

Timely Justice: Turning 18

A briefing on the impact of turning 18 in the criminal justice system

Introduction

Young adults who have committed offences as children must have the opportunity to build meaningful futures and be treated fairly. The United Nations Committee on the Rights of the Child (the “UN Committee”), has made it clear that *“child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process”*¹.

System delay is the main reason children turn 18 between the commission of an offence and prosecution, resulting in real injustice. The coronavirus crisis has exacerbated delays throughout the criminal justice system and the impact on children approaching their 18th birthdays will be grave.

There is a clear need for further reform to the youth justice system to ensure it fully meets child rights standards. However, it does seek to ‘see children as children’. In contrast with the adult system, its principle aim is to prevent reoffending². The youth justice system gives children some special protections, for example, they are more likely to be diverted away from the formal criminal justice system through diversion schemes and their welfare must be considered by the various agencies involved. However, those who have committed offences as children, but are not dealt with until they have turned 18, are not able to benefit from those legal protections. This is contrary to what is stipulated by the UN Committee.

Recognition of the view that a young person does not magically gain maturity when they turn 18 is increasingly widespread within the criminal justice system. Despite this, however, there continues to be a binary division between the regimes and procedural rules that apply to children compared with adults.

Quite simply, the impact of turning 18 is profound. If a child reaches this age before criminal proceedings are commenced, they will become an adult in the eyes of the law. Significant inequities arise for those who commit offences as children but cross the age threshold in to adulthood before their cases are heard.

The data available indicates that each year approximately 2%-3% of proven offences are committed by children who turn 18 prior to conviction. This corresponds to 2,500 offences for the twelve months ended March 2017 and 1,400 offences for the twelve months ended March 2018³. Turning 18 prior to conviction has a significant impact as the young people affected are prosecuted in adult courts and lose the opportunity to benefit from the youth justice system.

For a growing number of young adults this happens because it can take months or in some cases years for the police or the Crown Prosecution Service (“CPS”) to make a charging decision, leaving them, their families and the victims in limbo. There are currently no fast-track charging decisions for children, including those approaching their 18th birthday. This is despite the inequity which will follow if they are prosecuted once they become adults. For their peers who committed an offence at the same age but are dealt with before their 18th birthday, the outcomes will be vastly different.

The damaging consequences of turning 18 between the date of the offence and prosecution include loss of anonymity, reduced likelihood of diversion, only being eligible for adult sentences, longer supervision periods (heightening the risk of breach) and much longer rehabilitation periods which reduce employment prospects and prevent people moving on with their lives.

In order to protect the rights of all children in trouble with the law, including those who have turned 18 prior to conviction, and ensure fair treatment, it is time for reform. It is crucial that prosecution in adults courts for those who commit offences as children is avoided through timely justice. Where this is not possible, the justice system should treat childhood offending as just that. The same sentencing framework afforded to children should be available to those who have turned 18 between offence and conviction.

Release Under Investigation

Since changes to the use of police bail in 2017, which mean suspects can only be on police bail for a maximum of 28 days⁴, the vast majority of suspects are “Release Under Investigation” (“RUI”) while a charging decision is considered. The growing use of RUI has vastly exacerbated the problem of delayed charging decisions. Unlike when someone is put on police bail, there is no deadline by which time the police or CPS must review the matter or make a decision. Anecdotal evidence available from frontline staff points to significantly increased delays.

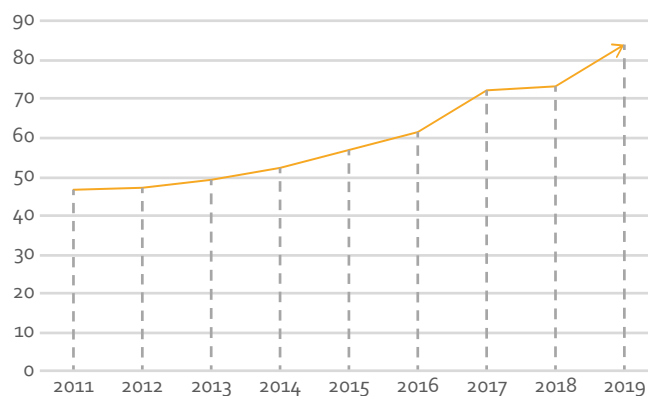
Suspects released under investigation are not given any indication of when a charging decision will be made in their case. Despite the huge implications a charge will have on a child’s future, there is no requirement for expedition when a suspect is approaching the age of 18. Further, there is no guidance on time scales for police investigation and/or a decision to charge when a child or young person is involved.

The National Police Chiefs’ Council (“NPCC”) released guidance in 2019 that investigations must have a documented supervisory review at least every 30 days until the investigation has been completed and a disposal actioned⁵. However, it remains suggested good practice and there is a great deal of uncertainty in the system. Charlie Taylor, former chair of the Youth Justice Board for England and Wales, expressed concerns about the “limbo effect”. Often when RUI is used it results in investigations being prolonged and suspects “left dangling [...] so they are all grown up by the time they get charged, all the while unable to access support from the Youth Offending Team (“YOT”)”⁶. The Law Society has also evidenced the need to introduce measures for time limits on the use of RUI⁷. It is crucial therefore that reforms are made to the use of RUI so that it does not result in pushing those who have committed offences as children into the adult justice system.

New statistics showing longer delays in the justice system reflect Just for Kids Law’s experience of working with children and young people. The RUI process has had a huge impact on the length of time a charging decision takes. This is partly due to work on already-charged cases being prioritised by the police, the CPS and forensic scientists. We need to strike the balance between ensuring that there is adequate time for securing fair and proper outcomes while avoiding a detrimental impact on a child’s rights and well-being.

The average number of days elapsed from the date of the offence and the day of the charging decision [or laying of information] for youth criminal cases in England and Wales has increased by 37 days (78%) in the past nine years⁸.

Average number of days taken from offence to charge or laying of information for youth criminal cases



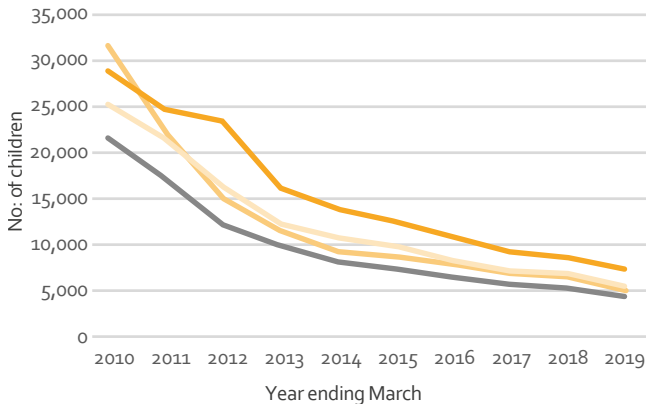
The Government has launched a public consultation on pre-charge bail and we welcome the proposal to introduce “review points” in to codes of practice for investigations where pre-charge bail is not used, including where individuals are interviewed voluntarily or released under investigation. However, there needs to be special consideration for 16- and 17-year olds, who are at risk of crossing a significant age threshold between commission of offence and conviction/sentencing.

Increase in older children entering the youth justice system

The high rates of children turning 18 before conviction is also driven by the increase in age at which children come into formal contact with the criminal justice system⁹. One in four (26%) first time entrants to the youth justice system are 17 years old, whilst 16 and 17 years old represent half (50%) of all children entering the youth justice system for the first time in the twelve months ended March 2019¹⁰. While it is welcome that there has been a decrease in

the numbers of younger children entering the youth system, we must also ensure that this does not mean that a large proportion of people who commit an offence as a child are tried as an adult.

Number of children receiving a caution or sentence by age, in England and Wales, years ended March 2010 to 2019¹¹



In the twelve months ended March 2019, a third (33%) of children cautioned or sentenced for an offence were aged 17 at the first appearance, meaning thousands of children are at risk of tipping into the adult system. More than half (58%) of all children who receive a youth caution or sentence were aged 16 or 17¹².

What does turning 18 mean in practice?

Once 18, a young adult loses access to youth diversion schemes, faces a greater likelihood of being charged, and will be tried in an adult court rather than a youth court. They do not have anonymity during court proceedings, face adult sentences and much more lengthy rehabilitation periods impacting their future life chances.

Decision to charge and loss of presumption of diversion

An “out of court disposal” is a way of dealing with an offence when an admission has been made and it is not in the public interest to prosecute. If someone is under 18 at the date of disposal there is a strong presumption in favour of diversion¹³. When deciding

if it is in the public interest to prosecute a child, the CPS legal guidance on Youth Offenders states that “prosecution is less likely to be required if [...] the seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies¹⁴”.

This presumption in favour of diversion is no longer there if someone reaches their 18th birthday after the offence, regardless of their age when the crime occurred. Young adults are no longer eligible for the types of out of court disposal they would have been given had their case progressed sooner. Youth cautions and youth conditional cautions are only available to children aged between 10 and 17 and cannot be given to an 18-year-old regardless of their age when the offence was committed¹⁵.

Given the presumption that children will be diverted from the criminal justice system where possible, they are likely to be able to benefit from out of court disposals where equivalent offending carried out by an adult would likely result in prosecution. There is no guarantee that those who would have received youth out of court disposal but for turning 18 will receive an adult caution

Availability of Youth Offending Team support

As a young adult who is 18 at the time of the disposal can only access adult cautions, this also has implications for the type of support they receive and how it is administered.

Children given a youth caution or a youth conditional caution are referred to a YOT, who can offer interventions and support to reduce the likelihood of reoffending, and provide the rehabilitation programmes which children may need to complete in order to comply with the caution.¹⁶ All YOTs must develop intervention plans based on an assessment focused on “promoting a pro-social identity¹⁷ and aiding desistance from crime¹⁸”.

Once 18, a young person is no longer eligible to be supported and supervised by the YOT on court orders, meaning that they are cut off from support



designed to prevent re-offending. Once over 18 the same support is not available from probation. In addition, when the YOT are supporting a child on a community-based order they will give them two warnings before initiating breach proceedings. Probation does not operate in the same way and breach proceedings will usually be initiated immediately following any instance of non-compliance, making further prosecution much more likely. The support of the YOT can make a crucial difference in supporting those who committed offences as children to successfully complete any interventions and to move away from offending.

Adult Courts

A child who turns 18 while their case is being heard (i.e. after having their first appearance in court) can continue to have their case heard in a youth court¹⁹, or can be remitted to the adult court before the trial, or after the trial but before sentencing²⁰. However, if a child turns 18 before having their first appearance²¹, their case must be dealt with by the adult court because a youth court has no jurisdiction. The key factor is whether the youth court has decided on mode of trial²².

Where a child is before the adult magistrates' court, for any reason, consideration should be given to any modifications that should be made to allow for effective participation²³. There should be the provision of an intermediary for the purposes of preparation for the trial and during the trial and a pre-trial court visit arranged where appropriate. Subject to the need for appropriate security arrangements, and if practicable, the trial should be held in a courtroom in which all the participants are on the same or almost the same level. A vulnerable defendant, especially if young, should normally, if the defendant wishes, be free to sit with members of his or her family or others in like relationships, and with some other suitable supporting adult such as a social worker, and in a place which permits easy, informal communication with the defendant's legal representatives. The wearing of robes and wigs should take account of the wishes of a vulnerable defendant.

Further, the conduct of the trial should follow a timetable which takes full account of a vulnerable defendant's ability to concentrate with frequent and regular breaks, if necessary. The trial judge should ensure, as far as practicable, that the whole trial is conducted in clear language that the defendant understands and that the questioning of witnesses

is conducted using short and clear questions. The conclusions of the "ground rules" hearing should be followed, and advocates should use and follow the advocates' toolkits²⁴. These safeguards will not generally apply to those who commit offences as children but turn 18 during the criminal justice process²⁵.

Adult courts are different to youth courts: adult courts are open to the public rather than closed, and defendants who have turned 18 are usually required to appear in the dock, whereas there are strong arguments which can be made to keep children under 18 out of the dock.

Jurisdiction

The exception – once proceedings 'are begun' in the youth court, there is a discretion for the case to continue to be heard there even when a child turns 18²⁶.

However, a case is only deemed to have begun once mode of trial has been considered. If mode of trial is not considered at the first hearing and the child turns 18 before it is, they will have their case transferred to the adult court²⁷.

Reduced use of bail

For children who are granted conditional bail, it is the duty of the YOT to ensure the required bail support is available, including intensive supervision and support as a robust alternative to custody²⁸. This is underpinned by the principle that custody should only be used as a measure of last resort²⁹. When bail is refused, a child must be remanded to local authority accommodation unless conditions for remand to youth detention accommodation apply.³⁰

Despite a worrying recent increase in the use of custodial remand for children³¹, the use of remand for children has generally decreased in the last decade with the average number of children on remand being 73% lower than its peak in 2006³². In the twelve months ended March 2019, youth detention accommodation remands accounted for only 11% of all remand episodes for children while two thirds (66%) of children given a remand to youth detention accommodation did not subsequently receive a custodial sentence³³. However, once a person has turned 18, there is much higher likelihood of a custodial remand due to the lack of bail support available.

Regardless of the date of the offence, young women aged 18 and over are remanded into adult prisons, as there are no distinct Young Offender Institutions ("YOIs")³⁴ for women. Young men who have turned 18 are remanded into YOIs. The impact of a remand into custody can be devastating and many remand prisoners face worse conditions than those sentenced³⁵. Further, nearly one in three children (and one in 10 adults)³⁶ remanded in custody in the twelve months ended March 2019 were eventually acquitted³⁷.

Sentencing options

If a child is convicted but turns 18 prior to sentence, they are entitled to receive youth sentences and a court must impose a Referral Order³⁸ if specified compulsory conditions are met. In practice, this means that Youth Offending Teams already support some children who have turned 18 to complete both Referral Orders and Youth Rehabilitation Orders³⁹, although the YOT may transfer supervision to the probation service for certain aspects. The YOT still has a statutory duty to implement a Referral Order and make arrangements for supervising the young person's compliance or non-compliance⁴⁰. However, Detention and Training Orders⁴¹ ("DTOs"), s.91⁴² sentences and extended supervision of DTOs can all be transferred to the probation service⁴³.

If a child turns 18 before they are convicted, they can no longer receive youth sentences, regardless of the date of the offence. As a result, they become subject to adult sentences. The purposes of adult sentences include deterrence, punishment of the offender and protection of the public⁴⁴. This is a significant shift from the purposes of child sentences, which have the prevention of reoffending as the principle aim⁴⁵, and the welfare of the child as a central consideration^{46, 47}.

Although now sentenced as an adult, the child's age at the time of the offence must be taken into consideration as part of the adult sentence they receive⁴⁸. Sentencing Guidelines state that "*when any significant age threshold is passed it will rarely be appropriate that a more severe sentence than the maximum that the court could have imposed at the time the offence was committed should be imposed*"⁴⁹. Further, the Court of Appeal has also emphasised that turning 18 is not a "cliff edge" and age remains a relevant factor for young people⁵⁰.

Sentencing

Although the length or severity of any sentence should always reflect the age a defendant was at the time they committed the offence⁵¹, defendants are sentenced according to their age at the date of conviction, rather than the date of offence⁵². This means where children turn 18 between the commission of the offence and the conviction, the maximum sentence available will be higher than that available on the date the offence was committed and they will receive adult sentences for offences committed as children.

Recently, sentences given to children who have turned 18 after a lengthy time on RUI have been challenged in courts. The Court of Appeal considered the long delay between commission of the offences and sentencing to be a factor in the case of *R v Hayward & Weaving*⁵³ and, consequently, reduced the sentence.

Once over 18, a young person's pre-sentence report, which supports the decision-making of the court, is prepared by probation services rather than the YOT. YOTs are primarily concerned with the welfare of the children they are working with and their aim is to prevent reoffending. Probation services, unlike the YOTs, do not have the same welfare-based priorities but are more punitive in nature with a focus on managing risk to the public. Therefore, those who were children when they offended but are supervised by probation rather than the YOT suffer an additional, disproportionate injustice. If a person who has turned 18 is sentenced to a Community Order, this will be undertaken alongside adults.

Sentencing Children and Young People Definitive Guideline⁵⁴

Section six: Available sentences

Crossing a significant age threshold between commission of offence and sentence

6.1

There will be occasions when an increase in the age of a child or young person will result in the maximum sentence on the date of the finding of guilt being greater than that available on the date on which the offence was committed (primarily turning 12, 15 or 18 years old).

6.2

In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes young people who attain the age of 18 between the commission and the finding of guilt of the offence but when this occurs the purpose of sentencing adult offenders has to be taken into account, which is:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

6.3

When any significant age threshold is passed it will rarely be appropriate that a more severe sentence than the maximum that the court could have imposed at the time the offence was committed should be imposed. However, a sentence at or close to that maximum may be appropriate.

R v Hayward & Weaving [2019] 8 WLUK 118 - Court of Appeal judgment on the passage of time between offence and sentence

The Court of Appeal considered the relevance of age and the long delay between the commission of the offences and sentencing.

Details

The appellants had committed a common assault and a subsequent Actual Bodily Harm on the same victim when they were aged 17 and 18. The offences took place in 2017 but they were not summonsed to court until 2019, by which time the younger of the two had turned 18. The sentencing judge took the sentencing guideline for children and young people into account and sentenced the younger appellant to 11 months immediate detention and the older one to a similar length of time. They appealed on the grounds that the sentences were manifestly excessive. The Court found that the delay between offence and sentence had been significant and not the appellants' fault. The appellants had matured significantly during the intervening period and they were both young. The Court held that the 11-month sentences were not manifestly excessive but that the imposition of an immediate custodial sentence was not necessary and it would have been possible for the court to have suspended the sentence. As the appellants had already served most of the sentence by the time the appeal was heard, the court substituted the 11-month sentences for 6 months and the appellants were immediately released from custody.

Adult custodial estate

There are significant problems with the children's secure estate. Males who commit offences as children but turn 18 prior to receiving a custodial sentence have to serve that sentence in Young Offender Institutions (YOIs). As there are no YOIs for females, young women who are convicted at 18 have to serve their custodial sentence in adult women's prisons.

An additional difficulty exists for those on remand in the youth custodial estate (secure children's homes or secure training centres) and are transferred to the adult custodial estates as a result of crossing the age threshold.

Enhanced supervision periods

Following a custodial sentence, young adults are subject to longer periods of supervision than they would have received had they been sentenced as children. For any custodial sentence of under 2 years, a supervision period of at least 12 months will follow⁵⁵. This heightens the risk of breach and recall, pulling young adults further into the criminal justice system.

Longer rehabilitation periods

The criminal records system for children in England and Wales is already highly punitive compared to other countries⁵⁶.

For a young adult who turns 18 prior to conviction, the punishment is heightened and they are

subject to much longer rehabilitation periods. The rehabilitation periods following custodial sentences of over 6 months, for example, are approximately double what they would be if the individual had been convicted under 18 years of age, regardless of the date of the offence⁵⁷. Longer rehabilitation periods act as further barriers to employment, housing and education, preventing children who have turned 18 from moving on.

The Supreme Court has ruled that the disclosure of youth cautions on enhanced Disclosure and Barring Service (“DBS”) checks is disproportionate and breaches Article 8 of the European Convention on Human Rights (“ECHR”). If the government implements this ruling, children who turn 18 and receive adult cautions for childhood offending will not benefit from this protection.

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
A custodial sentence of over 2 years 6 months but not exceeding 4 years	7 years from the date on which the sentence (including any licence period) is completed	3 years 6 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 2 years 6 months*	4 years from the date on which the sentence (including any licence period) is completed	2 years from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months*	2 years from the date on which the sentence (including any licence period) is completed	1 year 6 months from the date on which the sentence (including any licence period) is completed
A sentence of service detention	1 year from the date on which the sentence was completed	6 months from the date on which the sentence was completed
Dismissal from Her Majesty's Service	1 year from the date of conviction	6 months from the date of conviction
Fine	1 year from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order or youth rehabilitation order	1 year from the last day on which the order has effect	6 months from the last day on which the order has effect
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

Loss of anonymity

Those who turn 18 prior to prosecution lose their right to anonymity during the court process, despite having been children when they offended. While reporting restrictions are automatic in the youth court⁵⁸, and usually granted for children in the adult courts⁵⁹, this is not the case post 18. When the court considers lifting reporting restrictions, they are under a duty to consider the child's welfare and to promote their rehabilitation and reintegration into society. It is only on the rare occasions when the court is clear that it is in the public interest to identify child defendants that they can lift reporting restrictions. We know through our direct practice that the physical and psychological harm experienced by those who are publicly named and shamed is significant.

Conclusion

It is extremely damaging to children to allow them to wait for months or even years in limbo before they are charged. Such a delay also pushes them by default into the adult criminal justice system where the consequences are profound. This is despite the evidence that hardship, neglect, lack of consequential thinking or developing maturity can all lead to offending behaviour in childhood.

While there has been welcome progress over the last decade in recognising the distinct needs of young adults aged 18-25 in the criminal justice system, far less has been done to improve outcomes for those who commit offences as children but are convicted or sentenced as adults. Concerted action is now needed to truly provide timely justice.

Recommendations

Police investigation

- Amend the Policing and Crime Act 2017 to state that there should be a maximum time limit that any child can be subject to Release Under Investigation.
- Amend the Police and Criminal Evidence Act 1984 to ensure investigations involving 17 year olds are expedited. There should be a time limit of three months on which any child can be subject to a RUI. The Police could apply for permission to extend this with good reason.

- Add strict guidelines for the National Police Chiefs' Council on regular approval mechanics for continuing investigation over a period of time for children.
- Amend the Youth Justice Board and the police guidance to ensure all decisions to charge are based upon guidance relevant to suspect's age on date of offence.
- Ensure diversionary schemes remain available when children turn 18 including youth caution/youth conditional caution regime.
- Collect data on children who are released under investigation and those who commit offences but turn 18 prior to conviction, which must be fully disaggregated by gender, ethnicity and age and published (i.e. incorporated in the Ministry of Justice and Youth Justice Board for England and Wales annual youth justice statistics). The data available on these children is inaccurate and there is an urgent need to collect and publish accurate data.

Decision to charge

- Amend Crown Prosecution Service guidance to ensure all decisions to prosecute are based upon guidance relevant to suspect's age on date of offence.
- Amend Crown Prosecution Service and police guidance in order to expedite charging decisions for 17 year olds.

Determination of which court

- Start the process in a youth court for all individuals who are charged with an offence that they committed as a child, ensuring access to specialist courts and lawyers.
- Amend Crown Prosecution Service and police guidance in order to expedite determination of jurisdiction of trial proceedings.

Anonymity

- Extend s.45A Youth Justice and Criminal Evidence Act 1999 ("YJCEA") to defendants thereby giving judges discretion to grant lifelong anonymity to children who committed offences as children irrespective of the date of sentence.

- Extend s.45A YJCEA to allow for reporting restrictions to be put in place where the defendant was a child at the time of the offence.

Sentencing

- In cases where children have turned 18 between the offence and sentencing, the Courts should have access to sentences for children (e.g. Referral Orders and Youth Rehabilitation Orders).
- Provide training for sentencers, legal advisors and clerks on the Sentencing Council's (2017) Overarching Principles – Sentencing Children and Young People Definitive Guideline, paras 6.1 – 6.3 and as well as on the issue of turning 18.
- Children who turn 18 prior to conviction should be supervised by the YOT if the sentence is able to be completed within reasonable timeframe e.g. by age 19. The YOT will have to consider the cost/benefit of extending the support and allowing flexibility because the focus should be on resettlement and support. Consideration should be taken if it was a protracted process from committing the offence to conviction and sentencing, whether these cases deserve YOT support.

Secure estate

- Ensure specialist support and placements within the adult estate are available for those who have offended as children.
- Review legislation regarding the length of post-custody supervision for young adults who were children at the time of the offence.

Criminal record reform

- Provide a consistent approach to childhood offending by ensuring those who turn 18 prior to conviction or sentence are subject to same rehabilitation periods as children.

Endnotes

- 1 United Nations Committee on the Rights of the Child (2019) *General Comment No. 24 on children's rights in the child justice system*, para 31.
- 2 Charlie Taylor and Ministry of Justice (2016) *Review of the Youth Justice System in England and Wales*, para 172.
- 3 Figures sourced from the Youth Justice Board.
- 4 Extendable up to three months where authorised by a superintendent and every three or six-month extension thereafter ad infinitum must be agreed by a magistrate. Policing and Crime Act 2017 (PCA), s.62 and s.63.
- 5 National Police Chiefs' Council (2019) *015 19 NPCC FOI Response Part 3 – Operational Guidance for Pre-Charge Bail and Released under Investigation*; available at <https://www.npcc.police.uk/2019%20FOI/NPCC%20Miscellaneous/015%2019%20NPCC%20FOI%20Response%20Part%203.pdf>.
- 6 The Guardian (5 November 2019) *In Greater Manchester, youth crime is up but fewer go to court. Why?*; available at <https://www.theguardian.com/society/2019/nov/05/greater-manchester-youth-crime-court>.
- 7 The Law Society (7 November 2019) *Release under investigation*; available at <https://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-justice/release-under-investigation/>
- 8 Youth Justice Board and Ministry of Justice (2020c), *Youth Justice Statistics: 2018 to 2019 additional annexes*, annex E.1.
- 9 The average age of FTEs aged 10-17 has been increasing over the last ten years. It increased from 14.7 years old ten years ago to 15.3 in the latest year, though it has remained broadly stable over the last five years. Over the last ten years, the average age of FTEs receiving a sentence has always been higher than the average age of those receiving a youth caution. Youth Justice Board and Ministry of Justice (2020a) *ibid*, para 2.2.
- 10 Youth Justice Board and Ministry of Justice (2020b) *Youth Justice Statistics: 2018 to 2019 supplementary tables*, table 2.6.
- 11 Youth Justice Board and Ministry of Justice (2020a) *ibid*, para 3.5.
- 12 Youth Justice Board and Ministry of Justice (2020b) *ibid*, table 3.3.
- 13 Crown Prosecution Service (2020) *Legal Guidance: Youth Offenders*; Home Office (1994) *The Cautioning of Offenders: Circular 18/1994*.
- 14 Crown Prosecution Service (2020) *ibid*.
- 15 Ministry of Justice (2013) *Code of Practice for Youth Conditional Cautions*, para 2.2.
- 16 Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.135.
- 17 <https://www.t2a.org.uk/wp-content/uploads/2020/01/Nacro-Using-an-identity-lens-2020.pdf>
- 18 Youth Justice Board and Ministry of Justice (2019) *Standards for children in the youth justice system 2019*, page 9.
- 19 Children and Young Persons Act 1963, s.29.
- 20 The court can remit the defendant to the adult magistrates' court before trial (s.47 Crime and Disorder Act 1998) or after trial and before sentence (s.9 Powers of Criminal Courts (Sentencing) Act 2000).
- 21 See *R v Uxbridge Youth Court ex parte H* TLR 7/4/98 and *R v Amersham Juvenile Court ex parte Wilson* 1981 2 All ER 315. Crown Prosecution Service (2020) *ibid*.
- 22 *R v Ford (Lewis)* [2018] EWCA Crim 1751.
- 23 Royal Court of Justice (2015) *Criminal Practice Directions 2015*, CPD 3D-G.
- 24 *R v Grant Murray and other* [2017] EWCA Crim 1228, para 110.
- 25 In respect of eligibility for special measures, "vulnerability" and "intimidated" witnesses are defined in sections 16 and 17 of the Youth Justice and Criminal Evidence Act 1999 (as amended by the Coroners and Justice Act 2009); "vulnerable" includes those under 18 years of age and people with a mental disorder or learning disability; a physical disorder or disability; or who are likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case. Royal Court of Justice (2015) *ibid*, CPD 3D.1.
- 26 s.29 Children and Young Persons Act 1963
- 27 *R v Ford (Lewis)* [2018] EWCA Crim 1751.
- 28 Crime and Disorder Act 1998, s.38(4)(c).
- 29 Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people. Sentencing Council (2017) *Overarching Principles – Sentencing Children and Young People Definitive Guideline*, para 1.3.
- 30 Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.91(3).
- 31 The number of children held on remand in youth custody has increased by 12% in the last year, to just over 240 children, and now accounts for 28% of all children in youth custody. This is the largest proportion in the last ten years. Youth Justice Board and Ministry of Justice (2020a), para 6.
- 32 Prison Reform Trust (2019) *Bromley Briefings Prison Factfile: Winter 2019*, page 37.
- 33 Youth Justice Board and Ministry of Justice (2020a) *ibid*, para 6.
- 34 A type of secure accommodation that children may be placed in if they are in custody. Young offender institutions are for boys aged 15 – 17 and young adult men aged 18 – 21. For more information see <https://yjlc.uk/young-offender-institution-yoi/>.
- 35 HM Inspectorate of Prisons (2012) *Remand Prisoners: A thematic Review*.
- 36 One in 10 people remanded into custody by magistrates' courts in 2018 were subsequently acquitted. Prison Reform Trust (2019) *ibid*, page 23.
- 37 Youth Justice Board and Ministry of Justice (2020a), para 6.3.
- 38 A sentencing option for children who have pleaded guilty to an offence. If given a referral order a child is referred to a Youth Offender Panel with a parent. The child agrees a contract with the panel. A referral order can be from three to twelve months. For more information see <https://yjlc.uk/referral-orders/>.
- 39 Youth Rehabilitation Orders ("YROs") are community sentences given to children. Each sentence includes different requirements and can last up to three years. For more information see <https://yjlc.uk/youth-rehabilitation-order-yro/>.
- 40 HMP Prison and Probation Service, National Probation Service and Youth Justice Board (2018) *Joint National Protocol for Transitions in England*, para 9.4.
- 41 A prison sentence for 12-17 year olds which can be for 4, 6, 8, 12, 18 months or two years. Children aged 12 – 14 can only receive a DTO if they are considered a persistent offender. For more information see <https://yjlc.uk/detention-and-training-orders-dtos/>.
- 42 Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 allows the Crown Court to sentence children (under 18 year olds) charged with grave crimes to custody (a prison sentence). It only

applies for grave crimes, these are certain offences listed in section 91. It is normally used to pass a sentence longer than the maximum two years available under a DTO. For more information see <https://yjl.c.uk/section-91-sentences/>.

- 43 HM Prison and Probation Service, National Probation Service and Youth Justice Board (2018) *ibid*, para 9.7.
- 44 Criminal Justice Act 2003, s.142.
- 45 Crime and Disorder Act 1998, s.37(1)
- 46 Children and Young Persons Act 1933, s.44(1).
- 47 Sentencing Council (2017), para 1.1.
- 48 Sentencing Council (2009), para 5.2; *R v Ghafoor* [2002] EWCA Crim 1857
- 49 Sentencing Council (2017) *ibid*, para 6.3.
- 50 *R v Clarke, Andrews and Thompson* [2018] EWCA Crim 185
- 51 *R v Ghafoor* [2003] 1 Cr.App.R.(S) 84
- 52 *R v Danga* (1992) 13 Cr App R (S) 408 (CA), *R v Cassidy* (2000) Times 13 October, *R v Robinson* (1993) 14 Cr App R (S) 448
- 53 *R v Hayward & Weaving* [2019] 8 WLUK 118
- 54 Sentencing Council (2017) *ibid*, paras 6.1 – 6.3.
- 55 Offender Rehabilitation Act 2014, s.2.
- 56 Sands, C. and Standing Committee for Youth Justice (2016) *Growing Up, Moving On The International Treatment of Childhood Criminal Records*.
- 57 Disclosure and Barring Service (2019) *Guidance: Rehabilitation Periods. A table of rehabilitation periods for the most common sentences and disposals, and example scenarios*.
- 58 Children and Young Persons Act 1933, s.49.
- 59 Youth Justice and Criminal Evidence Act 1999, s.45.

ABOUT JUST FOR KIDS LAW

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

ABOUT THE YOUTH JUSTICE LEGAL CENTRE

The Youth Justice Legal Centre (YJLC) has been set up by the charity Just for Kids Law to provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Free specialist legal advice for children, their families, youth offending teams, the judiciary and lawyers.

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Other documents in the series: Youth Justice Legal Centre Legal Guide:
Turning 18

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