



Children's
Rights Alliance
for England

CRIMINAL JUSTICE

STATE OF CHILDREN'S
RIGHTS IN ENGLAND

2014

CRIMINAL JUSTICE

ARTICLE 37 -

- (a) No child shall be subjected to cruel, inhuman or degrading treatment or punishment. Young people who commit offences should not be imprisoned for life.
- (b) The arrest, detention or imprisonment of a child shall be used only as a last resort and for the shortest appropriate period of time.
- (c) Every child deprived of liberty shall be treated with humanity, and in a manner which takes into account his or her needs. Children should be kept separate from adult prisoners. They have the right to maintain contact with their family.
- (d) Every child deprived of his or her liberty shall have the right to prompt legal advice.

ARTICLE 40 -

- 1. Children who are accused of, or recognised as having broken the law shall be treated in a manner consistent with their sense of dignity and worth and which takes into account the desirability of promoting the child's reintegration into society.
- 2. Children's privacy must be respected at all stages of the proceedings.
- 3. States Parties shall establish a minimum age of criminal responsibility.
- 4. A variety of alternatives to custody must be available to ensure that children are dealt with in a manner appropriate to their wellbeing.

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What does the Convention say?

Children in conflict with the law are children first. Article 40(3) of the UN Convention on the Rights of the Child (UNCRC) recognises this, making it clear that, wherever possible, children should be dealt with outside the criminal justice system. Generally, a welfare response suited to the child's individual needs and circumstances can better address the underlying causes of the behaviour that first brought the child to the attention of criminal justice agencies.

When children enter the criminal justice system, they have a right to fair treatment and legal representation. They should not be subjected to any punishment that is cruel, inhuman or degrading. They should only be detained or imprisoned as a last resort and for the shortest possible time. Institutions where children are detained should treat them in a manner which takes into account their age, capacity and individual needs.

The UN Committee on the Rights of the Child recommends that children in conflict with the law are treated in a juvenile justice system separate from the adult system. The Committee goes on to say that children's physical and psychological development and their emotional and educational needs justify this different treatment, and that the juvenile justice system needs to ensure that all the child's rights under the UNCRC are being met.¹

A comprehensive juvenile justice policy requires:

- Prevention of offending
- Out of court interventions
- Fair trials for those who go to court
- Custodial provision only as a measure of last resort
- Rehabilitation and reintegration

All interventions must be designed to address the needs, and delivered in the best interests of the child.

In 2008, the UN Committee on the Rights of the Child highlighted its concern about a number of areas relating to children in contact with the criminal justice system in the UK. Among these, it recommended that the UK Government:

- Implement international standards of juvenile justice
- Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children in custody
- Raise the minimum age of criminal responsibility
- Develop a range of alternative measures to custody
- Place in statute the principle of using custody as a measure of last resort and for the shortest possible period of time
- Ensure that children in conflict with the law are always dealt with in the juvenile justice system
- Adopt measures to protect the rights and interests of child victims or witnesses of crime

There are four general principles, which underpin each of the specific rights outlined in the rest of the Convention:

- Article 2 - children should not be discriminated against in the enjoyment of their rights
- Article 3 - the child's best interests should take precedence in every decision and action taken relating to a child
- Article 6 - children have a right to life and develop to their full potential
- Article 12 - children have a right to express their views and have them given due weight

What progress have we made?

There is no definitive list of indicators which determines whether or not children enjoy their rights. This section presents indicators which have been used to illustrate particular rights issues facing children in England, and is based on a combination of official statistics, published research and additional material gathered through Freedom of Information requests. In addition, it summarises significant laws or policies which affect children's human rights.

Context

Overall levels of youth offending and the number of children reporting they are victims of crime have both fallen sharply since 2008, when the UK Government last reported to the Committee on the Rights of the Child. As the overall rates of offending have fallen, the children who remain in the system tend to be those with the most complex needs, requiring higher levels of support. The majority of young people who offend commit minor offences.

Age of criminal responsibility

The age of criminal responsibility is the point at which a child can be legally prosecuted for a crime. In England, children can be criminalised from the age of 10. The UN Committee on the Rights of the Child has consistently recommended that the UK Government should increase the minimum age of criminal responsibility and, instead, implement a welfare-based and child-rights oriented approach to children's problematic behaviour, that prevents them from entering the criminal justice system. The UK Government has refused: *'The UK Government believes that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held accountable for their actions.'*²

First time entrants to the youth justice system

The UN Committee on the Rights of the Child recognises that children should not be inappropriately criminalised. Contact with the criminal justice system can be harmful for children, and evidence suggests that formal contact with criminal justice agencies can increase the risk of reoffending. It is important to look at the number of children who are entering the criminal justice system for the first time because children who have not previously been involved should, where possible, be diverted from that system and dealt with through other means.

The numbers and proportion of young people being arrested, and the numbers entering the youth justice system have fallen since 2008-09. A national target to reduce the number of first time entrants to the youth justice system was introduced in 2008 and has remained in place since. However, first time entrants still do form a sizeable proportion of those who come into contact with the youth justice system - 38% in 2012-13. Reducing the number of these children will have a significant impact on the total number of children subject to criminal sanctions.

	2008-09	2012-13
Arrests	235,625 17% of all arrests ³	126,809 11.8% of all arrests ⁴
First time entrants into the youth justice system	79,260 ⁵	27,854 ⁶

Diversion and out of court disposals

Children in conflict with the law have the right to be treated in a way that promotes their rehabilitation, in most cases this means dealing with them outside of the criminal justice system. However, children diverted from the system must understand and freely agree to what is being proposed; be given the opportunity to seek legal or other advice; and have no criminal record as a result of the "diversion".

In England, "diversion" can refer to police diverting children from the youth justice system to more suitable support which could involve employment, mental health services, family support, social care, substance misuse or special educational need services – informal diversion. It can also refer to diversion from court through formal pre-court mechanisms i.e. cautions. The availability of these programmes varies from police force to police force, and local area to local area - and the use of informal diversion is not systematically recorded by the police or in Youth Justice Board statistics. However, it is likely that these non-criminal alternatives have played a part in lowering the numbers of children entering the youth justice system.⁷ This is to be welcomed.

2 HM Government (2014) The fifth periodic report to the UN Committee on the Rights of the Child: United Kingdom. <http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/The%20UK's%20Fifth%20Periodic%20Review%20Report%20on%20the%20UNCRC.pdf>

3 Home Office (2011) Police powers and procedures England and Wales 2009/10. Table 1.02. <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-2009-to-2010>

4 Home Office (2014) Police powers and procedures England and Wales 2012 to 2013. Table A_03. <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-2012-to-2013/police-powers-and-procedures-england-and-wales-2012-to-2013#arrests>

5 Youth Justice Board (2010) Youth justice annual workload data 2008/9, England and Wales

6 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales

7 Ibid.

However, the right to have no criminal record as a result of diversion is not being met. Formal diversions, which are recorded, have significant implications. For example, cautions will appear on a child's record when they are being checked for Disclosure and Barring Service purposes,⁸ which could affect their chances of future employment in some professions, undermining a child's chance of rehabilitation.

In April 2013, the youth caution replaced reprimands and final warnings for young people. Previously, police could deal with only two offences by way of a pre-court disposal before being required to prosecute a child. Under the new system, an unlimited number of cautions can be issued. Since 2008-09, the numbers of out of court disposals have fallen, but have not fallen as quickly as the rate at which children enter the criminal justice system. This suggests that a higher proportion of children are dealt with via pre-court disposals.

OUT OF COURT DISPOSALS	2008-09	2012-13
Number of reprimands/final warnings given to children 10-17 years-old	75,128	30,778

Treatment by the police

Children's rights mean that all those under-18 must be treated as children when in contact with the criminal justice system. This means they should be kept separate from adults, their parents or another appropriate adult should be contacted, and they should not spend the night in police accommodation. An anomaly means that 17 year-olds are not treated as children in many respects – they will not be diverted out of police custody to local authority accommodation over night, their parents will not be present during strip-searching and, until recently, their parent or another appropriate adult would not even be contacted. An inquiry by a cross-party group of parliamentarians found that many police stations do not have separate cells for children.⁹

See the chapter on Civil Liberties for information in relation to the police use of stop and search, strip-searching and Tasers on children.

See the chapter on Health for information in relation to police contact with children who are mentally ill.

The courts

The UNCRC says that children should be dealt with in a discrete justice system, adapted to their circumstances and needs, in recognition of the fact that they are more vulnerable than, less culpable than and have different needs and capacities from adults. In its General Comment on juvenile justice, the UN Committee on the Rights of the Child recommends that all those working with children in the criminal justice system should be trained in child development and in the particular needs of vulnerable children.¹⁰ Children have a right to be heard and/or represented in any judicial or administrative proceedings. The way in which court proceedings are conducted should be adapted so children can effectively participate and understand the discussions and decisions being made.

England and Wales introduced a discrete juvenile justice system in 1908, and the current system was introduced under the Crime and Disorder Act 1998. Local Youth Offending Teams (YOTs) were established in 2000. The vast majority of cases involving children are heard in the youth court. They are presided over by a panel of three specially trained lay magistrates - members of the public – or by professional district judges. Proceedings are intended to be relatively informal, hearings are closed to the public and there is a presumption that reporting restrictions should apply. More serious offences - grave crimes – are heard in the Crown Court where there are no automatic reporting restrictions protecting the child's privacy. Children also appear in the Crown Court when they are co-defendants with adults. Proceedings in Crown Court are more formal, and ill-adapted to a child's level of understanding and maturity.

8 Lord Carlile of Berriew, Chair, and others (2014) *Independent parliamentarians' inquiry into the operation and effectiveness of the youth court*, p.13. London: National Children's Bureau. http://www.ncb.org.uk/media/1148432/independent_parliamentarians_inquiry_into_the_operation_and_effectiveness_of_the_youth_court.pdf

9 All Party Parliamentary Group for Children (2014) "It's all about trust": Building good relationships between children and the police

10 UN Committee on the Rights of the Child (2007) *Children's rights in juvenile justice*

A cross-party group of parliamentarians published an independent inquiry into the youth court in 2014, in response to concerns that criminal courts are not an effective means of responding to youth offending.¹¹ It found:

- Child defendants, families, victims and witnesses are having to travel longer distances to court hearings, often at considerable cost
- Youth court closures and opening hours have led to more children appearing in adult magistrates courts
- Those appearing in adult court are sharing transport, custody suites and waiting rooms with adult defendants
- Too many criminal justice practitioners, including Crown Court judges and defence lawyers, have no training in working with young people, and even youth court judges are spending more time in adult courts, resulting in a loss of specialism. This can mean lawyers fail to take opportunities to divert children out of the court and to identify where a child is unable to participate in proceedings
- Youth courts are seeing more children with complex needs, and are ill-equipped to identify or address these
- Too many child defendants are unable to understand court language or follow the proceedings in which they are involved. There are inadequate mechanisms in the youth court if a child is unable to effectively participate. For example, while vulnerable child witnesses have the right to an intermediary, vulnerable child defendants do not.
- Too many child defendants are appearing in court without a parent present, and children in care have no social worker accompanying and supporting them
- Fewer YOTs include secondees from children's services, education, health and housing, leading to a diminution in integrated working and failure to address the multiple needs of the child

Some of these findings - children appearing in adult court; contact with adult defendants; the failure to ensure all those involved in children's cases have the appropriate training; children being unable to understand what is happening in court - are clear breaches of the UNCRC.

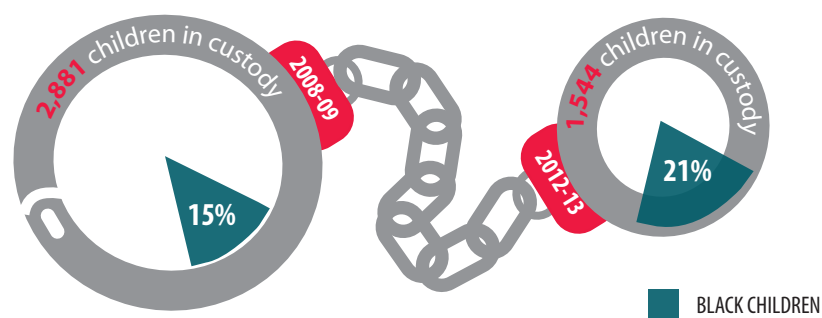
See also Civil Liberties in relation to children's privacy rights in court.

Sentencing

The sentences given to children in contact with the criminal justice system should be proportionate, and should promote their reintegration into society. The UNCRC states that children detained in custody must be separated from adults, and that custody should only be used as a last resort for children. The total number of sentences given to children has fallen as the overall number of children in the youth justice system has fallen, but the fall in those sentenced to custody has fallen at a faster rate. There has, therefore, been a significant reduction in the number of children in custody.

However, black children are hugely over-represented in the custody population, and this disproportionality has increased as overall custody numbers have gone down.

NUMBER OF CHILDREN IN PRISON CUSTODY (AVERAGE)



Changes under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act were intended to ensure that children are only remanded to custody as a last resort, but have not brought down the number of children in prison on remand as much as had been hoped. Sixty percent of those children placed in custody on remand were not later given a custodial sentence.

CUSTODIAL SENTENCES	2008-09	2012-13
Custodial sentences	6,720	2,780
Remanded to custody	5,504 (12% of total remands)	1,900 (8% of total remands) 61% were not given a custodial sentence after their remand episode 22 % of average population were on remand
Average number in custody	2,881	1,544
Total custodial population	96% male 66% white 15% black	95% male 59% white 21% black

HMI Prisons undertakes an annual survey of boys in YOIs,¹² which provides some insights into the levels of need they bring in with them; the kinds of issues they face whilst inside; and their concerns about the support available following release. The 2012-13 survey shows:

- 33% had been in local authority care
- Nine out of 10 had been excluded from school, and more than one-third had not been at school since they were 14
- 19% said they had emotional or mental health problems
- 10% said they had a problem with alcohol
- 34% said they had a problem with drugs

A report by the Children's Commissioner found that between 23% and 32% of the children in custody have a generalised learning disability, compared with between two and four percent in the general population.¹³ In a report on the health and human rights of children in custody, the British Medical Association said:

Every child in the UK is born with an equal right to the conditions necessary for good physical, psychological, and emotional health and wellbeing. Tragically, this is not always realised, not least for the thousands of children and young people who come into contact with the criminal justice system in the UK every year. Children and young people who offend are amongst the most vulnerable and disadvantaged members of our society.¹⁴

Children's prisons

Where children are in custody, they should be detained in an establishment which is small and home-like which is close to family and friends, provided with the support and services they need and kept safe and well.

There are three types of custodial establishments in England and Wales that contain young people under 18: young offender institutions (YOIs), secure training centres (STCs), and secure children's homes (SCHs).

¹² Kennedy, E (2013) Children and young people in custody 2012-13. HMI Prisons/Youth Justice Board. <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/summaries-of-juvenile-survey-responses/hmip-children-young-people-in-custody-12-13.pdf>

¹³ Office of the Children's Commissioner (2012) Nobody made the connection: the prevalence of neurodisability in young people who offend

¹⁴ British Medical Association (2014) Young lives behind bars: The health and human rights of your people detained in the criminal justice system

YOIs are run under Prison Service standards and rules, and there are seven in England and Wales. There are four STCs in England which are run by private companies; one STC (Rainsbrook) has a mother and baby unit. There are nine SCHs which take children sentenced to custody. These are run by local authorities. Experts agree that SCHs, which are smaller, offer more intensive support and allow better relationships to develop between children and staff, are better suited to meeting the needs of children in custody. The majority of young people sentenced to custody are 17 year-old males, most of whom are placed in YOIs. Younger or more vulnerable children, and girls, are currently placed in either STCs or SCHs. Children are not always in separate facilities from adults – Hindley Prison is a “split site” prison, holding both older boys aged 15-17 years-old and 18-21 year-olds, in separate units.

The government is proposing a new type of custodial institution, called a Secure College, the first of which is due to open in 2017. It will have 320 beds, and hold girls and boys between 12 and 17 years of age. The UN Rules for the Protection of Juveniles Deprived of their Liberty say that secure institutions for children should be small-scale and *‘the number of juveniles detained in closed facilities should be small enough to enable individual treatment’*.¹⁵ The Joint Committee on Human Rights has expressed serious reservations about the compatibility of the government’s plans with international human rights standards, and raised concerns about the failure to assess the impact on girls and younger children of being detained with so many older boys, the implications for children’s family rights of being detained in an institution far away from home and the proposals for use of force in secure colleges.¹⁶

PROPORTION OF PLACEMENTS IN CUSTODIAL ESTABLISHMENTS	2008-09	2012-13
Young offender institutions (YOIs)	85%	74%
Secure training centres (STCs)	8%	16%
Secure children’s homes (SCHs)	7%	9%

Conditions in prison

Under the UNCRC, children can be deprived of their liberty as a last resort, but do not lose their other human rights, such as food, education, health care, religious observance and family contact. Children should not be deprived of these basic rights by way of punishment when in prison.

Family and carers

Every child deprived of liberty has the right to maintain contact with his or her family and/or carers through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his or her family, unless this is not in their best interests.

Distance from home is one of a range of factors that is considered by placement officers in the Youth Justice Board when deciding where children should be held. However, the size of the custodial estate is shrinking as the numbers sentenced to custody diminish, which means that more children are likely to be placed further away from home. On 1 March 2013, the average distance from home for children in custody was 45.6 miles. If secure colleges go ahead, children will be placed in fewer larger establishments which are more likely to be further from home. The Joint Committee for Human Rights commented on this point, citing the government’s failure to take account of international standards that advocate decentralised institutions *‘to allow for children to continue having access to their families and their communities’*.¹⁷

15 UN General Assembly (1990) United Nations rules for the protection of juveniles deprived of their liberty. Rule 30. <http://www.un.org/documents/ga/res/45/a45r113.htm>

16 Joint Committee on Human Rights (2014) Legislative scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill. Fourteenth report of session 2013-14. <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf>

17 Joint Committee on Human Rights (2014) op cit. para 1.53

In the HMIP survey of Young Offender Institutions, 79% of young men said they received visits, but only 37% reported that they had one or more visits from family or friends each week. Young women in custody were often detained in units which were a long way from home, and had problems contacting family on arrival. Forty-four percent reported having one or more visits per week.

Family visiting rights form part of the system of rewards and sanctions in place in children's prisons. If children are put on a "basic regime", because of poor behaviour, they will have the right to fewer family visits than others.

Education

Like all other children, children in custody have an right to education. Children in YOIs receive only 12 hours of education each week,¹⁸ STCs provide 25 hours each week and children in SCHs have 30 hours of education each week.¹⁹ There are, however, proposals to double the number of hours of education in YOIs.

Health

In a recent report, the BMA notes: *'Unlike patients in the community, prisoners are reliant on prison staff for almost every aspect of their day to day life, and accordingly, have an extremely limited ability to influence the various factors which affect their health'*.²⁰ The report notes that there is a lack of data about the health needs of children in the secure estate, but that which does exist suggests the children have significant health needs. The systems in place for accessing treatment, including the requirement for children to self-refer via a form which must be passed to non-medical staff and the regime which penalises those who miss education for doctor's appointments, may hinder children's access to health services and undermine confidentiality. The report notes that children's mental health needs are not being met.

The use of control and force in the secure estate

The UN Committee on the Rights of the Child has been clear that *'[a]ny disciplinary measure must be consistent with upholding the [child's] inherent dignity'* and that the following disciplinary measures must be strictly forbidden: *'corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned'*.²¹ It is also clear that: *'Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted'*.²² The UN Special Rapporteur on Torture has said that segregation should never be applied to children.²³

Although total numbers have gone down, with the exception of single separation incidents, proportionally, the use of force, levels of violence and rates of self-harm have risen.²⁴

- The number of Restrictive Physical Interventions (RPIs) per 100 young people increased by 45% between 2009-10 and 2012-13 (17.6 RPIs per 100 young people to 25.6 in 2012-13). 170 resulted in injury and in 5% of cases, this was a serious injury requiring hospital treatment
- The number of self-harm incidents per 100 young people increased by 5% in 2012-13 compared to 2009-10 (5.3 incidents per 100 young people to 5.5 incidents per 100 young people in 2012-13). Young women are more likely to self-harm than young men
- The number of assaults per 100 young people in custody increased by 22% between 2009-10 and 2012-13 (9.1 assaults per 100 young people compared to 11.1 in 2012-13)
- However, the number of single separation incidents per 100 young people in custody in STCs and SCHs decreased by 55% from 2009-10 to 2012-13
- Responses to a Freedom of Information Request submitted by CRAE suggested that there is limited data collected in relation to separation and segregation incidents in YOIs. However, the data provided showed that almost 10,000 children were segregated in YOIs between April 2013 and March 2014
- The use of strip-searching as a matter of routine, rather than in response to a suspicion, has been brought to an end in children's prisons, a huge step-forward for children's rights

18 Ministry of Justice (2014) Transforming Youth Custody: Government response to the consultation

19 Ministry of Justice (2014) Transforming Youth Custody

20 British Medical Association (2014) Young lives behind bars: The health and human rights of your people detained in the criminal justice system

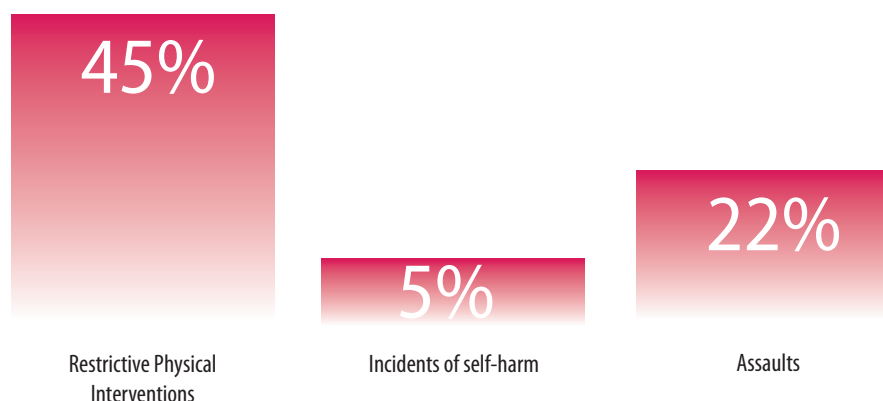
21 UN Committee on the Rights of the Child (2007) Children's rights in juvenile justice

22 Ibid

23 Special Rapporteur on Torture (2011) Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhumane or degrading treatment. A/66/268, para.86

24 Youth Justice Board (2014) op cit.

PERCENTAGE INCREASES IN PRISON ISSUES BETWEEN 2009-10 AND 2012-13



(Behaviour management data changed in 2008, so we are using 2009-10 figures to ensure comparability)

The new system of restraint for use in children's prisons, which is being rolled out across STCs and YOIs, still includes techniques which involve the deliberate infliction of pain on children, and one technique – the head hold technique - which was considered dangerous by the independent panel which reviewed the system.²⁵

In a recent report, the British Medical Association highlighted:

*The need to address, as a priority, practices in the secure estate – including the use of restraint, force and segregation – which are detrimental to health and wellbeing. Longer term, we call upon the government to carry out an in-depth review of the youth secure estate with a view to exploring more welfare-based alternatives to custodial detention.*²⁶

Keeping children safe and well

The UN Rules for the Protection of Juveniles Deprived of their Liberty is clear that the state must keep children in prison safe and promote their physical and mental well-being.²⁷ Children should only be detained in conditions which take full account of their particular needs, circumstances and requirements.²⁸ In 2008, the UN Committee on the Rights of the Child recommended that the government introduce automatic, independent and public reviews of any unexpected death or serious injury involving children in custody.²⁹

Since 2008, three young men have died in custody: 17 year-old Ryan Clark, 17 year-old Jake Hardy, and 15 year-old Alex Kelly - two of them on remand; two were victims of bullying. Two of the boys had been in public care, and one had a statement of special educational needs for ADHD.³⁰ All these deaths occurred in YOIs.

In February 2014, the Justice Secretary announced an independent inquiry into deaths in prison, but decided that this would not include the deaths of young people under the age of 18.³¹ Inquest has challenged this decision, arguing that '*current mechanisms do not allow for collective lessons to be drawn from an aggregated understanding based on multiple cases*.'³²

The Youth Justice Board has published its own "lessons learned" report on child deaths in custody,³³ in which it identifies areas where improvement is needed: support and outcomes for children in care; effective practice to tackle bullying and violence in the secure estate; information sharing with professionals and the families of young people in custody; better identification of those at risk of self-harm or suicide; and prioritising safety in the new

25 Restraint Advisory Board (2011) Assessment of Minimising and Managing Physical Restraint for children in the secure estate

26 British Medical Association (2014) op cit.

27 UN General Assembly (1990), Rule 1

28 Ibid, Rule 28

29 UN Committee on the Rights of the Child (2008) Concluding observations: United Kingdom of Great Britain and Northern Ireland

30 Prisons and Probation Ombudsman for England and Wales (2013) Child deaths: learning from PPO investigations into three recent deaths of children in custody Learning lessons bulletin, March 2013. http://www.ppo.gov.uk/wp-content/uploads/2014/07/LLB_FIL_03_Child_deaths.pdf#view=FitH

31 Grayling, C (2014) Deaths in custody. House of Commons Hansard, 6 Feb 2014. Col.35-36WS. <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140206/wmstext/140206m0001.htm#1402065900008>

32 Inquest (2014) The deaths of children in custody: the need for an independent review, p.4. http://inquest.gn.apc.org/pdf/briefings/INQUEST_Briefing_on_deaths_of_children_and_young_people_in_prison_JAN_2014.pdf

33 Youth Justice Board (2014) Deaths of children in custody: action taken, lessons learned. <http://www.justice.gov.uk/downloads/youth-justice/monitoring-performance/deaths-children-in-custody.pdf>

model of custodial provision - the Secure College. However, it fails to address the underlying causes that lead to serious injury and death in custody.

In response to questions about their safety and wellbeing as part of HMI Prisons' annual survey in YOIs:³⁴

- 25% said they had no one to turn to with a problem
- 30% said they felt unsafe at their establishment
- 22% said they had been victimised by other young men, and 22% said they had been victimised by staff
- 30% said they had been physically restrained
- 74% said most staff treated them with respect

Forty-five percent of those surveyed were from a black and minority ethnic background. They had more negative perceptions of almost all areas of their treatment and conditions. Thirty-six percent reported having been physically restrained; 6% felt they had been the victims of racism. Twenty-two percent of those surveyed were Muslim. Only 58% said staff treated them with respect, and 35% reported feeling unsafe.

A higher proportion of young people who had been in care reported substance and mental health problems, as well as victimisation by other young people.

Outcomes for young people who have been through the youth justice system

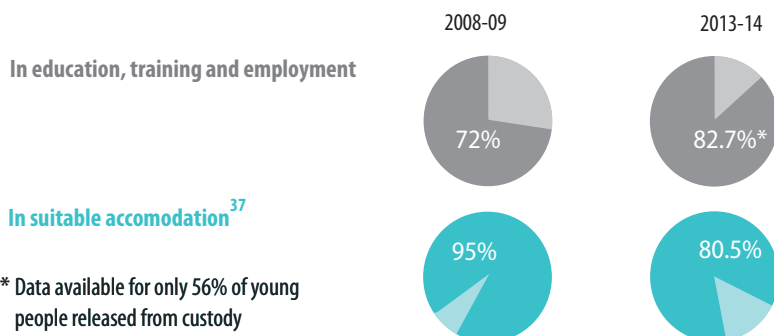
In its General Comment on juvenile justice, the UN Committee on the Rights of the Child recommends that children in conflict with the law should be dealt with in a way that promotes reintegration - '*all actions taken should support the child becoming a full, constructive member of his or her society*'.³⁵

Despite wanting to stop offending on release, the majority of young people are worried about their prospects after they return to the community, in particular being able to get a job or knowing where to go to get help with the problems they face. When asked by HMI Prisons what would prevent them getting into further trouble,³⁶ they said:

- Getting a job (46%)
- Having a partner (30%)
- Having something else to do that was not criminal (28%)
- The sentence they were serving (28%)
- Getting into school or college (28%)

Civil legal aid is no longer available for cases relating to housing, education, welfare, all of which are crucial aspects of a child's resettlement. This undermines children's ability to challenge poor decision-making in relation to their resettlement.

OUTCOME AT THE END OF SENTENCES



34 Kennedy, E (2013) Children and young people in custody 2012-13. HMI Prisons/Youth Justice Board. <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/summaries-of-juvenile-survey-responses/hmip-children-young-people-in-custody-12-13.pdf>

35 UN Committee on the Rights of the Child (2007), para.29.

36 Kennedy (2013) op cit.

37 "Suitable accommodation" is accommodation, which, so far as reasonably practicable, is suitable for the child in light of his/her needs, including his/her health needs. The authority should have satisfied itself as to the character and suitability of the landlord or other provider; ensured the accommodation complies with health and safety requirements related to rented accommodation; and that the authority has so far as reasonably practicable, taken into account the child's wishes and feelings; and education, training or employment needs.

Recommendations

- Raise the minimum age of criminal responsibility
- Ensure children do not have a criminal record as a result of a caution and allow children to wipe the slate clean after their sentence
- Family should be involved in children's sentence planning
- Introduce a system for recording the number of children who are coming into contact with the police and are dealt with by way of community resolution (who previously would not have had anything recorded against them)
- Ensure no child is held overnight in police custody
- Ensure that rules are changed so that 17 year-olds coming into contact with the police have the same rights as other children
- Bring in rules giving magistrates discretion to decide that children are unfit to plead
- Ensure child defendants have a right to an intermediary in court proceedings
- Raise the custody threshold
- Detain children only in small, home-like facilities, offering intensive and holistic therapeutic support (not Secure Colleges)
- Do not allow painful restraint techniques to be used on children, and only allow force for the purposes of preventing harm to the child or others
- Ensure that children's prison visits are not part of the system of rewards and sanctions to be earned or taken away
- Ensure that solitary confinement of children is banned
- Carry out an inquiry into the underlying causes of deaths of children in custody and institute urgent measures to address these
- Ensure children can access legal aid to challenge their treatment in custody and resettlement decisions

CRAE believes that human rights are a powerful tool in making life better for children. We're one charity working with over 100 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world. Our vision is a country that values and upholds every child's human rights.

We fight for children's rights by listening to what children say, carrying out research to understand what children are going through, and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

CRAE has produced an annual State of Children's Rights in England report since 2003. This report is one chapter from the full report State of Children's Rights in England 2014.

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