



# Last resort?

*exploring the reduction in child imprisonment 2008-11*

Rob Allen

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Rob Allen works on criminal justice and prison reform in the UK and internationally. He was director of the International Centre for Prison Studies from 2005 until 2010 and a member of the Youth Justice Board from 1998-2006.

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## *exploring the reduction in child imprisonment 2008-11*

### Executive Summary

- The number of children under 18 who are imprisoned in England and Wales has fallen by a third over the last three years, from about 3,000 in the first half of 2008 to around 2,000 in the first part of 2011.
- This unexpected fall represents the largest decline in custody for children since the 1980's. It does not reflect a broader trend in the use of custody, which has risen for adults.
- The fall has been largely brought about by fewer children being sentenced to Detention and Training Orders with particularly marked declines in the numbers of younger children and girls. Declines have been particularly marked in large conurbations. The falls have not applied as much to black and minority ethnic children as to white.

A number of factors explain the fall but it is not the case that reducing custody has been a deliberate or overt policy objective in central government. Rather, a range of dynamics behind the scenes have worked together to reduce the number of children appearing before the courts, reducing the proportion of these children who are sentenced to custody. Responsibility for youth justice in government transferred from the Home Office to the Ministry of Justice and Department for Children, Schools and Families in 2007 and local authorities were required to pay greater attention to meeting the needs of children in conflict with the law. Incentives for the police to bring minor cases into the system were removed and as a result informal and constructive responses were developed. This has led to a marked fall in the number of first-time entrants to the youth justice system, although the extent to which this represents a change in crime levels or a change in the way children are dealt with, in particular by the police, is difficult to disentangle. The overall level of crime as a whole and of serious youth violence declined across the country between 2008 and 2010. It is worth noting that the reduction in the child custodial population appears to have been achieved without prompting any increase in youth crime.

The number of children appearing in court has fallen by almost a quarter since 2008 but despite dealing with smaller numbers of more serious and persistent cases, the courts have sentenced a lower percentage of them to custody. These changes in sentencing may to an extent reflect the impact of legislative changes in the Criminal Justice and Immigration Act 2008 and a constructive guideline published by the Sentencing Guidelines Council, but the fall in custody started well before these came into effect at the

end of 2009. There is some evidence of a greater engagement between the Youth Justice Board and youth offending teams on the one hand and courts on the other, which may have developed a shared view that custody should be a last resort. Outside the system, initiatives such as *Out of Trouble* have developed innovative ways of raising awareness of the use of custody for children nationally and locally and provided technical assistance in areas with high rates of custodial sentencing.

While difficult to assess its impact, it appears that the climate of political, media and public opinion has not led to demands for a greater use of custody during this period. Prior to the publication of the Legal Aid, Sentencing and Punishment of Offenders Bill in June 2011, there was a considerable backlash against what was portrayed in parts of the media as an unduly soft approach to sentencing by the coalition government. The backlash and the changes in policy which resulted have by and large not applied to measures for the 10-17 age range. Experience suggests that sudden and unexpected reversals in policy are always possible but there are other more predictable aspects which lie ahead - cuts to services, the restoration of discretion to local authorities and the proposed election of police and crime commissioners - which could have a major impact on levels of custody in the future. The role of non-governmental organisations (NGOs) will remain crucial in this context.

## Introduction

- 1 The number of children under the age of 18 who are imprisoned in England and Wales has fallen by a third in the last three years - from around 3,000 in the first half of 2008 to around 2,000 in the first four months of 2011, reaching its lowest point for over a decade in April 2011. On average, 1,890 under-18 year olds were in custody during that month, 293 fewer than the previous year and more than 1,100 fewer than in April 2008. In 2010-11, the last financial year for which data is available, there were on average 2,067 children in custody, 29.5% fewer than in 2007-08.<sup>1</sup>
- 2 The drop has been unexpected and both sustained and significant enough to enable the Youth Justice Board (YJB) to reduce substantially the number of secure beds that it purchases for children; indeed, between August 2008 and April 2011 the YJB decommissioned more than 700 secure places. As a result some young offender institutions (YOIs) have been re-designated as adult prisons and plans to build a new YOI at Glen Parva in the Midlands have been dropped, although the National Audit Office<sup>2</sup> has argued that the financial savings involved could have been realised sooner. The fall in the use of custody goes some way towards bringing England and Wales into line with international norms which emphasise that children should be detained as a last resort and for the shortest possible time. It also comes as a very welcome development for the many NGOs which have been campaigning to reduce the number of children sent to prison.

- 3 This includes the Prison Reform Trust's *Out of Trouble* initiative, supported by The Diana, Princess of Wales Memorial Fund, which began work in the autumn of 2007 to develop and implement a five year strategy to reduce the number of children and young people imprisoned in the UK. The extent and duration of the programme has enabled *Out of Trouble* to work at both national and local levels, to not only advocate for less use of custody but to provide technical assistance to agencies who want to achieve it.
- 4 It is important to seek to understand in some detail both the mechanisms by which the numbers in custody have fallen and the deeper causes that lie behind it in order to inform future policies that might sustain the trend and even extend it to other age groups, particularly young adults aged 18-20. The last time there was a sustained reduction in child imprisonment was during the 1980's,<sup>3</sup> and the following decade saw a sharp reversal with the invention of new custodial institutions in the form of secure training centres (introduced in the late 1990s) and harsher policies and practices in respect of detention. It is hoped that by identifying the key drivers of the reduction in child imprisonment, this paper might contribute in some small way to helping to avoid the cycle repeating itself this time around.
- 5 This report presents analysis and evaluation of some of the factors that have led to the fall. This has been undertaken through an analysis of published statistics from the Home Office, Ministry of Justice and Youth Justice Board and local statistics collected by a number of youth offending teams. The statistical analysis has been supplemented by interviews with stakeholders in the youth justice system.

## What has happened

- 6 The number of children under the age of 18 held in custodial establishments has shown a dramatic and largely unexpected fall since 2008. The average population fell from 2,932 during the 2007-08 financial year to 2,067 in the financial year which ended in March 2011 - a fall of 29.5%. The average population was more than 3,000 in the financial year 2002-03. In October 2007 there were 2,999 under-18s locked up. Three years later the figure had fallen to 1,995. The average custodial population stayed below 2,000 in three of the next four months, and, despite some fluctuation, in April 2011 had reached a new low of 1,890. The average numbers of under-18s locked up each financial year is shown in Table 1 and in each month in Table 2. Figure 1 shows that the numbers began to fall most noticeably in the late summer of 2008 and have steadily continued to drop.

**Table 1: Average number of under-18s in custody each financial year from 2000-1 to 2010-11**

2000-1	2,807
2001-2	2,801
2002-3	3,029
2003-4	2,771
2004-5	2,745
2005-6	2,830
2006-7	2,914
2007-8	2,932
2008-9	2,881
2009-10	2,418
2010-11*	2,067

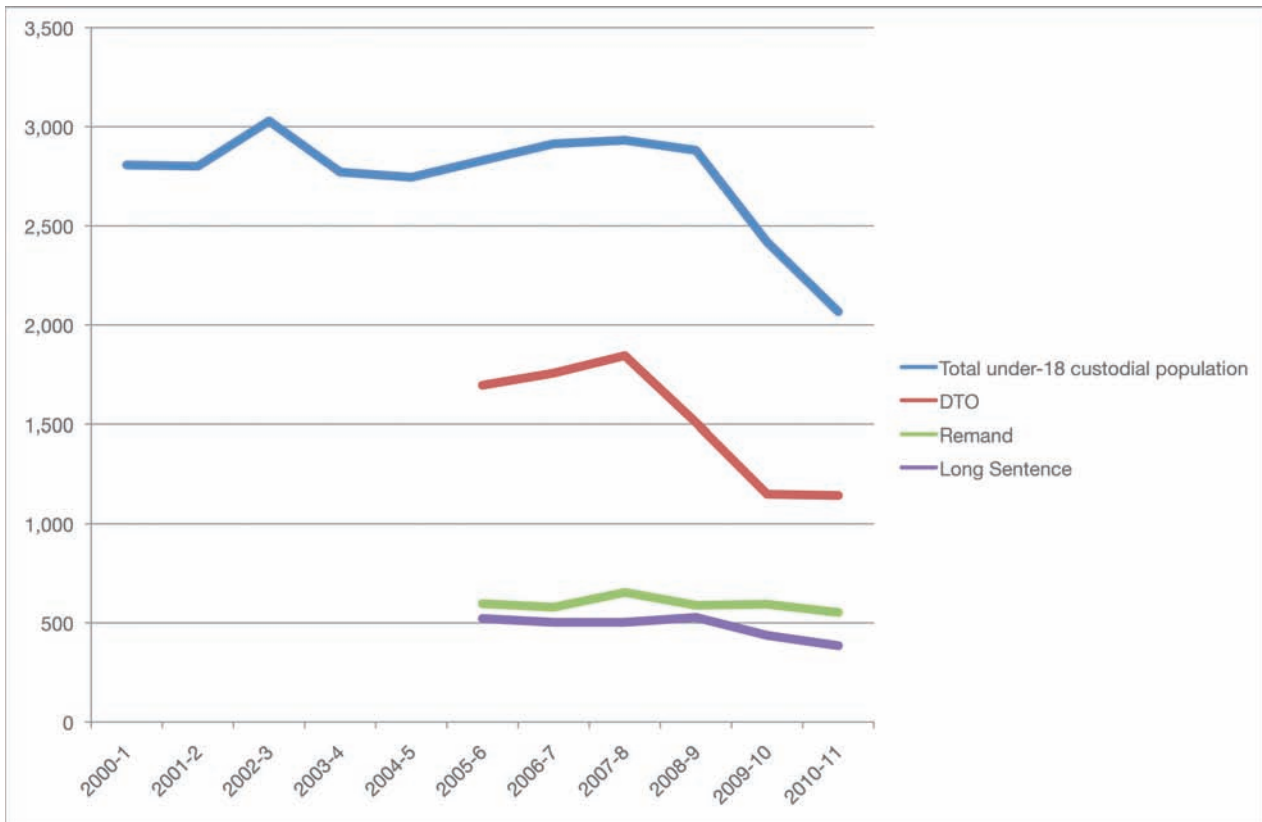
\* 2010-11 data is provisional.

**Table 2: Number of under-18s in custody each month 2000-1 onwards**

<b>Secure estate custody population (under-18s)</b>	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2000-1	2,610	2,804	2,825	2,929	2,968	2,868	2,815	2,812	2,704	2,741	2,789	2,821
2001-2	2,661	2,698	2,805	2,968	2,928	2,832	2,878	2,947	2,735	2,788	2,931	2,996
2002-3	3,094	3,124	3,087	3,195	3,104	3,145	3,200	3,137	2,919	2,862	2,872	2,882
2003-4	2,798	2,810	2,805	2,839	2,833	2,795	2,799	2,748	2,587	2,663	2,727	2,850
2004-5	2,775	2,809	2,763	2,768	2,785	2,792	2,828	2,803	2,617	2,646	2,692	2,677
2005-6	2,693	2,768	2,827	2,892	2,930	3,031	2,962	2,893	2,644	2,761	2,763	2,815
2006-7	2,785	2,868	2,922	2,963	3,067	3,052	2,999	3,000	2,796	2,832	2,851	2,839
2007-8	2,840	2,898	2,909	2,964	2,991	3,010	2,999	2,980	2,795	2,846	2,953	3,004
2008-9	3,012	3,006	3,072	3,006	3,019	2,934	2,905	2,905	2,715	2,726	2,648	2,625
2009-10	2,595	2,541	2,596	2,546	2,504	2,536	2,528	2,432	2,178	2,196	2,187	2,180
2010-11*	2,183	2,070	2,173	2,143	2,156	2,146	1,995	2,045	1,918	1,945	1,942	2,083
2011-12*	1,890											

\* Provisional data.

**Figure 1: Total under-18s in custody 2000-1 to 2010-11 against DTO, remand and long sentences 2005-6 to 2010-11**



7 The percentage fall over the three year period from March 2008 to March 2011 was greatest for younger children, with the average number of under-15s locked up falling by half (191 to 92) compared to a 29% fall in 15-17 year olds (2,813 to 1,991). Similarly, the reduction in the number of girls imprisoned over this period (46%) has been greater than that for boys (30%).

8 Troublingly, the fall in numbers in custody has not applied as much to black and minority ethnic children as to white. From 2007-8 to 2010-11, the percentage fall in the numbers of black and minority ethnic children in custody was 16%, compared to 37% for white. Whether this is because of differences in the type of offences committed by black and minority ethnic children, geographical variations in the rates of custody reduction or other reasons needs further exploration.

9 The figures also show that there has been a greater rate of reduction in the number of children serving Detention and Training Orders (DTOs) – the main custodial sentence for this age group - than there has been in the numbers either on remand awaiting trial, convicted awaiting sentence or those subject to longer terms of detention for grave crimes and other serious offences. In the three financial years from 2007-8 to 2010-11, the number of children in custody serving DTO's fell by 37%, on long term sentences by 21% and on remand by just 13%. The number of children in custody on remand and under sentence is shown in Figure 1.

- 10 A fall in the average monthly custodial population could mean that fewer children are being locked up or that those who are spend shorter periods in custody. It is the first of these that seems to explain the trend up until March 2010 at least. Overall the average length of time spent in custody by each child in fact increased by four days, from 76 days in 2006-7 to 80 days in 2009-10. For DTOs, it increased by two days (from 107 to 109), for remand by seven days (from 37 to 44) and for longer sentences by 13 days (from 336 to 349).
- 11 The downward trend in numbers does not reflect a wider drop in the use of custody in England and Wales. During the period in which the number of under-18s in custody has fallen, the total prison population has risen. There were a total of 82,319 prisoners in England and Wales in April 2008, a number which had risen to 85,439 three years later - a 4% increase over a period which saw the under-18 custodial population fall by 37%. Looking at a longer time frame, the National Audit Office found that “between 2005-06 and 2009-10, there was a 28% reduction in the number of custodial sentences given (7,100 to 5,100), and a 14% reduction in the average number of children in custody (2,830 to 2,444).<sup>4</sup> Although this happened while overall crime levels were falling, during the same period, the adult prison population actually grew by 14%.”<sup>5</sup>
- 12 Something distinctive has therefore happened in the youth justice system in England and Wales over the last three years. Information provided by youth offending teams to the YJB about the numbers of under-18s sentenced to custody in their areas shows that the downward trend in custody for children has happened across the country, though at very different rates. The YJB’s data show that between 2008-9 and 2009-10 the number of custodial sentences fell in total by 24%, from 6,720 to 5,130.<sup>6</sup> There were substantial regional variations. Numbers fell by a third in London and the South East, a quarter in Wales, a fifth in the West Midlands and 6% in the South West.
- 13 In fact the numbers did not fall in all youth offending teams. In 27 (out of 157), the number of custodial sentences rose. Indeed in two, Cornwall and Powys, the numbers doubled, from 12 to 25 and 5 to 10 respectively (although with such small numbers involved, such year on year variations are not uncommon). But in conurbations with a larger number of young offenders, the trend was generally sharply down. In Liverpool, the number of custodial sentences came down by 36%, in Manchester 28% and in Leeds 35%. In Leeds, this means that 73 fewer custodial sentences were given to children in 2009-10 than in the previous financial year. The biggest proportionate drop, however, was in Northamptonshire where 67 under-18s were sentenced to custody in 2008-9 but only 13 in the following year - an 80% reduction.

## Why has it happened?

### Changes in policy?

- 14 There are a number of possible explanations as to why the numbers have come down. One obvious one is that the government wished to achieve this objective and introduced measures to do so. It has been suggested, for example, that the downward trend may be explained, at least partially, “by a degree of policy shift within the youth justice system involving attempts to expand and strengthen preventative and diversion work and develop more flexible community sentencing.”<sup>7</sup> But it does not seem to be the case that the fall in numbers has been the result of a deliberate policy change on the part of the government or the agencies that comprise the youth justice system. Reducing use of custody was one of the Youth Justice Board’s corporate targets from 2005-8<sup>8</sup> - a period which saw no decline in numbers - but the target was dropped in the corporate plan for the following three year period (2008-11) in favour of an objective to provide ‘safe and effective use of custody’. The YJB remained “concerned about the large number of children and young people in custody”<sup>9</sup> and continued to monitor the performance of youth offending teams in reducing the percentage of convictions leading to custody – but, paradoxically, the priority explicitly, formally and publicly attached to reducing these numbers by the YJB has been lower during the period which has seen the reduction than immediately beforehand.<sup>10</sup>
- 15 Neither has there been much in the way of overt political enthusiasm for reducing the number of children imprisoned, notwithstanding the strong case for adopting such a policy. The UN Committee on the Rights of the Child concluded in 2008 that in the UK “the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort.”<sup>11</sup> The Committee recommended the development of a broad range of alternative measures to detention for children in conflict with the law, and establishing in statute the principle that detention should be used as a measure of last resort and for the shortest period of time.
- 16 It might be argued that the Criminal Justice and Immigration Act 2008, which received Royal Assent in July 2008, went some way towards meeting these recommendations. Reforms had been proposed in 2004 “to establish Intensive Supervision and Surveillance – which is a highly supervised community programme involving close attention from supervising officers, full daytime programmes and electronic monitoring – as the main response to serious and persistent offending.”<sup>12</sup> By the time these proposals found their way into the Bill, intensive supervision did not take the form of a discrete sentencing disposal (as had initially been planned) but as one of the possible requirements that could be added to a new Youth

Rehabilitation Order (YRO). The Regulatory Impact Assessment undertaken when the draft legislation was introduced into Parliament confirmed that there was still an intention to reduce the use of custody. It explained that “a major policy aspiration for the new sentence is the reduction of young people who are sent to custody. Without the introduction of the YRO there is a risk that the number of children sent to custody would increase. The introduction of YRO with an Intensive Supervision and Support element will also provide an alternative to custody, which the courts must consider, therefore meaning that only after careful consideration will a young person be sent to custody.”<sup>13</sup> The Act provides that the Intensive Supervision requirement, or Intensive Fostering requirement, should be imposed only when a custodial sentence would otherwise be appropriate and in cases when a court decides to impose a custodial sentence it is required to give reasons why the alternatives cannot be justified.<sup>14</sup> While it is possible that these strengthened legislative provisions have played some part in reducing custody since they came into force on 30 November 2009, the fall in the use of custody was well underway by then. The Act’s implementation was not accompanied by any substantial changes in the provision of supervision. The Intensive Supervision requirement largely rebadged the Intensive Supervision and Surveillance programme which had been available since 2001 and intensive fostering became available in only a very small number of cases. This explains perhaps why the Bill’s impact assessment shows that the government did not bank on the new sentence producing any savings in terms of reduced custody costs.

- 17 Limits to any enthusiasm for reducing custody were also evident when, in November 2009, the government refrained from implementing Section 9 of the Act defining the purposes of sentencing of under-18s. According to the YJB this was because of concerns raised by senior judges that “by not including the equivalent purpose of sentencing to the adult one of ‘the reduction of crime’ (including its reduction by deterrence) in those applying to under-18s, this could be interpreted as precluding courts from including an element of deterrence in sentences for under-18s.”<sup>15</sup>
- 18 The government’s reluctance to implement the provision provoked a countervailing anxiety on the part of some children’s charities that this could result in courts locking up more children in the hope of deterrence. This does not seem to have happened however. The Justice Secretary at the time said that he would seek to amend the legislation to confirm that an element of deterrence could be included in sentences given to under-18s when the opportunity arose.<sup>16</sup>
- 19 If there was no unambiguous and overt policy to reduce numbers, could the fall have reflected a less visible shift in policy behind the scenes? There was an important machinery of government change in May 2007, (shortly before the Criminal Justice and Immigration Bill was introduced into Parliament) when youth justice became the

joint responsibility of the newly created Ministry of Justice and the Department for Children, Schools and Families (DCSF), formerly the Department for Education and Skills, now Department for Education. Since 1997, youth justice had been the responsibility of the Home Office and it was hoped by many that the influence of DCSF in particular could lead to a less punitive and more welfare or educational dimension in policymaking. However, the Youth Crime Action Plan (YCAP), published jointly by the two Departments together with the Home Office in July 2008, had relatively little to say in explicit terms about reducing the use of custody for children. The Plan did propose to make local authorities liable for more of the costs associated with remanding children from their area, and floated the idea that local government should contribute to the costs of custodial sentences. Both of these measures had been put forward by those interested in reducing the use of custody as a way of curbing a free good<sup>17</sup> and it is possible that the airing of these proposals has served to concentrate the minds of local authorities on the case for reducing numbers on the basis that in due course they might become liable for the costs involved.

20 The sponsorship from DCSF did bring with it a better understanding of local government, because the Department's core business of education gave it a great deal more contact with local authorities than had the Ministry of Justice. The Chief Executive of the YJB has suggested that "this had an impact in encouraging the YJB's policy switch to become much more local government facing."<sup>18</sup> Local authorities themselves became more directly involved in youth justice after the introduction of the new performance framework for local government outlined in the 2006 Communities and Local Government White Paper *Strong and Prosperous Communities* and put in place from 2008-9 onwards. This included a set of national indicators on which local authorities were required to report and from which they were able to agree a smaller number of priorities for inclusion in a local area agreement. National Indicator 43 related to children within the youth justice system receiving a conviction in court who are sentenced to custody, with a good performance against this indicator "typified by a reduction year-on-year."<sup>19</sup> The rationale for the indicator was that, while rates of custodial sentencing can vary from area to area, with the courts ultimately responsible for sentencing, "the effectiveness of work by local agencies in providing preventative interventions, and of local community alternatives to custody can be successful in reducing the likelihood of children's behaviours escalating to a point where custody becomes inevitable."<sup>20</sup> Although this indicator already formed an element of the YJB's monitoring of YOTs (and was mirrored in the YJB's priorities), its inclusion as a national indicator flowing from the priorities identified in public service agreements and departmental strategic objectives endowed it with a good deal more significance for local authorities than hitherto, the fact that the indicator was not chosen as one of the specific priorities in any local or multi area agreements notwithstanding. Public Service Agreements 14, *Increase the number of children and young people on the path to success*, 23,

*Making communities safer*, and 25, *Reduce harm caused by alcohol and drugs*, also raised the importance attached by a range of central and local agencies to the performance of the youth justice system. Indicators relating to engagement in suitable education and/or employment and their access to suitable accommodation may have been particularly significant. Progress in these areas may well have had a dual effect, first by reducing risks of children reoffending and second by having a more direct impact on sentencing, if, as seems plausible, children with nowhere to stay and not in education, employment or training, may face a higher risk of a custodial sentence than those who are more settled and constructively engaged.

- 21 Given the increasing importance of local government, it is perhaps no coincidence that in quick succession the government appointed a new Chair of the YJB in 2007 who was previously a local government Chief Executive and elected member (Frances Done), and then in 2008 a Chief Executive who had previously been a director of housing and community services in local government (John Drew).

### Changes in crime?

- 22 One possibility is that the amount of crime committed by children has fallen. It is certainly true that the number of children in the 10-17 year old age range has fallen during this period, from 5.5 million in 2004 to 5.25 million in 2009, a 4.5% reduction. In some local authority areas the decline has been more significant, particularly in northern cities - Liverpool's 10-17 population fell by 16% in this five year period, Manchester's by 13% and Leeds' by 8%.<sup>21</sup>
- 23 We know too from the British Crime Survey that crime overall, as measured by the BCS, fell by 9% between 2008-9 and 2009-10. Similarly, police recorded crime figures for 2009-10 fell by 8% from the previous year. The relationship between crime and custody is by no means straightforward however. Crime has been falling since the mid 1990s and this has not been reflected in any systematic way in falls in the numbers of either adults or children in prison.
- 24 It is also significant that until recently children were not interviewed as part of the British Crime Survey. Exploratory work carried out in 2009-10 presented four different approaches to the classification of crimes *against* children - many of which are likely to be committed by other children. The four approaches yielded estimates for the numbers of personal crimes experienced by children of between 400,000 and 2 million, confirming that efforts to obtain valid and reliable data about a so-called true level of youth crime are simply not possible.
- 25 In their 2010 youth justice report, the National Audit Office (NAO) considered that the fall in custody may, in part, "reflect the reduction in the overall number of offences for which young people are being convicted."<sup>22</sup>

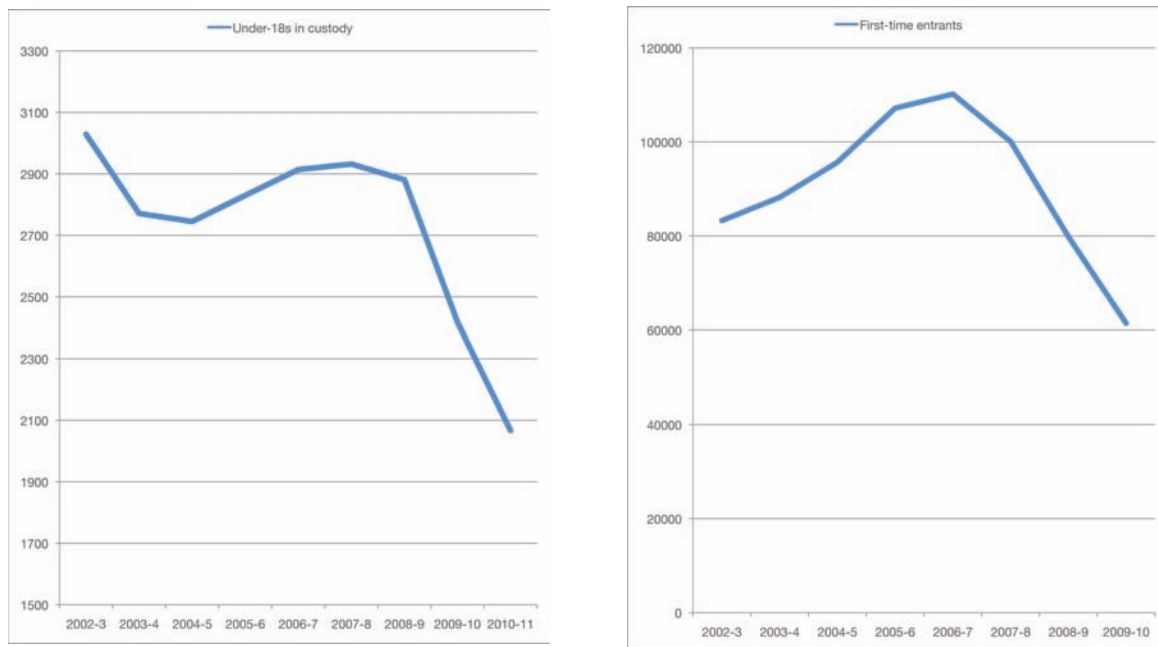
26 It is certainly true that the number of children receiving formal pre-court and court disposals has fallen from 216,000 in 2006-7 to 185,000 in 2008-9 and 156,000 in 2009-10.<sup>23</sup> The overall number of first-time entrants to the youth justice system also fell from 110,188 in 2006-7 to 79,851 in 2008-9 and 61,422 in 2009-10, a fall of 23% between 2008-9 and 2009-10. But as the NAO admit, “it is not known... to what extent falls in first-time entrants reflect genuine reductions in crime.”<sup>24</sup> Nor is it known whether the falls in the numbers of disposals reflect real changes in crime or whether they represent changes in processing by the police. The government and YJB have maintained that the falls in the number of first-time entrants in particular reflect an increased investment in prevention and in children’s services. A minister cited a fall of 20% in first-time entrants to the system in 2009 as evidence that “our work over the last 12 years tackling youth crime is making a real difference. We know that early intervention and prevention works, nipping criminality in the bud at the earliest possible stage and offering our young people positive alternatives to hanging around on street corners.”<sup>25</sup> Another said that the figures show that “our efforts to prevent low level offences escalating into more serious crime are working.” But the extent to which the fall represented a change in crime levels or a change in the way children are dealt with, in particular by the police, is difficult to disentangle. It is certainly the case that the overall level of crime recorded by the police and measured by the British Crime Survey fell between 2008 and 2010, and between April 2007 and March 2010 there were reductions across the country in serious violence involving 13 to 24 year old victims or offenders.<sup>26</sup>

### Changes in processing?

27 The 2008 YCAP concluded that “reductions in youth crime will principally come about if we reduce the flow of young people entering the criminal justice system. Each year around 100,000 young people aged 10–17 enter the criminal justice system for the first time. Our new goal is to reduce the rate by one fifth by 2020.”<sup>27</sup> In fact this particular target was met within the very first year, ten years ahead of schedule. The rapid development of alternative ways of responding to children in trouble has undoubtedly been an important mechanism for reducing the number of candidates for custodial sentences. Indeed trends in the use of custody match trends in the number of first-time entrants quite closely, though the relationship needs some explanation.

28 It is not of course the case that dealing with children outside court means that those who previously would have faced a custodial remand or sentence are now being diverted not only from court but from the formal system as a whole.<sup>28</sup> Rather it is a hypothesis that the use of informal methods of dealing with minor misbehaviour may serve to curtail the development of a delinquent career more effectively than a formal reprimand, final warning or prosecution over time.

**Figure 2: Under-18s in custody against first-time entrants 2002-3 to 2010-11\***



\*NB. Data on first-time entrants in 2010-11 not published at time of publication

29 In addition, the development of informal measures effectively delays the criminalisation of those children who do continue to offend. Extending the range of pre-court options both increases the opportunity for children to turn away from crime and dilutes the criminal history which courts have to consider if they eventually do come to be sentenced. Since 2008 an array of responses have been developed which do not involve formal entry to the youth justice system. The Association of Chief Police Officers (ACPO) strategy on young people, implemented from December 2007, explains the rationale for these, seeing merit in “swift resolution of anti-social and criminal behaviour by children and young people and the need to tailor the level of any intervention to the risk of re-offending and the personal risks associated with the young offender.”<sup>29</sup>

30 The strategy is based on “working with partners to ensure appropriate responses and resources are in place, for pre-court disposals, to meet the identified needs of individual offenders and victims, and provide positive opportunities for rehabilitation in the community”. Even for serious and persistent offenders, the strategy aims to meet the identified needs of each individual child, prolific and priority, serious, ‘spree’ or PYO,<sup>30</sup> to break their cycle of offending behaviour and provide *positive opportunities for rehabilitation in the community* for them and their victims (emphasis added). Among the informal methods developed by the police and youth offending teams have been Triage schemes in which children under arrest are assessed rapidly in police custody suites before a decision about how to process their case is taken, and the Youth Restorative Disposal (YRD). The triage concept, taken from hospital accident and emergency departments, enables the local youth offending team to contribute to an assessment of needs and risks and to offer assistance to a child and their family without the need for formal processing, including the giving of a

reprimand or final warning. The Youth Restorative Disposal enables the police to deal informally with minor cases by encouraging an apology and additional action to right the wrong caused, involving the victim of the crime where appropriate. Importantly, the YRD does not create a criminal record - fingerprints, photographs and DNA are not taken, although guidance on its use makes it clear that it is not “a short-cut or soft option for dealing with offences that should be disposed of more formally.”<sup>31</sup>

- 31 YRD and Triage have supplemented the options of Penalty Notices for Disorder (PND's) which were made available for 16 and 17 year olds in 2004. More recently the Youth Conditional Caution has been piloted for 16-17 year olds since April 2009, with the aim of reducing the number of these children being taken to court for relatively low-level offences. Its introduction was based on the view (inter alia from the Audit Commission) that the ‘two strikes and you’re out’ policy was too restrictive and was leading to too many children going to court and getting convictions for relatively minor offences.<sup>32</sup>
- 32 The development of these new diversionary methods followed a period in which the police were under pressure ‘to bring offences to justice,’ the top priority for the criminal justice system from 2002 onwards. For example, public service agreements between HM Treasury and the Home Office sought to increase the number of crimes for which offenders were brought to justice by 2007-8 to 1.25 million. An offence was considered to have been brought to justice when a recorded crime resulted in an offender being convicted, cautioned, issued with a penalty notice for disorder, given a formal warning for the possession of cannabis or having an offence taken into consideration. The 2007-8 target was exceeded with 1.449 million offences brought to justice (OBTJ) in the 12 months to December 2007. But only half of these were convictions, a quarter cautions, 10% PND's and the remainder cannabis warnings and offences taken into consideration. While the target of bringing offences to justice was criticised by some as “not a good indicator of success in relation to the types of crime which the public fear most”,<sup>33</sup> the corollary of this was a disproportionate focus by the police on children. ACPO research into the factors contributing to the increasing performance yield in OBTJ found a trend of increasing numbers of under-18 year olds being processed by the police. Bringing children into the system for offences such as shop theft and minor disorder may have served to accelerate criminal careers and make harsher penalisation more likely. As the YJB put it in 2007, “although not mutually exclusive, there is some tension between the target for justice agencies to increase the number of offences brought to justice and our corporate target of reducing the number of first-time entrants to the youth justice system. Minor offences are disproportionately committed by the young. Therefore, as greater volumes of lower order offences are detected, so the number of young people who offend who are brought to justice increases.”<sup>34</sup>

- 33 The OBTJ targets have now been revised and since 2008 there has been much wider ownership by police and prosecutors as well as YOTs of the target to reduce first-time entrants to the youth justice system. In April 2008, the Treasury's PSA Delivery Agreement 14 included the reduction of first-time entrants to the criminal justice system aged 10-17 as one of five indicators which would measure an "increase in the number of children and young people on the path to success."<sup>35</sup> According to the annual youth justice statistics for 2009-10, the number of first-time entrants in England and Wales receiving their first reprimand, warning or conviction was 61,422 in 2009-10 - 23% lower than in 2008-09 (79,851) and 44% lower than in 2006-7 (110,188). The report comments that "the trend is broadly similar when Penalty Notices for Disorder (PNDs) are included. The change in the trend in FTEs broadly reflects the changes in police behaviour in response to the Offences Brought to Justice (OBTJ) target."<sup>36</sup>
- 34 There is a question as to whether the inappropriate incentive to bring minor child offenders into the formal criminal justice system to meet the target of bringing offences to justice has been replaced by an equally inappropriate *disincentive* to process children formally in order to meet the new target of reducing first-time entrants to the system. But as long as there is adequate provision of what the YJB has called "constructive non-judicial approaches that satisfy victims without criminalising young people", research suggests that the effect of keeping such cases outside of the formal system will be to reduce the escalation of offending as well as provide more steps in the processing ladder.<sup>37</sup> The NAO found that the number of first-time entrants has fallen at a greater rate in the 69 priority areas in England funded under the Youth Crime Action Plan but this does not tell us exactly why the fall has happened. It is plausible that these areas have seen the development of more "constructive non-judicial approaches" or primary prevention initiatives which have produced falls in crime as well as changes in modes of responding to crime. Whichever way it has happened, it has led to a reduction in the number of children appearing before the courts.

### Changes in the court population?

- 35 It is certainly the case that the period since 2008 has seen a substantial fall in the numbers of children appearing before the courts. YJB data shows that there were 23% fewer disposals in 2009-10 than in 2007-8. But the number of custodial disposals fell slightly more than this over the same period (by 25%) so the fall in custody is not simply a reflection of a reduced pool of children being sentenced.

- 36 If it has been changes in police practice that have in large part resulted in fewer children being brought into the formal system, and thence into court, there may have been other changes too. The Crown Prosecution Service conducted a public consultation exercise on a new draft version of the Code for Crown Prosecutors from 18 October 2009 until 11 January 2010, publishing the revised version the following month. The section on 'Youths' has been expanded and makes clear that prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children. Guidance has also been produced for prosecutors suggesting that prosecution may not always be in the public interest in cases of school bullying and offences in residential care homes. It is difficult to assess whether these changes have contributed to the reduction in custody. Their timing suggests that while they may not have been significant at the outset, they may have helped to sustain the trend.
- 37 Given the fall in the number of children being sentenced, one might expect the proportion of all disposals which are custodial to have risen. In fact the custody rate has been roughly stable at around 6% each year since 2006-7. There was even a slight decline from 6.1% to 5.5% between 2008-9 and 2009-10. With the size of the pool of those sentenced diminishing, one might expect the proportion of those going to custody to increase. After all, those appearing before the courts would be the more serious and persistent offenders. The fact that the proportion has not risen suggests that at least some of the explanation for the fall in custody lies at the door of the courts.
- 38 Counter intuitive though it might be given the increase in diversion from court, it is necessary to explore the possibility that the reduction in the use of custodial sentences may reflect, in part, the fact that those appearing before the courts are somehow less serious offenders than previously. Comparing Ministry of Justice data about children sentenced by the courts in 2007 and 2009 shows that, as one might expect, reductions in numbers sentenced have been greater in respect of offences such as theft and criminal damage than violent and sexual offences, robbery and burglary. Perhaps surprisingly, the only group of offences for which more offenders were sentenced in 2009 than in 2007 were drug offences.<sup>38</sup>
- 39 No clear conclusion can therefore be drawn as to whether cases were less serious in 2009 than two years earlier. Longer term trends since 2000 show that there have been reductions in the proportions of certain offence types which have led to custody – for example in robbery and theft cases (but less so in the case of violent crimes).<sup>39</sup> This is likely to reflect changes in sentencing practice that need explanation.

## Changes in sentencing?

40 We have seen that, despite dealing with smaller numbers of probably more serious and persistent child offenders, the percentage the courts have sent to custody has actually fallen, rather than increased. What might explain changes in court behaviour? In November 2009, the Sentencing Guidelines Council (SGC) published a definitive guideline on the sentencing of youths.<sup>40</sup> This followed a consultation on a draft that was published in June 2009, although the process of developing a guideline commenced when the Sentencing Advisory Panel issued a consultation paper on Principles of Sentencing for Youths in December 2008. The Guidelines highlight a number of legislative and non-legislative reasons for restricting the use of custody, including, for example, that under both domestic law and international convention, a custodial sentence must be imposed only as a ‘measure of last resort’ (which is not strictly the case in the case of domestic law), that the custody threshold is higher in the case of a child than in the case of an adult, and that it is clear that Parliament expects custodial sentences to be imposed only rarely on those aged 14 or less. For all children aged 10-17, where the offence(s) has crossed the custody threshold, the statutory tests are likely to be satisfied only where a custodial sentence will be more effective in preventing offending. The Guidance also says that the obligation to have regard to the welfare of the offender requires a court to take account of a wide range of issues, including those relating to mental health, capability and maturity, and that they must be alert to welfare needs and the vulnerability of children to self harm, particularly within a custodial environment. There are a variety of more technical matters mentioned in the Guidance which are likely to have served to restrict the use of custody; for example the Guidance says that a sentence that follows reoffending does not need to be more severe than the previous sentence solely because there had been a previous conviction; that even where the custody threshold has been crossed, a court is not required to impose a custodial sentence; and that before imposing a custodial sentence as a result of re-sentencing following breach, a court should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the child has been given the appropriate opportunity and support necessary for compliance.

41 The Guidance was issued in November 2009 shortly after the implementation of important provisions of the Criminal Justice and Immigration Act 2008. The law already prohibited courts from passing a custodial sentence unless it was of the opinion that the offending was so serious that neither a fine alone, nor a community sentence could be justified for the offence.<sup>41</sup> The new provisions specifically required the court to “state its reasons for being satisfied that the offence(s) is (are) so serious that no other sanction is appropriate and, in particular, why a youth rehabilitation order with intensive supervision and surveillance or with fostering cannot be justified”<sup>42</sup> before sentencing a child to custody. Another provision clarifying that the pre-sentence report for a child for whom a custodial sentence was being considered must be in writing had already come into force.<sup>43</sup>

42 Clearly the fall in the use of custody had started before these changes and the guidance from the SGC came in. But the impact would seem to have further restricted an already declining use of custody. The *Youth Court Bench Book*, reissued in 2010, may have added to the effect, making it clear that “custody should be seen as a last resort.”<sup>44</sup>

43 In the case of the new YRO, this effect was by no means inevitable. While respondents to the consultation paper *Youth Justice: the Next Steps* were generally supportive of the idea of simplification of youth sentencing, “magistrates expressed concern and thought that having just one community sentence could lose the ‘bite’ of progressively more severe punishments. It was argued that it would be harder for multiple offenders to understand that a later Order is any different or more serious than the first one. Some thought that there was a risk of misunderstanding and insufficient use of the sentence, leading to escalation into custody.”<sup>45</sup> This has certainly not happened as yet.

### Changes in youth offending teams?

44 A further factor to be considered is whether there have been any changes in youth offending team practice which have helped bring about the reduction in the number of children in custody. This could have occurred in a number of ways. For example, a more effective system of offender management or focus on resettlement could have reduced the rate of reoffending among children supervised by YOTs and those leaving custody. The reduction in the numbers of children formally processed in the youth justice system should certainly have enabled YOTs to give greater attention to their smaller caseload of more serious and persistent offenders.

45 Ministry of Justice data shows that between 2000 and 2009 the proportion of 10-17 year olds who reoffended has decreased by 3.3 percentage points from 40.2% to 36.9% though the falls since 2007 have been relatively small - from 37.5% in 2007 to 36.9% in 2009. Since 2000, the number of further offences committed per hundred offenders (the frequency rate) has also fallen by 27% from 151.4 to 110.5, though the reductions have not been more marked in the years since 2008, when the number of children in custody also started to fall. Since 2000, the number of the most serious reoffences committed per hundred offenders (the severity rate) has risen from 0.91 to 0.96 – a 4.9% increase.<sup>46</sup> Much of the increase has been since 2007 – the rate rose 15.1% between 2007 and 2008 from 0.73 to 0.84 offences, and by 13.3% between 2008 and 2009. While the very small number of serious offences committed by children means a small change in numbers will result in a large change in the rate, these are the cases that are likely to lead to custody. On the other hand, the known reoffending rates following custodial sentences fell steadily from 2006 to 2009.<sup>47</sup>

- 46 Intensive alternative to custody programmes might have become better targeted on those genuinely at risk of custody and more effective at curbing reoffending. The proportions for each type of disposal have remained fairly stable over the period 2006-7 to 2009-10, but taking a longer view there is some evidence that community sentences have replaced custodial ones. The numbers sentenced in 2009-10 were similar to those in 2002-3 at 92,704 and 93,183 respectively. Yet there were 2,000 fewer custodial sentences imposed in 2009-10 and 3,000 more community sentences. First-tier penalties were about the same. The reduction is partly explained by a switch from custodial to YOT-supervised community based sentences.
- 47 Achieving such a switch was proposed by the National Audit Office in 2004 when it argued that, in order for the YJB “to succeed in its aim of reducing the number of people placed in custody, it will need to improve the credibility and effectiveness of higher tariff community sentences.”<sup>48</sup>
- 48 Whether or not the effectiveness of higher tariff penalties has improved, there is some evidence that their credibility might have, as part of a more engaged relationship between youth offending teams and their local courts. The improved liaison is illustrated by the issuing of guidance by the Magistrates Association in July 2010 calling for a “positive open dialogue with constructive and critical feedback between the courts and the YOT.”<sup>49</sup>
- 49 In terms of relationship with courts, there is some data about the extent to which proposals in pre-sentence reports have been accepted by sentencers. This shows that, between 2005-6 and 2008-9, so-called congruence rates in respect of custodial recommendations actually fell from 92.7% to 89%. This could indicate that courts have become slightly less willing to accept a proposal for custody from youth offending teams and in more than one in ten of these cases presumably asked the YOT to think again. Previous studies of high custody areas have shown that a not insignificant number of custodial sentences follow from a YOT proposal.

### **Changes in the Youth Justice Board?**

- 50 Notwithstanding the dropping of their formal target to reduce custody, the YJB has become more active in challenging the high use of custody, using a new range of tactics, described by the YJB Chief Executive as “fewer public declarations, more engagement ‘behind the scenes’ – generally a much more effective way to work with local government in all its forms”.<sup>50</sup> The recent NAO report found that “the Board has been meeting its objective to reduce custody numbers, partly through supporting caseworkers to produce recommendations for community sentences that sentencers have confidence in.”<sup>51</sup>

- 51 Since 2009 the Board has sought to influence practice in areas with high custody rates, sending joint letters from its Chair and the Chair of the Youth Courts Committee (YCC) of the Magistrates Association (MA) to YOT managers and Chairs of Youth Court Panels urging them to meet and discuss their use of custody compared with other areas. A repeat letter was sent out 6 months later with new statistics. The initiative in part reflected much closer cooperation and regular meetings between the MA and the YJB.
- 52 The new YJ Performance Improvement Framework (introduced in 2009, but trialled in 2008) included the proportion of children sent to custody as a performance indicator in the performance part of the assessment. The YJB also asked for “evidence that the YOT has contributed to reducing the use of youth custodial remands and sentences and reducing any disproportionality, including children and young people from black minority ethnic (BME) backgrounds.”<sup>52</sup> It asked for specific information about the work undertaken to build and maintain a strong relationship and communication with courts and sentencers, the arrangements in place to reduce the use of custody and remands to custody, how the YOT Management Board maintains oversight of use of custodial remands and sentencing and how the YOT works across the partnership to ensure effective resettlement for children being released from custody.
- 53 Not surprisingly perhaps, a survey undertaken by the Prison Reform Trust’s *Out of Trouble* programme found that nine out of ten YOT managers agreed that the YJB was putting pressure on YOTs to work on reducing numbers in custody and this was much more apparent than pressure from any other source.
- 54 The YJB has also produced a second edition of its guidance document *Making It Count in Court*. This recognises that “there will be occasions when a YOT court report author will conclude that custody is the only sentencing option. This can be due to: the seriousness of the offence and/or the level of persistence and/or the child’s persistent failure to comply with community sentencing options. In such cases, report writers should not be afraid to state their reasons for reaching that conclusion. Otherwise, if proposals are put forward that are neither appropriate nor suitable, courts will lose confidence in the report writer, the YOT and community penalties generally.”<sup>53</sup> This guidance appears to have built on research commissioned by the YJB on the attitudes of judges and magistrates which found “a widespread view that custodial sentences are given to young offenders because it has become ‘unavoidable’. This endpoint could be reached because of the seriousness of an offence but, more commonly, sentencers describe feeling that community alternatives had been exhausted and ‘enough was enough’.”<sup>54</sup>

## Changes from outside the system?

- 55 A large number of non-governmental organisations take an interest in the youth justice system in England and Wales, some offering practical services to children who offend and children at risk, others working at a range of different levels to influence law, policy and practice. The vast majority of NGOs are concerned about the use and practice of imprisonment for children and the period since 2008 has seen a range of activity aimed at producing change.
- 56 For example, the Howard League and Local Government Association worked together in 2007 to support a ‘custody panel’ in North Hampshire which reviewed each custodial sentence passed in the area to see if further action might have been taken to avoid custody and to give feedback to workers involved in cases. The panel also used the information gained from the reviews to inform and improve practice of all agencies and to develop and improve strategies to reduce the use of custody.<sup>55</sup> The numbers of children in North Hampshire sentenced to custody fell from 78 in 2007 to 45 in 2008, a fall of 42%.
- 57 The Prison Reform Trust’s five year initiative *Out of Trouble* has been able to adopt a variety of methods over time to meet its aim of reducing the numbers of children locked up. Perhaps the most distinctive has been work at a local level to demonstrate that the use of custody can be reduced. Beginning in 2008, *Out of Trouble* sought to engage with council chief executives and elected members in areas with high use of custody. Based on an analysis of low as well as high custody areas, consultancy work has been undertaken in a number of areas to encourage practices which tend towards a sparing use of custody, such as high rates of diversion and making a full use of the tariff options. In those YOTs where consultancy help has been provided, falls in the use of custody have generally been higher than the regional average. Although this may reflect the high starting points, many of the YOTs have been large contributors to custodial numbers. The work has undoubtedly made a contribution to the overall fall in numbers,<sup>56</sup> working in tandem with the YJB and others to engage local stakeholders, in particular local authorities and their partners, more fully in the task of developing effective measures on youth crime and to reduce the use of custody.
- 58 In some ways, *Out of Trouble* has played a role analogous to that undertaken by NACRO’s youth crime section in the 1980s,<sup>57</sup> offering information and technical assistance alongside more traditional campaigning methods aimed at changing attitudes and policy. The complementary nature of these approaches is illustrated by the response in Torbay following an *Out of Trouble* letter to local stakeholders to congratulate them on reducing the numbers of children locked up. A press release was issued by representatives of the council’s cabinet, the chair of the local magistrates youth bench and local police welcoming the halving of the number of

custodial sentences. This shows not only the success in reducing the numbers of children locked up in the area but local pride in having been able to achieve this. The question of whether this reflects a broader change in the climate of opinion is worth exploring.

### A changed climate?

- 59 *Out of Trouble* has also played a more traditional campaigning role aimed at influencing political, professional and public attitudes around the use of penal custody for children and highlighting the relative lack of public enthusiasm for locking up children. Other charities and pressure groups have undertaken similar efforts - amongst them Barnardo's, which focussed on trying to reduce custody for the youngest offenders aged under 14; the Howard League who have used litigation alongside conventional campaigning; and the Standing Committee for Youth Justice (SCYJ), a coalition of charities consistently lobbying behind the scenes for less use of child custody. How successful have these efforts been?
- 60 Measuring the climate of opinion about a particular issue is notoriously difficult. There is evidence that public attitudes have been rather less punitive towards children than is often supposed<sup>58</sup> but the development of policy has often been influenced by a perceived need by politicians to crack down on a particular problem or set of problems, whether persistent young offenders, street robbery, knife crime or anti-social behaviour. Particular incidents - the killing of James Bulger by two 10 year olds in 1993 is the obvious example - can come to symbolise some deeper social malaise and call forth robust responses.
- 61 There have been a number of grave and newsworthy incidents involving children over the last four years. Yet they have not led to the calls for tough responses which might have been expected.<sup>59</sup> Where they have, politicians have hesitated to rush to make changes, aware perhaps that the costs of a more expansive use of prosecution or custody would have been unaffordable. In London for example, the Mayor's youth crime strategy published in November 2008 - a year which had seen 27 teenagers "stabbed shot or beaten to death"<sup>60</sup> on the capital's streets - was based on recognition that enforcement is only part of the solution to the crime problem. The plans focussed instead "on the critical moments when things can go wrong: early years, the transition to secondary school, the entry to the job market and the disastrous consequences of incarcerating young offenders without a serious strategy for education and rehabilitation, particularly during their first time inside."<sup>61</sup> A year later in December 2009, the Government announced a review of out-of-court disposals in response to media reports that serious and persistent offenders (of all ages) were being spared prosecution. The Lord Chancellor told Parliament four months later that "the initial work on the review provided a greater understanding of the operation of the existing out-of-court disposals frameworks for adults and young people. We plan now to seek

further evidence by undertaking a detailed review of individual case files to examine the particular circumstances in which out-of-court disposals have been administered for apparently serious offences. This will inform an examination of the broader policy of these frameworks and consideration of how to improve transparency and accountability in how out-of-court disposals are used. This is a substantial piece of work and will require public consultation.”<sup>62</sup> The more substantive public consultation in the form of the 2010 general election meant that the work was not continued, in that form at least. The Conservative Party’s manifesto in that year promised to “introduce a series of early-intervention measures, including grounding orders, to allow the police to use instant sanctions to deal with anti-social behaviour without criminalising young people,”<sup>63</sup> suggesting that the benefits of a diversionary approach were not lost on them. The Legal Aid, Sentencing and Punishment of Offenders Bill contains measures to replace the current youth out-of-court disposals with a system of youth cautions, and youth conditional cautions, and repeal youth penalty notices for disorder but the policy aims to “promote informal restorative disposals” and to “create a clear national framework for dealing with offences out of court.”<sup>64</sup> As ever, how this new framework operates on the ground will determine the numbers of children who find themselves at risk of progressing through the criminal justice system towards eligibility for custody.

- 62 Of perhaps more direct concern as far as custody is concerned, was the Conservative Party’s promise prior to the 2010 election to “make it clear that anyone convicted of a knife crime can expect to face a prison sentence.” Under-18s have been involved in about 4,000 offences of possessing a knife each year since 2007.<sup>65</sup> The proportion of these offences which have led to a custodial sentence each quarter has been between 5% and 10%. Sending all of these children to custody for even the shortest period of two months would have added some 600 to the numbers in custody. The commitment was dropped in December 2010, (although the Legal Aid, Sentencing and Punishment of Offenders Bill currently in Parliament provides for a mandatory custodial sentence for adults convicted of a new offence of ‘threatening with weapon in public’). More broadly, although the coalition government’s progressive plans for criminal justice set out in the green paper, *Breaking the Cycle*, underwent well-publicised revisions prior to the publication of the Bill, the tougher measures it introduced (and those promised as part of a further review of sentences for dangerous offenders) look likely to have much more of an impact on adults than on children. *Breaking the Cycle* argued that “too many young people whose offences are not the most serious and whose behaviour does not pose a risk to the public are sent to custody.” The government’s response to the consultation confirmed that the three key outcomes for youth justice involve reducing the number of first-time entrants to the youth justice system, reducing reoffending and reducing custody numbers.

63 The new legislation also contains reform to the remand arrangements for children so that all those under 18 are treated in the same way for remand purposes, rather than treating 17 year olds as adults, ensuring compliance with the United Nations Convention on the Rights of the Child. Local authorities will become financially responsible for all child remands to secure accommodation, providing “a powerful incentive for local authorities to invest in alternative strategies for this group of young people.”<sup>66</sup> This perhaps provides an opportunity to drive down the numbers of children locked up on remand which have not hitherto fallen by anything like the numbers sentenced to custody.

## Conclusion

64 The fall in the use of custody for children is accounted for both by a drop in overall numbers being sentenced by the courts and by a drop in the proportion sentenced to custody. There have been changes to the way that children are dealt with by the police which may have reduced their prospects of reoffending and have certainly provided more opportunities for them to grow out of crime. The overall level of crime has fallen during this period indicating that reductions in the use of custody can be achieved without a negative effect on community safety. There have also been changes in the way the courts have sentenced under-18s, stimulated in part by changes in the law and sentencing guidance and in part by the improved performance and focus of YOTs. This in turn has been stimulated and sustained in a low profile but effective way by the YJB and by campaign groups including *Out of Trouble*. If the changes have not been directly stimulated by political leadership nor have they been impeded.

65 What has resulted is a more balanced and sensible system of youth justice than was in place in the middle of the last decade. There is much evidence for filtering minor delinquency out of the formal criminal justice system and reserving the efforts of criminal justice agencies on those children whose seriousness or persistence of offending requires formal action. That is not to say that interventions should not be offered to those who show early signs of problem behaviour. Such interventions are much more likely to succeed if they are provided through family support, schools or community initiatives rather than what the Americans call ‘cops, courts and corrections’.

66 For the future, there are a number of ways of building upon the success achieved in reducing the number of children in custody. The most obvious challenge is to reduce the use of custodial remands. The Legal Aid, Sentencing and Punishment of Offenders Bill introduces a new legal framework for the remand of all those under 18 to custody. This should result in fewer 17 year olds (who are currently subject to adult remand provisions) being held in custody awaiting trial and offers the opportunity for reductions among younger children too. There is work to do too in trying to reduce the numbers who end up in custody having breached the requirements of community-based orders, to divert more children with mental health problems and learning disabilities from custody and to address the disproportionate imprisonment of black and minority ethnic children.

- 67 In the longer term, there is a challenge in seeking to enshrine the progress which has been made over the last three years in legislative change. As this paper has shown, legislative changes are not a necessary pre-requisite for reducing the numbers in custody. But introducing more rigorous statutory criteria for custody or raising the age at which children can be imprisoned or even prosecuted would cement the achievements in place in line with the UK's obligations under the UN Convention on the Rights of the Child.
- 68 On the other hand there may be a need to defend the gains that have been made. Of particular importance, historically, has been the role of the police not only as gatekeepers to the justice system but important moral entrepreneurs. The cuts they, and other agencies, face may help to strengthen the case for diversionary and cost-effective approaches, of which a sparing use of custody is an example. But if they lead to heightened public, professional and media concern about crime and the role that children play, the current approach may come under pressure from those who favour a harsher response to children in trouble. At the time of writing, the press campaigns against the so-called 'soft justice' measures proposed by the coalition have been focussed on adults rather than children. Experience suggests that this can change very quickly.
- 69 At a technical level, the abolition of the Youth Justice Board and the new localism agenda offer both threats and opportunities. The YJB has played an important role in Whitehall and more widely, raising the priority which is attached to keeping children out of custody wherever possible. In recent years this has become more important to local authorities than in the past, in part as a result of a regimen of public service and local area agreements underpinned by a performance management framework which has been discarded by the coalition government. Restoring a greater degree of autonomy to local agencies about the priorities for their areas - including the proposed introduction of elected police and crime commissioners - will have uncertain consequences. Requiring local taxpayers to consume their own smoke by meeting the costs of child imprisonment may, however, limit the affordability of harsher policies and practices however electorally appealing they may appear to be.
- 70 Whatever happens there will be a continuing need for a vibrant non-governmental sector to continue its work in this area, promoting the values of a sparing use of imprisonment for children and helping to demonstrate the most effective ways of bringing it about.

## Endnotes

- 1 All data except where stated is from the Ministry of Justice.
- 2 National Audit Office (2010) The youth justice system in England and Wales: reducing offending by young people NAO: London.
- 3 'Out of Jail: The reduction in the use of penal custody for male juveniles 1981-88' The Howard Journal of Criminal Justice Volume 30, Issue 1, pages 30-52, February 1991
- 4 This was provisional data given to the NAO, the published figure is 2,418.
- 5 National Audit Office (2010) The youth justice system in England and Wales: Reducing offending by young people NAO: London.
- 6 The method of collecting data in 2008-9 was different to that in 2009-10 but this is unlikely to have made a major difference. See page 54 of Youth Justice Statistics 2009-10 - England and Wales jointly published by the Ministry of Justice and Youth Justice Board.
- 7 Prison Reform Trust (2010) Punishing Disadvantage - a profile of children in custody PRT: London.
- 8 Between 31 March 2005 and 31 March 2008, the target was to reduce the size of the under-18 custodial population by 10%.
- 9 Youth Justice Board (2008) Corporate Plan 2008-11 Business Plan 2008-9 YJB: London.
- 10 This is not to say that the Board and its senior officers did not privately attach equal or greater importance to reducing custody. The Chair and Chief Executive of the YJB have made it clear that the priority did not change, though the means of achieving the policy did. According to the Chief Executive, the new approach was "to engage YOTs and their local partnerships, together with sentencers at a national level, in a series of low profile and very pragmatic pieces of work. At this time our approach to working with local government, in particular, changed dramatically." Personal communication with the author.
- 11 United Nations Committee on the Rights of the Child (2008) Concluding Observations: United Kingdom of Great Britain and Northern Ireland CRC/C/GBR/CO/4 20 October 2008.
- 12 Home Office (2003) Youth Justice: The Next Steps – Companion document to Every Child Matters Home Office: London.
- 13 Criminal Justice and Immigration Bill Regulatory Impact Assessments P18  
<http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/docs/regulatory-impact-assess-1.pdf>
- 14 Criminal Justice and Immigration Act 2008 Schedule 4 Para 80(3).
- 15 [www.yjb.gov.uk/en-gb/practitioners/CourtsAndOrders/CriminalJusticeandImmigrationAct/#purposes](http://www.yjb.gov.uk/en-gb/practitioners/CourtsAndOrders/CriminalJusticeandImmigrationAct/#purposes)
- 16 Ibid
- 17 Prison Reform Trust (2008) Criminal Damage: why we should lock up fewer children PRT: London; Allen 'The Costs of Custody' in ed Blyth, Newman and Wright Children and Young People in Custody (2008) Policy Press: Bristol.
- 18 Personal communication with the author.
- 19 Department for Communities and Local Government (2007) The New Performance Framework for Local Authorities & Local Authority Partnerships: Single Set of National Indicators CLG: London.
- 20 Department for Communities and Local Government (2008) National Indicators for Local Authorities and Local Authority Partnerships: Handbook of Definitions CLG: London.
- 21 Data from the Office of National Statistics (ONS) provided to the YJB.
- 22 National Audit Office (2010) The youth justice system in England and Wales: reducing offending by young people NAO: London.
- 23 Youth Justice Board, data where pre-court disposals include reprimands, final warnings and fixed penalty notices.
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