

include YOUTH

Response to DoJ consultation on Increasing the Minimum Age of Criminal Responsibility December 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 comment on the public consultation on increasing the Minimum Age of Criminal Responsibility (MACR) in Northern Ireland from 10 to 14 years. We support the Minister's efforts to bring about change in this area and commend her for bringing the consultation forward and encouraging public debate on

the low age of criminal responsibility. **Our view is that the MACR should be 16 years with no exceptions for serious or grave offences.**

Specific Comments

Q1: The UN Committee on the Rights of the Child recommends that Member States set a minimum age of criminal responsibility (MACR) of no lower than 14 years. Do you agree that MACR should be raised in Northern Ireland from the current age of 10 to 14 years.

A: No, we are not in agreement that it should be raised to 14, as we believe, to be children's rights compliant, it should be 16 with no exceptions.

While we welcome the consultation we are not supportive of the proposal to increase MACR from 10 years to 14 years. In compliance with international children's rights standards, Include Youth believe that the age of criminal responsibility in Northern Ireland should be 16 years old, with no exceptions for serious or grave offences.

The United Nations Committee on the Rights of the Child has repeatedly said that the minimum age of criminal responsibility in the UK is not compatible with the government's obligations under international standards of juvenile justice and the United Nations Convention on the Rights of the Child (UNCRC).¹

A recent report submitted in December 2020 to the UN Committee on the Rights of the Child in preparation for the next examination of the UK Government's compliance with the UNCRC, compiled by the Children's Law Centre and drawing on evidence submitted by a range of organisations in NI stated:

'Despite a 'Raise the Age' campaign involving organisations working with children and young people, the Northern Ireland Commissioner for Children and Young People, and children's rights advocates, the age of criminal responsibility in Northern Ireland remains 10 years. This contravenes international standards, including the Global Study on Children Deprived of Liberty which argued that states should establish a MACR "which shall not be below 14 years of age".'

The UN Committee on the Rights of the Child recommend that the minimum age of criminal responsibility should be 16 years. This position is based on extensive global evidence on the harm having a low age of criminal responsibility has, the

¹ UN Committee on the Rights of the Child, (2008), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations, paragraph 78; UN Committee on the Rights of the Child (2016), Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Geneva: United Nations; UN Committee on the Rights of the Child (2010) General Comment No. 24 on Children's Rights in Juvenile Justice, United Nations.

ineffectiveness of such an approach and on the improved understanding of child and adolescent development.

*'States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the **Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age.**' (UNCRC, 2019, General Comment No.24 on children's rights in the justice system)*

When delivering the Children's Law Centre 2008 Annual Lecture, the then Chair of the Committee stated:

'The Committee clearly stated the importance of raising it to 12 with a view of eventually raising it even further... In order to persuade State parties to seriously raising the age of criminal responsibility... 12 was decided as the absolute minimum age by the Committee... Furthermore, it was the general understanding of the Committee that industrialised, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16'.²

In General Comment No.24, the UN Committee on the Rights of the Child also recommend that there should be one minimum age only.

*'Systems with two minimum ages:
Several States parties apply two minimum ages of criminal responsibility (for example, 7 and 14 years), with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated. Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices. 27. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.'*

We have an opportunity to go beyond the bare minimum of what a children's rights compliant age of criminal responsibility should be. Our health and social care agencies and our voluntary and community sector are mature and developed, meaning that we

² Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child, The Convention on the Rights of the Child: From Geneva to Northern Ireland, Bringing Children's Rights Home, CLC Annual Lecture, 13th March 2008.

are able to provide an alternative pathway for children, that does not necessitate branding them as a criminal from a young age. We should not aspire to just meet the lowest age threshold of what is acceptable in terms of the age of criminal responsibility. Rather we should aim for a position which sets us out as exemplary in terms of how we treat our vulnerable children. When the UN Committee on the Rights of the Child 'commends' State parties that have a higher minimum age such as 16 we should be aiming to reach a point of commendation rather than just the 'at least' option.

This position was supported at the recent joint event on MACR on 28th November 2022, organised by Include Youth, NIACRO, Children's Law Centre, VOYPIC and QUB Centre for Children's Rights, all of whom supported an increase to 16. Leading academics in the fields of youth justice and children's rights also stated their support for the age to be raised to 16.

Q2: Select the one which most clearly represents your preferred MACR

A: 16 years old

Reasons why MACR should be raised to 16 years with no exceptions for serious offences

Our age of criminal responsibility is at the bottom of the league:

We have one of the lowest ages of criminal responsibility in the world and one of the lowest in Europe. The worldwide trend is to raise the age, generally to at least 14.³

There have also been calls for an increase in the age in England and Wales from some Parliamentarians, academics, NGOs and civil society. Lord Dholakia has repeatedly introduced bills into the House of Lords aimed at raising the age.⁴ Lord Thomas of Cwmgiedd, the former Lord Chief Justice of England and Wales has also called for an increase stating:

³ Hazel, N (2008) 'Cross national comparison of youth justice, London: Youth Justice Board and Howard League for Penal Reform (2008) Punishing Children: a survey of criminal responsibility and approaches across Europe', London: Howard League.

⁴ Brown, A. and Charles, A. (2021), Minimum Age of Criminal Responsibility: The Need for a Holistic Approach, Youth Justice, 2021, Vol.21 (2), 153-171.

“There are better ways to deal with children than criminalising them. The current age of criminal responsibility is too young. It does not comply with the United Nations Convention on the Rights of the Child.”⁵

Lessons from Scotland:

The Age of Criminal Responsibility (Scotland) Act 2019 was passed unanimously by the Scottish Parliament on 7th May 2019, received Royal Assent on 11th June 2019 and fully commenced on 17th December 2021. This Act raised the age of criminal responsibility in Scotland from 8 to 12. Additionally, it provides certain safeguards to ensure that harmful behaviour by children under 12 can be responded to in an appropriate and meaningful way, which will not criminalise children.⁶

However, there have been calls in Scotland to go beyond raising the age to 12, with considerable support from key stakeholders to raise the age to 16. The Children’s Commissioner for Scotland has called for the minimum age of criminal responsibility to be raised to 16 years old claiming that an increase to only 12 years of age is a significant missed opportunity.⁷

The age of criminal responsibility is out of line with other age-related legislation:

The age of criminal responsibility is out of step with other legal age limits. Below the age of 18 children cannot vote; sit on a jury; buy alcohol, tobacco or fireworks; get a tattoo or open their own bank account. Below the age of 16 children cannot consent to sex, leave school, play the lottery or buy a pet. How we treat children within the criminal justice system is starkly different to how we treat them in other areas of social policy. There is an inherent unfairness to the standards of accountability we hold children to in this way.

Neuroscience Research:

To apply the same standards of criminal responsibility to a 10 year old as we would to an adult is to ignore large amounts of evidence about the immaturity of children at that age.⁸ Children do not have the emotional maturity to be responsible by law for their

⁵ The Guardian, Monday 4th November, 2019, Age of Criminal Responsibility Must be Raised Says Experts.

⁶ <https://www.gov.scot/policies/youth-justice/raising-age-criminal-responsibility/>

⁷ Children and Young People’s Commissioner Scotland, Age of Criminal Responsibility (Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018

⁸ Michael E Lamb and Megan PY Sim, (2013), Developmental Factors Affecting Children in Legal Contexts, *Youth Justice*, 2013 13: 131

actions. Although it is true at 10 children are likely to know the difference between right and wrong, they do not have the capacity to fully understand the consequences of their actions.

Neuroscience data has found that there are developmental differences in the brain's biochemistry and anatomy that may limit adolescents' ability to perceive risks, control impulses, understand consequences and control emotions.⁹ There is an argument that children are not capable of fully understanding the implications of their behaviour or know how to regulate their behaviour. Evidence on children's understanding of the criminal justice process suggests that 13 years old and younger are impaired in their ability to understand criminal proceedings and only begin to understand what it means to appear before a judge at around 14 or 15 years of age.¹⁰ Evidence also suggests that children who have experienced trauma, abuse or neglect are 'particularly poorly developed in the required capacities for criminal responsibility and are much more likely to come into conflict with the law'.¹¹

Research on brain development has recently informed new sentencing guidelines in England, Wales and Scotland, acknowledging that full capacity in terms of the ability to reason and adequate levels of maturity may not be reached until the mid 20's for some young people.¹²

Key voices with expertise in child development and child psychiatry are calling for an increase. As Dr Phil Anderson, Consultant Psychiatrist in Child and Adolescent Mental Health, states in his contribution to our blog series on MACR, hosted on the Queen's University Policy Engagement Site, the UNCRC requires that domestic laws are developed in a manner consistent with the emerging capacities of the child. He goes on to say:

"The relevance of these brain findings to youth justice is that the adolescent population is demonstrably and substantially different to the adult population. Legislative approaches to issues, such as MACR, needs to reflect the current scientific understanding of the brain."¹³

⁹ Enys Delmage, (2013), The Minimum Age of Criminal Responsibility: A Medico Legal Perspective, *Youth Justice*, 2013 13:102.

¹⁰ Children and Young People's Commissioner for Scotland, Age of Criminal Responsibility(Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018.

¹¹ *ibid*

¹² Lesley McAra and Susan McVie, Raising the minimum age of criminal responsibility : the research evidence, QUB Policy Engagement Blog, 2022 (forthcoming).

¹³ Dr Phil Anderson, <http://qpol.qub.ac.uk/minimum-age-of-criminal-responsibility-macr-why-it-should-be-raised-in-northern-ireland/>

In giving evidence¹⁴ to MPs on the Justice Committee, Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists, stated:

*“Previously, it was thought that the most significant period of brain maturation was in the first five or possibly eight years. We now know that a second critical period takes place in adolescence and is a very dramatic development of the frontal lobes, which are, essentially, responsible for decision making, planning, consequential thinking, getting ideas about ourselves and social interaction... We have reached a point where nobody is saying any different, and everybody understands that brains are not mature by the age of 10. **They are not mature by the age of 13 or 15.** It is a much longer process than anybody thought, so it does not make sense to treat somebody at 10 the same as an adult, because they are fundamentally quite different in their decision-making abilities.”*

Emerging neuroscience evidence should be one factor to be considered when debating the need to raise the minimum age of criminal responsibility.

Children at risk of coming into contact with the justice system have complex needs:

Children in areas of high deprivation are more likely to be at risk of coming into contact with the criminal justice system and in NI this is particularly true of communities affected by the conflict. The 2011 Youth Justice Review made specific reference to a number of groups of young people that are over-represented in the youth justice system. These included young people with speech and language difficulties, mental health problems and care experienced children.¹⁵

There is no shortage of research linking the higher risks of young people living with poverty, mental ill health, having experience of being in care or experiencing neglect/abuse, misusing drugs or alcohol, and having learning and behavioural difficulties, coming into contact with the criminal justice system.¹⁶ It is often children who are in

¹⁴ Justice Committee Oral evidence: Children and young people in custody, HC 306
<https://committees.parliament.uk/oralevidence/621/pdf/>

¹⁵ Youth Justice Review, page 86.

¹⁶ Howard League for Penal Reform (2011), ‘Response to Breaking the Cycle: Effective Punishment, rehabilitation and sentencing of offenders’, London: The Howard League for Penal Reform; Prison Reform Trust, (2009), ‘Seen and Heard, supporting vulnerable children in the youth justice system’.

greatest social need that are swept up by youth justice systems.¹⁷ McAra and McVie state that:

“Those having early system contact (in the form of referrals to the children’s hearing system for offending by age 12, being formally excluded from school or being care experienced, had almost five times greater odds of a criminal conviction by age 18 than those with no such history”.

McAra and McVie have also found from an analysis of their longitudinal data that there is a statistically significant relationship between needs and deeds – the more serious the deed, the deeper the need. This is true of all forms of serious offending that they measured over the course of their study, but when looking at the findings of young people involved in violence (assault, robbery and weapon carrying) it still held true. They show that those involved in violence in comparison with other young people in the cohort are significantly more likely to come from the poorest backgrounds, report self-harming behaviours including suicide attempts, to have been victims of bullying and of crime, especially violent crime, and to have been excluded from education.¹⁸

Research has shown that many children and young people in Scotland who were referred to juvenile justice on care and protection grounds in early childhood described how they became *“increasingly viewed as offenders by agencies during their teenage years”* and the outcomes for these care experienced young people were the most negative, *“with lives consistently blighted by poverty, mental health and drug problems, poor educational experiences and periods of unemployment”*.¹⁹

Children in care are particularly over-represented in figures of children in custody in Northern Ireland. Of the children in custody during 2021/2022, 34% were in care.²⁰

In recent DoJ funded research on over-representation in the youth justice system in NI, the authors drew attention to the multiple disadvantages and vulnerabilities that the majority of children who come into contact with the justice system have. These included economic disadvantage, under-resourced communities, conflict legacy,

¹⁷ Barry Goldson, (2013), ‘Unsafe, Unjust and Harmful to Wider Society’: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, Youth Justice Series 2013 13: 111.

¹⁸ McAra L and McVie S, (2007) Youth Justice? The impact of system contact on patterns of desistance from offending, *European Journal of Criminology* 4(3): 315-345; McAra, L. and McVie, S. March 2022, Causes and Impact of Offending and Criminal Justice Pathways: Follow Up of the Edinburgh Study Cohort at age 35. [ESYTC Report \(4.3.22\) \(ed.ac.uk\)](#)

¹⁹ McAra, L. and McVie, S. Raising the minimum age of criminal responsibility: the research evidence, Queen’s Policy Engagement Blog Series on MACR (forthcoming).

²⁰ Youth Justice Agency, Annual Workload Statistics, 2021/2022.

parenting stress, educational disadvantage, and family involvement in the criminal justice system.²¹ The authors state:

“Therefore, discussion with representatives across sectors regularly illustrated the complexity of the lives of those who come into contact with the criminal justice system, particularly those who have multiple or sustained system contact. The compounding nature of disadvantage experienced by some children...children with care experiences, children from the Travelling community and migrant or refugee children, some felt, put them at increased risk of criminal justice contact.”²²

The report draws attention to the criminalisation of children in residential care, with nearly all participants acknowledging that care status influenced responses to children’s behaviour, particularly children living in children’s homes, with police being called to care homes for minor offences or incidents that would not result in the same action in a family/parenting setting.

A low age of criminal responsibility that seeks a criminal justice solution to welfare issues, poverty and adverse childhood experiences, simply accelerates already vulnerable children further into the system and ultimately custody.

Damaging impact of criminalising children:

In asking whether a low age of criminal responsibility is in the child’s best interests it is necessary to look at the impact of criminalisation on the child’s future development. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.²³ The Edinburgh Study of Youth Transitions and Crime recently published their latest findings from the longitudinal programme of research on pathways into and out of offending for a cohort of 4,300 people. The authors note in their blog on the Queen’s University Belfast Policy Engagement Blog Series on MACR, how involvement with formal systems can be criminogenic and inhibit desistance.

“There is strong evidence across all years of our Study that formal system contact begets further and more intensive forms of contact – that being charged, referred into the juvenile justice system, being convicted and being

²¹McAlister, S., McNamee, C., Corr, M., Butler, M., Over-Representation in the Youth Justice System in Northern Ireland, QUB, DoJ, March 2022, p34,35.

²² Ibid, p35.

²³ See no.18,19.

made subject to intervention, all heighten the risk of labelling and being sucked further into the system in later years.”²⁴

Criminalising from an early age stigmatises the child and alienates them from society, creates problems of self-esteem and creates barriers in the way of return to education or future employment, not least in the form of acquiring a criminal record.

We are also concerned that children and young people do not fully understand what actions or behaviour may result in a criminal record thus putting themselves at risk of unknowingly acquiring a criminal record. As the Tracing the Review report noted, this lack of awareness about processes and implications could mean children and their parents are not completely clear of the impact of giving informed consent to particular disposals. There are also concerns about children and young people’s knowledge of disclosure processes, filtering arrangements etc. The Youth Justice Review recommended that diversionary disposals should never be subject to disclosure. In most European countries, records for juvenile offending are never disclosed and /or are sealed. In NI the current arrangements are in contravention of children’s rights standards.²⁵

There are better ways to deal with it – better for children and better for communities:

As the previous section has outlined, punitive measures increase the likelihood of reoffending. A key issue in deciding on the age of criminal responsibility is what we want the aim of the process to be. If the aim is to prevent offending, to encourage rehabilitation and the reintegration of the child into playing a constructive role in society then dealing with the child through the criminal justice system does not offer the best chance of success. Our reoffending rates demonstrate this. Government figures from the Department of Justice, reveal that the one year proven re-offending rate of young people for

- Custody release was 16 out of 20 young people
- Non-custodial disposal with supervision was 45.6%
- Non-custodial disposal without supervision was 38.6%
- Diversionary disposal was 21.5%²⁶

²⁴ McAra, L. and McVie, S. Raising the minimum age of criminal responsibility: the research evidence, Queen’s Policy Engagement Blog Series on MACR. [Raising the minimum age of responsibility: the research evidence - Queen's Policy Engagement \(qub.ac.uk\)](https://www.qub.ac.uk/policy-engagement/blog-series-on-macr/raising-the-minimum-age-of-responsibility-the-research-evidence-queen-s-policy-engagement-qub.ac.uk)

²⁵ N.Carr and S.McAlister, May 2021, Tracing the Review: Developments in Youth Justice 2011-2022, QUB Centre for Children’s Rights, University of Nottingham, Include Youth, VOYPC, NIACRO, Children’s Law Centre.

²⁶ DoJ, Adult and Youth reoffending in NI 2019/2020 cohort, Research and Statistical Bulletin, November 2022.

Rather the focus should be on assessing the child's problems and needs and attempting to meet those needs. In a children's rights compliant approach, children in conflict with the law are defined as 'children in need' and the responsibility of children's services (e.g. education, health, social care). The emphasis is on care, protection and diversion from the criminal justice system through providing support to families and helping them to access services and support. In a rights-based environment the emotional and mental health issues can be addressed without labelling the child as criminal or putting an already vulnerable child through the justice system.

It is important that the Department of Justice works closely with colleagues in other departments, but especially Department of Health, to ensure that other measures are taken to ensure that children who were formally dealt with through the justice system will be accommodated in an alternative way. We believe that it is essential that the Department of Health demonstrate buy in to this process by outlining how they will take on that new responsibility and to reassure the community that there has been thought given to this handover.

This type of approach would focus more on the well-being and rehabilitation of the child; it will address the difficulties the young person has experienced which has led them to engage in behaviour which is potentially harmful to themselves and to others, and ultimately risks them becoming involved in the justice system.

It will also ensure less children end up in the justice system. It is a more effective approach and will lead to better outcomes for children and families and safer communities for all.

The Edinburgh Study of Youth Transitions and Crime have published their recent phase of research which included in depth interviews with members of the cohort who had been involved in the criminal justice system in their teenage and adult years. It found that the key factors that helped people stop offending were loving partners, children and jobs which they valued. This points to the importance of educational inclusion and training and employment pathways for young people.

Younger children who are engaged in criminal activity should be supported to realise the consequences of their behaviour.²⁷ We are not suggesting that no action should be taken, nor are we condoning unacceptable behaviour. The voices of communities and specifically victims cannot be ignored and are central to this discussion. It is vital that we listen to what communities are telling us and find ways to address issues of concern. As the Youth Justice Review stated, it is not a case of *whether* children

²⁷ Thomas Hammarberg, former Commissioner for Human Rights on Juvenile Crime, Children's Rights Information Network CRIN.

should be held accountable, but *how* they are held accountable.²⁸ The evidence tells us that solutions for these issues are rarely found in criminalising very young children but in non-criminal justice interventions such as, community development, universal family support and early intervention and prevention services. Such interventions would also recognise that many children who display unacceptable behaviour have in fact been victims themselves. This connection was recognised by some respondents to the consultation in Scotland to raise the age of criminal responsibility. Proposals to increase the age of criminal responsibility in Scotland were broadly welcomed by victims' groups due to the close link between childhood victimisation and offending.²⁹

In the Queens Policy Engagement Blog series, McAra and McVie³⁰ address the concern that some consultees to this consultation may have about what would happen to young people who fall below the age of criminal responsibility but who are involved in behaviours that are harmful to others and/or themselves.

“It is important to stress that in Scotland, as in other jurisdictions where the age of criminal responsibility is higher (as in many Scandinavian countries) these forms of behaviour will trigger interventions but ones which are welfare based, and do not criminalise children Diversion too from formal measures, must be well resourced services and support for children, including educational, restorative, and other structured activity.”

It is also worth noting that there is a fiscal cost to the criminalisation of children and in particular to the detention of children, money which could be diverted to community alternatives. The most recent CJI inspection of Woodlands outlined that with the small number of admissions and no change in the number of staffed places, the cost of holding a young person in custody during 2020-21 was £190,206 (expressed as the cost per place including corporate overheads) or £829,988 when expressed as the cost per occupant.³¹

We could remove a considerable number of children from the justice system:

Raising the age of criminal responsibility would remove a considerable number of children from the justice system.

²⁸ Youth Justice Review, 2011, A Review of the Youth Justice System in NI, page 106, Department of Justice NI.

²⁹ Houses of Parliament, Postnote Number 577, June 2018, Age of Criminal Responsibility.

³⁰ See footnote 23

³¹ Criminal Justice Inspection NI, Announced Inspection of Woodlands, Sept 2022.

According to government figures³², there were **456 individual children** aged 10-15 years old **referred to the Youth Justice Agency Services** in 2021/2022.

The age breakdown of that group is as follows:

- 10-13 years old – 154 children
- 14 years old - 135 children
- 15 years old – 167 children

It is also concerning that we are seeing an increase in the numbers of 10- 13 year olds coming into contact with the criminal justice system. The proportion of individual children referred to Youth Justice Agency Services aged 10-13 has increased, to account for 17% in 2021/2022, which is a considerable increase from 12% in 2017/2018.

The proportion of individual children referred to Youth Justice Agency Services aged 14 has also increased, to account for 14.9% in 2021/2022, which is a considerable increase from 10.9% in 2017/2018.

The proportion of referrals to Youth Justice Agency Services for Early Intervention work has increased from 8.6% in 2017/2018 to 21% in 2021/2022. We are concerned that the increase in the number of 10-14 years old coming into contact with the system is due to the increase in early intervention work and that this work could be drawing more children into having contact with the justice system.

Tracing the Review report noted that *'there is an evidence of mission creep in youth justice'* especially within the sphere of early intervention.

"A body of persuasive research evidence shows that the best outcomes for young people can be achieved when their needs and behaviours are responded to outside of the criminal justice system."

Recent research reported that there is a view by some working in the criminal justice system that given the complex and multiple adversities children in the justice system have, contact with the system may not be in the child's best interests, and that solutions are better found elsewhere. As one police representative has stated:

*"...probably 85% of PSNI's call per year are mental health related. So I think focusing on early intervention, addressing root causes, supporting the Trusts, so god-willing they don't ever come near us. And really for better focus on ACEs and how certainly in policing we don't want to traumatise further or re-traumatise and turn kids into criminals. It's about finding the right approach."*³³

³² NISRA, DOJ, Youth Justice Agency Annual Workload Statistics 2021/2022, 15th September 2022.

³³ McAlister, S., McNamee, C., Corr, M., Butler, M., Over-Representation in the Youth Justice System in Northern Ireland, QUB, DoJ, March 2022, p58

In the same report, representatives from the voluntary sector and human rights bodies shared this view, but emphasized the need for responses to be located in community and social services, with criminal justice having a 'supporting' role. Raising the age of criminal responsibility was also seen as a good starting point to divert vulnerable younger children from the justice system.

In terms of individual children in **custody** in 2021/2022, 10-15 years old account for 42% of under 18 year olds detained in Woodlands Juvenile Justice Centre. The age breakdown for this group in 2021/2022 is as follows:

- 10-13 years old – 4 children
- 14 years old – 13 children
- 15 years old – 27 children

It is worth noting that in 2021/2022 the proportion of admissions to the Juvenile Justice Centre involving children subject to Care Orders has increased from 30.9% in 2019/2020 to 37.2% in 2021/2022. Of the 106 individual children in custody in 2021/2022, 33 were subject to a Care Order and 3 were Voluntary Accommodated. The increase in care experienced children being deprived of their liberty is deeply concerning.

One in three children detained are care experienced.

Also worthy of note is the breakdown of the average population in the Juvenile Justice Centre by status. Very few children who are detained there have actually been sentenced. In 2021/2022, there were NO admissions to the Juvenile Justice under sentence, 79.7 % admissions were under PACE and 20.3% were on remand.

When we look at PSNI figures for children being given Community Resolution Notices (CRNs) we see that there are a considerable number of under 16 year olds receiving these disposals:

In 2018/2019, 870 CRNs were given to 10- 15 year olds.³⁴

There were 1,057 10-15 year old children recorded as having received prosecutions at court and out of court disposals in 2021.³⁵

The call for change is growing:

³⁴ Ibid, Appendix 2, Table 3, p77

³⁵ DoJ Public Consultation on Increasing the Minimum Age of Criminal Responsibility in NI from 10 years to 14 years, October 2022, page 13.

There are increasing calls for and growing evidence to support an increase in the minimum age of criminal responsibility in NI.

- In a 2016 a Kids Life and Times survey of over 5,000 children aged 10 – 11 years in Northern Ireland revealed support for increasing the age of criminal responsibility. 59% of the children supported the minimum age of criminal responsibility being raised with the majority supporting an increase to 14 or 16 years old.³⁶
- The Northern Ireland Human Rights Commission has called for urgent action to address the low minimum age of criminal responsibility in Northern Ireland.³⁷
- There have been calls to raise the age of criminal responsibility to 16 years by the NI Children’s Commissioner.³⁸
- The demand for change in NI has been further fuelled by the changes that have been evident in other jurisdictions, notably Scotland.
- The number of voluntary agencies adding their voices to the call to raise the age is growing and now includes Include Youth, NIACRO, Children’s Law Centre, Barnardo’s, Extern, NI Alternatives, Northern Ireland Youth Forum, VOYPIC, Children in NI, Parenting NI, NICVA, and Quakers Service.
 - In November 2021, we launched a commissioned research report by Dr Nicola Carr and Dr Siobhan McAlister examining developments in youth justice between 2011 and 2021. The Tracing the Review report recommended that urgent action be taken to raise the age of criminal responsibility to 16 years.³⁹

Young People’s Views

As part of our response to this consultation we held focus groups with young people across all Include Youth offices.

During group discussions with young people in all offices, all young people agreed that the age of criminal responsibility should not be 10 years old and should be raised.

³⁶ McAlister, S., Carr, N., Dwyer, C. and Lloyd, K., 2017, Raise the Age? Children’s attitudes towards the minimum age of criminal responsibility, ARK.

³⁷ Northern Ireland Human Rights Commission, Human Rights in Northern Ireland 2022, The 2022 Annual Statement.

³⁸ Northern Ireland Commissioner for Children and Young People, 2022, Statement on Children’s Rights in Northern Ireland.

³⁹ Dr S McAlister and Dr N Carr, 2021, Tracing the Review – developments in youth justice 2011-2022, NIACRO, Children’s Law Centre, Include Youth, VOYPIC, Centre for Children’s Rights Queen’s University of Belfast, University of Nottingham.

Some young people had experienced PSNI involvement from ages 12-13years old. All of the young people explained that this contact with the police was extremely negative, with a few explaining that some officers were 'horrible' and some were 'nice'. Such was the experience that one young person stated that they would find it hard to go to the police if they needed help due to their negative interaction with police from a young age.

Young people discussed their experiences of the PSNI coming into children's homes and mental health units, saying that when police enter in full uniform it can be very intimidating. They explained that if they came without uniform and 'tried to understand what was going on' without trying to be 'scary', they would be more willing to engage with them.

One young person stated: '*once they know you and know you are in care they always stop you*'.

Case Studies:

19-year-old male, first experience with PSNI was at 13 years old

What was your experience?

The police say they are there to help and protect but they don't do that for everyone, I have never felt help or protection from them. I have a real anger when dealing with the police. I was 13 the first time I had dealing with the police and at the time I was in kinship care. I was told I was in a lot of trouble, but no one ask me what was going on or why I did what I did. It was just horrible, anytime I have had contact with them it makes me angry, once they knew me it was like they were always on my case. Its 10 times harder if you are in care.

How has this impacted you?

My mental health, this was the start of my mental health getting bad. I was in consistent fear of being stopped by the police and everyone were I am from thinking I was a bad kid because from when I was 13 they would just stop and search me all the time so I was always worrying when I went out that I would be stopped, it was like they knew me from then and would just think I was always getting up to something bad. It was as if they had their minds made up about me. Living in a small community and being stop by the police for nothing, just because I made a mistake when I was 13 is really embarrassing, they ask me lots of questions, tell me to empty my pockets and pat me down for no reason, it makes me really angry and sometimes I didn't want to leave the house because of it. once the police know you you're a target.

Who is best placed to help young people if they find themselves in a situation like you did?

Social services or someone who works for the police but they don't come in a uniform. At that age you do stupid things you don't realise the impact. If someone who was nice and could understand and help kids learn what would happen if they did these things or find out why they did do them and help them so they don't do it again. The police go 10times harder if you are in care.

18 year old male, first experience with PSNI was 13 years old

What was your experience?

Peer pressured, I didn't know right from wrong at that young age. I was threated from 13 to be put in a tag. Male officer, tone of voice and threaten and angry using vocabulary that I didn't understand, quoting what he said to me "good luck finding a job" after the females office was looking at him I could see she wasn't happy with what he said. She was nice she would have checked in to make sure I was doing ok. He annoyed me because he was so threatening towards me and it scared me, I didn't mean to do what I did. I would have like to have had a better experience, I was peer pressured and they didn't draw me away from that, they should help with that instead of having such a harsh look on young people.

How has this impacted you?

At that age I believed I wouldn't get a job, going to school it stuck with me, I didn't want to go out for a few months. He came from such a threatening manner it didn't just affect me. I was doubting myself and I don't think any 13 year old should feel threated because they are not educated on policing and law and orders.

Who is best placed to help young if they find themselves in a situation like you did.

Family support if they have family. Youth justice system helped my sister and me, I can't give any other recommends because it is all I know.

Concluding Comments

We welcome the opportunity to comment on this consultation. We are supportive of the Department's attempts the bring this issue into the public domain and hope that the process is helpful to any future decisions which may be taken. We look forward to seeing the results of the consultation and are keen to support in any way we can.