

Children: Innocent until proven guilty?

A briefing on the overuse of remand for children in England and Wales and how it can be addressed

Penelope Gibbs & Simon Hickson

Key Facts

- **Three quarters of under-18 year olds locked up on remand by magistrates or district judges are either acquitted or given a community sentence**
- **One fifth of children in custody in England and Wales are locked up on remand – approximately 600 at any one time**
- **The number of children imprisoned on remand has increased by 41% since 2000**
- **95% of those remanded in custody have pleaded innocent and are awaiting trial, 5% are awaiting sentence**
- **Use of the important alternative to custodial remand – remand to non-secure local authority accommodation (RLAA) – has declined by 43% in the last four years**
- **In most areas of England and Wales there is no specialist accommodation for under-18 year olds on bail or remand to non-secure local authority accommodation**
- **29% of boys and 44% of girls in young offender institutions (YOIs) have previously been ‘looked after’ by their local authority**
- **If a child is detained overnight by the police, the youth offending team (YOT) and defence representative often only have a couple of hours to develop a relationship with, and assess, the child, prepare a bail package and present this to the court**
- **In the year 2008/9, 844 children were locked up on remand for a week or less.**

London Solicitor:

'I do not expect to get bail applications granted anymore. Ten years ago hardly any under-18 year olds got remanded'.

Today, children on remand make up one fifth of children in custody and nearly half of all receptions into custody. In the last seven years the number of children locked up on remand has increased by 41%.¹ Imprisonment is often a damaging experience for children. The latest survey of children in young offender institutions (YOIs) reveals that over half hardly ever, or never, get visited by friends and family and that a quarter of young men have been victimised by other boys while inside.² Children who have not been sentenced to custody should only rarely be imprisoned. They have a right to their liberty whilst awaiting trial or sentence unless there is strong evidence of their posing a danger to others. The UN Convention on the Rights of the Child says that imprisonment of children should be used 'only as a measure of last resort and for the shortest appropriate period of time',³ but a third of the children locked up on remand have been charged with a non-violent crime, and three quarters are either acquitted or given a community sentence when they come to trial in the magistrates' court.

Average under-18 custodial population at any one time

	2000-2001	2007-2008	% change
Average custody total	2,807	2,942	+5%
Average custodial remands total (un-convicted plus those awaiting sentence)	429	606	+41%
Average un-convicted	391	575	+47%
Custodial remands as % total of those in custody	15%	21%	+35%

Source: YJB (see full report for inter-year data)

¹ Youth Justice Board supplied data to the Prison Reform Trust

² *Children and Young People in Custody 2006-2008* HM Inspectorate of Prisons, Youth Justice Board

³ Article 37 UN Convention on the Rights of the Child, 1989

Something is going very wrong when so many children are locked up on remand, but deemed safe enough to be released into the community if convicted and sentenced. Since September 2007, the Prison Reform Trust (PRT), supported by the Diana, Princess of Wales Memorial Fund, has been working to reduce the number of children and young people imprisoned in England and Wales. In June 2008, PRT published a twelve point plan for reducing the child custody population of England and Wales.⁴ Point one of that plan was to reduce the number of children remanded in custody. Since then we have examined why so many children are being locked up on remand and how the tide could be reversed. It's not an easy process because so many agencies are involved – police, defence solicitors, courts, social workers, housing officers and youth offending team (YOT) workers – as well as the children themselves and their families. But reducing child custodial remands would save many children from unnecessary and harmful effects of imprisonment and allow the government to redistribute funds towards meeting the welfare and housing needs of these vulnerable children.

We have gathered information from a number of sources: interviews with senior practitioners and sentencers, a literature review of research and statistics, a survey of bail and remand officers, in-depth interviews with a cross section of the latter and a national seminar on this subject. As we have gathered information, we have sought to analyse the processes which contribute to remand decisions. In this report we present the problem – the rise in child custodial remands; we assess why the problem has arisen; and we present a series of policy and practise solutions. There are many ways of reducing child custodial remands, but the main approaches can be summarised in twelve points, which we will expand in the full report.

⁴ *Criminal Damage: why we should lock up fewer children.* Prison Reform Trust 2008

12 point action plan

1 Change bail law so that the legal criteria for refusing bail to children are stricter

These criteria should be significantly different to those used for adults and address child characteristics and vulnerability. The Bail Act 1976 sets the criteria for refusing bail and most criteria are the same for adults and children. No account is taken of children's greater vulnerability, lesser maturity or their welfare needs. A major reform of bail for children is needed so that it is no longer possible to refuse bail to children who have been accused of a non-violent offence and who do not pose a clear threat of committing a violent offence while on bail.

Action by: Ministry of Justice (Moj)/Department for Children Schools and Families (DCSF)

2 Change legislation so 17 year olds are treated comparably to other children, in particular with access to suitable community remand accommodation and to emergency accommodation in place of police detention.

Legislation affecting child remands discriminates against 17 year olds. If the police detain a 17 year old overnight, they have no legal access to emergency accommodation in the community, unlike those aged 16 and under. If refused bail, 17 year olds are treated the same as adults by being automatically remanded to custody. By contrast a 15 or 16 year old has a chance of being remanded to local authority accommodation.

This difference in the treatment of 17 year olds contravenes the UN Convention on the Rights of the Child and contributes to a disproportionate number of 17 year olds being locked up on remand - 17 year olds get half of all custodial remands given to children though they make up less than a third of those on remand (awaiting trial or sentence).

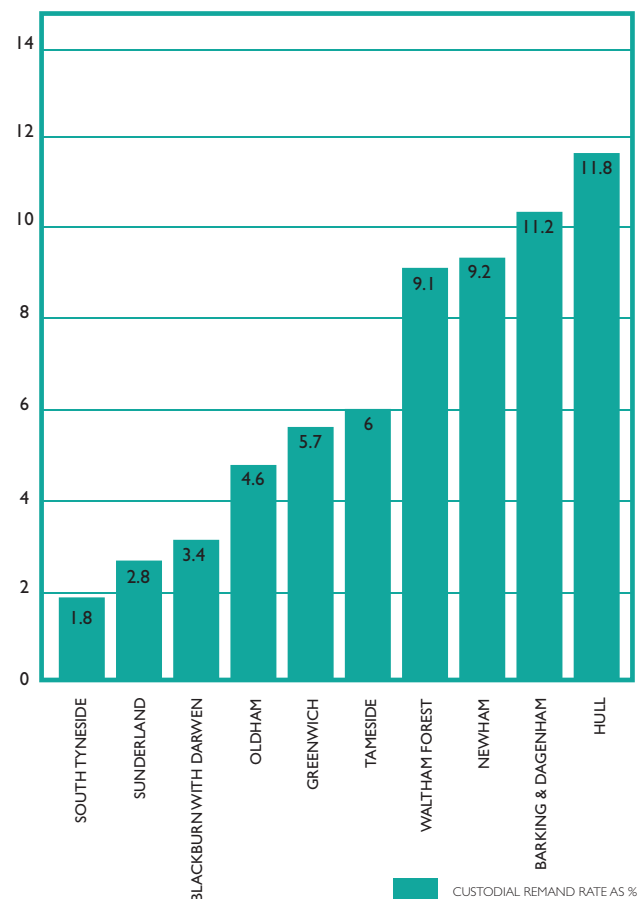
Action by: Moj/DCSF

3 Address justice by geography

There are huge differences in the use of remand from area to area. In 2006/7, 15% of those from Lambeth awaiting trial or sentence were locked up, whereas in Ceredigion 1% were. The level of serious crime in an area explains some of the difference, but far from all - even similar areas' rates vary widely. The government and the Youth Justice Board (YJB) should focus on areas with particularly high remand rates, analysing the drivers to high remand and the proportion of custodially remanded children who are acquitted or get a community sentence. The YJB, Crown Prosecution Service, the Judicial Studies Board and HM Courts Service should offer support and training to youth offending team (YOT) practitioners, prosecutors and magistrates in those areas.

Action by: Moj/DCSF, Youth Justice Board (YJB), Crown Prosecution Service, sentencers, Judicial Studies Board, Her Majesty's Courts Service

Proportion of children awaiting trial/sentence receiving a custodial remand across a group of comparable youth offending teams 2006/7



Source: YJB

4 Provide incentives for local authorities to reduce custodial remands

Local authorities can make a huge difference to whether a court resorts to a custodial remand. If the court trusts the local authority to support a child remanded to non-secure local authority accommodation, or if the court is assured that a 17 year old has well supervised accommodation in which to live while on bail, it will be more inclined to avoid a custodial remand. There are no financial and few other incentives for local authorities to invest in accommodation or services for those on bail/non-secure remand to local authority accommodation (RLAA). Two measures would change this situation:

- Delegate the budget for court-ordered secure remand and for remand in custody to local authorities
- Introduce a national indicator for reducing the number of children subject to court-ordered secure remand (COSR) and remand in custody.

Action by: MoJ/DCSF, YJB, local authorities

5 Improve the way defendants are dealt with by the police

Police have the power to bail or detain children they have charged prior to their appearing in court. If they detain a child under the age of 17 overnight, emergency accommodation (a 'PACE' bed) should be provided by the local authority but in reality it is rarely asked for and even more rarely provided. Children are sometimes detained without having seen a defence solicitor or practitioner. Police detention is in effect a custodial remand and also puts huge time pressure on the system, since a detained child must be produced in court the next morning and court decisions on bail or remand made then. The police should inform the YOT as soon as they expect to charge a child. They should also be trained to assess risk so that detention is only used when absolutely necessary and no child should be detained unless they have met with a legal representative. If overnight detention is considered necessary, a PACE bed should be provided. The youth crime action plan suggestion of having YOT officers in police stations to help divert minor

offenders from the criminal justice process is a good one but they should also be used to help divert children from police detention and to prepare court bail packages.

Action by: the police, local authorities, youth offending teams, YJB.

6 Reduce the time pressure in court

When a child is detained by the police, they must be produced in court the next possible day (Monday for those detained on Saturday), even if the bench sitting has no youth court experience or training. These children are the most at risk of being locked up on remand, yet practitioners have least time to prepare a bail/RLAA package for them.

In order to prevent unnecessary custodial remands, the YOT should start work on bail options on the day or evening of charge. If, despite this, they are not ready when the child is due in the courtroom, the court must allow the YOT and defence lawyers at least half a day to gather information and to discuss the situation with the CPS. If the detail of a bail/RLAA package does not sufficiently satisfy the court, for instance, if more information is needed, the child should be bailed or detained in an emergency local authority bed overnight. Custodial remand should not be used to buy time until the court obtains further information about the child or their circumstances or until a new bail/RLAA package is ready to be presented to the court.

Action by: the police, local authorities, YOTs, sentencers

7 Prevent 'remands of convenience' by Saturday courts

If a child is detained by the police on Friday, they must be produced in front of the court on Saturday. In a Saturday court the odds are stacked against community remand:

- The bench is frequently an adult bench with no youth court experience
- The youth offending team officer may not be in court and if they are, may have great difficulties in getting the information needed for a robust bail/RLAA package

- The CPS and defence may have little youth court experience
- The child may live in a different area to that of the court. Even on a weekday it may be difficult to contact their 'home' YOT. On a Saturday this is doubly difficult.

YOT officers we polled said Saturday courts were one of the key drivers to custodial remands, for all the above reasons. In order to reduce the discrimination suffered by those who appear in a Saturday court, the police should be encouraged to detain as few young people as possible, and the information available to Saturday courts improved.

Action by: the police, YOTs, HMCS, sentencers

8 *Improve the training of magistrates, district judges and defence practitioners*

A youth court magistrate gets just a couple of hours' training in child remand law and no training in the UN Convention on the Rights of the Child. A magistrate who sits in the adult court may have had no specific training in youth legislation, but still have to make a bail decision about a child.

It should be mandatory for all sentencers to be trained in detail about the range of child bail support and RLAA options, and for youth court magistrates to learn how the Children Act 1989 can be used to get local authorities to provide suitable housing for young people. Magistrates and district judges also need more training in assessing risk, particularly in the case of children who have breached bail conditions or re-offended while on bail. If three quarters of young people who get custodial remands in the magistrates' court do not get custodial sentences, the initial assessment of the risk they posed in the community must frequently be inaccurate.

Action by: Judicial Studies Board, sentencers

Children are frequently represented by solicitors or junior barristers who have little experience of working with vulnerable children and/or of defending in the youth court. Children at risk of being locked up on remand need to be defended by experienced practitioners who understand both youth justice and childcare law, and can competently oppose an inappropriate

proposal for refusing bail. All solicitors and barristers who defend children need enhanced training in the relevant law. As with the family courts, there should be a panel of solicitors who specialise in youth court matters or solicitor's firms should be accredited for child defence work.

Action by: MoJ/DCSF, Legal Services Commission, the Law Society

9 *Improve the system for defendants with mental health problems, learning disabilities or learning difficulties*

Children who have mental health problems, learning disabilities or difficulties often find it hard to understand and cope with the criminal justice system. A comprehensive system for screening children for such needs at the police station and at court needs to be developed.

Clear guidance should be issued on how to deal with those with mental health problems, learning disabilities or difficulties at charge, remand consideration and trial stage. Bail packages need to be adapted to accommodate children with these needs. Clarification on diversion from the criminal justice system for such children is urgently required; the use of custodial remand is inappropriate.

Action by: MoJ/DCSF, Department of Health, YJB, JCB, Sentencing Guidelines Council, YOTs, the police

10 *Engage parents better in the court and bail process*

The support of parents is an important factor in reassuring the court that a child on bail will be well supervised. A supportive parent in court can be pivotal in preventing a custodial remand. But legislation mandating the appearance of parents in court is not enforced and anecdotal evidence suggests many children are not accompanied by their parents.

Punitive approaches will not improve the situation, but youth offending teams and police must make strenuous efforts on the day of charge to contact parents (or failing them a wider family member), and persuade them of the importance of attending court. Where there is a risk of custodial remand, courts should adjourn remand decisions to allow more time

for parents to be contacted and persuaded to attend court.

Action by: YOTs, the police, the courts

11 *Reduce the disproportionate number of black children locked up on remand*

Black under-18 year olds are far more likely to receive a custodial remand than their white or Asian peers. There is very little research on why this is, but is likely to be related to social and cultural factors. The propensity of courts to use custodial remand in the case of foreign national children with no known address may also contribute to the numbers.

The drivers to high custodial remand for black children need to be identified in research and appropriate steps taken to prevent discriminatory practice. YOT areas where there are a disproportionate number of black children on remand should consider commissioning culturally-based bail support packages using community workers, mentors and mental health workers with a good understanding of local black communities. For minority ethnic children for whom English is not their first language, translation services should be made readily available.

Action by: Youth Justice Board, YOTs, MoJ/DCSF

12 *Improve bail supervision*

Our survey of youth offending team officers revealed that offending while on bail and breaching bail conditions are key drivers to custodial remands. Steps must be taken to ensure that, when bail conditions are set, children are not being set up to fail. Young children, and those with family and/or health problems, may find it very difficult to comply with stringent bail conditions. Courts need to set bail conditions which suit the individual child. The present bail 'menu of options' is insufficiently flexible and needs to be revised.

Other measures need to be taken to reduce offending while on bail. Children living in bed & breakfast or hostel accommodation, who are not in education or training, are particularly liable to re-offend while on bail. Such children need better supervision during the day and in the evening.

Action by: MoJ/DCSF, YJB, YOTs, local authorities

CONCLUSION

The number of children locked up on remand has increased much more than the number sentenced to custody but this increase has had little public or media scrutiny. It is almost as if remand has been put in the too difficult box, to be left to practitioners to deal with.

The lack of governmental focus is reflected in recent publications. The only mention of remand in the Youth Crime Action Plan is a reference to the financing of court-ordered secure remands. The Criminal Justice and Immigration Act 2008 only reference to bail is a change in the circumstances in which electronic monitoring (tagging) can be imposed and an allowance for time spent tagged when deciding a custodial sentence. The government has made no progress on removing the legal discrimination facing 17 year olds despite committing to do this five years ago. There has been no major government sponsored research on child remands and some crucial data is uncollected or not in the public domain.

Despite difficulties in finding some information, the Prison Reform Trust has identified the main drivers for the high rate of child custodial remands and suggested many ways in which we could avoid children being locked up on remand. Various practical changes could reduce unnecessary use of custodial remands – better training and guidance for custody sergeants, better YOT representation in Saturday courts, more remand fostering places – but ultimately the greatest difference would be made by a change in primary legislation. While the criteria for the refusal of bail remain broadly the same for children as adults, courts will always have wide discretion to lock children up on remand. And new legislation over the last ten years has given courts greater discretion to imprison children on remand. Now is the time for the government to review bail law and practise and ensure that thousands of children every year do not continue to be imprisoned unnecessarily.

The Prison Reform Trust aims to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; by informing prisoners, staff and the wider public; and by influencing parliament, government and officials towards reform.

www.prisonreformtrust.org.uk

The Diana, Princess of Wales Memorial Fund continues the Princess' humanitarian work in the UK and overseas. By giving grants to organisations, championing charitable causes, advocacy, campaigning and awareness raising, the Fund works to secure sustainable improvements in the lives of the most vulnerable people in the UK and around the world.

www.theworkcontinues.org

This briefing was written by Penelope Gibbs and Simon Hickson
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For further information contact
Penelope Gibbs
15 Northburgh Street
London EC1V 0JR
penelope.gibbs@prisonreformtrust.org.uk
Tel: 020 7689 7742

