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Barry, Monica Youth custody in Scotland: rates, trends and drivers.

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YOUTH CUSTODY IN SCOTLAND: RATES, TRENDS AND DRIVERS

SECTION ONE: INTRODUCTION

The upward trend in youth custody rates across the UK has led the Prison Reform Trust, with support from The Diana, Princess of Wales Memorial Fund, to identify the drivers to youth custody and to reduce the overall numbers of children and young people in prison or secure settings. The Trust's concerns rest on the following facts:

- Imprisoning children is harsh and ineffective;
- Children can suffer mental health problems as a result of being deprived of their liberty and having limited contact with family and friends;
- The incarceration of children is not cost-effective;
- Custody exacerbates rather than reduces youth crime (Prison Reform Trust/ SmartJustice, 2008).

Two studies have been undertaken in England and Wales to date as a result of this campaign (Gibbs and Hickson, 2009; Prison Reform Trust/SmartJustice, 2008). The Prison Reform Trust now wants to explore youth custody rates, trends and drivers in Scotland, with a view to reducing numbers of children and young people held in custody north of the Border. This review therefore gives some key statistics on youth custody rates and trends and explores the drivers to changes in those rates over time. The review identifies four key drivers: a) increasingly stringent requirements imposed on children and young people who offend; b) the increased use of remand; c) shorter prison sentences with little scope for rehabilitation; and d) the earlier criminalisation of children and young people. Reducing child imprisonment requires attention to all four of these factors which interact in different ways and at different times, depending on policy, practice and public concerns.

Custody in Scotland

Custody in its broadest definition means safe-keeping, guarding and containment. In Scotland, children aged 16 and under are offered a more welfare-oriented approach to such confinement than their counterparts south of the Border. In England and Wales, risk assessments relating to children who offend suggest that higher needs equate with a higher likelihood of re-offending. In Scotland, the focus has traditionally been on addressing the young person's broader welfare needs rather than on assessing the risk of re-offending *per se*. This report explains the unique situation in Scotland compared with England and Wales, but firstly describes the different age of criminal responsibility in Scotland which may impact on this country's approach to the custody and care of children and young people who offend.

In Scotland, the age of criminal responsibility (at which a person is deemed to know the difference between right and wrong) is currently the same as the minimum age of prosecution in criminal courts. Whilst in England and Wales the age of criminal responsibility (and prosecution) was raised from 8 to 10 years in 1963, it remains at 8 years in Scotland. The reasoning behind this was that the Children's Hearings system in Scotland gave protection from prosecution to children who offend by retaining them within that welfare-based system, and it was only on the instructions of the Lord Advocate in Scotland that children aged 8 – 12 could be prosecuted in criminal courts. Indeed, no child of that age was prosecuted between 2002 and 2007 (<http://www.scottish.parliament.uk/s3/bills/23-CrimJustLc/b24s3-introd-pm.pdf>; McDiarmid, 2009). However, in response to growing concerns from children's rights proponents and other legal commentators, who argue that the age of criminal responsibility should be increased to 12 irrespective of the presence of the Children's Hearings system, the Scottish Government has, in its 2009 Criminal Justice and Licensing (Scotland) Bill, proposed increasing the age of prosecution to 12, whilst still retaining the age of criminal responsibility at 8. The latter retention means that children aged 8-12 can still be referred to the Children's Hearings system on offence grounds, and this continues to cause concern to many commentators on children's rights and wellbeing, given the possible moves within the Government to 'tighten' the remit of the Children's Hearings system more generally (see below).

In terms of restriction of liberty through custodial measures, there are two routes through which a young person over the age of 8 can be detained in Scotland, if found criminally responsible: one is through the Children's Hearings system, for those aged 8 – 15, and the other is through the adult Criminal Justice system, for those aged 16 and over, although the age range 15-17 is a muddy area in Scotland in terms of custody, since the Children's Hearings system can continue to have responsibility for those still on supervision on their 16th birthday and until they reach the age of 18. The Children's Hearings system and the Criminal Justice system in Scotland are distinct, although arguably converging in recent years (McAra and McVie, 2007; Cavadino and Dignan, 2006), and the following paragraphs of this introductory section highlight the key problems and challenges for each system.

Throughout this report the term '**custody**' is used as a 'catch-all' phrase to include a) children and young people held in secure care (aged 8-18) and b) young people held in adult prisons or 'young offender institutions' (aged 16-21). The term '**secure care**' relates only to those 8-18 year olds held in residential establishments under the direction of the Children's Hearings system, and the term '**imprisonment**' relates only to 16-21 year olds held in prisons or institutions under the direction of the Criminal Justice system.

Secure care

Our ultimate ambition must be to have no child in Scotland in secure care (Scottish Government, 2009a: 1).

Some 250 young people are placed in secure care every year in Scotland, two thirds of them coming through the Children's Hearings system and one third through the courts (Johnstone, 2010). Under Section 51 of the Criminal Procedures (Scotland) Act, 1995, young people from the ages of under 16 up to 18 can be remanded to secure care when they appear in court rather than a Children's Hearing. This often occurs when the child is accused of a serious offence. Those convicted of an offence and imprisoned under the age of 16 are sent to secure care until their 16th birthday, although the Scottish Government has recently extended the upper age for secure care in these cases to 18. Thereafter, they are transferred to a young offender institution,

which houses young prisoners up to the age of 21, and thence on their 21st birthday, they are moved to an adult prison. There are 5 young offender institutions in Scotland currently, geographically dispersed and often located within an adult prison. Although young people can be housed temporarily in other adult prisons across Scotland, this practice may be contrary to the UN Convention on the Rights of the Child (UNCRC) and is under review by the Scottish Prison Service (see Section 4).

According to the UNCRC, secure care should only be used as a measure of last resort and for the shortest period appropriate, and yet the criteria for secure care are neither stringent nor well defined. The Children's Panel must ensure that a young person meets the criteria for secure care, as set out in Section 70(10) of the Children (Scotland) Act 1995, which states that a young person can only be admitted to secure care if they a) have or are likely to abscond in non-secure accommodation and such absconding would put their physical, mental or moral welfare at risk; or b) if they are likely to injure themselves or others unless kept in secure accommodation.

Imprisonment

‘[Prison] is a 19th century strategy that has difficulties tackling 21st century problems’ (Scottish Prisons Commission, 2008, p. 26).

‘High prison populations do not reduce crime; they are more likely to create pressures that drive reoffending than to reduce it’ (Scottish Prisons Commission, 2008, p.2).

Along with England and Wales, Scotland has one of the highest imprisonment rates in the world. The prison population in Scotland has risen every year for the last decade, increasing by a fifth from approximately 5,800 in 2000 to 8,000 in 2009. The prison population is expected to reach 8,700 by 2016 (Scottish Prisons Commission, 2008). Scotland also has one of the highest proportions of under 18 year olds in prison compared to other European countries, and yet youth crime in Scotland is not increasing, indeed it is decreasing (Cavadino and Dignan 2006; Scottish Prisons Commission, 2008).

The main reasons for these high imprisonment numbers are:

- an increase in the number of women (a 90% increase in the last 10 years);
- an increase in accused for whom bail is deemed inappropriate (a 70% increase in the last 10 years);
- an increase in ex-prisoners being recalled for breaching licence conditions (a 1,000% increase in the last 10 years);
- an increase in short-term prison sentences; and
- an increase in young people being subject to out of court summary justice, which if breached can result in imprisonment.

Imprisonment can also be used as ‘respite’ for communities by sheriffs who consider prison to be an alternative ‘welfare’ option or holding mechanism for vulnerable offenders who are otherwise homeless or suffering from a drug or alcohol addiction (Barry and McIvor, 2009; Doob and Spratt, 2009; Scottish Prisons Commission, 2008). Whilst the numbers of longer-term prisoners are decreasing, short-term prison sentences are increasing dramatically. Equally, the Scottish Prisons Commission (2008) draws attention to the steady rise in the prison population in Scotland in recent years irrespective of whether there has been an increase, decrease or stability in the crime rate. When crimes increased in the early 1990s, so did the prison population, but when crimes decreased or remained stable, the prison population continued to rise. Imprisonment is thus not just a reflection of the crime problem in Scotland (Scottish Prisons Commission, 2008), but perhaps has more to do with political rhetoric and the criminalisation of young people more generally.

Layout of the report

Sections Two and Three of this review highlight key statistics relating to children and young people referred to the Children’s Hearing system and the Criminal Justice system respectively. These sections also include trends in youth custody and the possible influences on those trends. The concluding section of this review draws together the key themes emerging from both systems and discusses the main drivers

which increase or reduce custody rates for children and young people under 21 in Scotland.

SECTION TWO: THE CHILDREN'S HEARINGS SYSTEM

The Criminal Justice system, by definition, only relates to people charged with or convicted of an offence. The Children's Hearings system in Scotland, where legal processes are minimised, relates to children and young people with complex needs requiring support, protection or other interventions. Historically, however, and since the Children Act of 1908, criminal hearings relating to juvenile offending in both England and Scotland became much more punishment- rather than welfare-oriented, and although such hearings were held in different buildings to adult hearings, they were still criminal courts in all other respects (Cavadino and Dignan, 2006). It was only in the late 1960s, with the Children (Scotland) Act, that Scotland moved towards a more welfare-oriented approach to juvenile justice, with the introduction of the Children's Hearings system. This system deals not only with offenders but also – and primarily - with children in need of care and protection because of adult abuse or neglect.

The welfare of the child, using minimum intervention principles, is of paramount concern, and decisions are made by a tribunal comprising an independent Reporter and lay panel members. They can a) take no further action, b) require the young person to be supervised by a social worker whilst still living at home, or c) require the young person to be supervised in a residential setting. Table 2.1 gives a breakdown of the number of children referred to the Reporter by main grounds of referral and age for 2008-09, with a total of 47,178 children being referred to the Reporter in this year. As this table illustrates, there are as many children under as over 10 years old who are referred to the Children's Hearings system, and as can be seen from this table and the following Table 2.2, the vast majority are referred on care and protection grounds (because of a lack of parental care or because they may be at risk of harm) rather than on offence grounds (because of offending behaviour). However, with 11-15 and over 16 year olds, the majority are referred on offence grounds. Where offence grounds are accepted by the young person or established by a sheriff, such offending is included in any criminal record relating to that young person.

Table 2.1: Number of children referred to the Reporter by main grounds of referral and age, 2008-09

Age on referral	Lack of parental care	Victim of Sched. 1 offence	Offence grounds	Other grounds
Under 1	1,741	1,527	0	320
1-5	6,005	6,919	0	1,249
6-10	4,663	5,766	714*	2,177
11-15	3,683	5,672	12,091	9,422
16+	75	10	805	239
Age unknown	5	14	5	15
Total no. referred**	15,320	18,621	11,805	12,741

* From age 8 only (age of criminal responsibility)

** A child may be referred to the Reporter more than once per year on the same and/or different grounds. These totals count every child referred to the Reporter during the year once. This means that the sums may be greater than the totals.

Source: SCRA (2009a)

When compared with recent years, the overall numbers referred on both care and protection grounds and on offence grounds seem now to be decreasing. However, despite this decrease in overall numbers referred, the numbers subject to compulsory supervision measures (whether for their own or other people's protection) increased from 12,644 in 2006-07 to 13,219 children in 2007-08.

Table 2.2: Number of children referred to the Reporter by grounds of referral and year

Grounds of referral	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Lack of parental care	16,266	16,781	17,801	19,086	15,143	15,320
Victim of Sched 1 offence	12,929	16,270	17,331	19,485	19,212	18,621
Alleged offence	16,470	17,494	17,641	16,490	14,506	11,805

Source: SCRA (2009a; 2008; 2005)

Of all the children referred in 2008-09, 28 per cent were aged 14 or 15; 29 per cent had allegedly committed an offence; and the vast majority were referred by the police (SCRA, 2009a). In terms of 14 and 15 year olds, the proportion of children referred on offence grounds in this age group was 33 per cent in 2005-06; 31 per cent in 2006-07; 29 per cent in 2007-08; and 17 per cent in 2008-09: suggesting a decrease in referrals of almost 50 per cent on offence grounds for 14 and 15 year olds in the last 4 years.

Cavadino and Dignan (2006) argue that in Scotland there has been a trend towards increased numbers of 'no further action' cases rather than supervision orders, increased numbers of care and protection cases at the expense of offence-related cases, and increased numbers of home supervision requirements rather than residential placements. This has resulted in political concerns about the minimum intervention principle of the Children's Hearings system, a system which politicians and policy makers argue has few 'powers' to deal with offending by children and young people. In recent years, political pressure to review the system has increased, culminating in a proposed reform of the system in the summer of 2009.

The proposed draft **Children's Hearings Bill** was published in June 2009 for the purposes of public consultation but it was subsequently withdrawn because of harsh criticism from children's rights and advocacy organisations about the proposed changes. The draft Bill is seen by its critics as undermining the traditional child-focused and welfare-oriented ethos as well as the minimum intervention principle of the Children's Hearings system by emphasising its role with 'troublesome' rather than 'troubled' children. The proposed bill also reduces the influence of the Reporter in matters relating to the child's welfare, and increases the influence of the courts (which are less able to engage children in meaningful and informal participation, the strength of the current Children's Hearings system). Whereas the previous Children's (Scotland) Act 1995 prioritised the 'needs' of children who may be at danger as a result of others, the proposed Bill prioritises the 'deeds' of children who may present a danger to others through having allegedly committed an offence, even though the latter category constituted only 25% of all children referred in 2008-09 (SCRA, 2009a). Children referred as being at risk because of a Schedule 1 offender (39% of all children referred in 2008-09) and because of a lack of parental control (32% of all

children referred in 2008-09) (SCRA, 2009a) are given less attention in the Bill compared with alleged child offenders.

The proposals in the Criminal Justice and Licensing (Scotland) Bill (2009) still require the referral of children aged 8-11 to the Children's Hearings system on offence grounds, and to the storing of DNA and fingerprint data from such children where the grounds for a serious violent or sexual offence have been accepted or established. Although this age group cannot be prosecuted or convicted in criminal courts, they can still be criminalised through involvement in the Children's Hearings system on offence grounds, irrespective of whether those grounds are accepted or established and the consequences of such criminalisation (e.g., a criminal record) are of continuing concern to advocates of children's rights, irrespective of the 'welfare' orientation of the Children's Hearings system.

Unruly certificates

Coupled with the increasing political emphasis on young people's offending behaviour rather than their broader welfare needs, those young people who are looked after and accommodated away from home in residential settings, are doubly disadvantaged because of their status as being in statutory care. All young people aged 14-16 (and up to 18 if on supervision to the Children's Hearings system) who are alleged to have committed a criminal offence can be detained in police cells or in a prison or young offenders institution if they are deemed by the police or the court to be 'unruly or depraved' – a measure that is commonly referred to as an 'unruly certificate' (H.M. Inspectorate of Constabulary for Scotland, 2008). A 'police unruly certificate' is a formal recording of a child being held in a police cell, usually only for a few hours but often overnight, because of unruly behaviour and pending a referral to the Reporter if the young person is under 16. A 'court unruly certificate' following referral to the Children's Panel and concurrently to the Procurator Fiscal because of a serious incident, allows a sheriff to order a young person under 16 who is deemed 'unruly or depraved' to be detained in a secure unit, an adult prison or a young offender institution pending trial or sentence (Criminal Proceedings (Scotland) Act 1995). Such detention can be up to a maximum of 90 days in length, compared with remand which is up to 110 days.

Table 2.3: Unruly certificate receptions by sex, age, crime/offence and time spent in custody, 1999-00 to 2008-09

	1999 -00	2000 -01	2001 -02	2002 -03	2003 -04	2004 -05	2005 -06	2006 -07	2007 -08	2008 -09
Total	12	18	24	25	23	20	28	33	15	11
Male	10	18	22	24	22	19	28	30	14	11
Female	2	-	2	1	1	1	-	3	1	-
Age 14-15	5	15	15	18	18	12	26	27	13	10
Age 16-17	7	3	9	7	5	8	2	6	2	1
Non-sex. crimes of violence	7	9	8	20	10	12	11	9	3	3
Crimes of dishonesty	3	3	4	1	6	2	5	3	3	-
Fire-raising, vandalism	-	-	1	1	1	2	-	4	-	-
Other crimes	-	4	6	1	1	3	7	8	6	4
Misc. offences	2	1	5	-	4	1	5	8	3	3
Average no. of days in custody	30	28	19	16	19	17	17	16	12	10

Source: Scottish Government (2009b)

In 2008-09, 11 children were held in prison custody on court unruly certificates compared with 15 in 2007-08, following a peak of 33 in 2006-07. The vast majority of these children were male, and aged 15. The average time they spent in prison result on an unruly certificate was 10 days in 2007-08, down from 30 days in 1999-00. There has been pressure on the Government to review court unruly certificates in the last few years, which may account for the recent drop in their use, and the Scottish Government recently announced that it would abolish court unruly certificates altogether. The Criminal Justice and Licensing Bill currently before Parliament in Scotland seeks to abolish the detention of under 16s in prison custody, but still allows

their retention in secure care or an equivalent ‘place of safety’ pending disposal of the case in court (see below).

A recommendation by H.M. Inspectorate of Constabulary Scotland (2008) also argued that the term ‘unruly certificate’ should no longer be used by the police, and be replaced with a more suitable alternative to ensure that a child is not detained ‘simply because of their unruly behaviour’ (Cruickshank and Barry, 2008). H.M. Inspectorate of Constabulary suggests that they are now referred to as ‘child retention certificates’ or ‘child detention certificates’, and that if held temporarily in a police cell, that such a measure must be endorsed by, and reviewed every eight hours by a superintendent or higher ranking police officer.

Being subject to ‘unruly certificates’ by the police and held in a police station, pending release [back] to residential care or prison custody, coupled with care staff practices of calling the police when there is a disturbance in residential units, may result in some looked after and accommodated young people being disproportionately referred to the Children’s Hearings and Criminal Justice systems (Cruickshank and Barry, 2008). Both policy-makers and practitioners have recently argued that being held in police custody on an ‘unruly certificate’ is a matter of concern for young people who are looked after and accommodated, where care staff may ask the police to deal with what is usually anti-social rather than offending behaviour. The recent inspection by H.M. Inspectorate of Constabulary for Scotland (2008) reiterated such concerns when it suggested that some police forces appear unclear about the legislation and guidelines in respect of whether a child should or could be retained in police custody, not least when such detentions resulted from:

...relatively minor offences that did not fall within the guidance. These cases were not extraordinary and did not involve circumstances which would have required to be reported to the procurator fiscal, nor did they merit the child being held in a place of safety before his/her appearance before a sheriff (ibid, para. 27).

In turn, because looked after and accommodated young people may be at risk of accruing more offending incidents than if they were living in a family home

environment, young people in statutory care may arguably be more readily defined as ‘persistent’ offenders and treated accordingly. The Scottish Government defines a persistent offender as someone aged between eight and 16 years who is referred to the children’s reporter on offence grounds on five or more occasions within the previous six months. This definition was criticised as being too loose by the majority of ‘persistent’ young offenders in a recent study of young people held in secure care (Cruickshank and Barry, 2008). These young people considered it ‘easy’ for looked after and accommodated young people in particular to accrue five ‘official’ episodes of offending in a six month period. Persistent young offenders constitute under 3 per cent of all of the children referred to the Reporter, and yet account for over 30 per cent of all referrals on offence grounds. Because persistent offenders tend to be older, it is often suggested that the Children’s Hearings system cannot cope with them which may result in an overuse of secure care for these most troubled and troublesome young people.

Place of Safety legislation

In Scotland, both the Criminal Proceedings (Scotland) Act 1995 and the Children (Scotland) Act 1995 refer to places of safety for the retention of children and young people. In the former, such places are an equivalent to remand, pending either summary proceedings, a trial or sentence. In the latter, they are used to safeguard the welfare of the young person or because of a likelihood that s/he will fail to attend court or comply with conditions. A place of safety is therefore not necessarily for children and young people with mental health concerns, but to protect a child or young person from either harming themselves or others, or from absconding. A place of safety can include police cells (temporarily pending transfer to a more ‘suitable’ place of safety or pending a court appearance within days), secure units and local authority residential units.

Scotland’s secure estate

Unlike Scotland’s prisons, the secure estate is currently under-used, which is good news for proponents of community-based options for children and young people in trouble, but bad news for the suppliers of such residential establishments, who cater for less than 1 per cent of all Scotland’s looked after children and young people at an

average cost per person of £4,500 per week (SIRCC, 2009; Scottish Government, 2008a; 2008b). As at March 2009, there were seven secure units in Scotland, providing 118 places. Table 2.4 gives a breakdown of numbers of children and young people accommodated by type of accommodation.

Table 2.4: Number of children looked after 2000-2008 by type of accommodation

Type of accommodation	2000	2001	2002	2003	2004	2005	2006	2007	2008
Residential unit	723	767	773	780	787	773	821	868	753
Residential school	629	684	672	640	657	618	662	628	649
Secure accommodation	90	87	93	92	80	82	78	113	93
Other residential	143	44	55	38	44	66	77	52	118

Source: Scottish Government (2008b)

In 2007-08, there was a 78 per cent occupancy rate, which was lower than the occupancy rate in 2006-07, at 84 per cent (although there were 18 less places in 2006-07) (Scottish Government, 2008b). This under-use of secure care in Scotland is consistent with the reduced or stabilised use of prison custody for young people sentenced by the courts. However, as will be seen later in this report, the use of both secure care and prison custody for young people *on remand* is increasing.

The use of secure care is also not consistent across Scotland, suggesting differences in supply and demand for secure care places in certain geographical areas. For example, in Glasgow, which accounts for 17 per cent of all referrals in 2007-08 (SCRA, 2008), the number admitted to secure care has doubled from 42 in 2001-02 to 84 in 2007-08, whereas in Edinburgh and Dundee, for example, rates of admittance to secure care have gone down. In East Ayrshire, until 2007-08, the average admittance rate per year was 6 young people, but it increased to 18 in 2007-08. Likewise, in North Ayrshire in 2007-08, the numbers have quadrupled since 05-06. North and South Lanarkshire have also seen an increase, with a rate in 2007-08 which was double that in the previous six years. Without further research, it is impossible to ascertain the reason for these geographical inconsistencies or to estimate what proportion of these young people were on remand pending a court hearing rather than following sentence.

Table 2.5 below gives a breakdown of sex, age and length of stay of young people in secure accommodation in Scotland from 2000 to 2008.

Table 2.5: Young people in secure accommodation 2000-2008 by sex, age, and length of stay

Secure accommodation	2000 %	2001 %	2002 %	2003 %	2004 %	2005 %	2006 %	2007 %	2008 %
Males	82	73	72	77	74	65	76	74	69
Females	18	27	28	23	26	35	24	26	31
Aged 13 or under	8	15	18	13	9	12	13	12	7
Aged 14	23	19	14	14	20	19	23	18	20
Aged 15	44	36	42	44	40	46	40	40	41
Aged 16+	25	30	27	28	32	23	23	30	32
Less than 1 month	20	26	17	19	25	27	30	26	32
1 – under 2 months	15	9	14	22	18	14	11	20	15
2 – under 3 months	14	13	17	8	7	10	9	11	14
3 – under 6 months	25	23	26	23	30	29	24	25	24
6 – under 12 months	14	16	18	17	11	13	21	13	13
1 year or more	13	13	9	11	10	7	5	4	3

Source: Scottish Government (2008b)

The above figures show an increase in the use of secure accommodation for females and for those aged over 16. According to the Scottish Government (2008b), stays in secure care of under a month have increased whilst those of over a year have decreased in the last 8 years. In 2008, 69 per cent of all young people residing in secure care were male, but the number of females resident in secure care has increased from nearly a fifth in 2000 to nearly a third in 2008. Ninety-three per cent of all residents were 14+ years old in 2008, and the number of 16+ year olds is increasing slightly 2007-08 compared with 2005-06, possibly reflecting the Government's recent intention to house 16 and 17 year olds in secure care rather than young offender institutions.

One half of young men entering secure care formerly lived in the parental home. Whilst only 10 per cent of males entered secure care from foster care or children's

homes in 2008-09, 39 per cent of females came from such placements. Nine per cent of males and 5 per cent of females came from other secure care establishments, with the most common reasons for these transferrals being because of the particular needs of the individual young person being better addressed elsewhere, to place him/her nearer to home, or because of an incident involving another resident in the previous placement.

Whereas only 9 per cent of young women were admitted to secure care under criminal law legislation in 2008-09, 49 per cent of young men were. In stark contrast, whereas only 11 per cent of young men were admitted to secure care through the Children (Scotland) Act place of safety legislation, 44 per cent of young women were. The most common term used in both the Criminal Proceedings (Scotland) Act 1995 and the Children (Scotland) Act 1995 for justifying admittance to secure care is as a 'place of safety'. In the former – 'criminal' – legislation, the young person must have allegedly committed an offence which warrants detention or remand, rather than 'protection' per se. In the latter – 'welfare' – legislation, a young person warrants detention (for a maximum of 66 days) on the grounds that they may fail to attend a subsequent hearing (i.e., abscond), may fail to comply with community-based requirements, or to safeguard his/her own welfare or that of others. Whilst secure care placements are indeed a welfare measure compared with prisons or young offender institutions, young men are doubly disadvantaged and penalised by being admitted to secure care through a criminal, rather than a child protection route.

Mental health needs of children in secure care

Half of the young people admitted to secure care were known to social services from under age 10, and had experienced stressful family upbringings, bereavement, disrupted education and problematic relationships with other family members prior to admission. All residents in secure care as at 31st March 2009 were known to have at least one disability, whether physical or mental (Scottish Government, 2009b). The vast majority were identified as having social, emotional and behavioural difficulties, although only 29 per cent of these were medically diagnosed. Seventeen per cent were known to have a mental health problem, 16 per cent had a specific learning difficulty and 12 per cent had a physical or motor impairment (see following section).

However, although the vast majority of secure care residents receive physical health care during their time in secure care (for example, eye tests or dental treatment), only 15 per cent of these receive mental health care or treatment (Scottish Government, 2009b). Secure units often find it difficult to access routine psychological assessments for residents and by the time a referral to Child and Adolescent Mental Health Services (CAMHS) has been processed (often up to 6 months later), the young person has since left secure care. Equally, there is currently no specific facility for young people with mental health problems who are housed in secure care, although the Government has agreed to investigate the need for a specialised secure unit for young people with such needs.

In the UK as a whole, it has been estimated that whilst only 5 per cent of all children have a conduct disorder, those 5 per cent commit some 30 per cent of all crimes (SCMH, 2009), hence reflecting the potentially close association between mental health and offending behaviour amongst children and young people. Those identified as having mental health problems are more likely to come to the attention of the Children's Hearings system, not only on offence grounds but also on care and protection grounds (SCRA, 2007, 2008). Those with complex mental health needs often find it difficult to engage with statutory services, notably within the Children's Hearings and Criminal Justice systems, thus exacerbating their offending, their mental health and their likelihood of escalating into prison. Recent research in Scotland (SCRA, 2008) suggests that whilst those children with mental health problems constitute 10 per cent of the general child population, 22 per cent of persistent young offenders referred to the Children's Hearings system had an identified mental health problem. Forty-one per cent of high risk children and young people who had been defined as 'children who had caused serious harm to another person or were considered to be at risk of doing so' were identified as having mental health problems. Over one third of children referred to the Children's Hearings system also have parents with identified mental health problems (SCRA, 2008). With these high prevalence figures in mind, it is of concern to SCRA that Child and Adolescent Mental Health Services in Scotland (CAMHS) are often unable to cope with the demand for reports and services and that pressure points vary from area to area (SCRA, 2009b). There are also no secure mental health facilities currently available for young people in Scotland.

Remands to secure care

Thirty-two per cent of all admissions are housed in secure care for less than one month and approximately a third of these are on remand. Whilst the numbers referred via the Children's Hearings system to secure care has remained relatively stable since 2003-04, using secure care for young people who are remanded or sentenced by the adult courts (aged 15-16 most commonly, but up to 18 if they were recently looked after in care) has more than doubled between 2005-06 and 2007-08 (SIRCC, 2009), although there is no consistency across the country (Scottish Government, 2008b) and no statistical records kept of index offences which resulted in remand or sentence to secure care. Anecdotal evidence, however, suggests that such remands are for more serious offences involving violence, drugs or taking and driving away. Whilst detaining a 15 or 16 year old in secure care is arguably preferable to detaining them in a young offender institution or adult prison (albeit more costly), it is nevertheless concerning that such detention is deemed essential when 47 per cent of all remands do not subsequently convert to a custodial sentence. It is also evident that young people who were previously looked after and accommodated on offence grounds within the Hearings system are at a higher risk of escalating into the Criminal Justice system. It is to this 'adult' system, which focuses on young people aged 16 and over from a 'deeds' rather than 'needs' perspective, that this review now turns.

SECTION THREE: THE CRIMINAL JUSTICE SYSTEM

In principle, the system of Children's Hearings functions to manage the young person's needs for care, protection and support, whereas the criminal justice system punishes criminal behaviour. The latter places the onus on the offender or alleged offender, rather than on the wider community, to take responsibility for his/her actions. Although children as young as 8 can be prosecuted in the adult courts, the most common age at which young people enter the Criminal Justice system is at the age of 16. However, over the last 10 years or so, the numbers of under 16s with a charge proved in the adult courts has remained relatively stable. In 2007-08, 0.6 males and 0.01 females per 1,000 population had a charge proved under the age of 16 (in other words between the ages of 8 and 15), although a breakdown by each year within this young age range is not kept (Scottish Government, 2009c).

There is a certain tariff of disposals available within the courts for both young and adult offenders. These include Fines; Compensation Orders; Supervised Attendance Orders (for those who default on their original fine, with a requirement to do up to 100 hours of constructive activity as a so-called 'fine on time'); Probation Orders (up to 3 years); Community Service Orders (up to 240 hours); Restriction of Liberty Orders (electronic tagging for up to 12 hours per day); Drug Treatment and Testing Orders (for those with a drug addiction); and imprisonment.

Prison sentences comprise those of less than 4 years for 'short-term prisoners' (who can be released on licence after one half of their sentence); and those of 4 or more years for 'long-term prisoners' (who can be released on licence after serving one half of their sentence if parole is granted, or who are released automatically after two-thirds of their sentence on licence). If any ex-prisoner commits another imprisonable offence before the expiry of the original sentence, whether or not on licence, s/he can be recalled to prison to serve, at least, the remainder of that original sentence. The Management of Offenders, etc. (Scotland) Act 2005 allows some prisoners sentenced to more than 3 months to be released on Home Detention Curfews.

In 2007-08, 133,100 offenders were convicted in the adult courts (Scottish Government, 2009c) and 62 per cent of all convictions resulted in a fine or

compensation order. The number of custodial sentences was 16,700, the second highest in the last 10 years, and the average daily prison population was 7,376, 3 per cent more than in 2006-07 and the highest ever recorded (Scottish Government, 2008d). Twenty-three per cent of all charges proved related to crimes committed by under 21s, and 18 per cent of all prisoners were under 21 in 2007-08.

Under 18s appearing before adult courts have increased every year since 2002-03, from 8,500 to over 10,000 in 2006-07. However the numbers of under 21 year olds directly sentenced to young offender or adult prison establishments has remained fairly stable over the last decade, as can be seen from Table 3.1 below.

Table 3.1: Direct sentenced receptions to penal establishments by age: 2000-01 to 2008-09

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Total – all ages	11,379	11,782	12,778	12,204	12,207	12,916	13,970	14,205	14,650
Under 16	2	1	1	5	-	2	2	4	5
16	81	100	132	100	123	134	157	130	107
17	350	349	373	340	310	375	390	408	378
18	613	512	481	444	494	515	561	584	583
19	672	629	592	499	527	570	577	622	593
20	718	721	628	561	454	574	599	611	603
Sub-total (% of total)	2436 21%	2312 20%	2207 17%	1949 16%	1908 16%	2170 17%	2286 16%	2359 17%	2269 15%

Source: Scottish Government (2009c)

The overall numbers of young offenders directly sentenced to prison has not changed dramatically over the last 8 years or so, although the numbers of under 18s increased in the mid-2000s before reducing again in 2008-09.. Many of the direct sentenced receptions to prison resulted from an increase in prison sentences for young offenders

found guilty of relatively low-tariff offences, such as handling offensive weapons, common assault and breach of the peace (Scottish Government, 2009b). Table 3.2 gives a breakdown of under 21s with a charge proved by main crime/offence in 2007-08.

Table 3.2: Under 21s with a charge proved by main crime/offence, 2007-08

Crime/offence	Males	% of all males	Females	% of all females	Under 21s as % of all charges proved
All crimes/offences proved	24,409	22	3,290	16	21
Non-sexual crimes of violence	822	35	71	20	33
Crimes of indecency	123	23	10	4	17
Crimes of dishonesty	2,882	21	528	14	19
Fire-raising, vandalism, etc.	2,240	47	205	36	46
Other crimes*	4,434	25	465	18	24
Miscellaneous offences**	9,068	26	1,491	22	26
Motor vehicle offences	4,840	13	520	8	12

* Crimes against public justice, handling offensive weapon, drugs, etc.

** Common assault, breach of the peace, drunkenness, etc.

Source: Scottish Government (2009d)

In 2007-08, under 21 year old males accounted for 22% of all male charges proved, with the most common crimes being handling offensive weapons, drug offences, common assault, breach of the peace and motor vehicle offences. Under 21 year old females accounted for 16 per cent of all female charges proved, with the most common crimes being dishonesty, drug offences and common assault (Scottish Government, 2009d). Males and females aged under 21 accounted for the majority of all charges proved relating to fire-raising and vandalism (47% of males and 36% of females), non-sexual crimes of violence (35% of males and 20% of females) and miscellaneous offences (26% of males and 22% of females) (Scottish Government 2009d).

Whilst recorded crime has dropped in the last ten years, recorded crimes of violence are on the increase, mainly as a result of misuse of alcohol and drugs, rising from 2,400 in 2006-07 to 2,700 in 2007-08 (Scottish Government, 2009c). However, very few under 18 year olds are sentenced specifically for drug offences *per se*. Whilst ten years ago, 18 per cent of young prisoners had convictions for non-sexual crimes of violence, this had risen to 30% by 2007-08, although the overall youth offender prison population had decreased by some 25 per cent during that period. However, whilst 63 per cent of young prisoners had convictions for crimes of dishonesty ten years ago, this dropped to 26 per cent in 2007-08.

In 2007-08, seventy-six per cent of all custodial sentences were for less than 6 months, and 50 per cent were for less than 3 months. The average length of sentences was 7 per cent higher in 2007-08 than in 2006-07, especially for violent crimes, such as handling an offensive weapon, the average sentence for which rose by 35 per cent from 161 days in 2006-07 to 217 days in 2007-08.

Fifteen per cent of all convictions related to women, and women comprised 8 per cent of all custodial sentences. The peak age of convictions for males was 18 and for females 19, and this peak age has remained fairly static for several decades.

Young prisoners are held in temporary halls within adult prisons or, in respect of males only, at a national Young Offender Institution located in the Central Belt of Scotland. Whilst an average of 0.2 per cent of all males given custody in 2007-08 were under 16 years old, no under 16s were in custody in Scotland as at 26th March 2008. One in five of all custodial sentences (19 per cent or 2,948) were given to 16-20 year old males (Scottish Government 2009c). No females under 16 were given custody, but 14% (182) of all custodial sentences were for 16-20 year old females, at the only female prison in Scotland, also located in the Central Belt. Between 2006-07 and 2007-08, the number of convictions resulting in custody for females under 21 fell by 9% and for males under 21 by 3%. Over 300 15-24 year olds were in hospital, rather than prison in 2007-08, for the treatment of mental illnesses (Scottish Government, 2009c), although there are no statistics on the various categories of mental illness.

According to Scottish Government (2008d) statistics, the average daily young offender population in adult prisons decreased from 708 in 1998-99 to 560 in 2004-05, but increased thereafter to 685 in 2007-08 (constituting 13% of the total sentenced adult prison population). Over the last 10 years, the average daily male population of all ages has increased by 20 per cent and the female population by 87 per cent (Scottish Government, 2008d).

Table 3.3 illustrates the varying lengths of sentence for young offenders imprisoned over the last 8 years.

Table 3.3: Average daily population of sentenced young offenders (aged 20 and under) by length of sentence, 2000-01 to 2007-08

Length of sentence	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08
Total	655	628	601	573	560	625	645	685
Less than 3 months	13	12	9	9	10	14	13	13
3 months - less than 6 months	81	76	62	51	55	57	58	59
6 months - less than 2 years	255	246	236	217	212	242	241	243
2 years - less than 4 years	119	113	116	112	118	142	136	175
4 years or over (excluding life)	142	136	145	146	131	127	143	136
Life sentences	31	26	21	20	19	26	30	31
Recalled prisoners	3	6	3	9	8	11	19	25

Source: Scottish Government (2008d)

As the above table shows, the majority of prison sentences are for between 6 months and two years, although sentences of between 2 years and 4 years are increasing in recent years. The average sentence length for young prisoners ranged from 97 days (for, e.g., theft of a motor vehicle) to 686 days (for, e.g., serious assault or attempted murder). Young offenders charged with fine default were imprisoned at a 42 per cent

reduced rate compared with 2006-07, probably due to the increased use of Supervised Attendance Orders.

The cost of housing a single prisoner per year ranges from £31,000 - £40,000, and yet the majority are only there for a relatively short period and cannot access within prison the kind of care and attention they may need. In other words, the cost per prisoner is for containment more than for rehabilitation purposes. And yet, most prisoners are ‘damaged and traumatised’, because of addictions, mental health problems and former abuse, although currently statistics are unavailable as to the prevalence of such problems amongst young offenders in adult prisons. Prisoners aged 18-20 are much more likely to have limited skills, higher rates of unemployment and lower educational achievement than their older counterparts (Scottish Prisons Commission, 2008). Short-term prison sentences do not allow for effective interventions and are often counterproductive through removing people from existing housing, employment, social networks and health care.

Bail and remand

As can be seen from Table 3.4 below, in 2000-01, the average daily young offender remand population (those aged 20 and under) was 220, but this rose to 361 in 2006-07. In 2007-08 it dropped marginally to 355 (Scottish Government, 2008d). In 1998-99, 30 per cent of the daily remand population comprised young offenders; and some ten years later it was 23 per cent.

Table 3.4: Average daily remand population 2000-01 to 2007-08

	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08
All ages	881	1,019	1,247	1,246	1,216	1,242	1,567	1,560
Young Offenders	220	256	272	251	260	284	361	355

Source: Scottish Government (2008d)

Some 15 per cent of these remands comprise young women, and 16 per cent of all charges proved had a ‘bail aggravator’, namely that the offence was committed whilst on bail, with the most common charges committed on bail being crimes of dishonesty. However, as mentioned earlier, up to 47 per cent of remanded offenders do not receive a prison sentence. The Scottish Prisons Commission (2008) notes that rates of remand have exceeded rates of sentences to imprisonment in recent years, and in order to reduce the burgeoning prison population in Scotland it recommends a reduction in the use of remand and a concurrent increase in the use of bail (see Section Four).

Reconviction rates

Just over a quarter of offenders with no previous convictions were reconvicted within 2 years, whilst three quarters of those with 10+ previous convictions were reconvicted within 2 years. Crimes of dishonesty were more likely to result in reconvictions, as were prostitution offences (Scottish Government, 2008c). Offenders aged 20 and under are the most likely group to reoffend (Scottish Prisons Commission, 2008). The following two tables show the variations in age and propensity to reoffend as young offenders get older, as well as a shift in type of offending with age.

Table 3.5: Reconviction rates resulting in imprisonment by age for under 21 year olds (2005-06 cohort)

Under 21s by age	Total number	Percentage with a custodial reconviction within:		
		6 months	1 year	2 years
17 or under	3,999	6	10	16
18	2,858	7	12	18
19	2,718	7	10	16
20	2,547	6	10	15
Total	12,122	6	10	14

Source: Scottish Government (2008c)

Table 3.5 illustrates the extent to which the rates of reconviction for young offenders tend to decrease as they get older, notably at least between the ages of 17 and 20, and

some would argue that this is a natural occurrence associated with age and maturity rather than with any deterrent effect from involvement in the Criminal Justice system.

Table 3.6: Percentage reconviction rates resulting in imprisonment by age and index crime for under 21 year olds (2005-06 cohort)

Index crime	Under 17	18	19	20
Dishonesty	12.8	14.4	12.7	13.1
Violent crimes	6.3	6.1	5.5	3.9
Criminal damage	4.4	4.6	4.6	4.7
Breach of the peace	5.5	5.4	4.2	4.3
Drug offences	-	-	-	-
Other crimes*	6.5	7.5	6.3	7.4

* includes crimes against public justice, offensive weapons, firearms, prostitution.

Source: Scottish Government (2008c)

Table 3.6 above shows reconviction rates by index offence for under 21s who are imprisoned. Although reconviction rates may decrease with age, these rates do however vary between different categories of offence.

SECTION FOUR: CONCLUSIONS

Key findings

The Children's Hearings system

- The numbers of children and young people referred to the Children's Hearings system on offence grounds is decreasing;
- The numbers of children and young people subject to compulsory supervision measures is increasing, and they are at risk of being 'uptariffed' as a result of possible failures to comply with such conditions;
- Children and young people who are looked after and accommodated are more likely to escalate through the Children's Hearings system on offence grounds because of police involvement in disturbances within residential care settings;
- The use of secure care for children and young people remanded or sentenced by the courts has more than doubled between 2005-06 and 2007-08;
- There is a political drive towards making the Children's Hearings system more offence- and punishment-focused at the expense of addressing children and young people's broader welfare needs.

The Criminal Justice system

- The overall prison population in Scotland is increasing year on year;
- Seventy-six per cent of all custodial sentences are for less than 6 months, leaving little scope for meaningful intervention;
- Whilst the youth custody population has decreased in recent years, there has been a rise in youth custody rates for violent crimes;
- Almost half of remands do not convert to a custodial sentence and yet remand in an institution can be equally disruptive and damaging to children and young people;
- The number of under 18s convicted and given community-based disposals has increased which has indirect implications for the prison population if such disposals are breached;

- The length of short-term (under 4 years) sentences is increasing;
- The numbers of young people remanded in custody is increasing;
- There is no direct association between rates of crime and rates of imprisonment.

There are four key themes emerging from these findings which directly or indirectly impinge on the rates and trends in youth custody in Scotland. These themes are:

- the **increasingly stringent requirements** imposed on children and young people who allegedly offend;
- the **increased use of remand** for young people who allegedly offend;
- **shorter prison sentences** with little scope for rehabilitation;
- **earlier criminalisation** of children and young people.

Increasingly stringent requirements

The findings from this review demonstrate that while less young people are being given custodial sentences, a greater number of alleged offenders are subject to more stringent requirements as a condition of a community-based intervention in both systems. Within the Children's Hearings system, 'unruly certificates', although decreasing in number, are a source of concern to children's rights proponents. Unruly certificates can be issued to young people, especially young people in statutory care, for minor incidents of anti-social behaviour as much as for offending behaviour, and can result in young people being held in secure care or prison pending a legal decision on their case. Young people in care are also doubly disadvantaged by accruing 'incidents' of offending within residential care establishments which can result in them being labelled 'persistent offenders' and escalating through the Children's Hearings system as a result.

Scotland is one of the few countries with an above-average number of young people in custody, partly because the Children's Hearings system does not extend officially (for the majority of young people) over the age of 16, at which age young people enter the adult court system. There may also be some element of frustration on the part of policy makers (and the police) that the Children's Hearings system is focused on needs rather than behaviour *per se* and may therefore be perceived as being 'soft

on crime'. Nevertheless, since the early 1990s at least, the Scottish Children's Hearings system has been under intense scrutiny from politicians keen 'to be seen to be doing something' about youth crime in Scotland, and there has been a blurring of boundaries between that system and the Criminal Justice system in terms of the care and control of young people in trouble. This has led to a possibly greater use in recent years of secure care rather than community-based supervision for young people in trouble, albeit for short periods of time. A SEED report (2006, cited in Johnstone, 2010) suggests that although secure care may keep young people safe, as well as offering constructive educational opportunities, such detention often results in stigmatisation and labelling of children and young people, which could hamper their chances of success in early adulthood.

The Children's Hearings system still deals with 'needs' rather than 'deeds' and works in the best interests of the child. However, if s/he fails to comply with a condition of supervision, then the case is referred back to a Children's Hearing. Whilst the majority of such review cases will result in the continuation of the original conditions, or perhaps with additional conditions, for young people at greater risk of re-offending, the alternative to non-compliance may well be secure care. There are no figures on how many people are in secure care because of non-compliance with earlier types of supervision, but it is likely that the proportion is significant.

To illustrate this point, a recent evaluation (Scottish Government, 2007) found that non-compliance was common in relation to the conditions of Intensive Support and Monitoring Services within the Children's Hearings System, and notably the electronic tagging condition of such orders, and that many stakeholders were frustrated that young people could not be held to account for such 'breaches' other than through detention in secure care. Anti-social behaviour orders are increasingly targeting the younger age group in Scotland and breach of such civil orders is now a criminal offence for 12-15 year olds as it is for over 16 year olds. Young people on community-based orders such as probation or community service are subject to increasingly stringent conditions, and they are likely to receive a custodial sentence if they breach the conditions of their order, irrespective of the minor nature of the original offence with which they were charged. The number of prisoners recalled from licence or supervision because of non-compliance with the conditions of their

orders has increased dramatically from 100 in 1999-00 to almost 600 in 2008-08 (Scottish Government, 2009c). Although the majority of these licencees will be older, the recall rate is as much an indicator of stringent conditions on parole as it is of reoffending rates *per se*.

Whilst figures are not readily available within Scottish Government statistics to gauge the proportion of young people who breach community-based disposals and receive a custodial sentence, or even the number of young people in prison as a result of breaching a community-based disposal, recent commentators (e.g., Morgan, 2009; McAra and McVie, 2007) have expressed concerns about the uptariffing of young people within both the Children's Hearings and Criminal Justice systems as a result of their failure to comply with conditions imposed on community-based orders, rather than as a result of the seriousness of their offending behaviour itself.

Increased use of remand

In 2008-09, a total of 334 young people under the age of 21 were held in custody on remand, whether in secure units, remand centres or adult prisons. Of these young people, approximately two thirds were untried, whilst the remainder were convicted and awaiting sentence. Although the numbers of young people admitted to secure care on offence grounds has decreased in recent years, it would seem that sheriffs (or equally social workers writing background reports for sheriffs where remand is anticipated) are taking up this slack in occupancy rates by referring remanded young people to secure units rather than to adult prisons. Secure units are, undoubtedly, the best place for young people who are remanded pending a court case, but not if that remand decision was at the expense of the young person being bailed.

This review has noted a doubling of the use of secure care for remanding under 18 year olds and an increase in the use of prisons for remanding under 21 year olds. Given that crime rates have either remained stable or dropped in recent years, this increase in remand is presumably at the expense of bail, and yet research suggests that remanding a young person can be counterproductive: it is disruptive of existing community supports; it encourages association with often older prisoners who may have an adverse influence on a young person's subsequent behaviour; it can interrupt

ongoing and effective interventions within the community; and it disrupts current employment, accommodation and family commitments. Given that nearly half of all remanded individuals do NOT receive a subsequent custodial sentence suggests that remand is not being used as it should, namely in cases where a subsequent custodial sentence is likely.

SIRCC (2009) suggests that remanding and sentencing by the courts to secure care is a key driver in the over-use of the secure estate and that “there has been an upwards trend in the use of secure care in response to decisions by the court” (ibid, p16). SIRCC (2009) strongly recommends that young people are kept in the welfare-oriented Children’s Hearings system rather than in the Criminal Justice system, and that remands are kept to a minimum.

The Scottish Prisons Commission (2008) also argues that remand to prison for young people in particular should be avoided where possible, not only because of its disruptive consequences but also because of young people’s susceptibility to adverse peer group pressure and their propensity to learn from their older counterparts in prison. The Scottish Prisons Commission (2008) has suggested that in cases where unconditional bail seems unwise because of fear of further offending, self-harm or absconding, sheriffs should be given more information on conditional bail options (such as electronic tagging or specialist bail accommodation). Alternatively, once guilt is established, court processes should be concluded more quickly in such cases so as to avoid the need for remand or bail.

Shorter prison sentences

The political rhetoric that ‘prison works’ does not stand up in the face of consistently high rates of reconviction for those released from custody. The 2 year reconviction rate for offenders of all ages following custody or community-based sentences was 46 per cent for males and 38 per cent for females in 2007-08 (Scottish Government, 2008c). Of these, 55 per cent of the males and 39 per cent of the females were aged under 21, and 14 per cent of these young people received a custodial reconviction within two years (Scottish Government, 2008c).

It would seem that across Scotland, numbers of young people in prison have increased, and that young people sentenced to imprisonment tend to receive shorter prison sentences. Shorter periods in prison are, by definition, preferable to longer periods, but shorter periods in prison mean less scope to undertake treatment or rehabilitation programmes prior to release. Imprisonment also means that young people's community and family ties are broken, albeit temporarily. The Scottish Prisons Commission (2008) recommends the use of prison only in instances where no other form of community-based punishment (mainly in the form of 'payback') is justifiable and that sheriffs should impose a community sentence for those who were being considered for a prison sentence of 6 months or less.

Earlier criminalisation

Morgan (2009) argues that interventions with young offenders are happening earlier in their lives, *in anticipation of* potential offending rather than as a response to actual offending. Police powers and discretion in relation to children and young people have also been extended in recent years. Research by McAra and McVie (2005) in Scotland suggests that previous contact with the police by young people is associated with an increased likelihood of adversarial police contact in the future. Such young people, discriminated against because of their backgrounds, class or previous histories, become a 'permanant suspect population' (ibid, p. 27), even though such police attention results in few charges and even fewer referrals to the Reporter. McAra and McVie conclude that such adversarial contact with the police is a 'strong predictor of later serious offending' (ibid, p. 27), although not necessarily earlier involvement in the Criminal Justice system. Equally, young people are now increasingly subject to 'direct measures' in Scotland, which are summary rather than criminal measures but which, if breached, can result in a criminal court appearance. This increases the likelihood of netwidening and uptariffing of young people and thus makes the likelihood of eventual custody all the more likely.

Earlier criminalisation measures targeted at children and young people in Scotland now include intensive supervision, electronic tagging and Antisocial Behaviour Orders, the latter of which, although a civil matter, has criminal repercussions if 'breached'. Compulsory supervision within the Children's Hearings system, like

many community-based disposals in the Criminal Justice system, is not of itself a cause for concern in terms of criminalising young people, but *breaching* such requirements can escalate a young person through the Children's Hearings system, potentially into secure care and thereafter into the Criminal Justice system and potentially into prison.

Given the concerns about criminalisation of young people, the Scottish Prison Service is now focusing more on the UNCRC to reduce its youth custody rates – namely Article 37 (c), which states that a young person under 18 should not be held in a custodial institution with those over 18 unless it is considered to be in his/her best interests. The Scottish Prison Service is therefore developing a strategy for 16 and 17 year olds regarding age appropriate responses in order to improve outcomes for young people in Scottish prisons. This may go some way at least to reducing the likelihood of further criminalisation of young people as a result of being held in adult custodial institutions.

Nevertheless, concerted effort on the part, not just of the *deliverers* of youth and criminal justice services in Scotland, but also of the *policy makers* is needed to ensure that children and young people are 'at liberty' to defend and develop their life chances.

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