
2. Custody should be a last resort for young adults.

Given their capacity to change, young adults are more likely to benefit from rehabilitative sentences and restorative measures.

Sentencers need to ensure that they have all relevant evidence before passing sentence, including the impact of the proposed sentence both on the young adult and the community. Sentencers should also take care to guard against the risk of discrimination on the basis of the young adult's ethnicity. Black, Asian and Minority Ethnic (BAME) young adults are over-represented in the criminal justice system (Ministry of Justice 2016: Figure 1.01: Ethnicity proportions throughout the CJS, 2016).

Obtain relevant information: Consideration should always be given to obtaining a pre-sentence report for young adults. Reports from social workers, psychologists and psychiatrists that deal with the potential impact of a sentence on the young adult's well-being and life chances should also be considered. This is because the distinct needs and characteristics of young adults may not be apparent without relevant in-depth assessments being prepared. There are well-documented high levels of difficulties and unmet need among young adults in the criminal justice system, many of whom have multiple vulnerabilities that impact on their mental health and life chances. These include their psychological history, cognitive functioning, histories of placement in care facilities and their own early caring responsibilities (Justice Committee 2016: 11–12). There is a well-established link between early childhood adversity and criminalisation (Justice Committee 2016; Centre for Youth & Criminal Justice 2018). Maturity is now well established as an important factor and the Ministry of Justice has published a psychosocial maturity screening tool for young adult men convicted of crime to be used by probation and custody officers (Ministry of Justice 2017b).

Fully explore community options: Where possible, the option of a community sentence should always be fully explored. Community orders can be imposed even where the custody threshold has been met. The support in the community should be fully explored and considered. Young adults may be entitled to additional support from social services as care leavers in accordance with section 23C(1) of the Children Act 1989 and statutory guidance (Department for Education 2015). The nature and intensity of

the service may vary depending on the age and circumstances of the young person. All care leavers aged between 21 and 24 are entitled to leaving care support if they request it regardless of whether or not they are or wish to be in education in accordance with section s. 23 CZB of the Children Act 1989 and statutory guidance (Department for Education 2018). Care leavers in education when they turn 25 are entitled to support until the course is completed in accordance with the section 23CA of the Children Act 1989. Young adults may also be entitled to support under the Care Act 2014 (Department of Health & Social Care 2018: Chapter 16).

Fully consider the risks associated with custody:

Where a community sentence appears not to be commensurate with the seriousness of the offence, particular care and attention should be paid before imposing a custodial sentence.

It is well established that custody can have a particularly damaging effect on young adults given their stage of development and it has a range of other damaging consequences. Custody increases the likelihood of offending, exposes the young person to violence and trauma and leads to the creation of more victims. Incarceration is the form of punishment most likely to result in reoffending. When compared to community orders or suspended sentences, short-term custody has been found to be less effective in reducing reoffending among 18- to 20-year-olds than among any other age group, except those aged 50 and over (Hillier and Mews 2018). It is particularly ineffective with the most prolific offenders: among those with more than 50 previous offences, the odds of reoffending within a year were 50 per cent higher for 18- to 20-year-olds following short-term custody than a court order (Hillier and Mews 2018).

Sending a young adult to prison inevitably results in a punishment that goes significantly beyond the deprivation of liberty. The negative effects of prison custody on young adults and the community are demonstrated by the high number of self-inflicted deaths by young adults in custody, increasing incidents of violence and self-injury among young adults due to poor prison conditions, and high reoffending rates (Lord Harris 2015). Between 2006 and 2016, 164 young adults aged 18 to 24 died in custody; 136 of whom took their own lives (Ministry of Justice 2017a: Table 1.3). In his annual reports, the Chief Inspector of Prisons has repeatedly raised concerns about the state of prisons holding young adults, many of which hold older adults too,

including concerns about high numbers of young adults unlocked for less than two hours each day, low levels of purposeful activity and high levels of violence and drug use (Her Majesty's Inspectorate of Prisons).

3. Where a custodial sentence is imposed, the term should take into account the impact of prolonged custody on the young adult's well-being and life chances.

This may include the impact of the sentence on the young adult's prospects of education, employment and dependent children, both by depriving the young adult of opportunities to develop and reducing the support available.

Young adult care leavers are entitled to time-limited support. Services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that age.

While people convicted under the age of 18 receive shorter rehabilitation periods for the purpose of disclosing convictions to employers as a matter of course, young adults receive the same rehabilitation periods as older adults. The time period for when convictions become spent is provided for by section 5 of the Rehabilitation of Offenders Act 1974. For those "under 18 at date of conviction", the periods are half of those imposed on those aged 18 or over at the date of conviction. However, difficulties in obtaining employment can dramatically increase the risk of further offending by young adults (T2A 2011: 7).

4. The period of any custodial term should be less than that imposed on an older adult.

Current sentencing guidelines state that children under the age of 18 should receive a discount of around one half to one third of the sentence that would have been imposed on an adult for the same offence (Sentencing Council 2017: 36). A similar graded approach should be adopted for young adults which reflects their on-going development. For example, sentencers might adopt the approach in the guidance for children or a modified approach such as a discount of between one third and one quarter. As in the case of children, "although chronological age dictates in some instances what sentence can be imposed...the developmental and emotional age of the child or young person should always be

considered and it is of at least equal importance as their chronological age" (Sentencing Council 2017: 4.10).

5. When considering mitigating factors, attention should be paid to how they particularly affect young adults.

- a. Mitigating factors may be accentuated in the case of young adults on account of their on-going physical and mental development, as well as an increase in stressors such as responsibilities in work and home life combined with a reduction in support;
- b. Young adults with conditions such as brain injury and other forms of trauma, learning disabilities/difficulties and speech and language difficulties may face particular difficulties during this period of development and transition;
- c. Young adults often have less contact with services than children and therefore additional effort needs to be made to obtain positive evidence;
- d. Young adults may face particular disadvantages based on their ethnicity or gender which may need to be carefully explored to counter the risk of bias;
- e. Young adult care leavers may have experienced multiple disadvantages which may not be apparent from the information immediately available;
- f. Young adults may have caring responsibilities; and
- g. Young adults are still maturing and an assessment of the maturation of the individual young adult may be required to obtain the extent to which the offence was influenced by their lack of maturity (Ministry of Justice 2017b).

A table of mitigating factors that currently apply to children and to older defendants, with suggestions as to how these might be adapted for young adults, is available at www.howardleague.org.

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison. We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

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