

# The use of custody for children and young people

Policy position paper



changing lives  
reducing crime

England and Wales lock up more children and young people through the youth justice system than almost any other Western industrialised society. Despite the development of intensive alternatives to custody provision and a considerable fall in the levels of detected youth crime, the number of children sentenced to custody rose sharply during the 1990s and has remained stubbornly high for most of the subsequent period.

Custody is an expensive resource with a poor success rate; there is considerable evidence to suggest that for many children incarceration actually increases the risk of recidivism. Reducing reliance on the secure estate would free up resources to develop effective programmes to work with children in trouble in the community as well as to improve provision for the much smaller number of children who do need to remain in custody.

During the early months of 2009, the population of the secure estate fell for the first time since 2000 – almost certainly a consequence of a falling youth court population. Nacro believes that this provides an opportunity to both look at how to sustain this drop in numbers and to improve custodial provision for those children who need to be in custody.

## Nacro's beliefs

- 1** Custody is an ineffective way of tackling youth crime. It does not address the root causes of youth crime and has a poor record in terms of reconviction: more than three quarters of children released from detention are reconvicted within one year.
- 2** It is important that every area offers (and makes use of) a full range of credible alternative provisions to custody for children since areas which make a higher use of pre-court diversion and lower level court disposals tend to have low rates of custody and vice versa. There is currently a significant variation in the rate of custody between different areas which cannot be accounted for in terms of the local volume and pattern of the crime committed by young people.
- 3** Custody should be reserved for those whose offending is so serious that they pose a serious risk to the public. The current level of youth imprisonment constitutes a breach of the requirement in the United Nations Convention on the Rights of the Child that custody be used as a last resort, and domestic legislation should be changed to reflect the convention.
- 4** Current custody levels reflect a broader punitive political climate so, while legislative change is important, significant reductions in the use of custody are also dependent on a substantial change in the way politicians and the media address the issue of youth crime. Given that custody has a poor record in terms of reconviction and can actually increase the risk of recidivism, a substantial fall in the use of imprisonment could be achieved without any adverse impact on either the risk to the public or the level of youth crime.
- 5** Young people who do need to be held in custody (because they represent a serious risk of harm to the public) should be placed in secure children's homes designed for the purposes of the care of vulnerable children. Children in custody are 16 times as likely to kill themselves as children in the community, and young offender institutions ill equipped to address the needs of those below the age of 18 should be decommissioned.

## Facts and figures

- 1 Reoffending following release from custody is inversely related to age:<sup>1</sup> younger children are more likely to be reconvicted than older teenagers,<sup>2</sup> who in turn are more likely to be reconvicted than adults.<sup>3</sup>
- 2 In the areas that make the highest use of custody, up to one in four children convicted in court are deprived of their liberty; the equivalent figures in areas with the lowest use of custody are one in fifty.<sup>4</sup>
- 3 There are a large number of children who are detained within the secure estate who do not pose a serious risk to the public.<sup>5</sup> Currently, 12% of children aged 16 to 17 convicted of non-violent offences are given custodial sentences, while more than one third of younger children below the age of 15 deprived of their liberty do not appear to meet the statutory criteria.<sup>6</sup>
- 4 Between 1997 and 2007, the average length of custody imposed in the youth court for offences of theft and handling stolen goods rose from 3.2 to 5.7 months.<sup>7</sup> Although there are difficulties of comparison, England and Wales locks up four times more under 18s than France, ten times more than Spain and 100 times more than Finland.<sup>8</sup>
- 5 In February 2007, 40% of the population of the secure estate for children and young people were classified as vulnerable.<sup>9</sup> During 2006, there were 6,044 assaults in YOIs<sup>10</sup> and one third of children have no educational provision on entering those establishments.<sup>11</sup>

## Context

Between 1992 and 2002, the number of children sentenced to custody rose by more than 85% while the level of detected youth crime actually fell by more than a quarter. Since then, although custodial sentencing has begun to fall, the population of the secure estate for children and young people has remained relatively stable due to increased sentence lengths and rising levels of children being remanded to the secure estate.

The expansion in the use of custody is associated with what is sometimes referred to as the punitive turn in the early 1990s, which led to changes in the treatment of children in trouble with the law across the board. The punitive turn had a number of elements: an increased politicisation of youth crime, with the main political parties vying to appear the toughest on law and order; tougher decision-making by courts and other agencies working in the youth justice system; and shifts in legislation which loosened the criteria for custody and encouraged harsher sentencing for offending that did not meet the custody threshold.

The secure estate for children and young people is comprised of three types of establishment: young offender institutions managed by the prison service (YOIs); secure training centres; and secure children's homes. The unit cost for each type of accommodation varies widely. While a placement in a YOI costs approximately a quarter of that of a place in a secure children's home, this reflects the fact that YOIs are significantly larger, have much lower staff to child ratios and inferior access to other facilities and services by comparison. Yet 85% of young people are currently detained in prison service accommodation and the Youth Justice Board currently spends more than two thirds of its annual budget on placements in the secure estate.

# Recommendations: the way forward

## An evidence-based approach

The attitude of the government and the media towards youth crime should be based on evidence of effective practice rather than on a media-driven alarmist 'get tough' attitude to children in trouble. In its most recent report on the United Kingdom, the UN Committee on the Rights of the Child was extremely critical of both the government and the media for encouraging 'a general climate of intolerance and negative public attitudes towards children, especially adolescents'.

## Use alternatives to custody

There needs to be more emphasis on pre-court diversion since reducing the court population is associated with lower levels of custody. Similarly, practitioners should work to ensure that responses to children in the court system are governed by the principle of minimum necessary intervention to ensure that full use is made of community-based disposals.

## Change the legislation

The statutory threshold for custody should be amended to reflect the requirement in the UN Convention on the Rights of the Child that custody only be used as a last resort. In practice this should mean that:

- courts are precluded from locking up children below the age of 16, other than those who have committed 'grave' crimes
- courts can only impose custody on children above the age of 16 where they consider that their offending poses a risk of significant harm to the public.

## Reverse the policy on accommodation

As the number of children in the secure estate falls, young offender institutions should be closed and young people increasingly accommodated within secure children's homes. The current policy of decommissioning the latter should be reversed.

## Develop a broader response to children in trouble

Reducing custody is not simply about providing robust community alternatives since the level of youth imprisonment depends on other factors, including how many children are brought into the court system in the first place and how quickly they are processed through the sentencing tariff. Local areas should therefore develop broader strategies to reduce the use of custody that focus on maximising decriminalisation, diversion from court and lower level court orders.

## Sources

- 1 Nacro (2003) *Counting the Cost: Reducing child imprisonment* London: Nacro
- 2 Hansard, House of Commons, column 898W, 1 April 2008
- 3 Ministry of Justice (2009) *Reoffending of Adults: Results from the 2007 cohort* London: Ministry of Justice
- 4 Youth Justice Board (2009) *Youth Justice Annual Workload Data – Disposals regionally 2007/2008* London: Youth Justice Board
- 5 Hansard, House of Commons, column 2276W, 16 September 2009
- 6 Glover J and Hibbert P (2009) *Locking up or Giving up: Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised* Ilford: Barnardo's
- 7 Ministry of Justice (2009) *Sentencing Statistics 2007: England and Wales* London: Ministry of Justice
- 8 Nacro (2003) *A Failure of Justice: Reducing child imprisonment* London: Nacro
- 9 Hansard, House of Commons, column 1652W, 28 March 2007
- 10 Hansard, House of Commons, column 490W, 28 November 2007
- 11 Parke S (2009) *Children and Young People in Custody 2006-2008* London: HM Inspectorate of Prisons

