child for not working to the accepted international standard of 12.

Is there anything important to note about the context for young people in England and Wales

In some ways the context is possibly similar for children and young people across parts of Europe. If we think about the last five years, we've had Brexit, which inevitably has disrupted the labour market. We've had the pandemic, which we know has been worldwide and has affected how professionals have engaged with children and importantly the experiences of those children and their maturation. Their access to normal childhood activities was stunted to the point now that we have some children who do not feel able and safe to go to school in the way you or I did. On top of that you've got war. And these things together have created a significant cost of living crisis. We already knew pre-pandemic, pre-war, pre-Brexit, the links between deprivation, housing overcrowding and offending, as well as the evidence base around the impact of trauma on children and links to offending. So, you've got all of that in a melting pot alongside pre 2020 evidence about significant over-representation of children with speech, language and communication challenges in the Youth Justice System, as well as the compelling evidence of disproportionality and adultification of children who are Black, Brown or Mixed Heritage which results in their over-representation in the harder end of the youth justice system and poorer outcomes for them. On top of all of that you have salami slicing of investment year on year in public services, which means that the demand is way outstripping the resource that's there. While we've done so well in youth justice in applying the evidence base that means we've had this huge success in the system, the application of the evidence base hasn't properly percolated into other systems.

Shall we pause there and talk about that evidence base. You mentioned Child First earlier. What is Child First?

In essence we have translated decades and decades of evidence and international research on what works in preventing children offending into a framework called the Child First framework of evidence. There are four clear tenets of the framework which are (1) treating children as children — honouring their rights and adults honouring their responsibilities to uphold those rights; (2) taking a strength-based approach so always coming from a point of goodness, and building on strength, looking for strengths and they are in every one of us and with children we again have a responsibility to untap those; (3) collaborating with and promoting the voice of the child so children are involved in their plans, they have a some agency about what's going to happen to them and it's done with them rather than to them; (4) and then finally diverting children from the Criminal Justice System and the stigma that's associated with that.

> Our absolute view is that children need an individualised approach, with highly skilled adults they can trust

It's interesting to think about how we could overlay some of that onto other statutory services that are critical in the lives of children, like education, for example. If we did a quick thinking through of Child First, and those four tenets I've just talked through, in relation to a child who may be being 'naughty' or 'bad', and I put those words in inverted commas — a child who is seen as disruptive. Are teachers using that four-point checklist to say, what's happening for this child here and now? What is this behaviour a manifestation of? What has happened to this child that is making them behave this way? And how are they feeling? We are seeing more and more children not engaging in education and we know that education is a critical protective factor. We need to be looking at how we, in

justice, can better support other mainstream services to understand children's behaviour and maximise inclusion, which in turn maximises safety and reduces victims and harm.

Yes, and in a way that brings us round to who the children are who are at risk of coming into conflict with the law. Because although there have been these successes as you've described in reduced numbers of first-time entrants and children in custody, children with complex needs, and cumulative disadvantage, experiencing harm and sometimes also causing harm to others, haven't gone away, have they?

That's absolutely right. We should talk about some of the statistics here. Our last set of statistics, for 2022/23, show that over the last decade, the number of first time entrants reduced by 72 per cent, which is massive, and the number of children in custody reduced by a similar figure 71 per cent. That is a transformation of a system. And we know, because of the evidence base, that this transformation is much more likely to reduce reoffending and offending by children because by not bringing them into the system, particularly the hard end of the system — custody — we are not stigmatising them. Some of the early evidence shows that this is impacting on the adult system as well — reducing the number of young adults coming into the adult Criminal Justice System. So that is massive impact on the lives of children which should help to reduce harm, victimisation and improve safety.

But those 72 per cent of children who are being diverted have not gone away. They still have a set of circumstances and the systems around those children still need the support and money to work with them to reduce the harm they face and sometimes also cause. Our ongoing investment in early intervention, prevention and diversion is absolutely critical. These are children with really complex needs, children who have likely had four or more adverse childhood experiences, be living in an area of high deprivation, potentially will be care experienced (a rather ironic term 'looked after' by the State) and, we know from our own evidence, are likely to have some element of difference, which might be neurodivergence, speech, language, communication, and are disproportionately Black, Brown or Mixed Heritage or from the Gypsy, Roma or Travelling communities. These are children who because of their circumstances are also more vulnerable to exploitation and are targeted by organised crime gangs for moving drugs, weapons, selling drugs, or sexually exploited. So, the landscape is complex, these children's needs are complex, and our absolute view is that children need an individualised approach, with highly skilled adults they can trust, who understand what is happening and has happened to them and, from that, work out with them how to make things safer for them and for others.

What's your sense of how well we are currently meeting the needs of children in these circumstances?

Their needs are being met to varying degrees and it's important that we think about this across the whole spectrum of services. So, starting first thinking about our universal youth work offer, there is huge variation here. Recently, I visited an amazing service called Spotlight in Tower Hamlets. It was connected to a secondary school, open seven days a week, with a phenomenal health offer. There is no reason why this type of provision can't exist everywhere — but it doesn't. And whilst I get that the financial position, and money is tight, money is there for quite a lot of this stuff, but what varies is the collective imagination and determination to make it happen in ways that genuinely make a difference to all children, including some of the most marginalised children who are often also those on Youth Justice's 'books'. Youth Justice services are carrying a lot of the responsibility of the broader partnership and one of the things we need to do now is to equal up that contribution from across the statutory partnership. Some of that is about funding and making it a mandatory obligation that there is a consistent contribution to enable a consistent offer whether you're in Sunderland or Suffolk. That's not me saying that the system needs to be nationalised — I am absolutely against that — I'm saying that there should be a requirement that everyone puts in a certain amount that is matching the justice commitment that comes from the Ministry of Justice via the YJB. And then health come in, and education come in, and they say this is our financial offer, but this is also our service offer. So that in this locality we commit to engaging with all children, including children who are involved with youth justice. At the moment, we are hearing that some children who are on a youth justice order are being told that they can't go to college because they're working with youth justice services. How can that support the system's principal aim? That's a real example where at the moment children's needs are not being met by the statutory partnership and that's got to change. We are at a moment in time in my view, ahead of the Spending Review, where we can really influence the standards for justice and re-define what the offer for children working with youth justice services looks like from mainstream services. We particularly need to focus on education, health and policing, describing what these mainstream services do to prevent the criminalisation of children and to stop children unnecessarily being brought into the justice system. I

come back to say it's not all about money, it's about having practitioners who understand the evidence base and have the training, resources and support they need to apply it in their day-to-day practice. It's also not all about policy, though of course there are some policy changes that could be helpful, to drive the sort of behaviours we want. But we mustn't stand still as if we can't make any progress without new money or new policy — we can, and we must.

Zooming in on that small but important minority of children who nevertheless are in conflict with the law and are pulled into the formal Youth Justice System, including custody. How well are we meeting their needs?

Naively, I knew what Youth Offending Institutions (YOIs) looked like, because I'd worked in one, and I knew what a Secure Training Centre looked like because I was working in HMP Woodhill when we opened one next door, but I'd never been in a Secure Children's Home until I started at the YJB. Let's be clear Secure Children's Homes are the best bit of our secure provision at the moment. They're seen as the flagship of the secure element of care for children in justice, and yet I don't think the public widely know that Secure Children's Homes will have barbed wire around them and have the same locks that were in the last prison I governed at Winchester. Now that's not uniformly true because you go to places like Barton Moss (a Secure Children's Home in Greater Manchester for boys), and that's excellent, but that's because it has been hand crafted by two managers over twenty years. But what this means for the 430 or so children currently in custody in England and Wales is that there is huge variation in what life in custody looks like for you — the offer is so different. Our YOIs are just not fit for purpose. They do not have the right physical environment, investment, processes, and there is something about the commissioner/provider relationship (which is now all back with Youth Custody Services) that just does not work. And because Youth Custody sits within His Majesty's Prison and Probation Service (HMPPS) the policy framework for YOIs is just overlaid from adults — we treat children as mini adults, which flies in the face of the evidence, including about neurodevelopment.

Going forward, there is an opportunity to really strengthen alternatives to remand. Of those 430 children in custody, we know that around 41 per cent are there on remand — without a sentence — and, of those children, 72 per cent do not get a custodial sentence. How can it be that we disrupt a child's life, give them a pro-criminal identity, kick them back out to the community where their college now won't take them because they're open to youth justice, their Education Health Care Plan (EHCP) wasn't delivered in custody, and then we go 'okay great, well done, go ahead and live a crime free life'. Oh, and, we've put you back in the same estate where you were exploited before and you're sharing a bedroom with your three siblings in a house with a parent who has a whole host of challenges that mean they can't really look after you properly. Those are the areas that are deeply broken in the system and that speaks to my previous point about children in the community where statutory services aren't always stepping up to support them. I know it's difficult, I know everyone has thresholds and challenges, but we have got to do better. Going back to youth custody, I am ashamed to be a leader of the organisation that oversees our Youth Justice System, when it has been 28 years since I started working in criminal justice, and there has been no change at Feltham (a Young Offender's Institution). I talk to Feltham not because I'm being rude to the Governor of Feltham or indeed rude to Youth Custody Services, but this is my personal point of reference from when I started. How can that in a modern civilised society be right?

We mustn't stand still as if we can't make any progress without new money or new policy

You mentioned workforce earlier, so I wanted to come back to that before we look ahead to what next.

Yes, let me say something first then about workforce in the secure estate since that's where we have just been in our conversation. There's something about understanding the messiness of custody, which I genuinely don't think many people do, and the challenges that poses, particularly for young new staff. Putting myself in a new Officer's shoes, you have to keep this person here — there is an element of containment — and then you are also required to help them, but in this environment which is absolutely not fit for purpose where you have no freedom because the core day is dictated to you. So actually, as a prison officer, or key worker, you have all these constraints put on you before you even talk to a child, and, not necessarily given the right skills and training in the first place. Again, if we go back to the evidence base, what

we know works is small, homely environments, with staff who are trained in understanding children in terms of their maturation, development, and behaviour. So that's the starting point for custody, and we know that many staff currently working in custodial environments with children don't understand these things and are not equipped to. And then adding into that, there is not enough of them. Staffing ratios in a YOI compared to a Secure Children's Home are much lower. So working in a YOI you're already off to a more difficult start because you're working with more children who all have complex needs who are often being seen as something different to what they actually are because they're six foot and Black — I'm going to an extreme and calling out the adultification here deliberately to make the point — charged with murder rather than seeing the 14 year old vulnerable boy who is themselves a victim and has been exploited and abused.

And you're probably getting assaulted quite a bit too as a prison officer in a YOI?

Well yes or if you're not being assaulted then you are preventing harm to others. If I think back to my time as a Prison Officer in that environment, I didn't get assaulted — I was pinned to a wall once — but there were very few days where I was not involved in a restraint. So even if children's frustration wasn't aimed at me, I was around high levels of violence and that has an impact. The other thing that we haven't spoken about that has a massive impact on staff is self-harm. There are a small number of children, including girls — a really important minority within the Youth Justice System — who have high levels of self-harm as their mechanism for coping with life. This is really hard to work with in custody. We know that saying 'don't do that' doesn't work but policies still push in that direction rather than saying, this is this child's coping mechanism, how do we minimise the harm and work with them, with a strategy, so that we're not taking everything out of their room, which increases risk, putting them in strip clothing, and avoiding situations where children are smashing their television, threatening to harm staff, cutting everywhere with dirty blades, without proactive medical guidance. This is really hard for staff to work through.

The other issue I want to talk about in terms of workforce is the pandemic and this assumption that we just go back to what we were before. We haven't acknowledged as professionals and practitioners what changes happened to us and our lives through the pandemic. As an example, if you're a teacher, in 2019, you were happy going into a classroom day in day out with 30 children. It was your norm. Get to 2020 in the pandemic and the whole way you work is different — its either through a screen or at school with a handful of keyworker children. Okay pandemic 'over' now, let's do our recovery plans and boom, you're back in a room with maybe more than 30 children because you've had to make some efficiencies in your class sizes as well. And each of those 30 children's experiences have been different, your resilience is absolutely diminished, you've got cumulative fatigue, and then you are having to respond to the needs of now 34, or 36, children who have had some stunted development, maybe witnessed some violence within the home and perhaps undertaken some violence themselves, have been exploited, are hungrier than ever, and we think that just keeping doing what we've always done before in mainstream education is going to grow us well rounded adults who can contribute to our economy. Something has to change.

> In five years, I would love for there to be a system that doesn't attribute a label to a child.

And is there a parallel there for youth justice staff?

Absolutely, there is a parallel, but there is a slight difference, which is that staff who work with children in justice have a better understanding of the behaviour and the complexity of what's underpinning it, and have better opportunity to work with fewer children. So, if you're a teacher, as I said, you might be working with 34 or 36 children whereas if you are a Youth Justice Worker your case load is less than that. There is something terrible in youth justice that when you are hitting that threshold, with being the most complex and highest needs, you are getting a service, which feels really bizarre because actually shouldn't we be thinking about more effective support much earlier in the system and better identify those most vulnerable children? Going forward, this is where I do get excited, because we know here and now who the children are who we should be focusing on. Technology and AI are developing at such a pace we should be able to go much further up stream in terms of data mapping and matching to identify children. If, for example, every child had a speech and language assessment before they transitioned to secondary school, how many children could we make a difference to? A huge number. There are some simple things that aren't huge cost that we could do. The tech infrastructure with some investment could be significantly different and really help practitioners in all sorts of ways including sorting the wheat from the chaff in terms of case notes,

making best use of a practitioner's skills rather than them sitting for hours and hours going through or writing up case notes and assessments. Going back to your question, there is a slight difference but also plenty of shared challenges for our youth justice workforce. The challenge community staff have to carry is that, when a child is being exploited and goes missing for example, they know what's happening and there's nothing they can do — they feel powerless. I did a visit recently to a Youth Justice team and spent an hour just talking about how staff felt carrying that burden; carrying that responsibility of knowing they are doing everything they can do and yet there are people with huge power and influence over children still able to reach them and get them to do things which damage them further, and put them and others at significant risk. Community practitioners carry that much more than colleagues in custody.

Let's think forward now to your hopes. Where do you hope youth justice will be in five years' time in England and Wales?

In five years, I would love for there to be a system that doesn't attribute a label to a child, whether that be a criminogenic label or a label that affects the way they see themselves and inadvertently perhaps gives them permission to not conform in terms of making the most out of themselves and their lives. I would really love to see a social justice system, that extends into health, policing and education, which is based on evidence — relational, trauma informed practice rather than 'you've done this thing, this is what I now need to do to you'. I'm not diminishing the experience of victims, because putting evidence at the centre of things is all about preventing further harm and victimisation. Within that, we've got to recognise that these children are themselves victims. There are very few cases I have seen where children who have caused harm to others have not also themselves experienced harm and been victims of their own circumstances. It's important that we think of children in youth justice in this light but then also avoid giving them unhelpful labels that they could carry into adulthood as 'I'm a victim'. Getting the balance right here is challenging, but we've got to drive a more nuanced and evidence-led understanding of victimhood, and how to prevent offending and therefore victimisation if we are to prevent future offending and future victims.

An important part of what's needed to make that happen is government making tough decisions about where it's going to invest in youth work that's truly inclusive — like the place I visited and talked about earlier, Spotlight in Tower Hamlets. We know we haven't got enough for everyone to have everything, so we need to be clear about which communities most need 'a Spotlight'. If we look at data and evidence we know those areas, we know the areas of greatest deprivation. So, let's give those children in those communities the lifting up they need as part of the Government's Opportunities Mission. That's my hope number two.

Hope number three is that custody is only used for children when absolutely necessary. There's a big question for me about whether remand is on all occasions necessary and whether we could have a different place-based accommodation like the London Accommodation pathfinder offering children a safe and supported place to live that prevents them being taken into custody. And the second part of that is that when children do get a custodial sentence there should be a service which honours their rights as children, and our responsibilities to them as adults. That service needs to understand that some of those children are getting long sentences so will transition into the adult justice system. These transitions need to be better supported than is currently happening and hold in mind the ultimate goal to prevent offending at the end of what is likely to be a long double-digit sentence. In five years, I don't think we will be saying that children won't be committing those offences. That's still way into the future because there's still lots to be done, sadly. And so you don't have Youth Offending Institutions, you have a range of community based alternatives that are safe and secure but not prisons, which is in essence what we have with our Youth Offending Institutions. And whether that looks at the hard end something like a secure school, we will see, but certainly not a Feltham or a Wetherby.

My final big hope for five years' time is that our mainstream services have the skills and resources to be able to keep and hold — a caring hold — our most vulnerable children in their mainstream provision, particularly education. Proper inclusion, which is deeply practised by all services that shape children's lives.

Thank you so much Steph, that's a powerful way to end. A final short question to close, drawing you back to the personal. If you had the chance to go back in time and offer a sentence of advice to your younger self starting out on her career as a Prison Officer in Feltham, what would you say?

One of the best people I ever worked with said to me 'life is a marathon not a sprint', very wise words. I would merge that with 'don't try and change everything and everyone on your own and yesterday'. It takes a village to raise a child so spend time finding out who your neighbours are and work with them to make the changes needed. To summarise, slow down and don't do everything yourself.

Book reviews

The Impact of Youth Imprisonment on the Lives of Parents

By Daniel McCarthy and Maria Adams
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William Payne *is an independent member of the PSJ Editorial Board*

This is the sixth book in the Routledge series of Studies in Crime, Justice and the Family, edited by Rachel Condry of Oxford University. Other books in the series include Families, Imprisonment and Legitimacy: the cost of custodial penalties by Cara Jardine (2020); Juvenile Lifers: (lethal) violence, Incarceration and rehabilitation by Simone Deegan (2021); and Parental Imprisonment and Children's Rights, edited by Aisling Parkes and Fiona Donson (2021). In this book the authors (the Professor of Criminology and Senior Lecturer in Criminology in Surrey University's Sociology Department), consider the experiences of, and especially the hardships borne by, the families whose young male children have been imprisoned. It seeks to provide a different perspective on the important role that is generally accepted that families play in supporting prisoners during and beyond their time in prison. The background provided by the Farmer report is acknowledged, particularly its emphasis on the role prisons should play in supporting prisoner-family ties.[1]

The fieldwork underpinning the research findings was conducted in two YOIs in 2016/7. It is substantially based on interviews with 61 parents/carers (37 mothers, 13 fathers, seven sibling carers, three aunts/uncles and one grandmother), 62 per cent of whom were White, 20 per cent Black, 15 per cent Asian and three per cent 'mixed'. Questionnaires returned by 214 parents/carers, including the 61 interviewed, also informed the research. Most of the children of those interviewed were serving between two years and Life. Perhaps unsurprisingly, the authors note (p. 129 in an Appendix on the methodology) that they found caregivers more willing to participate when their child had served at least two years of their sentence. The sample therefore appears to exclude the parents of the majority of young men imprisoned who receive sentences of two years or less. While the conclusions the authors reach may not be qualified by this, one would assume that the dynamics of family relationships will vary according to the length of time a child/young man is detained.

The subject of the book is approached by considering the complexity of youth-parent relationships; the experience of parent-child relationships before imprisonment; the challenges presented to families by visiting their children in prison; and how imprisonment impacts on parents during their child's imprisonment. At the outset it is recognised that some families can, as the Farmer report noted, have a detrimental impact on prisoners. But the overarching concern is to understand the burden families carry in sustaining the relationship with their imprisoned sons. The authors argue against describing this as one of the so called 'collateral consequences' of crime and criminal justice. They prefer the concept of 'symbiotic harm' coined by Condry and Minson (2021),[2] which conveys a sense of the interdependence of relationships rather than implying, as 'collateral' does, that the consequences are secondary or subordinate. They also urge that 'we need to move beyond the approach which suggests that parents' roles can only be understood via the lens of criminogenic risk factors in the lives of young men in prison' (p.3). They are dismissive too of the reflex tendency to 'blame the parents': while some parenting may have shortcomings, the adversities the families of all people in prison face, it is suggested, 'should not always be conceived as wilful neglect by parents — a symptom of troubled families…for some it is more the case of families in trouble.' (p. 38). Accompanying a sense of shame, parents often experience a sense of desperation at being unable to deal with their sons' challenging behaviour before they were imprisoned; and they can be victims too.

Much of the fieldwork for the authors' research took place in prison visits facilities. They refer to 'the porousness of prison visitation and prison life' (p. 87) to describe the physical, psychological and emotional challenges parents

1. Farmer, M. (2017). *The importance of strengthening prisoners' family ties to prevent reoffending and reduce intergenerational crime.* Ministry of Justice.
2. Condry, R., & Minson, S. (2021). Conceptualizing the effects of imprisonment on families: Collateral consequences, secondary punishment, or symbiotic harms? *Theoretical Criminology, 25*(4), 540-558.

experience to see their sons in prison. Acknowledging the theme of the importance of prison visits as an opportunity for positive engagement, the authors conclude, 'our analysis is more circumspect on the capabilities of visits to initiate benefits for family members in particular' (p.87). The need for prisons to be more attentive to visitors' experiences of visiting is a point well made.

Although the authors doubt the extent to which prisons can be places for high quality family contact, they identify various ways in which visits could at least acknowledge the rights and responsibilities parents retain. They refer to the 'Missouri Model'which appears to be an enlightened approach of engaging parents of young offenders who have been detained.[3] A critique of the Youth Justice Board's 'Constructive Resettlement Framework' would also be interesting,[4] as would a consideration of the effectiveness of the 'Parenting Contract' and 'Parenting Orders', the role of Youth Offending Teams and the Probation Service. However, understandably, these considerations were outside the scope of the authors' focus. Nevertheless, the book provides a very interesting set of insights into the important relationship of the parents of young male prisoners have and their sons.

3. Mendel, R. (2010). *The Missouri Model: Reinventing the practice of rehabilitation youthful offenders* Annie E Casey Foundation; and http://missouriapproach.org/
4. https://www.gov.uk/guidance/case-management-guidance/custody-and-resettlement

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