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Confinement and restrictive measures against young people in the Nordic countries – a comparative analysis of Denmark, Finland, Norway, and Sweden

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ABSTRACT

This article reviews and compares the use of confinement and other restrictive measures against young people under 18 in child welfare and/or the criminal justice systems in Denmark, Sweden, Finland, and Norway. Young people are confined for a variety of reasons, including protection, care, treatment, and punishment. However, confinement of young people is a contested issue because it can be viewed as necessary but also potentially harmful. Comparison of legislation and practices reveals that while there are some similarities in the service provisions for young people, there are also significant disparities among the four countries regarding the organization, function, and frequency of the use of confinement and restrictive measures. While Denmark and Sweden use secure welfare institutions, Finland and Norway apply other restrictive measures. Despite the differences in approaches to confinement in the Nordic countries, the use of confinement is guided by the principle of the child's best interest, and the child welfare system is the main frame for confinement and intervention. The article discusses these disparate practices from the perspective of children's rights and identifies new avenues for research and practice.

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Young people; confinement; Nordic exceptionalism; children's rights; child welfare; criminal justice

Introduction

This article compares the use of confinement and restrictive measures within child welfare and criminal justice in Denmark, Finland, Norway, and Sweden. It has been claimed that the Nordic welfare states have similar systems of providing support to children and young people with a wide range of problems and needs (Bryderup, 2010; Stang Dahl, 1978; Storgaard, 2005). These systems provide a range of services for young people who are diverted from the criminal justice system for treatment, rehabilitation, and to prevent recidivism. Sweden and Denmark use pre-trial remand to residential institutions and surrogate imprisonment for sentenced youth, or child welfare services. Only a small

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number of young people under 18 are confined to criminal justice, while deprivation of liberty takes place in multiple ways within child welfare (Enell et al., 2018). In this article, we review and compare how confinement and restrictive measures are used in the four countries, finding significant similarities and discrepancies. We argue that documenting the form, frequency, and possible effects of these restrictive practices is important because they can shape young people's everyday lives, development, and transitions into adulthood.

The confinement of children and young people is a contested issue. Restricting their freedom of movement is a drastic measure that may have detrimental effects on their health, access to school, and relational continuity (Enell et al., 2018; Henriksen & Prieur, 2019; Nowak, 2019). While residential institutions are care-giving environments, being confined to one is associated with substantial delays in cognitive and socioemotional development and poor physical health (Van Ijzendoorn et al., 2020). In closed institutions, there is also a risk of negative socialization and stigmatization (Bengtsson, 2012), and recidivism is estimated at roughly two-thirds among former secure care residents in Sweden and Denmark (Hansen & Zobbe, 2006; Vogel, 2012). Despite these risks, confinement is often used to protect young people from more immediate risks that they pose either to themselves or to others. However, using confinement to protect young people from harm results in ambiguous practices that can be experienced as both harmful and punitive (Enell & Wilińska, 2021; Henriksen & Prieur, 2019). The UN Convention on the Rights of the Child (CRC) considers the incarceration of minors to be a last resort and should only be used for the shortest appropriate period of time (article 37b). As Nowak (2019) concluded, this means that any detention of children should be at an absolute minimum length of time. The Convention stipulates that the best interest of the child (article 3) should always be considered, and that children have the right to be heard and to have their opinions taken into account (article 12). According to article 1, all persons under the age of 18 are legally children, which entitles them to specific rights regardless of whether they are toddlers or near adulthood. Children in confinement are often in their teens (13–17) and understand themselves as 'youth' or 'young people'. In this article, we use the terms children and young people interchangeably to acknowledge both their unique legal status and apply a terminology consistent with emic categorization.

Our overview begins with the Nordic welfare model and Nordic exceptionalism within the justice system, followed by a description of our methodological and analytical approaches. The findings are divided into two parts, namely child welfare and criminal justice, in which the practices of confining minors in the four countries will be described and compared. In the final section, implications for practice and policy are discussed.

The Nordic welfare model and Nordic exceptionalism?

The Nordic criminal justice systems are characterized by a relatively high age of criminal responsibility compared to many other countries. Children younger than 15 cannot be held responsible for criminal actions in any of the Nordic countries (Harrikari, 2008; Lappi-Seppälä, 2011; Nowak, 2019); when people younger than 15 commit criminal offences, the cases are passed on to child welfare services, where an assessment is made regarding relevant interventions. Young people over 15 receive more lenient sentencing than adults, often including non-custodial measures supplemented by supportive interventions (Storgaard,

2005). Prisons are small and relatively open and provide inmates access to health and social services, education, and job training. For these reasons, the criminal justice systems in the Nordic countries have been described as Nordic exceptionalism (Pratt, 2008a, 2008).

However, Storgaard (2005) has observed an emerging and continuing shift in the Nordic countries in recent decades away from treatment and towards punishment in programmes involving young people. For example, in Denmark, a new law was introduced in 2019 to combat youth crime (Law no. 1705), which included establishing 14 Youth Crime Boards that can sanction children and young people aged 10–17 with mandatory ‘plans of improvement’ These sanctions are not defined as sentences, which enables inclusion of children under the age of criminal responsibility. In Norway, one of the youth prisons is increasing its capacity from four to six places, in addition to three recently established (illegally) in an adult prison. In Sweden, a majority in parliament now favour transferring responsibility for the confinement of minors committing serious crimes from child welfare to correctional services (Andersson et al., 2021).

In addition to penal exceptionalism, the Nordic countries are also known for their extensive service provisions for children and families at risk. Troubled and troublesome children and young people are handled within child welfare (Hestbæk, 1998), stressing prevention, support, and control rather than formal punishment or imprisonment. This shared tradition goes back to the nineteenth and early twentieth centuries when child welfare was legislated more or less simultaneously in the Nordic countries (Stang Dahl, 1978), and a century later, Hestbæk (1998) argued that there was still a homogenous, recognizably Nordic model of child welfare legislation. Moreover, the Nordic countries were early to ratify the CRC’s recommendations and implement children’s rights in child welfare legislations (Pösö et al., 2014). In all four countries, voluntary and family-oriented support is prioritized, while out-of-home care and coercion are used only as last resorts. The child welfare system is also considered to be the best place for care and protection of children at risk of harming themselves or others.

Lately, the Nordic model of child welfare and the idea of Nordic exceptionalism in (youth) criminal justice have been challenged. For example, Barker (2013) and Smith (2011) have highlighted inhumane practices of pre-trial solitary confinement. Despite early ratification of CRC, child welfare in the Nordic countries has been challenged with weak realization of children’s rights (Pösö et al. 2014). For example, children’s participation in decision-making remains insufficient according to Danish law (Ankestyrelsen 2020), and the outcome of placement in care is poor (A. K. E. Henriksen, 2021; Vogel, 2012). Additionally, the Nordic countries have been criticized by both the CRC and the Council of Europe, the latter of which has criticized Norway for its overly long pre-trial remands of children (Norwegian National Human Rights Institution, 2021). While penal exceptionalism is reflected in Nordic youth justice, we argue that child welfare must be included to fully understand the extent of confinement and restrictive measures used against young people in the Nordic countries.

Defining confinement and restrictive measures

Confinement is not easily defined, and studies apply various definitions, as has been stressed by several scholars (Nowak, 2019; Van Dorp et al., 2021). The liberty of children and young people can be restricted in various ways, both in private (i.e. families) and

public contexts (i.e. secure care institutions or prisons). To enable comparisons among jurisdictions, we draw on the definition of seclusion developed by young people and practitioners in secure settings in Holland: ‘an involuntary placement in a room or area the client is not able or allowed to leave’ (Van Dorp et al., 2021). This definition highlights that confinement can take place in ‘open’ settings where institutional rules or adult authority prevents freedom of movement. While restrictions on mobility are central to documenting young people’s deprivation of liberty, we wish to draw attention to other forms of restrictions that confine young people’s liberty. Within criminal justice and child welfare, a wider range of restrictive measures (e.g. controlling access to communication and information, limiting contact with family and friends, subjecting them to room and body searches, and confiscating personal items) intensify the confinement of young people. Confinement thus includes both seclusion and restrictions, which can potentially amplify each other and exacerbate the negative effects on young people. In this analysis, we maintain a distinction between the terms ‘confinement’ and ‘restrictive measures’ to provide analytical clarity when comparing the four countries. Our aim is to highlight how these two factors intertwine in practice, inspired by Kalliomaa-Puha et al.’s (2021) notion of ‘confinement in fractions’.

Method

The analysis presented in this article is based on policy documents, official statistics, and research concerning confinement of youth in the respective countries. All authors were involved in a Nordic research network on confined youths (funded by Nordic Research Council for Criminology) with the aim of exploring similarities and differences across the Nordic countries. Participants in the network represented all the larger Nordic countries except Iceland (where no appropriate collaborator could be found). We collected and presented national data about the confinement of young people in different areas and made field visits to locked institutions (a secure care institution in Denmark, a locked psychiatric institution for children and young people in Finland and a youth prison in Norway). In our exploration of confinement of children and young people within the sectors of criminal justice, child welfare, and psychiatric in-patient treatment, we were surprised by how different the approaches were in our respective countries.

In each country, we studied relevant legislations in three sectors: criminal justice, child welfare, and psychiatric in-patient treatment. We also examined reports and statistics from responsible authorities (e.g. reports from inspectorates), research publications, and evaluations about confinement or restrictive measures. In these sources, we sought knowledge about:

- Legislation regulating the use of confinement and restrictive measures,
- Forms of confinement and restrictive measures,
- Responsible authorities and organization of confinement, and
- Number of children in different types of confinement.

Here, we focus on these issues in the areas of criminal justice and child welfare. All comparisons relate to young people under 18, even though the legislation or organization of confinement can sometimes be applied to people older than 18.

Attaining relevant and comparable information about children and young people confined to the different countries was difficult because information that is public in some countries is not public in others. We present numbers, but these should therefore be interpreted with caution. Another challenge was evaluating the equivalency of concepts and collected data, a central issue in all cross-national comparisons (Hantrais, 2014, p. 1999). An advantage of our network was our recurrent meetings, which allowed us to discuss concepts, practices, and legislations, and to arrive at consensus by providing each other with specific examples.

Findings

Confinement and restrictive measures in Nordic child welfare

Child and family welfare, that is, the policies and practices of protecting children (Freymon & Cameron, 2006), have historically been responsible for handling troubled and troublesome children and young people. However, the practices of handling these children and young people have developed in different ways in the four Nordic countries. Locked institutions are still a part of child welfare in Denmark and Sweden, while Finland and Norway closed these institutions in the last decades of the twentieth century. Below, we will describe confinement and restrictive measures applied within child welfare in each country.

Denmark

In Denmark, confinement of young people within child welfare is carried out in secure institutions. There are eight secure institutions, seven of which are administered by regional authorities and one by the Municipality of Copenhagen. Each institution has two to four units, typically accommodating five young people living in private rooms but sharing a living room and a kitchen. They all offer school and selected cognitive programmes aimed at reducing violent behaviour and drug abuse. In 2010–2012, there were a total of 145 beds in secure institutions. Since then, the number of beds has declined mainly due to a significant decline in youth offending; in 2019, there were 106 beds in secure institutions. All units are gender and age-integrated (Danske Regioner, 2020).

Young people are placed in secure institutions for two main reasons, namely as surrogate custody (that is, pre-trial remand or serving a sentence) or on welfare grounds. Most (around 70%) are in surrogate custody, while the remainder have been placed there due to concerns about their health and development (drug abuse, absconding, criminal involvement, and danger to themselves or others) or an assessment that more lenient forms of placement will not serve the purpose of safeguarding them (63§b, no 1–2 Danish Social Service Law). Placement in surrogate custody requires a court order, while placement on welfare grounds requires a care order approved by a Municipal Children and Youth Board. Placement on welfare grounds can be for either ‘danger’ (which relies on a risk assessment and cannot exceed 12 months) or ‘pedagogical observation’ (which can be a maximum length of 3 months with a possibility for a three-month extension). Most young people do not know how long they will stay. The young people are placed in units together regardless of the reason for their placement (i.e. custody or welfare), and the young people experience similar restrictions in terms of access to phone and internet and

visits. This practice of mixing young people irrespective of placement grounds has received critique on several accounts, including lack of specialized treatment (A. Henriksen, 2017) and potential breach of CRC, Art. 37 (Taxhjelm et al., 2020). Since 2010, placement in surrogate custody has decreased by 40%, while placement on welfare grounds has increased by almost 400% (Danske Regioner, 2020). In 2019, there were 462 admissions to secure institutions, of which a third (148) were welfare placements. The minimum age for placement on welfare grounds is 12 and maximum is 17. Girls make up approximately 10% of the young people in secure institutions, mainly placed on welfare grounds.

Secure institutions in Denmark are permanently locked, surrounded by fences and monitored by surveillance cameras. The staff can apply a range of restrictive measures such as body searches, physical coercion, physical guidance, restraint, care in solitude¹ and solitary confinement² in compliance with the Law on Adult Responsibility for Children and Youth in Out-of-home Care (LBK 764). All young people in secure institutions must abide by house rules and can be sent to their room if they fail to do so, a process called 'sectioning'. Since the young people are already confined, 'sectioning' constitutes a form of confinement within confinement, which is not registered nor can be appealed. Various authorities are authorized to impose various restrictive measures. Room and body searches, physical force, and guidance can be initiated by staff, while solitary confinement and control of communication can be temporarily authorized by the manager of the institution (the latter must be approved by the Children and Youth Board within 7 days). **Table 1** lists all restrictive measures in child welfare along with the possibility for appeal and if there are time limits.

Young people can also be confined to semi-closed institutions, which are child welfare institutions with a locked section. Semi-closed placement requires a decision by the Municipal Children and Youth Board, which enables placement in the locked section for up to five consecutive days and up to 30 days per year. In 2019, there were 48 beds in semi-

Table 1. Restrictive measures in Danish child welfare.

| Restriction | Possible to appeal | | Time limit |
|---|--------------------|--|------------|
| Assisted return to placement | no | no | |
| Bodily search and external physical examination | no | no | |
| Care in solitude | yes | no | |
| Control of communication (letters, telephone and internet) ^a | yes | no | |
| Drug testing (urine) | Consent is needed | | no |
| Inspection of private room ^a | no | no | |
| Physical guidance (requires some degree of consent) | no | no | |
| Physical force ^a | no | no | |
| Prohibition of substances and confiscation of private objects | no | no | |
| Restrictions on contact between the child and his/her parents or other persons close to him/her | yes | no | |
| Restrictions on freedom of movement | yes | 14 days in open inst. Five consecutive days and up to 30 days per year in semi-closed institutions 12 months in secure inst. | |
| Solitary confinement (only secure institutions) | no | 2 hrs in normal unit/4 hrs in specialized unit | |

^a Only applies to semi-closed and secure institutions.

locked institutions and 44 young people (equally divided by gender), were placed in these institutions. Finally, confinement³ can take place for a maximum of 14 days in any type of out-of-home placement, which also requires a care order by the Children and Youth Boards.

Sweden

As in Denmark, confinement of minors in Sweden primarily takes place within child welfare in secure institutions, which are state-run by Swedish National Board of Institutional Care (SiS). About 90% of the beds are in locked units (Statens institutionsstyrelse, 2021) which are inspected by the Health and Social Care Inspectorate at least once a year. At the time of writing, there were 675 beds (603 in locked or lockable units) distributed among 22 secure institutions. There are three different kinds of secure care placements: emergency, assessment, and treatment. Often, emergency and assessment placements are carried out in joint units, while treatment units are specialized. All units are gender segregated, every institution must arrange for schooling, and most of them offer (to varying extents) cognitive treatment programs for behavioural problems.

Compulsory care due to behavioural problems is regulated in the Care of Young Persons (Special Provisions) Act (LVU) and is specified by three criteria: 1) substance abuse, 2) criminality, or 3) other forms of socially destructive behaviour. A decision about compulsory care is made by the Administrative Court, and only those young people considered in need of 'special supervision' (§ 12 LVU) should be placed in secure care. However, this assessment is not made by the Administrative Court, but by child welfare authorities. When child welfare applies for a bed, SiS cannot say no and must (immediately if necessary) provide a bed for the young person.

Approximately 1100 children and young people enter secure institutions every year, a third of them girls. There are no time limits for how long the young people can stay in secure care. While the placement can last from a few days up to several years, the average time spent in care is roughly 5 months. Most young persons are 15–17 years old, but there is no lower age cut-off, and children as young as eight have been placed in secure care (Statens institutionsstyrelse, 2017, 2021).

Secure care differs from other forms of out-of-home care in Sweden, in that staff have the authority to carry out a number of restrictive measures. In addition to being confined to a locked setting, occupants of secure care can also be subjected to body searches, solitary confinement, and more. The mandate to control and secure young people with extensive psychosocial problems is also manifested through fences, barbwire, surveillance cameras, and the staff carrying alarms. After an amendment of LVU in 2018, all restrictive measures can be appealed, and children younger than 15 have access to a legal representative. Some of the restrictive measures have a maximum time limit, while others must be re-examined after a period of time and can be prolonged if still found necessary. For example, solitary confinement has an absolute maximum length of 4 hours, while care in a locked unit or solitude has no such time limit. Consequently, if the legal conditions are met, these measures can be used for unlimited time. Table 2 lists all restrictive measures in Sweden's child welfare along with the possibility for appeal and if there are time limits.

SiS provides annual statistics about children and young people in secure care, and the use of confinement and restrictive measures in Sweden are in some sense transparent. Unlike Denmark, it is not possible to use restrictions for children and young people in other child welfare institutions.

Table 2. Restrictive measures in Swedish child welfare.

| Restriction | Possible to appeal | Time limit |
|--|--------------------|-------------------------------------|
| Bodily search and external physical examination | yes | no |
| Care in solitude | yes | No (should be revisited every week) |
| Control of letters or other items | yes | no |
| Confiscation of private objects | yes | no |
| Drug testing (blood, urine, breath, saliva and/or perspiration) | yes | no |
| Inspection of private room | yes | no |
| Placement in locked unit | yes | no |
| Restrictions on freedom of movement | yes | no |
| Restrictions on electronic communications, telephone contacts and visits | yes | 14 days |
| Solitary confinement | yes | 4 hrs |

Finland

In contrast to Sweden, Finnish child welfare does not have any secure care institutions. The current Finnish Child Welfare Act (417/2007) does not use closed accommodation for children and young people as such but, instead, makes it possible to restrict liberty and rights of children who are in out-of-home care by restrictive measures (Huhtanen & Pösö, 2018). Consequently, when exploring ‘confinement’ of children in Finnish child welfare, one must look at the legislation about restrictive measures enabling confinement for individual young people.

Being in out-of-home care does not automatically result in a child or young person having their rights or freedoms restricted. Each restrictive measure used must be based on the Child Welfare Act. Three criteria need to be met in order to apply for restrictive measures: 1) the child is in out-of-home care as a result of a care order decision (with or without consent of custodians and/or a child older than 12) or a decision of emergency placement, 2) the child is placed in a residential setting (in foster care, it is possible to restrict contact only), and 3) the restrictive measures serve the child’s best interest and their (or someone else’s) health and safety. The restrictions must be implemented as safely as possible while respecting the child’s human dignity and not be applied as punishments or sanctions (Kalliomaa-Puha et al., 2021).

Following the criteria mentioned above, restrictions of young people’s liberty mainly take place in institutional settings. In Finland, various types of child welfare institutions are run by the state, by municipalities, or by (licenced) private organizations (non-profit as well as for-profit). The conditions for, and procedures of, carrying out restrictive measures are identical in public and private institutions. Typically, a social worker in the child welfare agency or a member of staff at the institution makes decisions about restrictive measures. The decisions should all be based on the child’s or young person’s behaviour (except for contact restriction, which should be based on the contact’s impact on the child or young person). The authority responsible for supervising the institutions’ use of restrictive measures is the Regional State Administrative Agencies and the municipalities that place children in those institutions. Table 3 lists all restrictive measures in Finland’s child welfare along with the possibility for appeal and if there are time limits.

Some of the restrictive measures have time limits, such as solitary confinement, which has maximum time of 12 hours per decision and 48 hours in total. Solitary confinement should only be used in extreme cases when no other options are considered appropriate

in a dangerous situation. 'Special care', a euphemism for closed accommodation (the child or young person cannot leave the specific facility), highly restricts the child's freedom of movement, personal liberty, and privacy. This measure is the only one with an age minimum (12) and should be based on a multiprofessional assessment of the child's needs and adequate support during the period of special care. Most decisions about restrictive measures can be appealed in Administrative Court by a child aged 12 or older and/or their parent(s), while others (e.g. bodily search) cannot.

Statistical information and research about the use or implications of restrictive measures in Finland is scarce, so we cannot provide an overview of extent of restrictive measures (Hoikkala, 2020; Huhtanen & Pösö, 2018). There is, however, a rough estimate suggesting that 300 young people are placed in 'special care' per year (Wennberg et al., 2020). The Parliamentary Ombudsman has a special duty to monitor children's rights, and they pay special attention to the fundamental and human rights of children in out-of-home care. Recent reports have highlighted serious shortcomings in the use of restrictive measures (Kalliomaa-Puha et al., 2021). Furthermore, children in residential institutions experience and are exposed to other types of restrictions than those entitled by legislation (Helavirta et al., 2021).

Norway

There are no locked institutions within child welfare in Norway. Instead, it is possible to use various forms of restrictive measures within child welfare institutions. The main priority of child welfare in Norway is to provide care and protection for children and young people. They are to be protected from harming themselves, from being harmed by others, and from abuse and neglect in their homes. At the same time, child welfare authorities are *not* entitled to intervene to protect others from the child's behaviour. The Child Welfare Act (1992) is the legal framework for all interventions. The care of children and young people can be either voluntary or involuntary, and based on either abuse and neglect (care placements) or on their own behaviour (behavioural placements). All behavioural placements must be authorized by a county board. If the county board finds the child or young person in need of care based on her/his serious behavioural problems, the child is referred to a child care institution. In cases of severe or repeated crime, the criminal justice system takes over, although child welfare services are also represented in the prison to fulfil the CRC.

Table 3. Restrictive measures in Finnish child welfare.

| Restriction | Possible to appeal | Time limit |
|---|----------------------------------|-----------------------------|
| Bodily search and physical examination | no | no |
| Confiscation of substances and objects | yes | no |
| Inspection of possessions and deliveries; leaving deliveries unforwarded | Inspection no, forwarding yes | no |
| Physical constraint (holding) | no | no |
| Restrictions on contact between the child and his/her parents or other persons close to him/her | yes | One decision for 30 days |
| Restrictions on freedom of movement | yes | 30 days |
| Solitary confinement | yes | 12 hrs |
| Special care | yes | 90 days |

Table 4. Restrictive measures in Norwegian child welfare.

| Restriction | Possible to appeal | Time limit |
|---|--------------------|--|
| Assisted return to placement | yes | no |
| Bodily search and external physical examination ^a | yes | no |
| Inspection of letters | yes | New decision on every occasion |
| Denial of electronic communications ^a | yes | no (should be revisited every second week) |
| Drug testing (urine or breath only) ^a | no | no |
| Inspection of room and personal items | yes | no |
| Notification to victims or relatives in criminal cases ^a | no | no |
| Physical constraint (holding to prevent acute dangerous acts) | yes | no |
| Prohibition of substances | no | no |
| Restrictions on freedom of movement ^a | yes | no (should be revisited every second week) |
| Restriction of visits | yes | no |
| Solitary confinement | yes | no |

^a Only applicable for children placed on behavioural grounds

Measures to restrict the liberty of children and young people are regulated in the ‘regulation of rights’ (“Rettighetsforskriften” 2011), some of which can be imposed on children and young people placed either on care grounds or on behavioural grounds. In addition, these measures can be applied to children placed on behavioural grounds in either voluntary or involuntary care.

At the end of 2019, 9257 children aged 0–17 were in foster care and 1078 children of the same age in child welfare institutions (Statistisk Sentralbyrå, 2020), of which 144 had been placed on behavioural grounds. A behavioural placement can last a maximum of 2 years (it must be authorized by the county board once a year), and it must be documented that the child has responded to the treatment. Child welfare institutions in Norway take care of children of different ages and different behavioural problems, and decisions about restrictive measures are made by residential care staff at the institution. Some of the measures are possible to appeal to the county governor, who processes these on behalf of the health directorate. Table 4 lists all restrictive measures in Norway’s child welfare along with the possibility for appeal and if there are time limits.

Criminal justice

In all four countries, the age of criminal responsibility is 15, and each country has special legislation for minors committing offences guided by principles of the CRC. Such legislation implies more lenient sentencing, efforts to divert youths from the adult system, and, in some cases, from correctional services and penal law by transferring them to social services. Hence, only a limited number of minors are confined within criminal justice.

Denmark

In Denmark, youths aged 15–17 who commit serious crimes are primarily diverted from criminal justice into child welfare institutions. However, there are three units in correctional services designated for minors, one high security, one ‘open’, where they can apply to leave for work/education, and one for pre-trial remand. Special legislation applies for youth in correctional services (LBK 1413), which specifies the principle of diversion, access

to education, preventing interaction with adult inmates, and increased attention to their health and well-being. This legislation does not include any exemptions from the restrictive measures that can be applied to inmates in Danish prisons, such as solitary confinement, control of communication, or body searches. There are 18 beds for minors in Danish correctional services and in 2019, there were 158 admissions (four of them girls). Pre-trial remand and sentenced youth are mostly diverted into child welfare, where they can be placed in either secure or open institutions. In 2019, 374 youths were diverted from criminal justice into secure institutions (Danske Regioner, 2020). Minors can also be sentenced to a 'youth sanction' that was introduced in Denmark in 2002 as an alternative to prison sentences exceeding 6 months. 'Youth sanctions' include a two-year programme of 1) 3 months in a secure institution, 2) open or secure placement, and 3) compulsory treatment/interventions.

In Denmark, minors in criminal justice can be subjected to various forms of restrictive measures depending on whether they are in remand or serving a sentence. In remand, their communications and visits are often monitored to prevent interference with an ongoing investigation, and this monitoring also applies for youths placed in surrogate remand in a secure institution.

Sweden

In Sweden, youths aged 15–17 who commit serious crimes (crimes that, if committed by an adult, would render a prison sentence) are diverted from correctional services to youth custody in child welfare institutions under the Secure Youth Care Act. This sanction is carried out in secure care institutions run by the National Board of Institutional Care. Consequently, young people are confined to the same secure care institutions, but usually in different units than children held under the Care of Young Persons (Special Provisions) Act (LVU act). While in secure care, these youths are subjected to the same restrictive measures as those used by child welfare and are entitled to the same treatment (Table 2). The most palpable difference between those referred by child welfare and those sentenced to youth custody is time spent in care. Since youth custody has a time-limited sentence (4 years at most), these minors have a release date, and the regulation of youth custody also suggests gradual custodial openness (Pettersson, 2017). The number of minors sentenced to youth custody varies but is around 70 per year (almost entirely boys), and SiS provides 68 beds (in addition to the beds designated for children under the LVU act, Statens institutionsstyrelse, 2021). A comparative study showed that, under earlier legislation, young people sentenced to youth custody ended up serving more time than those sentenced to prison (Pettersson, 2010). Hence, the introduction of youth custody in 1999, which had aimed at better aligning youth sentencing with the CRC, at first lead to minors being confined for longer periods of time than before.

Since the introduction of youth custody, almost no minors have been confined to correctional services. The legislation states that minors can be sent to prison if there are special circumstances (e.g. level of offence severity), which has concerned fewer than three young people every year. However, correctional services still carry out a substantial proportion of pre-trial remand of minors: for instance, in 2017, 178 children were in correctional services for pre-trial remand (Kriminalvården, 2018). There are three designated units for young persons in pre-trial remand, but it is relatively common that minors are placed with adults, for which Sweden has been repeatedly criticized (Civil Right

Defenders, 2020; United Nations, 2015). It is also possible for child welfare authorities to apply for compulsory care via the Administrative Court, which is often carried out in secure care institutions as a substitute for pre-trial remand, although there are no statistics about how often this procedure is used. However, when young people are in surrogate pre-trial remand in secure care, time is not deducted from the eventual sentence as is customary in correctional services, even though it entails confinement (see, Pettersson, 2018).

Finland

Finland is exceptional among the Nordic countries by currently having no prison units for youths aged 15–17, and because Finland (like the other Nordic countries) has adopted a humane and rational criminal policy line, the use of prison sentences for minors is limited. After 8 years of experiments, an Act about youth sanctions came into effect at the beginning of 2005 for minors who have committed serious offences. Instead of imprisonment, sentencing can include probation meetings, activities to improve social skills, and guidance in working life (Marttunen & Keisala, 2007). In practice, youths can be imprisoned only for very serious offences. Between 2011 and 2020, the average daily numbers of minors aged 15–17 years who were either convicted or on remand in prison varied between 7 and 10 (Rise, 2020), Table 3.

As in the other Nordic countries, imprisoned minors must be separated from adult prisoners unless being with adults is in his/her interests, according to the Imprisonment Act (Ministry of Justice, paras. 5, 2 §). In some cases, offending youth may instead be placed in other institutions (e.g. child welfare institutions; Muurinen, 2021).

In Finland, there are no special restrictive measures for minors in the prison context. Instead, their vulnerable positions are (somewhat) acknowledged in legislation concerning imprisonment. According to the Remand Imprisonment Act (Ministry of Justice), for example, the special needs related to age and developmental stage of remand prisoners under 21 years old should be taken carefully into account (section 1, 5 §). Moreover, minors have the right to receive information in their native language or a language they understand (section 2, 3 §).

Norway

In Norway, youths aged 15–17 who are convicted for serious crimes are separated from adults into two specific youth prison units situated closely to adult prisons. These two youth prisons are run by the correctional services, provide four beds each, and are both gender integrated.⁴ At the youth units, 50% of the staff are prison officers and 50% are social workers, all with at least 3 years of higher education. An interdisciplinary team (from health, school, and child welfare services) should be available to ensure that imprisoned minors receive adequate care and are followed-up in prison and after release. Each year, approximately 40 minors are admitted to these units, most of whom are in pre-trial remand.

Sentencing minors to prison is not common in Norway (Justis- Og Beredskapsdepartementet, 2020). The guiding principle is that children should only be sentenced to prison if they have repeatedly committed serious offences or one very serious crime. When deciding the length of the sentence, the court is obliged to always consider the age of the minor and give the shortest possible sentence. The correctional

services should always consider alternatives other than a prison sentence. However, residential care in child welfare is very seldomly used for pre-trial remand or serving a sentence and is not recommended by the Norwegian Directorate for Children, Youth, and Family Affairs. However, it is quite common that child welfare authorities place youths in child welfare institutions after they are released from prison.

Discussion

When exploring Nordic penal exceptionalism and the Nordic welfare model centring on the confinement of children and young people, our analysis has demonstrated several key differences between Denmark, Sweden, Finland, and Norway, which are summarized in Table 5.

Based on our analysis, the four countries can be roughly clustered into two categories: Denmark and Sweden confine children and young people in secure facilities, whereas Finland and Norway do not have locked institutions, although restrictive measures are permitted for regulating children's and young people's movements, contacts, and other types of liberty, and Norway has prison units for young people. In Sweden, restrictive measures are applicable only in secure care. In other forms of placement, children and young people cannot be legally restricted. This suggests that the Swedish secure care practice is *confinement-intense*, but non-secure care has no legal mandate to use restrictive measures. The Swedish system is then quite different from the other three countries, where restrictive measures can be applied to young people in residential care institutions, with some restrictive measures requiring a care order. Altogether, it can be concluded that the landscape of confinement – and, accordingly, the definitions of confinement – is quite diverse in child welfare across the studied Nordic countries: 'confinement' has a solid meaning in each spatial context, but 'confinement' might imply more than a physically closed place.

Denmark and Sweden are similar regarding the use of secure facilities for placement on welfare and surrogate custody grounds. In other words, secure care functions as protection and care for some, and punishment or incapacitation for others, and the lines between child welfare and criminal justice are blurred. However, it is significant that secure care in Denmark is mainly used for surrogate custody (pre-trial and sentenced youth), while in Sweden the practice is reversed, with a majority of children in secure care being placed on welfare grounds. In all four countries, Denmark stands out with the highest use of pre-trial custody, which mainly takes place in secure institutions. Norway

Table 5. Confinement of children and young people in child welfare and criminal justice.

| | Child welfare | Criminal justice |
|----------------|--|--|
| <i>Denmark</i> | Secure care (locked institutions) and semi-closed institutions | Three youth units in adult prisons and diversion to secure institutions (surrogate custody) |
| <i>Sweden</i> | Secure care (locked institutions) | Separate units for youth in pre-trial remand and diversion to secure institutions (surrogate custody), |
| <i>Finland</i> | No secure care, but restrictive measures | No youth units in prisons |
| <i>Norway</i> | No secure care, but restrictive measures, including solitary placement | Two youth prisons and one unit in a high-risk adult prison |

has two youth prisons, while Finland currently does not have a youth unit. Except for Norway, confinement of young people is intertwined in many ways with child welfare institutions.

Looking solely at the numbers of Nordic juveniles in prison, the idea of Nordic exceptionalism seems valid. However, when including young people confined or subjected to restrictive measures in child welfare, this idea of exceptionalism is challenged by multiple forms of confinement, ranging from placement in locked institutions to restrictive measures on young people's mobility, contact, and communication. To some extent, the confinement of Nordic youth is hidden in child welfare, embedded in ethics of care and protection, while potentially having negative impact on young people's life trajectories.

Trying to compare the numbers of children and young people in confinement turned out to be more challenging than we expected. The numbers of beds and admissions in Denmark and Sweden could be roughly compared, because in these two countries, confinement can be defined as taking place in secure institutions and in criminal justice. However, in Denmark, young people can be confined for shorter periods (up to 5 days in semi-closed institutions) and subjected to other restrictive measures in residential institutions. These numbers are not publicly available, and constitute an example of confinement 'by stealth', which applies to sectors in all jurisdictions. It was possible to get the numbers for youths in prison settings in Norway and Finland as well, but numbers regarding the use of restrictive measures are either fragmentary or missing in these countries. For these reasons, it is not possible to make quantitative comparisons.

The inaccessibility of data on confined youths and the frequency and form of restrictive measures is concerning. These data are vital for making informed political decisions about how to support young people involved in offending or high-risk behaviours. The systems of youth confinement have their particular histories and rationalities in each of the studied countries, which need to be understood in order to make sensible comparisons. Longitudinal data about outcomes are also lacking, thus there is limited knowledge regarding how different forms of interventions shape young people's lives and transitions to adulthood. The existing longitudinal studies of young people in secure institutions in Denmark and Sweden demonstrate that many of these young people are readmitted or reoffend after the period in secure care (A. K. E. Henriksen, 2021; Pettersson, 2017; Vogel, 2012). Restrictive measures pose a challenge for longitudinal research designs because it is difficult to separate their effects from those of other measures taken during the placement. The testimonies of residents in the historic studies of abuse of children in residential care suggest that restrictive measures have long-lasting impacts (e.g. Sköld & Swain, 2015), highlighting the importance of studying restrictive measures from a longitudinal perspective as well.

Our analysis has focused on comparing the legislation and practices regulating the confinement and use of other restrictive measures for young people. We regard comparative legislative analysis highly relevant for gaining a more thorough understanding of the variation in confinement practices. The increasing legal regulation of confinement and restrictive measures can be interpreted as a sign of juridification of child welfare through which child welfare is increasingly being enforced through interventions that rely on control, monitoring, and sanctions. From another perspective, legislation can be viewed as a means to explicate the pertinence and limits of confinement and restrictive measures

in a given society. Such legislation can provide children and young people (and their trustees) means to express their discontent in situations where they feel their rights to personal and/or bodily integrity have been violated. This expression, however, cannot happen without appropriate support for them to claim their rights in these situations.

Our analysis has not focused on the *practices* of confinement, which may or may not differ from legislation. How practice is experienced by young people themselves may depart from the purpose underpinning the legislation, and it is important for future comparative studies to incorporate knowledge on confinement from young people's perspectives. The current moment is defined by contradictory ideas about the proper treatment of young people in trouble, emphasizing on one hand their rights to be acknowledged (e.g. right to be heard) and on the other hand the need for disciplinary measures. It is crucial that the young people whom these measures concern would be regarded as valuable sources of knowledge.

Further studies should include Iceland, to provide a full comparison of the Nordic countries, and it would also be beneficial to include confinement of children and young people in mental health care and in immigration centres. Increased migration flows and the growth of youth mental health problems across the western world mean that a growing number of children and young people are living in restrictive or confined conditions. Raising knowledge and understanding across the entire field is imperative, because these institutional practices involve excessive power differentials and, consequently, a potential for harming young people already suffering from significant vulnerabilities.

Finally, it would be interesting to learn how these different practices of confinement have been shaped by the COVID-19 pandemic: what happens when existing forms and practices of confinement in child welfare and criminal justice are met with additional calls for restricting contact and movement due to 'new' health risks? How are children's and young people's rights negotiated in those situations?

Conclusion

Despite the different approaches to confinement, there are at least two core similarities among the studied Nordic countries: the principles of confinement are guided by the principle of the child's best interest, and the child welfare system is the main frame for confinement and platform for practice. Thus, to analyse and understand confinement in the Nordic countries, it is not enough to focus on criminal justice, but child welfare must be included. Analyses also need to broaden the focus by not only looking at physical confinement, but including a diversity of restrictive measures, both formal and informal, revealing what might constitute a system of confinement in stealth.

Endnotes

1. In this article, *care in solitude* means that the young person lives in a secluded part of the unit and is restricted from contact with other youth.
2. In this article, *solitary confinement* means the temporary placement of a young person in an empty room while observed by staff.

3. The Danish term is *tilbageholdelse*, which implies restricting movement rather than placement in a locked setting.
4. In addition, three beds were opened in 2019 in an adult prison despite the illegality (according to Norwegian Law and CRC) of placing youth there.

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