Key report facts

- Around three-fifths of all children sentenced to custody in the latter half of 2008 were convicted of offences that usually result in non-custodial sentences, and thus were at the less serious end of the spectrum of offending.

- Around half of the children were imprisoned for crimes that were non-violent.

- Just over one-third (35%) were imprisoned for offences that were both less serious and non-violent.

- No more than about one-fifth of sentenced children (based on our analysis of 200 randomly selected cases) were assessed as posing a ‘high’ or ‘very high’ risk of causing serious harm to others. And there were concerns about the vulnerability in custody of almost half of the children in our sample of 200.

- Around a fifth of sentenced children had been imprisoned for breaching conditions of community sentences, of asbos, of licences following earlier release from custody or for failing to surrender to bail. Thus breaches constitute a significant factor in shaping the size of the population of children in prison.

- Most of the children who were sentenced to custody were repeat offenders – and it is the persistence of their offending, rather than the seriousness of the specific offences for which they were sentenced, which would seem to explain the use of custody in many or most instances.

- About three-fifths of all children who received custody in the second half of 2008 had had previous periods in custody, either under sentence or on remand.

- About 30% were sentenced for two or more offences when they received the current custodial sentence.

- Of the 200 children in our sample of sentenced children, the previous offending of 70% of them is such that they could be described as ‘persistent offenders’, in accordance with the government’s ‘procedural definition’ of persistence. A further 24% had previous convictions, but because of missing data we cannot say if they should be described as ‘persistent’.

- Only 6% of the sample had no previous convictions. Almost half of the children with previous convictions had their first conviction at the age of 13 or younger.
About the study

At any given time, between 2,000 and 3,000 children aged 10 to 17 are likely to be in custody, either under sentence or on remand, in England and Wales. This study asked: who are these children, and why and how do they come to be in custody?

In order to answer these questions, we carried out a two-stage review of the information on children in custody that is held centrally by the Youth Justice Board (YJB).

First, we undertook a census of all children who received custodial sentences or custodial remands in the second half of 2008, who numbered approximately 6,000 in total.

Secondly, we looked in more detail at the backgrounds and current circumstances of 300 of these children (200 sentenced and 100 remanded), who were randomly selected from the full population.

We were thus able to produce a broad profile of all children who entered custody, and a detailed profile of 300 of them, from July to December 2008. No survey on this scale has been conducted in the last 25 years, and as such, the study is a significant addition to our understanding of youth custody.

Public opinion

In conjunction with the publication of this report, the Prison Reform Trust’s Out Of Trouble campaign commissioned a YouGov poll to test the public’s position on these issues. For the poll, YouGov questioned 2,089 members of the public on their attitudes to imprisoning children and the most effective ways of preventing young people from reoffending. The poll reveals:

- Nearly two-thirds (62%) of the public do not support the current minimum age of imprisonment (10) in England and Wales and think it should be at least 12.
- Nearly two thirds (63%) think the current minimum age of imprisonment for non-violent crime (12) is too low and should be at least 14.
- On balance, the majority think that no child below the age of 12 should be prosecuted in court.
- Better supervision by parents, treatment to tackle drug addiction, treatment to tackle binge drinking and better mental health care are all rated much more effective than a prison sentence at preventing young offenders from returning to crime.
Prevalence of disadvantage

Many previous studies have found that there are high levels of disadvantage among children who enter the youth justice system, and our research findings strongly reinforce this message. We conducted a detailed analysis of the types of disadvantage experienced by the sample of 200 sentenced children. The analysis was hindered by incomplete data as our assessment of disadvantage among these children was limited to those attributes on which information was available to us. This means that our figures on disadvantage are significant under-estimates. Nevertheless, the results make it clear that these children experience multiple layers of different types of complex disadvantage. For the vast majority of the 200 children, there is evidence of disadvantage both in terms of home and family and in terms of psycho-social and educational problems.

Prevalence of home and family disadvantages and psycho-social and education problems (% of cases of 200 sentenced sample)

<table>
<thead>
<tr>
<th>Item</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Absent father (i.e. has lived apart from father for significant period of childhood; not solely through bereavement)</td>
<td>76%</td>
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<td>Truancy or other non-attendance of education (currently or previously; due to refusal to attend, lack of provision or other reason)</td>
<td>54%</td>
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<tr>
<td>School exclusion (currently or previously; fixed-term and/or permanent)</td>
<td>48%</td>
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<tr>
<td>Has ever run away or absconded</td>
<td>47%</td>
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<tr>
<td>Ever on child protection register and/or has experienced abuse or neglect</td>
<td>39%</td>
</tr>
<tr>
<td>Parent and/or sibling(s) involved in criminal activity</td>
<td>38%</td>
</tr>
<tr>
<td>Absent mother (i.e. has lived apart from mother for significant period of childhood; not solely through bereavement)</td>
<td>33%</td>
</tr>
<tr>
<td>Substance use places the young person at particular risk (e.g. injecting, sharing equipment, poly-drug use) and/or has a detrimental effect on education, relationships, daily functioning, etc.</td>
<td>31%</td>
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<tr>
<td>Has witnessed domestic violence</td>
<td>28%</td>
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<td>Ever accommodated in local authority care (through voluntary agreement by parents and/or care order)</td>
<td>27%</td>
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<tr>
<td>Difficulties with literacy and/or numeracy</td>
<td>26%</td>
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<td>Self-harm</td>
<td>20%</td>
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<td>Formal diagnosis of emotional or mental health condition</td>
<td>17%</td>
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<tr>
<td>Bereavement – parent and/or sibling(s)</td>
<td>13%</td>
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<tr>
<td>Attempted suicide</td>
<td>11%</td>
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Multiple placements in care

Arran is a 14 year old boy, sentenced for racially aggravated common assault. The victim was a fellow-resident in a children’s home, whom he struck with his knee and then punched twice in the face.

Arran was first taken into care at the age of seven, when he was placed on a full care order because of his mother’s excessive alcohol consumption and ‘chaotic’ lifestyle. He experienced a number of foster and other residential placements, but frequently absconded. He is now living in a children’s home, but spends a great deal of time at his mother’s house; this violates his care order, which stipulates that he should not stay out overnight.

Arran’s relationship with his mother is tumultuous. She continues to drink very heavily, and has recently been admitted to casualty several times because of accidents resulting from her intoxication. Arran has siblings but does not have contact with them.
Conclusions

By law, custody should be reserved for those children whose offending is so serious that no other sentence can be justified, and hence should be the sentence of ‘last resort’. Our findings suggest, however, that in practice a great many children are being sentenced to custody for offences that are not in themselves very serious. In these cases, it is likely that the children have prior convictions, which are (in accordance with the law), taken into account by the courts when sentencing. While the use of custody for repeat, less serious offending is lawful, and it is clear that offending of this kind can cause real harm or be extremely difficult to deal with, it does not follow from this that custody is an effective or appropriate response.

The principal aim of the youth justice system is defined, in statute, as the prevention of offending by children. It is doubtful that the use of custody to punish children who offend – although unavoidable in some circumstances – contributes much to the achievement of this aim. The high level of correlation between offending behaviour by children and multiple disadvantage suggests that the prevention of offending depends, at least in part, on effective action to tackle these children’s deep-rooted and complex needs. In other words, a justice system that puts more emphasis on addressing welfare and less emphasis on punitive responses is likely to achieve better results in terms of reducing offending and reoffending. Such an approach would, moreover, comply with the statutory obligation on the courts to ‘have regard to the welfare’ of the children who appear before them.

Policy implications and recommendations

The broad context of this study is a jurisdiction which has a strongly punitive approach to dealing with children who break the law. A punitive approach to youth justice has developed in Britain in tandem with political rhetoric about the threats posed by children who are said to be beyond the control of their families, schools and communities; rhetoric which both reflects and reinforces public anxiety about offending and anti-social behaviour perpetrated by the youngest members of our society.

However, the current time presents opportunities for reform of the youth justice system and the development of a more progressive approach to misbehaviour and offending by children. The coalition government proposes to undertake a review of sentencing and has pledged to introduce a ‘rehabilitation revolution’ to reduce reoffending. Recognition of the ineffectiveness of short custodial sentences, allied with the urgent need to cut public spending on prisons, has produced a political climate in which the development of better and wider alternatives to custody, for children and adults alike, is seen as important and necessary.

In developing recommendations we have been guided by three principles. The first is that there is an unavoidable subjectivity to decisions about the custody threshold and the point at which the penalty of last resort should be deployed. In assessing whether the youth justice system in England and Wales has struck the right balance, it is worth remembering that our system is an outlier, compared to other European systems – being readier to send children to prison, and to send children to prison at an earlier age, than most of our European neighbours. At 10 years, the age of criminal responsibility in England and Wales is lower than in almost all other European countries. More children are locked up – on remand or under sentence – here than in most other countries in Europe. This does not necessarily mean that this country has struck the wrong balance, of course, but it should give our politicians pause for thought.

Placing children’s welfare at the heart of efforts to tackle their offending does not mean overlooking or minimising the difficulties and harm that these children’s behaviour causes. Ensuring that children understand and take responsibility for their wrongdoing, and make amends wherever possible, can and should be an integral part of a welfare-based approach to offending. This is an approach, therefore, that recognises just how troublesome is the behaviour of most children who are sentenced to custody, whilst also recognising that these children are themselves very troubled.
Secondly, we think it important to recognise that principles of deterrence are unlikely to prove an effective strategy in dealing with very disadvantaged children with patterns of persistent offending. We appreciate that there may be a role for deterrent sentencing for some children who find themselves in trouble with the law, but imprisonment is very unlikely indeed to prove effective for those disadvantaged children who have a lifetime of resistance to deterrent threat behind them. The welfare of these children should be the primary factor that is taken into account in sentencing decisions.

Finally, at a tactical level, we think that the best way to reduce the use of imprisonment for children is to ‘lengthen the road’ down which children have to travel in the court process before they reach the sentence of last resort. The Crime and Disorder Act 1998 intentionally reduced the length of this road, by eliminating multiple police warnings for minor offences. The unintended costs of this tactic were high, drawing children into the youth justice process more rapidly than was necessary, often for very minor offences.

Our recommendations for policy development are as follows:

1. In recognition of the high levels of disadvantage experienced by children in the youth justice system and evidence of damage in earlier childhood, health, social and children’s services should engage with vulnerable families at the earliest possible stage to prevent or reduce such damage.

2. A welfare-based approach to offending by children should be developed. There are three dimensions to such an approach:

a) The age of criminal responsibility should be raised to at least the European norm of 14. This would have the effect of removing all children under the age of 14 from the remit of formal youth justice.

b) Wrongdoing by these children would be addressed through non-criminal justice agencies; welfare agencies must ensure that this group receives the health and social care provision they require for their welfare to be safeguarded.

c) For children above the new age of criminal responsibility, referral to appropriate health and social care services should take place alongside formal prosecution, where prosecution is appropriate and in the public interest.

3. There needs to be an unequivocal legislative statement of the purposes of sentencing for those under 18 that limits the use of deterrent strategies for children with patterns of very persistent offending, whilst meeting the objections that were raised to Section 9 of the Criminal Justice and Immigration Act 2008.

4. Building on the Sentencing Guidelines Council guideline on Sentencing Youths, the Sentencing Council needs to formulate guidelines about the custody threshold for children that restricts further the use of imprisonment for children, and genuinely limits the use of custody to the most serious offences. This will require clarification of the role of previous convictions in aggravating the offence under sentence. For example, custody for persistent non-serious offenders could be ruled out by defining ‘last resort’ solely in terms of offence seriousness, so that it is no longer understood as meaning ‘the court has run out of other options’. Monitoring of sentencing practice should be undertaken to ensure that the custody threshold is consistently applied.

5. As part of the redefinition and clarification of the custody threshold, narrower criteria should be established for the imposition of custody for breach offences. Imprisoning children for technical breach, where this has not been accompanied by further offending, is inappropriate and other options should be developed.
6. The use of custodial remands for children should be minimised. This might involve, on the one hand, primary legislation to make it clear that more restrictive criteria are required for remand decisions in relation to children than those that apply to adult offenders. On the other hand, legislative reform will need to be accompanied by clearer guidance for courts on the criteria for remand and monitoring of remand decision-making.

7. The Asset assessment process should be thoroughly revised, with a view to developing a comprehensive assessment tool which encompasses screening for mental health problems, learning disabilities and speech, language and communication needs. Effective systems for referral and further assessment and support should be incorporated in the process.

8. Appropriate training, supervision and monitoring of staff responsible for assessment is vital to ensure that the system is properly implemented. What is needed is not simply a set of procedures to ensure effective compliance with assessment processes, but effective leadership that conveys to the workforce that proper assessment is critically important to their work.

9. The Home Office, the Ministry of Justice (MoJ) and the Youth Justice Board (YJB) need to explore new ways of ‘lengthening the road’ that leads to custody, for example by developing more flexible arrangements for police warnings and precourt diversion.