

Youth Justice in England & Wales: Past, Present & Future¹

Key words: youth justice; England & Wales; Japan; juvenile; young adult

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Abstract

This article provides interested Japanese readers with an understanding of the key elements of youth justice in England and Wales. It outlines the historical development of a separate justice system for young offenders, including the flux between welfarist and justice-based approaches, the decline in youth crime and incarceration and indicators of how a new, more decentralised approach might mark a return of social responsibility for youth offending, rather than responsabilisation of the young offender. It concludes by suggesting that there is a need for a new treatment category for young adults, those between 18-25 years of age, in both England and Wales, and in Japan.

Introduction

Most youth justice initiatives in England and Wales (E&W) can be placed along a shifting continuum between welfare and justice approaches. As a consequence, over more the 2 centuries, significant historical events revolve around attempts to: reform criminal justice, replace it with non-justice approaches, and/or divert ‘children’, ‘young offenders’, or young people (collectively referred to as ‘juveniles’² in Japan), from criminal justice. Resettlement after a period of custody, often referred to as transitions internationally (see Ellis, Kyo and O’Neill, 2018, for Japan, and O’Neill, 2018 generally), is also a recurring theme.

This article is aimed at providing Japanese readers with an understanding of youth justice in E&W by utilising in 3 main sections. First, the past, summarises the context and development of E&W youth justice and familiarising the reader with key terms of concepts. Second, the present, focuses in more detail on more recent developments and the current youth justice processes and outcomes. Third, the future, outlines what seem to be the most likely developments and any issues associated with these.

The past: Historical context and development of youth justice in E&W 1792-1902³

Table 1 summarises the earliest development of youth justice in England and Wales: from the first action by

charities, at the end of the 18th century, to treat children differently to adults; through first legislation, in the mid-19th century to separate ‘juveniles’ from adults in the courts: through to the beginning of the 20th century where separate legislation for young people starts to result in separate custodial institutions for ‘youthful offenders’.

Table 1: Key milestones in the development of youth justice in England and Wales, 1792-1902

Year	Milestone
1792	Royal Philanthropic Society opened London centre to prevent transportation ⁴ of children.
1797	Royal Philanthropic Society starts a juvenile resettlement scheme.
1823	Separate prison ships/hulks ⁵ introduced for juvenile offenders - closed in 1846 as ‘harsh and cruel’.
1838	Parkhurst Prison opened exclusively for juveniles. Also criticised by prison reformers as harsh and ‘re-rolled’ for adults in 1864.
1847	Juvenile Offenders Act - first to distinguish between adults and children under-14-year-old whose trials were now heard in magistrates’ court (lower tier) for lesser offences.
1854	Reformatory School Act - Inspector of Prisons approved on voluntary basis. Based on Victorian Christian homes to save troubled children from a fallen life (Parens Patrie and Status Offences)
1854	Youthful Offenders Act - First alternative to prisons for under-16-year-olds, sentence of reformatory for 2-5 years, first 14 days in prison. 1893 & 1899 Reformatory Schools Acts eventually abolish prison element.
1901	Youthful Offenders Act permits remand homes for children who are committed for trial. Young people may be held in remand homes or in workhouses instead of being kept in adult prisons.
1902	First borstal ⁶ institution opened for young males in Kent - strict regime of: <ul style="list-style-type: none"> • physical drill • training • education

Establishing a separate youth justice system

It is generally recognised that a separate youth justice ‘system’ began with the 1907 Probation of Offenders Act, which, established the probation service as an official criminal justice organisation, thereby allowing magistrates to sentence offenders for supervision in the community. It was explicitly aimed at replacing punishment for young offenders initially. The 1908 Children Act then established the first separate juvenile court (later than USA), focussing on both justice and more welfare-based disposals. Specifically, it abolished custody for children under 14-years-old and required the police to provide remand homes⁷. In the same year, the 1908 Prevention of Crime Act extended the use of borstals nationally for males between 16 and 20-years-old, serving indeterminate sentences between 1-3 years. Importantly, release also required a supervised licence resettlement period in community.

It took another 25 years before the next legislation was passed: the 1933 Children and Young Persons Act which is one of the clearest moves towards a welfare perspective for young offenders. The 1993 Act abolished

the death penalty for under 18-year-olds. It also raised the age of criminal responsibility (*sekinin*) to what now seems a very low 8-years-old. Home Office Approved Schools⁸ replaced reformatories and industrial schools, which along with the introduction of voluntary units for child offenders and those beyond parental control represented the same overlap between *parens patrie* and status offences that existed in all juvenile justice systems at the time (see Ellis and Kyo, 2017).

Post World War II: Welfare as priority

The period after the second world war until the early 1990s was, the most overtly welfarist period for youth justice in E&W. The 1948 Criminal Justice Act abolished committal to adult prisons for children under 17 years old and Detention Centres replaced court-imposed corporal punishment which was still in operation until that point. Non-custodial Attendance Centres were introduced for children under 12-years-old for specified daytime activities, but ‘short, sharp shock’ sentences were introduced for 14-20-year-olds. In 1959, the Carlton Approved School suffered extensive damage due to an inmate riot and the details of the regime there that came out of the inquiry damaged public confidence in the disposal. The inquiry recommended the use of more closed facilities for difficult children and in 1961, the Ingelby report recommended a greater focus on local authority welfare-based approaches, early intervention and support for the family. It also recommended in *sekinin* being raised from 8 to 12-years-old.

In reality, while the 1963 Children and Young Persons Act reacted by requiring local authorities to undertake preventative work with children and families at risk of offending, it only raised *sekinin* to 10-years old (which is actually the age of *sekinin* in 2018). 1964 saw the first Secure unit open and these were introduced specifically for children aged 10-18-years-old who had absconded from Open Approved Schools. In the same year, the Longford Report, referred to in a White Paper, recommended the abolition of the juvenile court and its replacement by a panel of experts, but this was rejected.

In 1967 the Court Lees Approved School was exposed in press for abusive use of corporal punishment and a Home Office inquiry found several similar scandals that further damaged public confidence. By 1969, the Children and Young Persons Act replaced Secure units and the scandal ridden Approved Schools with Local Authority Community Homes. It also introduced supervision orders and care orders for juveniles and provided for *sekinin* to be raised 14-years-old, but this was never implemented. 1971 also saw Youth Treatment Centres, opened with Department of Health, for young people who were considered too ‘disturbed’ for other custodial options. These were closed in 2002.

Over a decade later, the 1982 Criminal Justice Act combined youth Imprisonment and Borstals into Youth Custody Centres (YCCs) for offenders under 21-years-of age, a distinction separate to *sekinin* and an early recognition of the need for a separate category of ‘young people’, at least if custody was a sentencing option. YCCs were restricted to a last resort in this legislation. Specified activities were also introduced for Detention centres, but the short, sharp shock approach was retained. Following on the 1982 Act’s heels, Intermediate treatment and Intensive Probation were introduced by the Department of Health as welfare-based alternatives to custody for

children at a cost of £15 million and with 98 new diversionary projects by 1985. As a result, custody rates fell dramatically and the 1985 United Nations 'Beijing Rules' (UN Standard Minimum Rules for the Administration of Juvenile Justice) of child detention as a last resort was embedded .

The 1988 Criminal Justice Act was even more overtly welfarist and diversionary. It restricted the use of custody for children and provided specified activities as a statutory alternative to custody. Youth custody centres and Detention Centres were combined into Young Offender Institutions (YOIs) for offenders below 21-years of age. This was quickly followed by the 1989 Children Act which abolished care orders and supervision orders in criminal proceedings. It also established separate family proceedings courts so that for juvenile courts only dealt with young offenders. The 1989 UN Convention on the Rights also had an influence of subsequent legislation, especially Article 3 (children's best interests should always be a primary consideration) and Article 37 (limiting custody to the shortest possible length).

The addition of the 1990 'Riyadh Guidelines' to set standards for care in juvenile justice, presaged the 1991 Criminal Justice Act. Its impact on youth justice was to replace Juvenile Courts with Youth Courts, which then included 17 year-olds for the first time and raised the age for custodial sentences from 14 to 15-years old. It also introduced curfew orders for over 16-yearolds.

The present: 1993 changed everything

In the same year as Michael Howard declared 'Prison Works!' and its profound effects on the increased use of custodial sentences, there was also a signal offence that was to have a profound effect on government policy and practice youth justice. A two-year-old-boy, James Bulger, was murdered by two 10-year-old boys in Liverpool. The media and public backlash against young people hardened political attitudes to young offenders and media coverage was unrelenting, even to this day (see Carter, 2018). The 1993 Criminal Justice Act started to reverse the 1991 Act, with a greater focus on punitivism and a return to justice solutions over welfare. Tougher sentencing was brought in, with restrictions on offender history and offences while on bail, etc. lifted.

The 1994 Criminal Justice and Public Order Act quickly followed and there are echoes here of Japan in 2018 (see Ellis and Kyo, 2017) in that increasing *genbatsuka* allowed for and increases in the range of offences for which young people could be committed to Crown Court and effectively into the adult system. The length of potential custody was doubled, and Youth courts could use new custodial sentences for 12-14 year old persistent offenders.

The last significant development of the Conservative Government for youth justice was the 1996 Misspent Youth report, published by the Audit Commission. This criticised the youth justice system as too costly, inefficient and ineffective. It recommended greater interagency co-operation in national government and local practice. Whilst the Audit Commission report was understandably concerned with cost, the incoming New Labour government of 1997 effectively used it as a springboard for its 'No More Excuses' White Paper in November 1997.

Responsibilisation

New Labour's slogan of the 1997 election was 'Tough on crime, tough on the causes of crime', but its *More Excuses* White Paper is remembered mainly for its emphasis and impact on moving the youth justice agenda towards young offenders taking personal responsibility (effectively the end of *parens patrie* in E&W) and a focus system efficiency carried through from *Misspent Youth*. In short, New Labour ran with what were traditionally seen as Conservative values.

These themes were the core of the 1998 Crime and Disorder Act, whose principal aim for youth justice was the prevention of offending and reoffending. It established local multi-agency youth offending teams (YOTs) nationally, incorporating all of the professions that dealt with young offenders, including: social workers; probation officers; nurses; teachers and police officers (see Ellis and Boden 2005). Alongside, it also introduced a new range of disposals/sentence orders. These included the provisions for implementing the 1994 Act's Secure Training order, with half the sentence being served in custody and half in the community, due to a renewed emphasis on effective resettlement/transition. Secure training centres for 12 to 14 year olds were also introduced, re-emphasising the need for successful resettlement/transitions. The 1998 Act established Youth Justice Board (YJB) as a non-departmental (ie, not within the Home Office) agency responsible for monitoring and promoting good practice within the local YOTs, and which also took over responsibility for commissioning custodial places for young offenders on 2000. However, perhaps the most significant two changes introduced by the 1998 Act were the the justice focused abolition of *doli incapax* (ie, a child is not capable of distinguishing right from wrong and roughly equivalent to *sekinin*) for children between 10-14-years old⁹ and the controversial introduction of anti-social behaviour orders (ASBOs). The latter were civil court orders (where the burden of proof was lower than in the criminal courts) which were are disproportionately used against children and imposing restrictions for sub-criminal (status offences) behaviour, but a breach of and ASBO then became a criminal offence punishable by custody¹⁰.

Responsibility & diversion

The move away from *parens patrie* to responsibilisation and justice-orientated offences was attenuated in the 1999 Youth Justice and Criminal Evidence Act which introduced the diversion focused Referral Order for first-time offenders pleading guilty (eventually nationwide from 2002). This involved lay panels assessing the offence in place of courts and agreeing on contracts agreed with young offenders to emphasise restorative justice approaches.

The Youth Justice Board took firmer, centralised control over the local YOTS in 2000 by issuing the first National Standards¹¹ for youth justice. These defined the minimum required level of service provision, and crucially allowed central government funding of YOTs to be made conditional on the Standard's key performance targets. In the same year, the Detention and Training Order replaced either simple custody in Young Offender Institutions (YOIs) or Secure Training Orders (STOs). Sentences of four to 24 months were then served half in

detention and half on community licence, requiring YOTS to coordinate resettlement/transition support. At the same time Youth Inclusion Programmes¹² (YIPs) were introduced in response to demands from deprived areas to reduce youth crime and anti-social behaviour among young people (8-17-year-olds) in their area. YIPs provide somewhere safe to go to learn new skills, take part in activities, get help with their education/careers and interact with positive role models/mentors to help attitudes to education and crime.

In 2001, the Intensive Supervision and Surveillance Programme (ISSP) was piloted as robust community alternative to custody for persistent offenders, in an attempt to balance the demands of justice (in the form of retribution), welfare through community re-insertion and restorative justice, and cost-effectiveness. ISSP¹³ was rolled out nationally in 2003 (as a disposal, a bail condition, or a post-custody licence condition) based on a poor quality pilot evaluation and despite a large body of existing evaluation evidence that intensive programmes were flawed (see Ellis, Pamment and Lewis, 2009).

In 2002, the welfare requirements of youth justice were emphasised by Judge Munby, who ruled that children in custody should receive the same mainstream services as children in the community under the Children Act 1989 and human rights legislation¹⁴. A year later, multiagency Youth Inclusion and Support Panels were introduced to work with young people at risk (8-13 year-olds) of offending, with many of the same arguments found in relation to Japanese youth justice as to whether this was net widening to draw more young people in the justice system, or whether it demonstrated greater societal responsibility in providing care to avoid it (see Ellis and Kyo, 2017; Yoder, 2011).

Following Judge Munby's ruling, the 2004 Children Act extended the welfare role of youth justice custodial institutions by including them in the same safeguarding duties as non-justice children's agencies, this necessitating greater co-operation between youth offending teams and child protection services. A further element to this was the introduction of the first adolescent forensic unit, the Westwood Centre, in Middlesbrough, providing locked units for 12-to-18 year-olds, replacing larger, previous youth treatment centres. This is now a fully developed Community Forensic Child and Adolescent Mental Health Service, providing the highest tier of health intervention with secure accommodation¹⁵.

Decarceration or bureaucratic (cost) efficiency?

The final New Labour government took a decidedly welfarist turn in introducing the Youth Crime Action Plan¹⁶ in 2008, with an ambitious target of reducing first-time entrants to the youth justice system by a fifth by 2020. This included a pledge of almost £100 million to fund youth crime reduction initiatives. Importantly, it also required better communication between YOTs and the Youth Court so that credible alternatives to custody were prioritised, along with an emphasis on restorative solutions. The rehabilitation focus was enhanced by the Criminal Justice and Immigration Act¹⁷ (2008) in the same year. It replaced all existing community orders with the youth rehabilitation order, specifically designed to address reducing reoffending through individualised intervention packages. Significantly, the white paper also suggested requirements to courts to balance the prevention of offending with welfare. This was not implemented, but courts were tasked with justifying not imposing a stat-

utory alternative when they sentenced a child to custody.

In 2010, the coalition government was elected and, through the 2012 Legal Aid, Sentencing and Punishment of Offenders Act, accentuated the diversion from custody approach of the outgoing New Labour government by allowing courts to: conditionally discharge children; sentence young offenders to repeated community (referral) orders; and reduce the use of public protection sentences.

In 2013, the coalition government issued its Transforming Youth Custody consultation document¹⁸ which shifted the narrative towards education, in the form of secure colleges for 12-17-year-olds to replace existing youth custody, with the first proposed to open in 2017. This was widely responded to and in the government's own response¹⁹ to the submissions, it emphasised a commitment to improving partnership working in resettlement/transitions. The following 2014 Anti-Social Behaviour, Crime and Policing Act also new orders allowed courts to impose activity requirements.

The beginning of the future: The Taylor Review (2016)

In September 2015, the experienced school head and child behaviour expert Charlie Taylor was commissioned by the, then, coalition government to look at how E&W dealt overall with children and young people who broke the law. Its terms of reference were²⁰:

‘The nature and characteristics of offending by young people aged 10-17 and the arrangements in place to prevent it’

‘How effectively the youth justice system and its partners operate in responding to offending by children and young people, preventing further offending, protecting the public and repairing harm to victims and communities, and rehabilitating young offenders

‘Whether the leadership, governance, delivery structures and performance management of the youth justice system is effective in preventing offending and re-offending, and in achieving value for money’.

By December 2016, the Ministry of Justice published the long awaited report by Charlie Taylor (2016)²¹. Since Taylor was an educationalist with a history of improving poorly performing schools, he had been commissioned to review youth justice and to recommend a new, more devolved model of provision.

In his report, he noted that there was sense from practitioners that the youth justice system was overly centralised, and that their freedom to innovate was constrained. Taylor (2016, p.45 para 163) therefore, argued that with fewer children in the youth justice system, the response to offending could and should be better tailored to local need, and more effectively integrated with other services that are working with the same group of children and their families.

With this tabula rasa approach agreed, the Taylor Review made a series of radical conclusions and recommendations for change. Taylor argued that Youth Offending Teams' (YOTs) statutory duties to local authorities should be broadened within as ‘youth services’, while retaining existing contributions and cooperative duties

of the agencies that constituted the YOT staff, ie: police; probation; education and health services. This also required removing the ring-fencing that required YOT budgets to be narrowly spent on youth justice services.

Taylor's decentralisation recommendations also distanced local delivery away from YJB assessment systems and called for local authorities to be able to use their own assessment systems. He also recommended that the Ministry of Justice (MoJ) should devolve funds for youth custodial places to local areas to commission their own secure provision, not least so that children could be located in their home area. Taylor also stipulated that local authorities should make sure that all children will know where they are going to live at least two weeks before they leave custody.

Essentially, Taylor was proposing to take child custody away from the control of the justice system, but what was he proposing in its place? The answer was for the MoJ, the Department of education and the Welsh government to combine to create 'Secure Schools'. A suggestion which is, perhaps more in line with Japanese Secure Training Schools.

From custodial to educational establishments

As Bateman (2017 p.3) notes, Taylor's interim report in February 2016 dealt largely with the state of custodial provision for children. The Taylor Review's vision was for custodial disposal centres to be run by 'head teachers' with the autonomy & flexibility to:

- recruit and train their own staff
- commission vital support services (including mental health, etc.)
- establish a tailored approach to manage behaviour and rewarding success
- create a productive and therapeutic culture which raises attainment, improves behaviour, and promotes rehabilitation
- provides children with a bespoke package of support and education that addresses their offending behaviour, but also gives them skills, knowledge and qualifications that will help them to succeed on release
- put behaviour management in the hands of skilful, well trained education, health and welfare support workers.

Finally, and perhaps most importantly, from a rational, criminological perspective, Taylor advocated that the MoJ should establish a new expert committee to ensure the government receives independent advice and challenge on its approach to youth justice and the operation of the system across England and Wales.

Taylor's review then, represented the potential for the most radical overhaul of E&W youth justice since the founding of the YJB by New Labour. The coalition government's response²² seemed extremely positive and made it clear that it would be implementing Taylor's key recommendations by putting education at the heart of youth custody and improving the provision of health care to tackle the factors that increase the risk of offending. Chapter 7 of the response was even entitled 'A new youth justice system'. Reform groups such as the Howard League for Penal Reform welcomed the appointment of Charlie Taylor as the new Chair of the Youth Justice

Board²³ on 24 February 2017, ostensibly to implement his vision, but there were already clouds on the horizon in this response.

Critiques of governmental responses to The Taylor Report

Bateman (2017 p.3)²⁴ had already argued that no rationale had been provided by MoJ for the explicit exclusion of the following in the terms of reference:

the age of criminal responsibility, which remains stubbornly at age 10

the treatment of children in courts

the youth sentencing framework.

Following Taylor's interim report in February 2016²⁵, the Justice Secretary agreed to amend the terms of reference to include young offenders' treatment in court, and the sentences available to tackle their offending, but not the age of criminal responsibility (Bateman, 2016 p.3)

Andrew Neilson, the Howard League's director of campaigns of the for Penal Reform, said: *"We welcome the appointment of Charlie Taylor as Chair of the Youth Justice Board, even if that organisation is shorn of many of its responsibilities in this latest announcement."*

He was referring to the reorganisation of the YJB whereby responsibility for youth custody was moved to HM Prison and Probation Service, so that the latter would now run youth custody operations and contract management under a distinct Youth Custody Service, with commissioning for youth custody moved to within the Ministry of Justice. To some extent, this was predicted because the YJB had had a very troubled history of running YOIs (see for instance the Allison and Hattenstone's 2016 summary of these failings). However, as Nielson pointed out, *"it is far from clear why this means a prison service already in crisis should be given more responsibility for some of the most vulnerable children in the country"*.

In the event, the YJB was tasked with continuing to provide independent scrutiny of the whole youth justice system, but with greater emphasis on promoting early intervention in the community and sharing best practice across the system. Currently, this approach can be seen in the YJB's consultation paper on Draft Standards for Children in the Youth Justice System 2019²⁶.

Tim Bateman and the National Association for Youth Justice were even more critical of the government's approach after its response to the Taylor Report, describing it as a 'missed opportunity':

"The nine months since the report was published have seen few developments, suggesting that government commitments to consider further some of Taylor's recommendations may have been disingenuous. Progress in relation to piloting secure schools has been very slow." (Bateman, 2017 p.59).

Bateman's (2017) NAYJ report went further and argued that a number of Taylor's key recommendations were effectively ignored by the government and that *"commitments to reform were, for the most part, couched in vague terms or put off for future consideration"*.

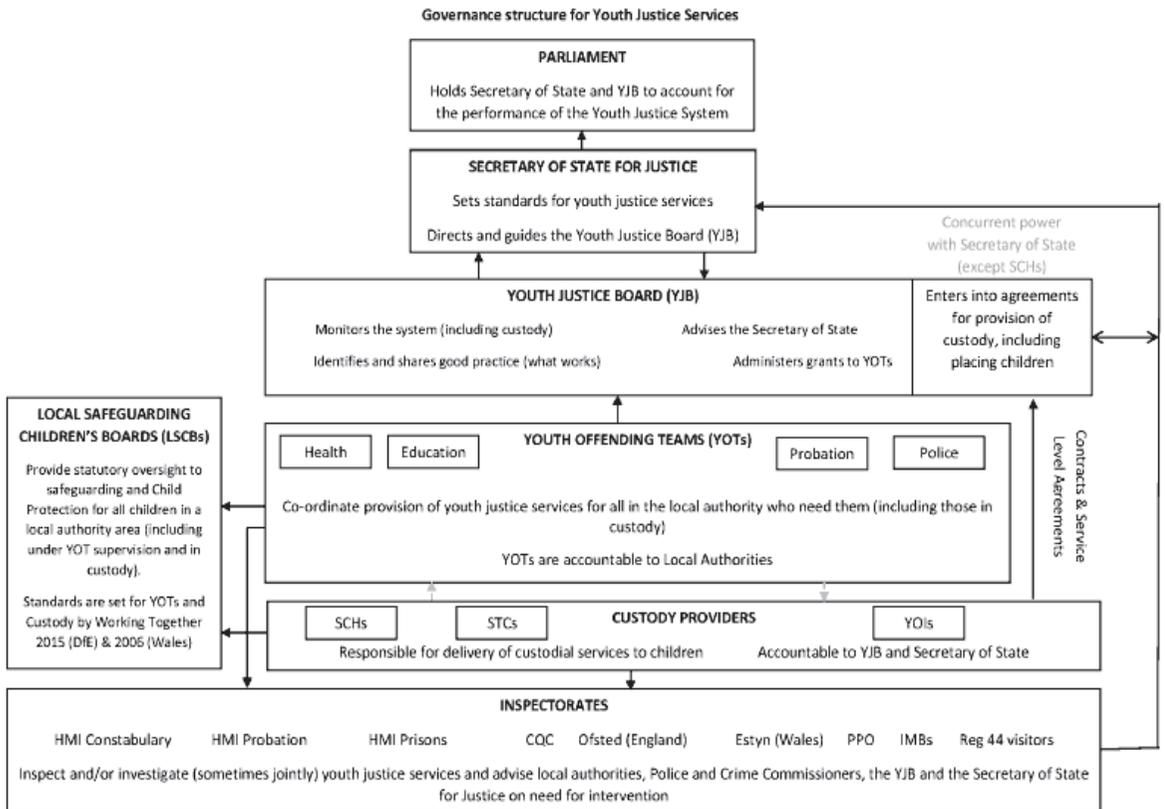
This has left Taylor, as Chair of the Youth Justice Board, in a difficult position after the coalition government was replaced by a minority conservative government in June 2017's snap election. However, the follow through

from Taylor’s report did effectively weaken the YJB’s control over those local youth offending teams and local authorities that wanted to operate a ‘children first offender second’ approach advocated by Positive Youth Justice advocates, which will be covered later.

Others were more critical than the Howard League of the government’s response to the Taylor report. The Standing Committee for Youth Justice (SCYJ)²⁷ (representing over 40 children’s and justice organisations, including Barnardo’s, argued that the government has "not gone far enough" in adopting many of the recommendations made in Charlie Taylor’s review, and had failed to respond at all to some of them. In particular, SCYJ argued that the MoJ focused too much on recommendations affecting the ‘secure estate’ at the expense of suggested wider reforms of youth justice services.

With the exception of the management of youth custody passing to the MoJ and Prison Service, the current structure and governance of youth justice in E&W is outlined in the Figure below.

[Figure 1]



Age and offending: evolution and confusion

Notwithstanding the recent proposed changes in Japan regarding the reduction (from 20 to 18) of the age at which offenders are considered adults (see Ellis and Kyo, 2017), the E&W system is incoherent in its approach

and definition of youth and young adults. While the age of consent remains at 10 years old, once a person enters the youth justice system, categorisation becomes very complex and inconsistent. This remains in stark contrast to the increasing level of academic findings that recognise that the developmental ‘adolescent period’ of development spans the age range of 10 to 24 years of age (see, for instance, Prior et al (2011) and the Transition to Adulthood Alliance collection of studies²⁸ it is included in).

Age ranges included/excluded vary by context in E&W, youth justice. Sentencing and management is restricted for those between ages 10 to 17. In sentencing to custody however, the age range 18 to 20 is considered to cover ‘young adults’, indicating that in this environment at least the process partly matches the evidence on maturation. This stipulation mainly covers Young Offender Institutions as separate prisons to adult prisons. Attendance Centre Requirements actually cover the age range 18-25, which is more closely aligned with the top range suggested by the academic research evidence collected by the Transition to Adulthood Alliance.

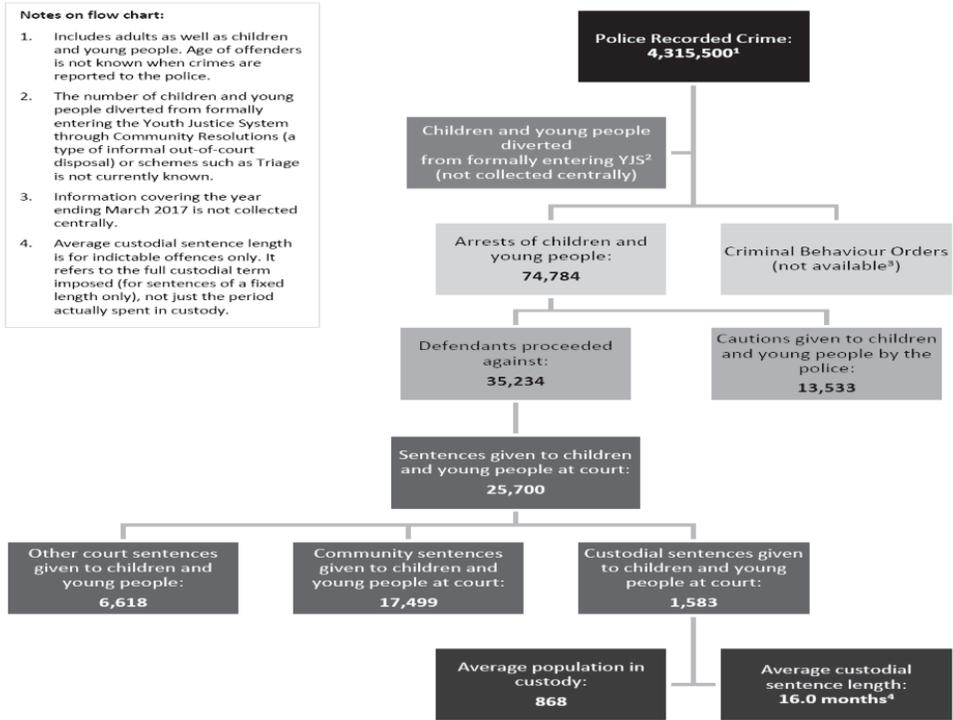
There have also been some promising moves within legal and practice guidelines. The Sentencing Council (2012) included ‘age and/or lack of maturity’ as an accepted mitigating factor, one which is now the most commonly cited by the defence in youth justice sentencing. The Crown Prosecution Service’s (2013) Code of Conduct also now includes ‘maturity’ as a factor for making decisions on a young adult’s culpability. Finally, the Practice guide for probation officers ‘Taking account of maturity’ was used (11,000 copies) 2013 for E&W pre-sentence reports and young adult appropriate sentence plans. However, there are areas where legislation, aspiration and practice do not coincide well.

Legislation & Practice in custodial settings

While there should be ‘distinct custodial institutions’ for 18-20 year olds, in practice such young adults carried out their sentences in 65 prisons, but only 5 of these (8%) were specifically for 18-20 year olds. Some were in facilities deemed suitable for the wider 18-24-year-olds (coinciding with a ‘young adult’ classifications, but 65% of 18-20 year olds were in prisons where they were ‘integrated’ with adults. This can mean a separate wing of an adult prison, but can also be a non-separated prison. Although the numbers are much smaller, it is notable that all female young adults are ‘integrated’ into adult women’s prisons. An HM Inspectorate of Prisons report shows only 1/3rd of ‘integrated’ prisons have specific approaches to dealing with young adults and lack specific training, interventions and additional resources.

This is despite the fact that youth crime, and therefore, criminal justice processing of them, forms a relatively small part of the criminal justice workload, to the current position represented below.

[Figure 2]



‘Decarceration’ and crime reduction

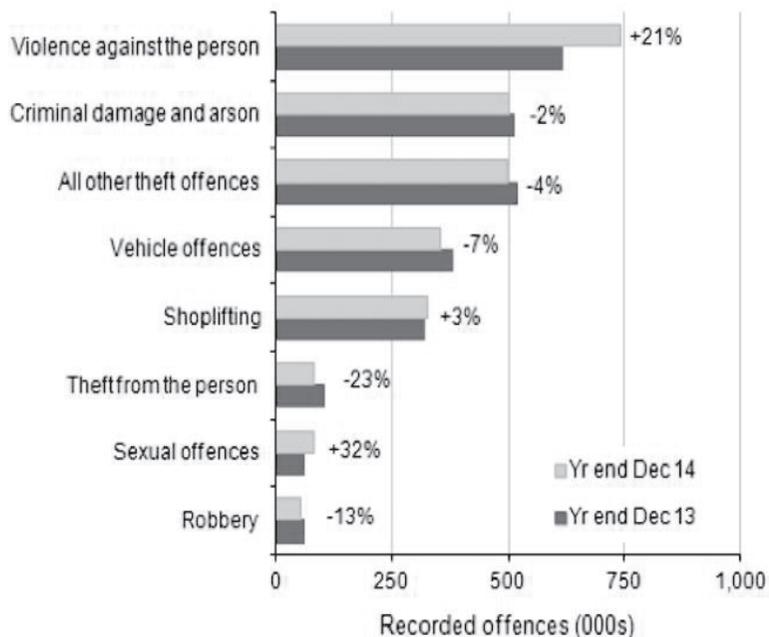
The overall long term trend in crime continued to fall in E&W from a high point reached in the mid-1990s. The official police recorded crime figures and the Crime Survey England and Wales figures tend to be used in conjunction now by policy makers. Concern has been rising about rises in the specific ‘violence against the person’ recording category of overall offences and the figure below shows a seemingly dramatic increase from 2013 to 2014 despite the context of generally falling crime in most categories other than relatively low frequency recorded sexual offences.

However, this needs to be seen against longer term trends. First, short term rises in specific violence categories need to be seen against the dramatic fall in all violent offences since the mid-1990s, and indeed to levels lower than in the 1980s, in the figure below.

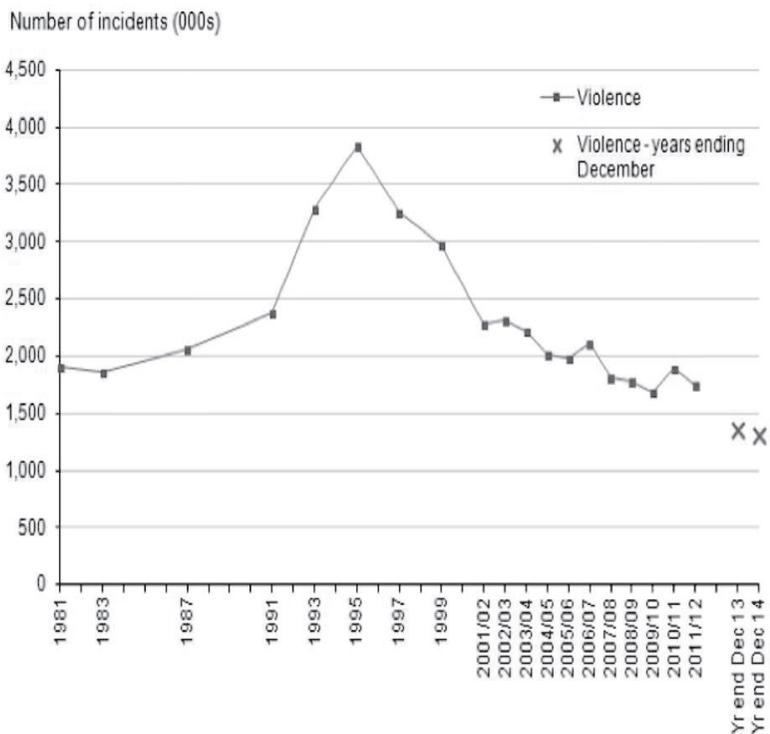
Second, as in Japan (see Ellis and Hamai, 2017; Ellis and Kyo, 2017) press and policy makers tend to associate any short term rises in, or general issues relating to crime as essentially a problem with youth. In reality, this is the case neither in Japan (Ellis and Kyo, 2017), nor in E&W. The data show that youths are growing less likely to offend, older offenders have increasing recidivism rates, and car theft for expressive ‘joyriding’ has given way to acquisitive/instrumental and sophisticated thefts of expensive cars by skilled older criminals by

[Figure 3]

Selected victim-based recorded crime categories - percentage change 2013-14.

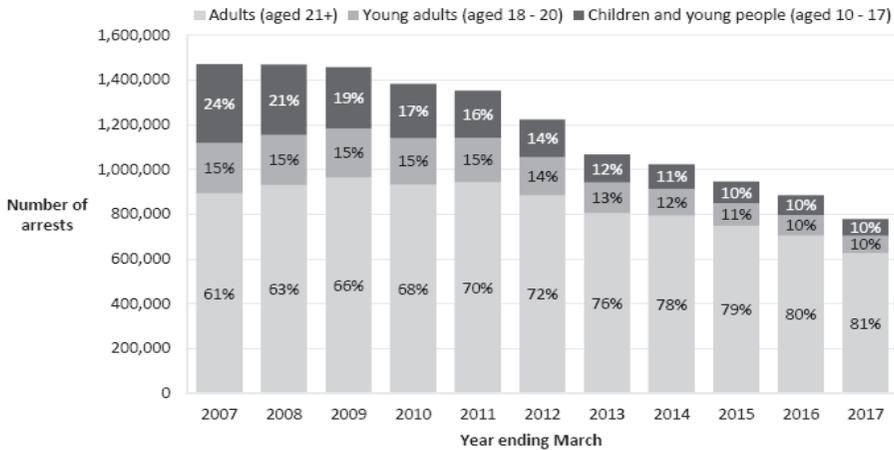


[Figure 4]



unlocking them remotely by hacking into their security systems. The figure below shows the change in the overall distribution of arrests by age groups over the decade up to 2017, in the context of decreasing levels of crime.

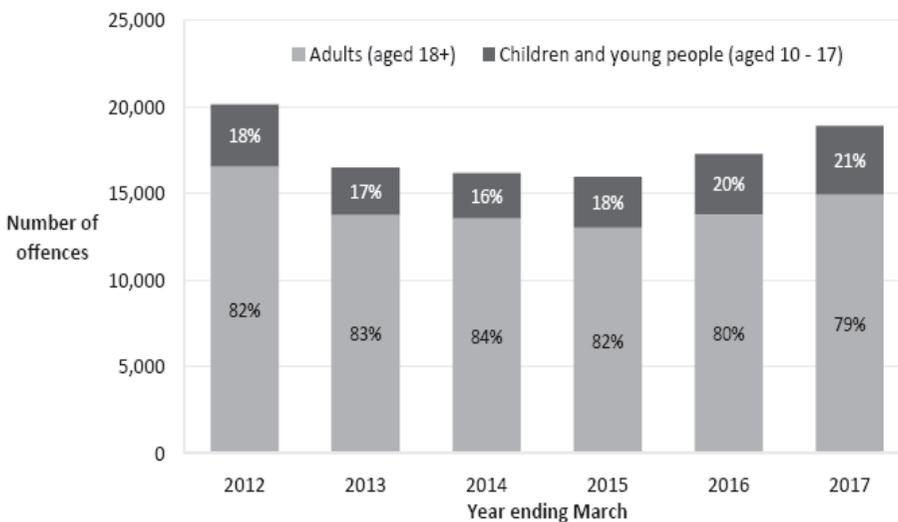
[Figure 5] Number and proportion of arrests by age group, England and Wales, years ending March 2007 to March 2017



One could focus on the drop in children and young people’s level of arrests from 39% to only 20%, but perhaps it is time to ask about the rise from 61% to 81% of all arrests for adults aged 21 and over. This pattern is certainly similar to the analysis carried out on equivalent Japanese figures by Ellis and Hamai (2017).

The most recent, relatively small ‘blip’ caused by the increase in knife crime by young people, as evidenced in the figure below, in some metropolitan areas, has received much more media coverage than the overall dramatic decline in crime by young people.

[Figure 6] Number and proportion of offences involving the possession of a knife or offensive weapon resulting in a caution or conviction by age group, England and Wales, years ending March 2012 to March 2017



Supplementary Tables: Chapter 11, Table 11.12

In terms of explaining the long term reduction in youth offending, or even in the recent knife crime blip, criminologists are speculative, but as Tim Newburn (2012) admits: ‘So what is happening? The brutally honest answer is that no one knows with any certainty.’

What is clear empirically is that all indices of measures for youth involvement in crime and criminal justice show a pronounced decline over the last decade in E&W.

Young people as victims

The same, though less pronounced, pattern of decline can be discerned in children (up to 15 years old) as victims.

[Figure 7] Offences experienced by children and young people aged 10-15, Crime Survey for England and Wales, years ending March 2012 to March 2017

Measure	Year ending March					
	2012	2013	2014	2015	2016	2017
Estimated number of incidents (thousands)	1,066	817	797	718	844	697
Estimated percentage who were victims of one incident or more	15%	12%	12%	12%	13%	11%
Estimated percentage who were a victim of a violent offence	6%	5%	6%	5%	6%	6%
Estimate percentage who were a victim of a theft offence	8%	6%	6%	6%	6%	5%
Number of children and young people aged 10 – 15 surveyed	3,930	2,879	2,933	2,374	2,804	3,062

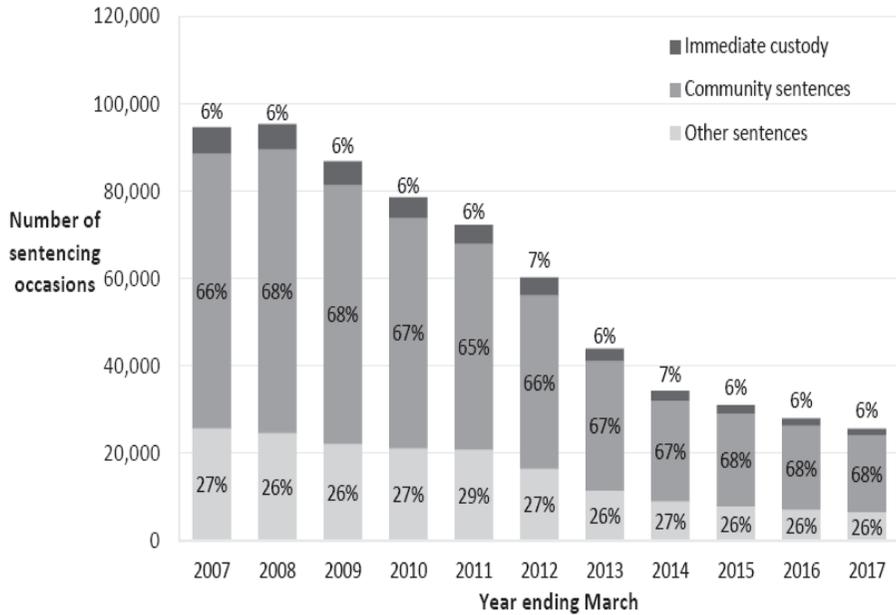
Source: *Crime Survey for England and Wales, ONS*

Sentencing

As the figure below illustrates, the proportions of young people sentenced to custody, community sentences, or lower disposals, such as fines, has remained constant over the last decade: 6% sentenced to custody; around 2/3rds sentenced to community disposals; and around a quarter received other sentences. The key point here

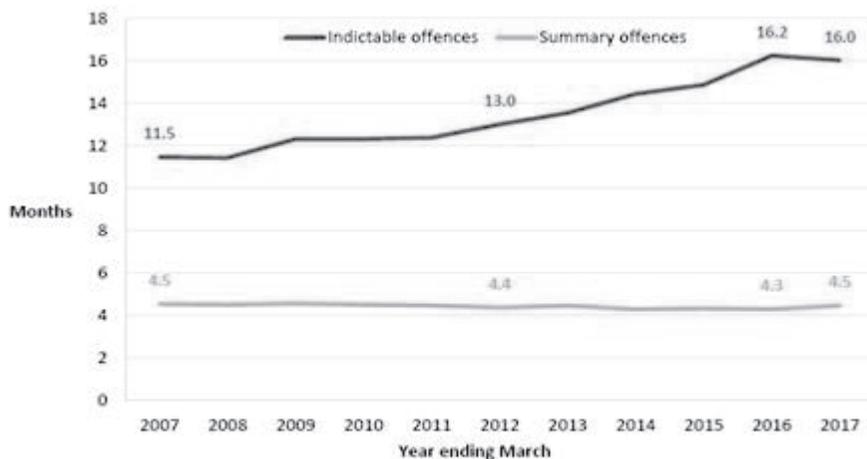
though is that these proportions at the end of 2017 relate to only around a quarter of the sentencing occasions than in 2007.

[Figure 8] Number of sentencing occasions for children and young people sentenced in all courts by sentence type, England and Wales, years ending March 2007 to March 2017



However, the figure below shows that the the average sentence length for youths convicted of more serious ‘indictable’ crimes, (ie tried in the Crown Court) increased by around 40% over the decade from 2007 to 2017.

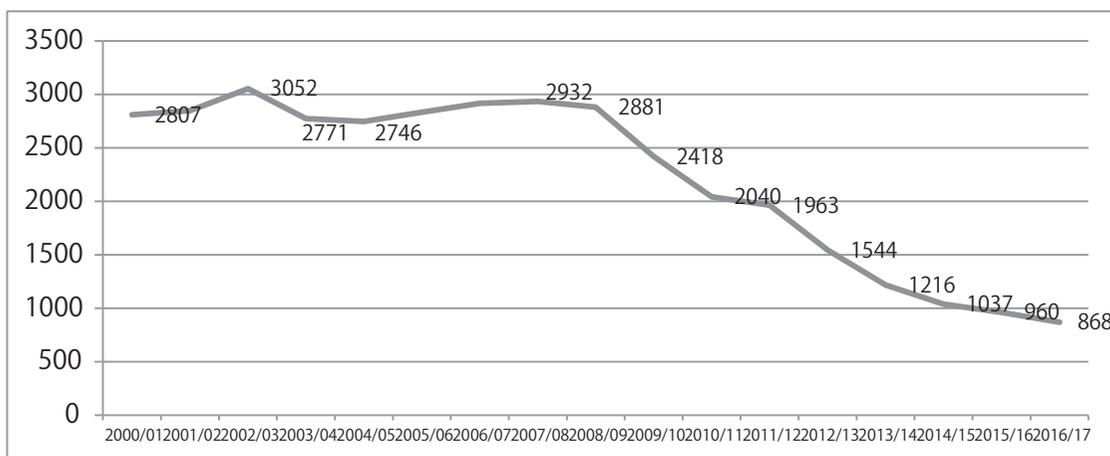
[Figure 9] Average custodial sentence length in months by type of offence, England and Wales, years ending March 2007 to March 2017



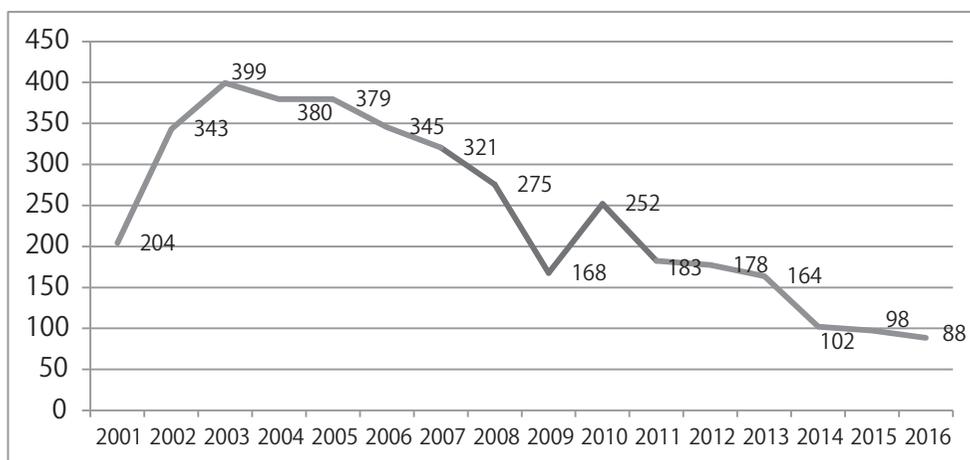
Youth Custody

As would be expected given the above trends, the number of young adults (18-21) in the criminal justice system reduced by 41% between June 2011 and June 2015. The equivalent figure for custody alone was 26%. The figures below show that the use of youth custody for those who were under 18 at the time of sentencing reduced by a ratio of 3.2 from 2000/01 to 2016/17. The equivalent figure for the much smaller ‘young adults’ category over 18 was lower, but still a reduction ratio of 2.3.

[Figure 10] Use of youth custody under 18 yrs averaged annual pop.s 2000-2017 (1:3.2 ratio reduction)



[Figure 11] Use of youth custody over 18 yrs averaged annual pop.s 2001-2016 (1:2.3 ratio reduction)



However, young adults are still disproportionate in criminal justice. Despite being only 10% of E&W population, they do form 30-40% of criminal justice caseloads (police, probation and prisons). They also have a 75% reconviction in 2 years after release from custody.

As with all custodial populations, the figure below shows that young adults incarcerated in E&W represent a skewed population in terms of mental impairment.

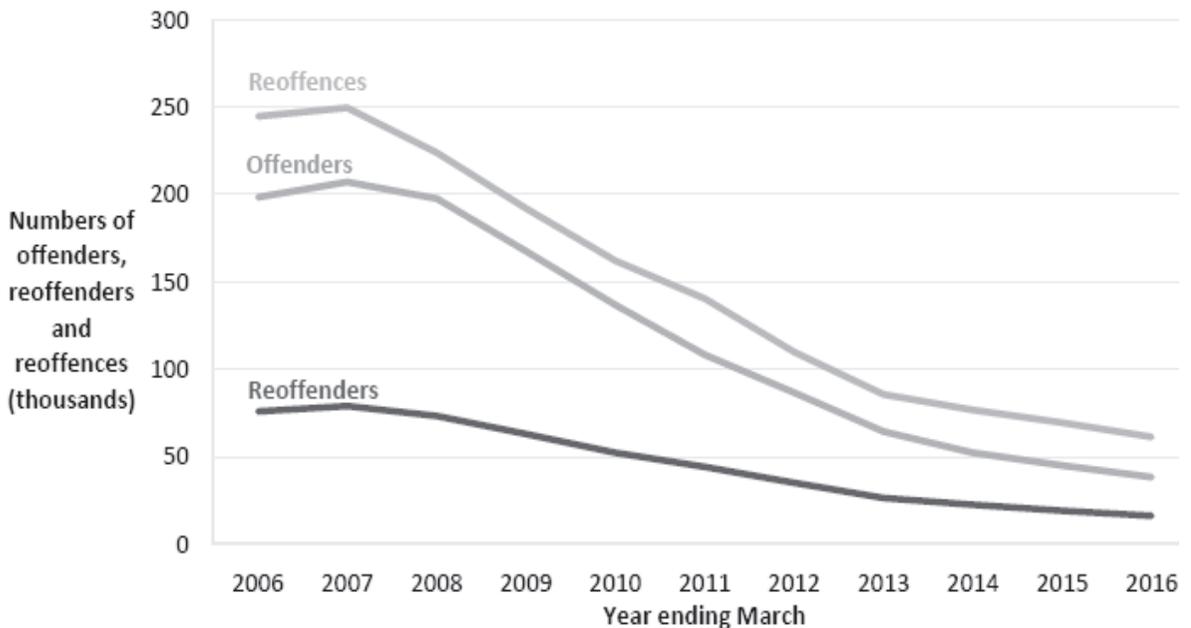
[Figure 12] Comparison of 18-25 population inside and outside prison

	Prevalence among young people in general population	Prevalence among young people in custody
Learning disability	2-4%	23-32%
Communication impairment	5-7%	60-90%
ADHD	1.7-9%	12%
Autistic Spectrum Disorder	0.6-1.2%	15%
Any head injury	24-42%	49-72%
Head injury resulting in loss of consciousness	5-24%	32-50%

Reoffending

The numbers of youth offenders and reoffenders are now relatively small, as indicated in the figure below.

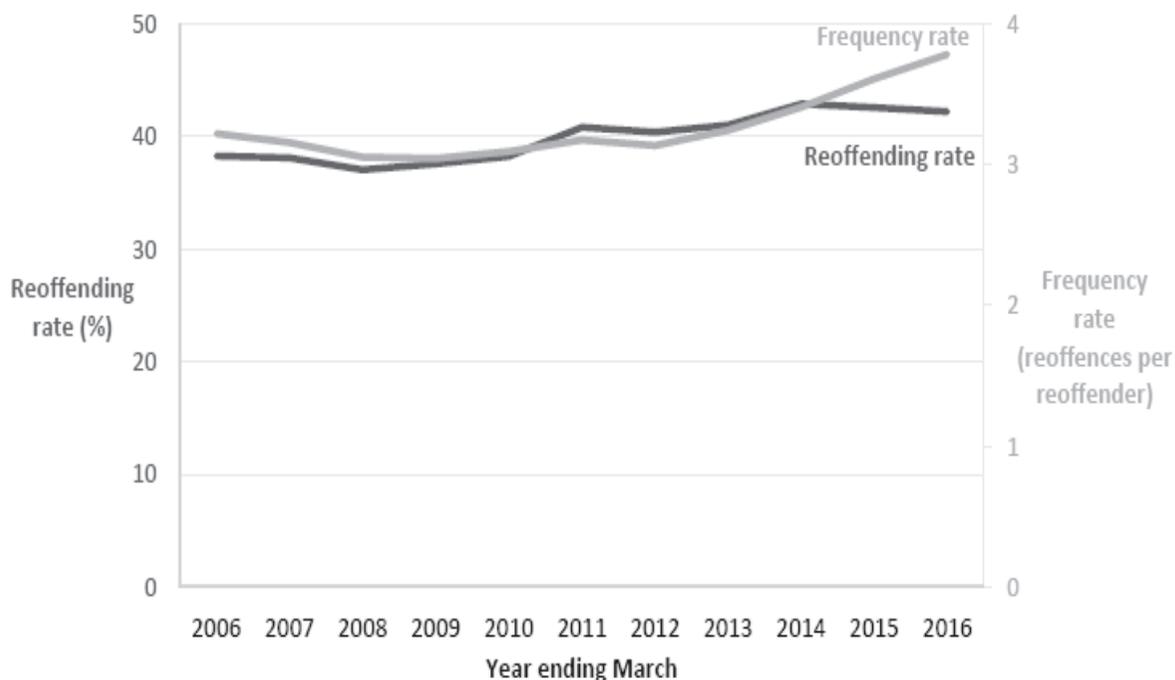
[Figure 13] Number of offenders, reoffenders and reoffences, England and Wales, years ending March 2006 to March 2016



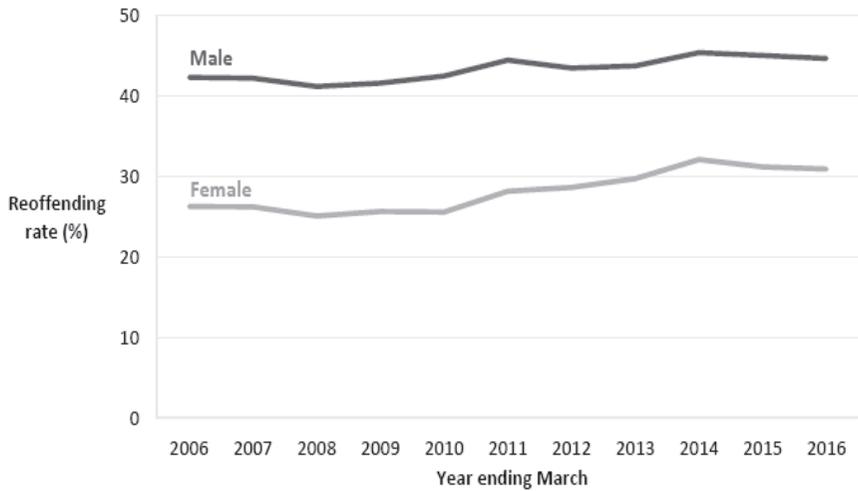
This indicates a smaller youth offending population than a decade ago, but perhaps a remaining group with more intractable problems. The reoffending rate remains above 40%, but the frequency of offending within this group is increasing towards 4 offences.

While the smaller female young offenders have a lower reoffending rate at just over 30%, the trend is in line with male offending and has increased since 2010.

[Figure 14] Reoffending rate and frequency rate, England and Wales, years ending March 2006 to March 2016



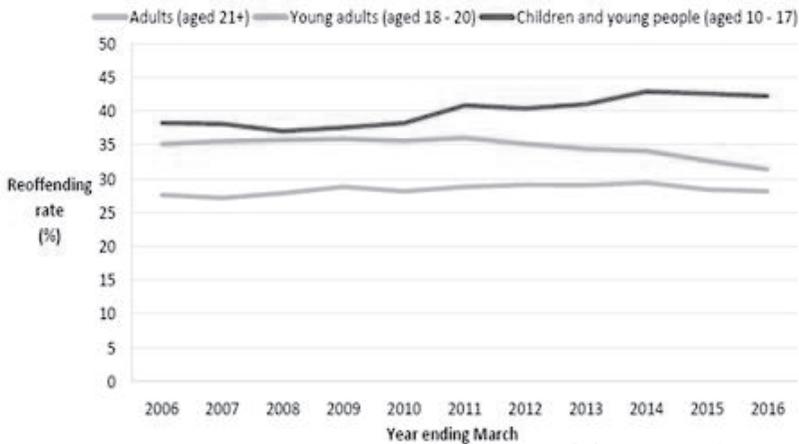
[Figure 15] Reoffending rate by gender, England and Wales, years ending March 2006 to March 2016



Supplementary Tables: Chapter 9, Table 9.2

It is also apparent that while young adults' reoffending trend is gradually converging with the adult rate of reoffending at around 30%, the 10-17 age groups' reoffending has risen to well over 40%.

[Figure 16] Annual reoffending rate for children and young people, young adults (aged 18-20) and adults (aged 21+)



Supplementary Tables: Chapter 11, Table 11.7

Indications as to why youth crime has fallen?

Since 1995, the highest point of recorded crime in E&W, traditional volume crime, which was mainly a youth pastime, has fallen. Vehicle crime has reduced by 86%; burglary by 71%; violent crime by 66%; and robbery by more than 50%.

Mainly for acquisitive crime, examples of explanations for this general reduction from a crime prevention perspective typically include: the falling value of items stolen due to cheaper technology; increased CCTV; increased size of televisions; target hardening, such as bollards in front shops and ATMs to prevent ram raiding, and shop front security shutters; smart phone anti-theft-tracking and disabling devices; cash robberies from bus transport prevented by a reduction in the number of cash payments for fares through introduction of electronic payment systems; plastic beer glasses have reduced severity of injuries in alcohol-related fights; decades of car anti-theft technology has reduced entry into pool of casual criminals. Academics such as Levitt (2004) and journalists teamed up with academics²⁹ alike have attempted to include many other factors too. But some of these do not work in explaining youth crime reductions. For instance, Levitt includes greater levels of incarceration as a factor in reducing US crime, but as outlined above, incarceration for young offenders in E&W has plummeted and sentencers' use of custody has stayed proportionately the same for young offenders. The number of police officers has also been drastically reduced, not increased in E&W, again undermining another of Levitt's 4 main explanations if applied to youth in this context. Other possibilities suggested are that older offending cohorts are dying or are no longer able to commit crime and are not being replaced by younger cohorts.

Some of the traditional explanations that focus on social structural factors may also need tweaking. Whilst unemployment is officially low in E&W, much of this is due to a gig economy based on zero hours contracts for many young people. The earnings from this are relatively low, but the potentially criminogenic factors generated from low income are offset by the self-incapacitating effect of having to spend considerable time performing work-related tasks. As Ellis and Kyo (2017) and Ellis and Hamai (2017) have suggested in relation to Japan, video gaming should also be considered as a crime reducing factor among young people. While there is a preponderance of a priori, positivistic studies attempting to correlate violent video games (comics, TV, films, etc.) to increases in aggressive assaults and homicides (Markey, Markey, and French 2014: 1), we have suggested it would be more fruitful to apply the findings from recent US research evidence that aggressive games may have a pro-social or cathartic effect for the majority of game players (Cunningham, Engelstätter, and Ward 2013), a factor which would disproportionately affect youth. This psychological explanation of the cathartic effect is likely to play a role for those with high levels of pathology, but this is unlikely to explain the large reductions in youth crime given the low incidence of such pathologies. More convincing is Markey, Markey, and French's (2014: 15) more criminological incapacitation argument. They found a high correlation between the release of violent video games and decreases in homicides. They argue that video games occupy juveniles inside for long periods

and therefore remove them from public venues “where they might have otherwise committed a violent act.” Ellis and Kyo (2017) and Ellis & Hamai (2017) have argued that this explanation is particularly pertinent to Japanese juveniles since violent gaming in Japan tends to take place in more social/family setting and is more role-play (JRPG: Japanese role: playing games) oriented (Anderson et al. 2010) than “Western” “hack and slash” gaming (Navarro-Remesal and Loriguillo-López 2015: 9-10). Mark Button has also been looking at the displacement of youth offending to on line fraud. Compared to street crime, car theft and burglary, this is a much easier environment in which to commit acquisitive crime and not be caught.

However, there are also now claims that the reduction in youth and general crime has reached a plateau. According to CSEW (2017), crime dropped by only 1% in 2016, compared to a 13% reduction in 2014 and 2015. At the same time, car theft crept up by 1%, attempted burglaries went up by 5% and relatively new recorded crime categories such as stalking, harassment and death threats (displaced violence?) went up by 18%. Pickpocketing has also continued to rise.

Recent concerns, or moral panics, in E&W have turned to new expressions of crime by the young. In some deprived areas of the large metropolitan cities, knife crime³⁰ has increased among young males, predominantly from deprived groups and with some possibility of cultural influences. Other recent crime phenomena are: acid attacks, which have occur both as expressive and instrumental; and attacks³¹ on moped delivery riders or by moped riders³².

The future: Decentralisation, Decriminalisation & Children’s Services

The treatment of children and young adults within the criminal justice system is at a very fluid point. There have already been YJB led initiatives to reduce the entry of children and young people into the justice system by working with young people considered to be ‘at risk’ of offending. The 2 main initiatives have been Youth Inclusion and Support Panels (YISPs) and Youth Inclusion Programmes (YIPs).

Youth Inclusion Programmes (YIPs)

YIPs were introduced in 2000 to provide tailor made programmes for 8-17 year olds in the in the 100 most deprived and high crime/risk neighbourhoods . These were delivered either through Junior YIPs for 8-12-year-olds, or Senior YIPs for 13-17-year-olds. Their major aim was to prevent/reduce offending through intervention with individuals, families and communities.

Youth inclusion and Support Panels (YISPs)

YISPs were introduced in 2003 to prevent offending and anti-social behaviour. Participation is voluntary, but their purpose is to ensure juveniles and families can access mainstream services at earliest opportunity. The delivery is again split between 2 age groups, 8-13-year-olds, but as ever in E&W, these do not coincide neatly

with those for junior and senior YIPs. YISPs were introduced into 13 pilot areas, but there are now more than 200. Referral is through Police, Education, Health and Social Services.

Common criticisms of them are that: their pre-emptive, early intervention approach subverts due process, proportionality, and evidence-based practice; and that they have dosage of treatment problems in that those at high risk may get too little intervention, whilst those at low risk may get too much.

YIPs and YISPs were very much a development from the 1998 Crime & Disorder Act. There was return or (re)emphasis on diversion, less stigmatising/labelling and attempts to avoid negative outcomes through contact with the criminal justice system. However, there was still a centralised, risk based, interventionist approach that academic research was increasingly challenging.

In 2015, Haines & Case proposed 'Positive Youth Justice: Children first, offenders second' (CFOS). This was influenced by T2A's³³ growing body of work and was, in turn, influential in the Taylor report's thinking. As noted, after the Taylor Report (2016) there was a level of devolved decisions making in youth justice and this has taken a strong grip on Wales where some government departments (though not criminal justice) are already devolved. The child-focussed and rights-facing social policy CFOS approach taken by some individual YOTs is designed to avoid 'us' & 'them' approaches. It is a reaction against what responsabilisation, 'adultification' and individualised fault that was part of the 1998 Act's approach. In some ways, this represents a return to a more *parens patrie* based approach that Ellis & Kyo have argued is present in the Japanese juvenile justice system, with a re-emphasised approach that also includes tackling external & structural factors constructed by adults. The CFOS approach recognises the combination of individual choice and criminalising contextual and structural factors beyond individual juvenile's control, eg, neighbourhood disorganisation and social deprivation. Using CFOS approach requires 'us', as the adult key stake holders and decision-makers to examine whether we are creating and socially constructing criminogenic contexts and structures. We also need to focus more on prevention of new problems instead of just existing problems.

The practical applications of CFOS as Positive Youth Justice are as follows:

- Child-friendly/appropriate practice
- Positive promotion
- Systems management
- Diversion
- Engagement
- Legitimacy
- Evidence-based partnerships
- Responsibilising of adults.

There are now some good local examples of distinct provision for young adults in many parts of England and Wales, but it is patchy and heavily dependent on local practitioner and senior management champions, who can vary in abilities to access and control resources effectively. Good practice has, therefore, not developed with-

in the framework of a national strategy. However, one county in England has been at the cutting edge of developing Positive Youth Justice and it is therefore worth outlining the Surrey Youth Support Service.

Surrey Youth Support Service

The Surrey Youth Support Service (SYSS) was set up by Ben Byrne who now leads it, ably assisted by his deputy Mike Blower. The abandoned YOT/JYB model in 2012 and largely replaced this with an ‘informal’ restorative approach which was deliberately and integrated with broader Social/Children’s services. This was an explicit move away from reliance on discrete services for ‘offenders’ to avoid labelling and prolonged contact with justice systems.

SYSS was set up as an evidence-based approach that therefore effectively entailed a rejection of the 1998 Crime and Disorder Act and a clear adoption instead of the 1990 UN Convention on the Rights of the Child. This has been easier since the Taylor report and the loosening of the YJB’s centralising role.

Youth Restorative Justice Intervention (YRI)

Introduced 2009, YRI became SYSS’s default approach for youth offending that was too serious for a simple community resolution but not serious enough to be ‘indictable’ for adult offences. In short, there was a youth ‘status’ offence focus.

The YRI approach: separates the work needed to deal with offence; supports the child’s participation, safeguarding, and well-being; and utilises the active involvement of victim to address harm caused. But, importantly, YRI also involves addressing wider issues, especially for repeat offenders. This allows chances to focus on: fractured family; peer/school relationships; environmental factors; and lack of access to resources, that most juveniles have.

The results so far have been dramatic. There has been a 91% reduction in first time entrants to youth justice system in Surrey, coupled with 70% fewer court orders.

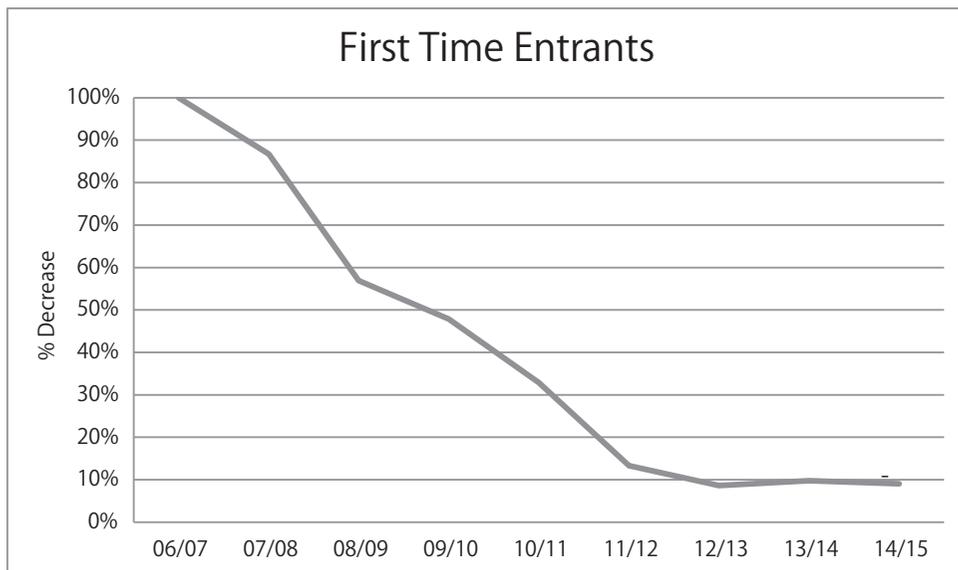
This has reduced costs and some of the savings have been used to fund prevention activities, although there is friction about how much of the savings can be retained for this purpose, along with other provision such as: homelessness services; mental health provision; employment services; and wider youth services.

An independent evaluation of SYSS’s YRI was completed in 2014 and refreshed in 2017. The latest results showed:

- An 18% reduction in re-offending
- A High level of victim satisfaction
- Reduction of 18% in re-offending
- Reduction in First Time Entrants (ie, 5000 young people who would otherwise have a criminal record)
- £1.5 m saved by YSS per year that was re-invested in preventative services
- For each £1 spent on the YRI (compared to the alternative) there is a saving of £3.41

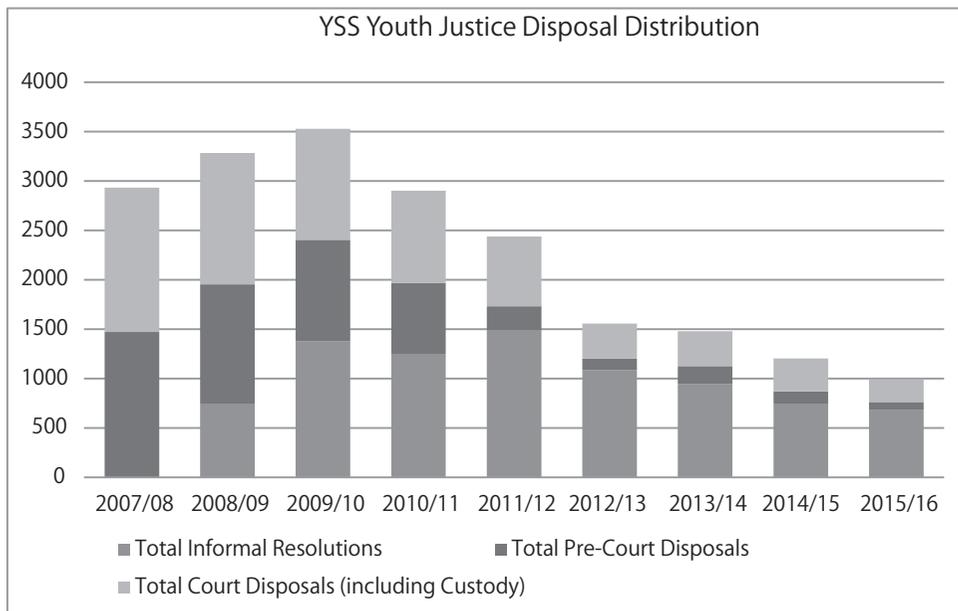
- Reduction in numbers attending youth court (62% drop in use of court orders)
- Reduction in youth crime in Surrey

[Figure 17]



The use of youth custody was also dramatically reduced in overall number and as a proportion of all Surrey youth disposals.

[Figure 18]



A victim survey also provided very promising results:

- 88% Victim Satisfaction overall
- 91% satisfied with their level of involvement in the process
- 89% said YRI was right in their particular case
- 87% would recommend YRI approach to others
- 85% said ‘justice has been done’.

The offender survey showed:

- 98% felt listened to when talking about putting things right
- 92% agreed that the experience had made them think about how the crime had affected the victims
- 98% said the experience will stop them committing another offence

Ben Byrne admits that SYSS is still not a full CFOS approach since too many children are arrested & detained by police for status offences that are really behaviour that is symptomatic of safeguarding needs. This means children are often first assessed and supervised as ‘offenders first’. Sentencing will result in some young offenders going into custody where conditions are often not safe or suitable for vulnerable children, as noted above. However, SYSS is working towards addressing these elements within UNCRC (1990).

Conclusions

The move to decentralised approaches has worked well in Sussex, and is likely to be an approach that the whole of Wales will operate. To some extent, this offers some hope to balance the disappointment the Bateman (2017) has expressed about the missed opportunities since the Taylor Report.

Children are increasingly diverted from formal sanctions and child custody is used more sparingly now. However, the government response to Taylor also retains an underlying punitive ethos, eg, the introduction, in 2015, of mandatory custodial sentences for 16 and 17 year olds convicted for a second time of possession of a knife or offensive weapon is still in place (Bateman, 2017).

Youth justice system-contraction might also be driven by financial imperatives, associated with austerity, rather than by any considered judgement of how the wellbeing of children in conflict with the law might best be promoted. Bateman(2017) argues that if savings are not passed on into youth services, this explanation is more credible.

In relation to Japan, now that the age for of adulthood has been reduced from 20 to 18, rather than seeking to simply send 18 and 19 year olds to adult prison, it would be astute to consider whether Japan could steal the march on other nations and consider a third tier of treatment and custody that is evidence based, for young adults

between 18 and 24. Perhaps the most convincing SYSS evaluation results are, therefore that from **2011 to 2016 in Surrey, there was:**

- A 52% reduction in number of 18-23yr olds charged
- A 29% reduction in proportion of all adults charged aged 18-23yrs.

In order to make this work, the independent evaluators of SYSS argued that the following elements are crucial:

- Senior level buy in and commitment
- The support of the local Police and Crime Commissioner (PCC) as an advocate to other agencies
- A willingness to invest upfront and to not be territorial over which agencies explicitly benefit the most from savings realised
- Recognise that worthwhile partnerships are hard and need effort to sustain
- Leadership based on doing the right thing to achieve aims and not doing things right to satisfy existing, but ineffective processes
- External evaluation to provide credibility and validity.

[Notes]

- 1 Based on my presentation at the Symposium on juvenile justice in E&W and Japan, 18 March, 2018' Ryukoku University, Kyoto, Japan
- 2 See Ellis and Kyo, 2018.
- 3 Much of this section is based on the following source: <http://www.beyondyouthcustody.net/policy/youth-justice-timeline/>
- 4 For a simple introduction to the use of transportation as punishment, see <http://vcp.e2bn.org/justice/section2196-transportation.html>. For more in depth treatment, see: Beattie, 1986, 2001; Ekirch 1978.
- 5 See footnote 3 sources also for explanation of prison ships.
- 6 See Warder and Wilson (1973) for an academic account <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5843&context=jclc>. The following link also provides pictures of the Kent borstal conditions. <https://warwick.ac.uk/services/library/mrc/explorefurther/digital/prison/borstal/>
- 7 See https://www.swd.gov.hk/doc/fsa_sd/019c.pdf
- 8 See <http://www.childrenshomes.org.uk/AS/>
- 9 See [https://www.newLawjournal.co.uk/content/defence-doli-incapax-branded-%E2%80%9CAnachronism%E2%80%9D](https://www.newlawjournal.co.uk/content/defence-doli-incapax-branded-%E2%80%9CAnachronism%E2%80%9D)
- 10 The 2014 Anti-Social Behaviour Crime and Policing Act replaced ASBOs with injunctions for the prevention of nuisance and annoyance (civil) and criminal behaviour orders.
- 11 For updated version, see <https://www.gov.uk/government/publications/national-standards-for-youth-justice-services>
- 12 The best summary of these can be found at: <https://web.archive.org/web/20081008172845/https://www.yjb.gov.uk/en-gb/yjs/Prevention/YIP/>
- 13 Now amended to 'Intensive Supervision and Surveillance' only.
- 14 See https://howardleague.org/wp-content/uploads/2017/06/judgment_R_2002.pdf
- 15 <https://www.england.nhs.uk/publication/community-forensic-child-and-adolescent-mental-health-service/>
- 16 <http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/publications/docs/youth-crime-action-plan.pdf>
- 17 <https://www.legislation.gov.uk/ukpga/2008/4/section/9/enacted>
- 18 https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/supporting_documents/transformin-

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- 19 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273402/transforming-youth-custody-consultation-response.pdf
- 20 Statement to Parliament 11` September 2015, <https://www.gov.uk/government/speeches/youth-justice>
- 21 Taylor, C. (2016) Review of the youth justice system. <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>
- 22 <https://www.yjlc.uk/wp-content/uploads/2016/12/The-government-response-to-Charlie-Taylor%E2%80%99s-Review-of-the-Youth-Justice-System.pdf>
- 23 <https://howardleague.org/news/howard-league-responds-to-youth-justice-board-announcement/>
- 24 A short summary is also available, with url links at <https://www.cypnow.co.uk/cyp/news/2004281/government-disingenuous-on-youth-justice-reforms>
- 25 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf
- 26 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752181/Standards_for_children_in_the_justice_system_2019_consultation_document.pdf
- 27 <http://scyj.org.uk/wp-content/uploads/2017/02/SCYJ-response-to-the-Taylor-Review-govt-response-FINAL.pdf> or a summary at <https://www.cypnow.co.uk/cyp/news/2003135/moj-criticised-for-weak-response-to-youth-justice-review>
- 28 <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Justice/Young%20adult%20offenders/written/21967.html>
- 29 <https://www.cbc.ca/news/canada/manitoba/9-reasons-crime-rate-1.3692193>
- 30 <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04304>, <https://www.theguardian.com/membership/2018/jun/21/radical-lessons-knife-crime-beyond-the-blade>
- 31 <https://www.theguardian.com/world/acid-attack>
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- [Figure 2, 5-10, 13-16]: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2016-to-2017>
- [Figure 3 & 4]: <https://theconversation.com/fact-check-has-violent-crime-gone-up-40915>
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- [Figure 17 & 18]: Blower and Stevens (2018)