

include YOUTH

Response to DoJ New Custodial Arrangements for Children: Proposals for Consideration August 2022

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Include Youth

Include Youth is a regional rights-based charity for young people in or leaving care, from disadvantaged communities, or whose rights are not being met to improve their employability and personal development. We work with over 800 young people a year aged between 14-25. Our main offices are in Belfast, Armagh, Ballymena, Derry, Enniskillen, Newtownards and Omagh.

The young people we work with and for include those from socially disadvantaged areas, those who have had poor educational experiences, those from a care background, newcomer young people, young people with mental health issues, young people who have committed or are at risk of committing crime, misusing drugs and/or alcohol, engaging in unsafe or harmful sexual behaviour, or at risk of being harmed themselves. We provide a range of tailored employability programmes for these young people, including programmes delivered in partnership with community-based organisations.

One of our programmes, the Give & Take Scheme, adopts a youth work approach to improving the employability and increasing the self-esteem and confidence of young people aged 16 to 24 who are not yet ready to participate in mainstream training. We work across 9 primary sites and a number of outreach locations. The core components are personal development, mentoring, training, work experience, essential skills and transitional support.

Many of these young people have experienced social exclusion, poverty or have other complex challenges in their lives and therefore need additional support to overcome these barriers and positively progress their education, training or employment needs. Seventy-five per cent of young people on the Scheme are care experienced, while over a third has a background in offending.

Include Youth also engages in policy advocacy work in the areas of employability, youth justice and policing. This work is informed by relevant international human rights and children's rights standards, is evidence based, including that provided by young people and practitioners and is based on high quality, critical analysis.

General Comments

We welcome the opportunity to provide comments on the proposals for new custodial arrangements for children.

Include Youth has repeatedly called for the full implementation of the recommendations of the Youth Justice Review, including those relating to bail, remand

and the use of custody (Recommendations 8, 9, 18 and 19). We remain of the view that custody is not currently being used as a measure of last resort. This view was further cemented by the findings of the Tracing the Review report¹, which stated that the overuse of remand and the placement of children into custody under PACE provisions remains an issue of concern, and indeed had become more acute. The report notes that respondents who took part in the Tracing the Review research expressed frustration that these aspects of the 2011 Youth Justice Review had not been sufficiently advanced.

Recent figures highlight that while the numbers of children admitted to Woodlands has decreased, there is still an inappropriate use of custody with 77% of admissions in 2020/2021 related to PACE, 22% to remand and just 0.7% to sentence admissions.² Furthermore, the proportion of young people admitted to custody with experience of the care system remains high and calls into question whether custody is truly being used as a last resort for these young people.

We were disappointed that the proposed changes to the legislation governing bail and remand for children were not included in the Justice Bill in the previous mandate, but are encouraged to hear that these provisions are now likely to be progressed in the new mandate, once the Executive is formed.

We also welcome the commitment to advance the change in legislation which would prevent children being held in adult custodial establishments.

We believe that these proposals must be viewed within the wider context of the continuing and urgent need to increase the low age of criminal responsibility. We are mindful that any developments or changes which may come about as a result of these new proposals regarding custodial arrangements for children, must not be seen as a distraction or a dilution of the wider goal of an increased age of criminal responsibility. As the Tracing the Review authors, referring to the need to increase the MACR stated:

“This issue cannot, however, be sidelined or softened. The NI Executive have a duty to comply with UNCRC obligations”. (page 28)

Specific Comments

Q1. Minimum sentence duration of 6 months?

It is our position that if we are to transform our justice system to one which sees those children and young people with whom it comes into contact with as children first and

¹ Tracing the Review: Developments in Youth Justice in Northern Ireland 2011-2021, May 2021, Nicola Carr and Siobhan McAlister.

² YJA Annual Workload Report, 2020/2021.

offenders second, then any decision on minimum and maximum length of sentences **must be based on individualised assessments of the child's circumstances and needs**. Sentencing decisions should be taken not solely on the circumstances and gravity of the offence but also age, circumstances and needs of the child.

We recommend that:

- Any sentencing decision must be guided by the best interest's principle and custody as a last resort and for the shortest period of time possible principle.
- Judges need to be provided with appropriate and clear guidelines as to how to make appropriate decisions concerning sentences.
- Judges should be advised on the weight to be put on the best interest's principle.
- Judges should be provided with a review of independent assessments on the child, taking into account social care needs, psychiatric and psychological assessment.
- Severity of offence and future risk should also be taken into consideration.

We are still of the opinion that many of the children currently held in the JJC should not be there and their needs would be best met elsewhere. If the JJC was truly being used as last resort, then we agree that there needs to be a sufficient minimum amount of time given to work on rehabilitation and specific needs, which would have been deemed serious enough to require a custodial sentence. We believe that the YJA would require at least a period of 3 months to be able to conduct any progressive and supportive work with the child.

Central to any decision must be an assessment on how putting a child in custody and how the length of time spent there, will ultimately help the child to address the root causes of why they have ended up in the justice system.

Q2: Maximum duration dependent on age

Include Youth do not support the differentiation of maximum duration periods on the basis of age. We do not support the proposed increase of a maximum duration of 4 years for children aged 16 years and over. Any decisions made about period of time in custody should be grounded on the principles of the use of custody as a last resort only, for the shortest time possible and the best interests of the individual child, taking into account specific context, circumstances and need.

How we view the whole issue of minimum and maximum duration of sentences must be discussed within the context of using custody as a last resort. If we reach a point where custody is truly only being used as a last resort, then we

will only see young people detained in custody who have committed serious or grave offences. This should inevitably result in appropriate length of sentences being given, most likely longer than 3 months, to suit the severity of the crime.

Q3: Custody/community split

We agree with this proposal.

Include Youth would ultimately prefer young people to spend more time in the community than in custody, but there remains a concern that the facilities and support available in custody are not mirrored in the community.

There is a need to begin to prepare the young people for release as soon as the custodial sentence begins. This preparation should involve outside support agencies in sufficient time to develop a release plan for the young person and ensure the young person receives the tailored support required. The community element of the sentence should contain as intensive a level of support as that provided within custody, but should be delivered in a way which is useful to the young person and does not actually add to external pressures. All young people should begin the community element of their sentence with a number of key elements in place, including stable accommodation, mental health support, drug/alcohol addiction support programme etc. if required and have some form of education, training or employment placement secured.

Q4: Age applicability

We welcome the fact that courts are not generally using custody as a sentencing option for younger children. We are firmly against custody being used for 10 –13 year olds but ultimately we remain committed to seeing no child under the age of 16 being criminalised, through a custodial sentence or otherwise.

As the proposals state, making the new order only apply to children aged 14 years plus, will not, de facto, increase the minimum age of criminal responsibility. While it could be seen as a step on the right direction it will not address the continued breach of international children`s rights standards that having such a low age of criminal responsibility results in. We understand and appreciate that the Department is doing what it can to move forward on the issues surrounding our low age of criminal responsibility and that at this juncture these proposals would go some way to addressing the use of custody for younger groups, but it cannot be seen as an alternative or a distraction to raising the age.

Include Youth believe that anyone under the age of 18 should serve their sentence at the JJC and not at the YOC. No young person under the age of 18 should ever be detained at the YOC. On turning 18 the young person's situation should be reviewed, taking into account individual needs, the timing and completion of education and training programmes, time left to serve etc.

Q5: Transition/transfer to YOC

We are not in favour of a young person being transferred automatically on their 18th birthday and are in support of the need to take into account whether a young person is particularly vulnerable or if they are engaging in an education or training course which is near completion, before a decision to transfer is made.

Q6: Supervision in the community

We agree that the YJA is the most appropriate organisation to undertake supervision, even when the young person has turned 18.

Q7: Breach procedures

Include Youth is not in agreement with the proposal that rather than a maximum of 30 days in custody for breach, the court would be able to send the child back to custody for any length of time, up to the maximum time remaining on their sentence.

Renewed focus should be put on the impact of unrealistic and unnecessary bail conditions. It is imperative that the necessary supports are set in place to prevent breach. We do not believe that breach should have an automatic outcome and that instead it should be used to renegotiate and assess the supports a young person requires thereby ensuring that any change of circumstances have been taken into account.

Q8: Repeal of uncommenced Community Custody Orders

Include Youth do not believe that these provisions should be repealed. We believe that criminal justice accommodation is not appropriate for 10 – 13 year old children. Ultimately the end goal is to take 10-13 year olds out of the justice system but until such time as we have an increased age of criminal responsibility, there is a need for the option to place younger children in accommodation managed by the health/care sector.

Q9: Suspended Sentences

Include Youth do not believe that suspended sentences should be an option for the new Order.

Q10: Other custodial sentences

We welcome the proposal to amend the legislation to specify that all custodial disposals for children under 18 years of age will be served in the JJC.

Concluding Comments

Include Youth welcome the opportunity to engage in this discussion on this important issue and as ever, we are happy to expand on any of the issues raised in our response.