

Rethinking Alternatives to Prison

Speech by ICPS Director Rob Allen to the Inside Government Conference

“The Youth Justice System: Effective, Transparent Justice for All”

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1. I want to share some reflections on where policy and practice might go in respect of young offenders over the next few years. It is worth asking what we mean by youth crime and young offenders. I chair the T2A Alliance which last year launched a manifesto for young adults arguing for the introduction of a more distinctive approach to those in the 18-24 age group, including making juvenile law applicable to those up to 21 as happens in Germany. At about the same time I visited Helsinki where I was told that for the prison service in Finland all those up to the age of 29 are considered young offenders.
2. At the other extreme three years ago, when I finished my term on the Youth Justice Board (YJB) I published a paper setting out some proposals for reforming youth justice, one of which was that the age of criminal responsibility should be raised to 14. A police officer got in touch to say that children understand right from wrong at the age of two and “from the police point of view the sooner they are in the system the better.”
3. There is of course much to be said for early intervention with children in difficulty. There is good evidence about the cost effectiveness of constructive work with children who show signs of conduct disorders at an early stage, but

there are many who wonder whether labelling theory – much in vogue when I first started work but seemingly sidelined in recent years – can have been wholly wrong. As the Riyadh Guidelines say “labelling a young person as deviant, delinquent or pre-delinquent often contributes to the development of a consistent pattern of undesirable behaviour.” This can result from a combination of how people see themselves and how others, particularly state agencies, see them and treat them. While such effects may be less acute in respect of “at risk” rather than “criminal” labels, whatever the positive intentions of targeting and intervention, unintended consequences cannot be ruled out. The extension of information exchange among agencies and the creation of a myriad of databases for children could exacerbate labelling effects. The Information Commissioner has suggested that “the more you use profiling, the more you run the risk of a society where there is greater stigmatisation, more discrimination, more social exclusion and a society of greater suspicion where trust is reduced.”

4. I am going to confine my remarks to mainstream youth justice - not 29 year olds or two year olds - and say a word about three areas: what role we should expect the formal criminal justice system to play; dealing with serious and persistent offenders and the role of custody.
5. As I mentioned I and many others, including the international community through the UN have recommended raising the age of criminal responsibility. The Joint Committee on Human Rights (JCHR) last year reported that they were not convinced by the government’s argument - a bit like the police officers - that this is a gateway to help.
6. The JCHR report also makes some other important recommendations, arguing for action across Government, particularly the Home Office, to refrain from creating additional offences which lead to the greater likelihood of children being criminalized, and that the Government should review and explain why such a disproportionate number of children who are looked-after, Gypsies and Travellers

or have autism become caught up in the criminal justice system. It also questions the degree to which Anti-Social Behaviour Orders (ASBOs) hasten children's entry into the criminal justice system,

7. The government are of course reviewing the use of diversion following a Panorama programme last year and an interview in a Sunday paper with the Commissioner of the Metropolitan police who expressed a view that too many cautions were being issued. This contrasts with the 2008 review of policing in which Sir Ronnie Flanagan found that police officers are encouraged to criminalise people for behaviour which may have caused offence but the underlying behaviour would be better dealt with in a different way.
8. It is finding that better way that is the key. Certainly any move to raise the minimum age of criminal prosecution to bring us into line with international norms and to divert more cases from prosecution should be accompanied by more robust duties on local authority to respond to children in conflict with the law. Countries like Germany which don't use the criminal justice system for children under 14 have better resourced, trained and respected social welfare systems to keep young people away from a life of crime, with some success if you use the rate of adult imprisonment as an indicator. Restorative measures, family therapy and mental health also play a more developed role in other jurisdictions, in Scandinavia for example and in Northern Ireland. Finland may have a handful of teenagers in prison but it is likely to have proportionately more in psychiatric institutions. Delinquency is not only to be seen through a criminal justice lens.
9. For those young people who do commit serious crimes or continue to offend there does seem to have been some very welcome success in reducing the use of custody. The YJB have achieved something that I and my colleagues were not able to. This seems to have been achieved by a more sustained focus on reducing custody at a local level plus a very good guideline from the Sentencing Guidelines Council. Section 11: 12 of its guideline on sentencing young people

makes it very hard to justify a custodial sentence, requiring courts to take the view that custody is a better way of preventing offending than other options, something which is usually very hard to do.

10. There are some other measures that would improve the response to more serious and persistent offenders, to reduce crime and reduce detention. Enabling youth courts to transfer cases with serious underlying problems to the family court so that care proceedings can be considered for example; and requiring stricter criteria to be met before children under 15 and breach cases can be remanded or sentenced to custody.
11. The Conservative Party have not yet set out in detail what they would do in respect of youth justice and their general approach to social policy appears to point in various directions. They have suggested that that they want to raise the minimum length of a custodial sentence for juveniles to 12 months. If they proceed with this they will need to ensure there is not net widening, either by tightening criteria for custody; requiring decisions to be imposed in Crown Court; or retaining shorter Detention and Training Order (DTO) terms and converting these into intensive community sentences.
12. If they proceed with one of their other proposals, that all young people convicted of possessing a knife should be sent to prison, the secure estate would be overwhelmed.
13. A more promising approach lies in making local authorities liable for meeting costs of most custodial placements to incentivise them to develop more compelling alternatives such as intensive fostering and to invest in a wider range of measures to divert young people from involvement in serious crime. This model has been used in the state of New York, to close youth prisons and invest in local community based measures instead such as after school activities, multi systemic family therapy, mentoring and so on. Requiring local authorities and

courts to develop local plans detailing the range of these community measures available for serious and persistent offenders would be an important part, along the lines of the local plans of intermediate treatment for those with long memories. It was in 1998 that the Youth Justice Task Force, set up after the 1997 election in which youth justice reform was a key policy priority for New Labour, recommended that the YJB should examine the scope for recharging some or all of the cost of secure facilities to the responsible local agencies and it has been recommended periodically ever since. Now finally there looks like some movement.

14. This could perhaps be complemented by the development of a more distinctive approach to the sentencing of children. Next month after years of preparation South Africa will implement its Child Justice Act. Diversion is at the heart of the legislation but the objectives of sentencing are interesting too. They are:
“to encourage the child to understand the implications of their actions and be accountable for the harm caused; to promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society; to promote the reintegration of the child into the family and community; to ensure that any supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration and; to use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.”
15. Finally for those young people who do need to be detained, there is a case for some radical reform. There are some, many even, pockets of good practice in the prison service. When I was on the YJB I was very impressed with the girls’ units at New Hall and much is promised at the new units at Wetherby and to an extent Feltham. But the overall law, philosophy and practice of the prison service is a hindrance not a help to the development of constructive regimes. These reflect structural problems that cannot be solved by tinkering. Even though Anne Owers latest report shows some improvements – fewer young people said they felt

unsafe but still a quarter did, education is getting better - there are still indications that prison is the wrong place. In half the establishments 15% or fewer young men could exercise every day - 3% at Werrington; use of restraint resulting in four fractures at one unit; only half of sentenced young people say they thought they had done anything to help them stop reoffending though almost all want to. The fundamental problems of lack of adequately trained staff, inappropriate rules and regulations and physical infrastructure that is fundamentally unsuitable, too big and not well designed, remain. Only a third of young people said it was easy for families to visit - 29% of girls and 16% of boys never had a visit. There is also a worrying turn in the rhetoric about what prison is for. The Ministry of Justice said they are clear about what prison is for. Prison is first and foremost a punishment - it removes the liberty of offenders, forcing them to comply with a structured, disciplined and tough regime where everyday choices usually taken for granted are removed.

16. Now is the time to remove juvenile custody from the prison service and set up a new youth justice agency to run a transformed youth justice estate – or get the YJB to do it.

17. In conclusion, the welcome fall in numbers in custody presents a real opportunity to introduce far reaching reform to youth justice; The Venables case reminds us of the difficult context of media and public attitudes but contrast it with the Edlington case where the tenor of coverage was much more balanced. There is scope for a reform project here for a new government.