The Bar Council

Reviewing the minimum age of criminal responsibility

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Cover illustration: Lyndon Hayes

Foreword

The true measure of any society can be found in how it treats its most vulnerable members. The responsibility shouldered by the criminal law weighs heavily in determining the minimum age when a child should be treated as criminally responsible for their actions.

In this report we examine arguments around increasing the minimum age of criminal responsibility (MACR). The MACR is the age from which a child[1] may be arrested, prosecuted, convicted or sentenced for a criminal offence. Although children below the MACR cannot be held criminally liable, this does not preclude the state from taking appropriate action in respect of younger children whose conduct may otherwise be considered 'criminal'.

A helpful way of thinking about this issue may therefore be to ask the question: is society best served by bringing children who are alleged to have committed offences within the criminal justice system, or can the aims of the state in relation to these children be better met by some other means?

While much of the literature around the MACR focuses on the impact of criminalisation on children themselves, it is equally if not more important to analyse whether the criminalisation of young children is more likely to reduce the risk of reoffending than a structured, non-criminal approach to reforming these children. The evidence shows deterrent sentencing is not effective in preventing offending by children. As detailed in this report, we consider that society can best achieve these aims by reforming children who offend. Child-focused arguments in favour of an alternative means to the criminal process of dealing with children coincide with and are supported by arguments from a harm prevention perspective.

At present, the MACR in England and Wales is 10, having been raised from 8 in 1963.[2] That remains low by contemporary global standards: in Scotland the MACR is 12[3], and in much of Europe it is 14. Age 14 is the lowest age recommended by the United Nations Convention on the Rights of the Child (UNCRC), as well as being the most common age in operation worldwide (the modal average). The UNCRC committee has recommended an increase in the MACR in each of its concluding observations on UK compliance with the rights of the child, in the years 1995, 2002, 2008, 2016 and 2023.

In some jurisdictions the MACR is higher than 14. For example, it is 16 in Argentina for serious crimes, and 18 for all other crimes, it is 18 in Brazil for all purposes. In others – although not many, and with distinct legal histories to England and Wales – the MACR is set lower than 10. Under a few regimes, there is no MACR at all – for example, the majority of US states (although the MACR is set at 11 at the federal level).

In many of the countries in which the MACR is set lower than 14, a regime modelled on *doli incapax*[4] operates. The definition and test vary somewhat between jurisdictions, but in essence, *doli incapax* is a presumption against criminal liability that can be rebutted by

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1 This report describes under 18 year olds as children and 18 to 25 year olds as young adults. Adolescence is defined as the period of life between 10 and 24 years: Sawyer, S. M., Azzopardi, P. S., Wickremarathne, D., Patton, G. C., 'The age of adolescence' (2018). The Lancet Child & Adolescent Health, 2(3), 223–228.

2 Section 50 of the Children and Young Persons Act 1933, as amended by s.16 of the Children and Young Persons Act 1963, provides that: "It shall be conclusively presumed that no child under the age of 10 years can be guilty of any offence."

3 Having been increased from 8 in 2019.

4 Latin, literally "incapable of wrong".

the state proving that at the time of the alleged offence, the child understood that their actions were seriously wrong.

The rebuttable presumption of *doli incapax* for those aged from 10 to 13 was abolished in England and Wales in the late 1990s.[5] [6]

A recent report published by the Co-op Foundation[7] explores the MACR. In a public survey of England and Wales[8], 65% of respondents considered that the MACR should be higher than 10, with 21% believing that MACR should be 16 or over. In addition, 61% of victims of crime believed that MACR should be higher than 10.

The age at which society draws its line speaks not only to public protection and accountability, but also to our understanding of childhood itself: of maturity, development, vulnerability, and capacity for change. Society should have moved on since the 1800s when Charles Dickens railed at the storm cloud of unfairness that gathered over children. However, Dickens' anger at the law and society, and the harsh treatment of children remains familiar today. Grooming children into gangs was a jovial story in Oliver Twist but today it is a dark pit of county lines exploitation and modern slavery.

The MACR in England and Wales is one of the youngest ages in the world where the law determines that a harm committed by a child can be an offence and prosecuted. England and Wales is now an outlier in how we use the criminal justice system to treat children. As well as setting children on a separate track, which funnels them towards further crime and prison, this approach also produces inconsistencies within UK law.

This report does not diminish the need for intervention and protection of the public. Rather, it asks whether criminalisation at such an early age is the most effective, proportionate or just response. It returns a definitive negative answer.

We recognise that in England and Wales any debate about the age of criminal responsibility brings back the memory of the James Bulger case. His memory will always remain. I remember having just completed my training as a pupil barrister and visiting my family in the north west of England where this innocent little boy dominated local news. The case was terrible and grave. However, thankfully, it also was exceptionally rare.

In our report, we analyse and reflect on research and evidence to identify methods by which child offending, as it currently is categorised, may be identified and managed in ways which tend to minimise, not aggravate, the risk of future actions of harm, as well as arrest the development of serious harm.

Over time, a strategy of prevention and harm reduction is likely to be of greater benefit to both children and to society than 'tough on crime' treatment of children.

Children shaped by neglect, exclusion, violence and exploitation do not emerge from nowhere. They often are the product of conditions long visible to the communities and institutions surrounding them.

Dickens' warning: "This boy is ignorance. This girl is want. Beware of them both, and all of their degree, but most of all beware this boy, for on his brow I see that written

[5] "The rebuttable presumption of criminal law that a child aged 10 or over is incapable of committing an offence is hereby abolished." In R v JTB [2009] UKHL 20 the House of Lords held that Section 34 abolished the entire concept of doli incapax for those aged from 10 to 13, thus precluding the possibility of it being raised as a defence.

[6] It is considered briefly later in this section.

[7] Co-op Foundation, 'What the UK Public thinks about children in the justice system' (2026), (available at: https://www.coopfoundation.org.uk/wp-content/uploads/MiC-research-report_FINAL.pdf).

[8] Out of a survey of over 3,000 members of the public.

Foreword

which is doom, unless the writing be erased"[9] continues to speak to deprivation and the debate on childhood, responsibility and the proper limits of criminalisation.

The MACR in England and Wales has remained unchanged for 60 years despite profound developments in developmental neuroscience and psychology.

Youth justice policy has also changed. The law should not stand still where knowledge has moved on. It is not about accountability but about criminalisation and being defined as a criminal so young.

It is time to increase the minimum age of criminal responsibility. Protecting childhood and protecting society are not competing aims. In the long term, they are the same endeavour.

The measure of a justice system lies not in how early it punishes children but in how wisely it protects their future.

Kirsty Brimelow KC
Chair of the Bar Council of England and Wales
June 2026

[9] A Christmas Carol.

Executive summary

The evidence available and highlighted in this report overwhelmingly supports the conclusion that a child's early involvement in the criminal justice system undermines public safety. It also has adverse outcomes for the child, by increasing future offending and perpetuating and punishing the child's underlying vulnerabilities and disadvantage.

The recommendation of this report is that the minimum age of criminal responsibility (MACR) should be raised to 14. We have reached this conclusion by taking into account the way in which the law currently operates, what the science tells us about the inappropriateness of bringing children as young as 10 within the criminal justice system and the alternatives to criminalisation.

We acknowledge that some young children, including those below the present MACR, may engage in conduct that would – subject to the required *mens rea*[10] being established – amount to criminal offending. Many, though not all, of those children will have been exploited by organised criminal groups. Research suggests that many children appearing before the courts do not have a basic understanding of 'right' and 'wrong', still less an appreciation of the nature of the criminal process in which they are required to participate.[11] The fact that children as young as 10 may presently be subject to prosecution is plainly insufficient to protect them from being exploited, nor to effectively deter such conduct, not least because most will be unaware of their potential criminal liability.[12]

Our conclusion is that children under 14 – and society as a whole – are better served by non-criminal methods of addressing offending conduct. Entrenching the idea that 10 year olds to young teenager children are criminals, at a point in their development when their identities and brains are still being formed, is both counter-productive and defeatist. It also increases rather than decreases the risk that other members of society will, in the future, become victims of crime.

Concerns about children's understanding of the criminal justice system have registered with the present government.[13] As noted in the study from Unnithan and Arthur cited below, the reality of having a limited understanding of the workings of the criminal justice system, and an (in)ability to distinguish 'right' from 'wrong', undermines a substantial plank of the principled justification relied upon in 1998 for the removal of *doli incapax*.

The jurisdiction of England and Wales is an outlier across Europe in its criminalisation of young children. Reassessing and increasing the MACR is overdue for both the needs of children and the protection of the public, including protection against future serious crimes.

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[10] Latin, literally "guilty mind".

[11] Unnithan, M., Arthur, R., ''Children know right from wrong': an examination into the role of compulsory education in informing children about the Minimum Age of Criminal Responsibility in England and Wales' (2026). Child and Family Law Quarterly, 38(1).

[12] A large-scale study conducted by the Sentencing Academy in 2023, showed considerable variation in the understanding of the children surveyed as to the workings of the criminal justice system. Notably, 61% of those who provided an answer to the question of at what age does a child become criminally responsible (i.e. excluding those who answered 'don't know') thought it was over the correct age of 10 years old. Hollingsworth, K., Bild, J., Dingwall, G., 'Children's Knowledge and Opinion of Sentencing' (2023). Sentencing Academy Research Report 19, (available at: https://www.sentencingacademy.org.uk/wp-content/uploads/2025/08/Childrens-Knowledge-and-Opinion-of-Sentencing.pdf).

[13] Edwards, J., 'Youth justice: time for a national conversation' (1 April 2026). Law Society Gazette; and see the Youth Justice White paper published 21 May 2026: "we will carefully consider and respond to the Bar Council's findings, as we assess whether, and when, it may be appropriate to explore reform in this area." Ministry of Justice (2026). Youth Crime, Changing Young Lives.

Executive summary

As the Law Commission noted back in 2016 in its report on Unfitness to plead:[14]

"Young people convicted between the ages of 10 to 13 are likely to become the most persistent offenders, with longer and more prolific careers. Quite apart from the moral obligation to respond to their vulnerability, intervening at an early stage to assist these younger defendants presents a cost saving in the long term."

[14] Law Commission, 'Unfitness to Plead Volume 1: Report', (Law Com No 364, 2016), p256, (available at: Unfitness-to-Plead-Volume-1-Final-report.pdf).

Introduction

This report is divided into 7 sections.

Section 1 introduces the minimum age of criminal responsibility (MACR) and explains how we got to where we are today, as well as touching briefly upon how the MACR operates in a global context.

Section 2 considers the emerging science of adolescent development, in particular the understanding of brain development in adolescence. We consider that this has real significance to any modern discussion around the MACR and so it is covered in the first substantive section of this report.

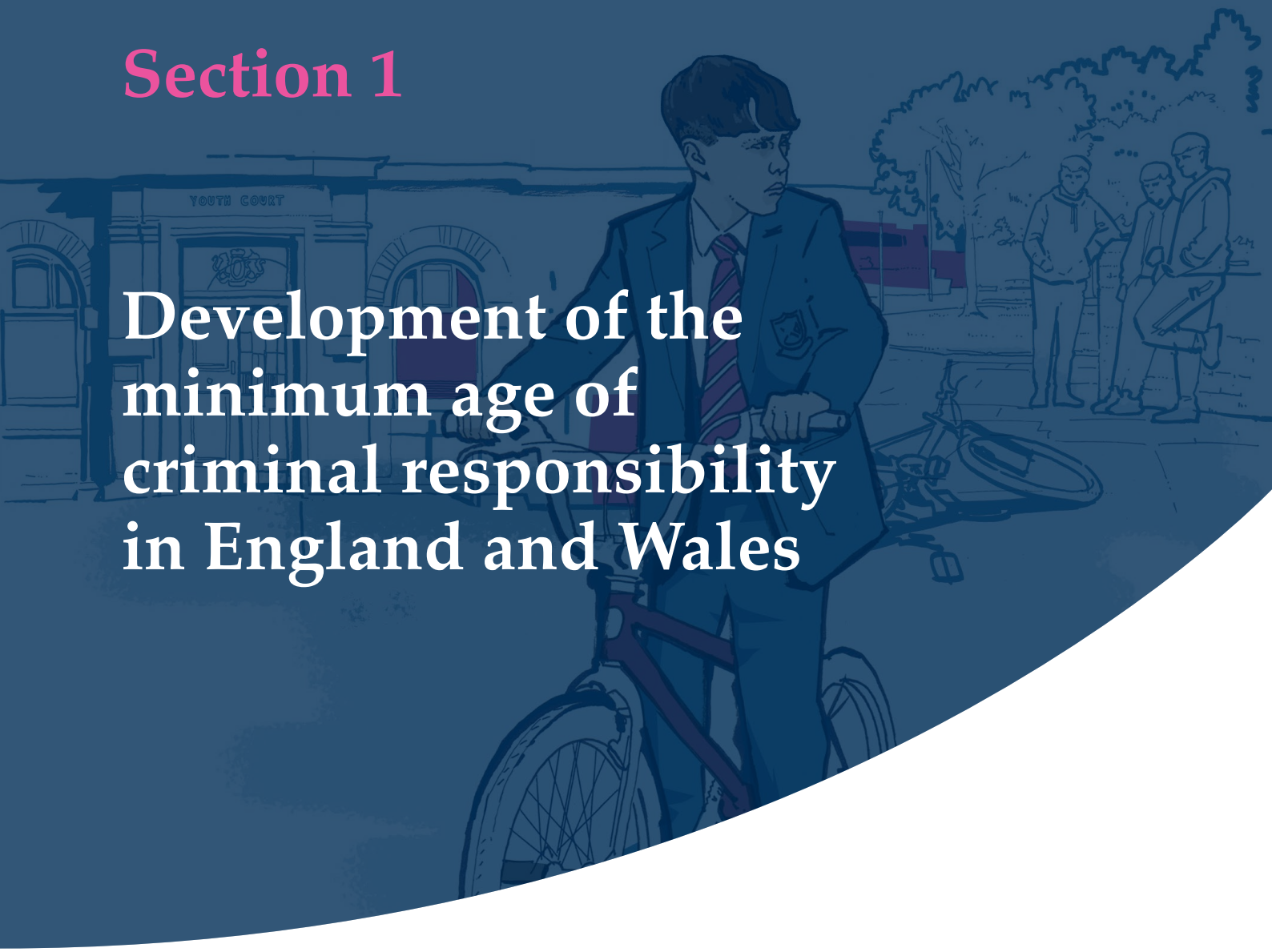
Section 3 looks at how children are currently treated in the criminal justice system.

Section 4 considers the adverse impact of criminalisation, particularly on children, and whether the present system has a disproportionate impact on certain groups.

Sections 5 and 6 focus on the general purposes of criminalisation and whether in respect of young children those purposes can be equally – or better – achieved through other means (eg through intensive supervision by social services). That part of the report includes, in particular, discussion of the ways in which the risk of recidivism may be reduced. It also considers the use of particular measures by the family courts such as the imposition of secure accommodation orders and deprivation of liberty orders. While such measures are properly focused on the protection of the child rather than on society as a whole, they may, if judiciously employed and properly supported (which is not currently uniform or a given), bring with them wider beneficial effects in the form of short-term protection, although that is not consistent. Such orders should not, however, be seen as a diversionary alternative in themselves, and we are not advocating an expansion in the use of such powers; rather, we highlight that they exist outside criminal justice and may have certain positive effects.

Section 7 pulls the themes into focus and provides a recommendation.

Section 1



Development of the minimum age of criminal responsibility in England and Wales

At common law, the minimum age of criminal responsibility (MACR) in England was 7 years old. That was increased to 8 years old and placed on a statutory footing, by s.50 of the Children and Young Persons Act 1933, where it remained for the next 30 years, when it was raised to its present level.

The raising of the MACR from 8 to 10 in 1963 followed debate (largely in the House of Lords) in which the prospect of an increase from 8 to 12 was under very real consideration.

At committee stage, an amendment moved by Lady Wootton of Abinger which would have increased the MACR to 12 was carried against the position of the government. When the matter returned to the Lords on 24 January 1963, the Lord Chancellor Lord Dilhorne moved to amend what was then clause 16 from 12 to 10.[15] That amendment was ultimately carried.

What is instructive about the debate is that the rationale for arguing in favour of 10 or 12 was near-identical. The argument advanced on both sides was that there was a need to ensure that those at the relevant age were placed under some form of supervision, so as to curb their putative offending. The dispute concerned whether that could, at that time, be better achieved through the criminal courts, or through some educational intervention, or through

[15] Children and Young Persons HL Bill (1963), volume 246, (available at: Children and Yoiung Persons Bill H1 - Hansard - UK Parliament).

using social services. As such, the debate centred on the needs of the child: while emphasising that the need for the protection of the public should not be wholly set aside, the question of the needs of the child was described by the Lord Chancellor as being "the primary consideration".

The competing positions are neatly encapsulated in the following statement of the Lord Chancellor (dismissing a proposal made by Lord Ingleby for a lowering of the standard of proof in respect of children under 12 to the balance of probabilities):

"The government therefore believe that, instead of attempting to find a non-criminal procedure for bringing a child before the court for his wrongful acts, it is more profitable to consider whether we can reasonably leave child offenders to be dealt with by the operation of the educational and social services up to a higher age than 8. That is, of course, what the noble Lady wants. The government believe that the answer to this question is, 'Yes; but not up to as high an age as 12 – not at present, certainly'."

Some years later, the prospect of raising the MACR was again considered in Parliament. In 1969, provision was made for the MACR to be raised to 14, save in cases of homicide, by s.4 of the Children and Young Persons Act 1969.[16] However, s.4 was never brought into force, and the provision was repealed by the Criminal Justice Act 1991.

Taking the House of Lords debate in 1963 as a reasonable starting point for consideration of the issue afresh, can we now reasonably leave children to be dealt with by the operation of the educational and social services (or other such services as presently exist) up to a higher age than 10? And has the argument that we should do so (which appears to have been common ground when the MACR was last raised) been fortified or weakened in the ensuing 60 plus years? As will be seen below, our view is that the answers to both of these questions are clear, and affirmative.

Consideration of comparative approaches

Central to the question of whether the MACR ought to be increased is the related question: how will those younger children who would otherwise be brought into the criminal justice system be dealt with?

The state has a number of existing powers which can be exercised in respect of children. Typically, but not exclusively, these powers are supervised by the family court. They are considered at greater length in section 5, but include:

- Action taken by local authorities – without recourse to a court – in furtherance of their duties of safeguarding and welfare promotion: s.17 Children Act (CA) 1989 and related provisions. Such action can include the provision of accommodation, as well as taking steps to promote the child's education
- The imposition of a care or supervision order under s.31(2) of the CA 1989, through the courts, in cases where the child is suffering or likely to suffer significant harm, and that harm is attributable to, *inter alia*, the child being beyond parental control
- The imposition of a child safety order under s.11 Crime and Disorder Act 1998. These orders place the child under the supervision of a youth justice worker, with an obligation to comply with particular requirements. Such orders are available where: a child has committed

[16] When read together with the interpretation of "child" in s.70.

an act which would have been an offence if they were over the MACR; such an order is necessary to prevent further such offending; and the conduct in question has caused harassment, alarm or distress

- Out of court resolutions, including community resolutions, administered by the police to children who would otherwise have been brought within the criminal justice system[17]

As might be expected, different countries take different approaches to the question of how to deal with younger children who may have committed what would otherwise be criminal offences or be at risk of offending. Consideration of comparative approaches can therefore be of some assistance. A few examples illustrate the range of approaches taken globally.[18]

In Scotland the MACR is 12. Children under 16 can be referred to a children's hearing.[19] This includes those below the MACR. Grounds for referral include not only offending type behaviour, but also lack of parental care or control, exposure to risk of harm and concerns about the child's wellbeing. That process focuses on the child's behaviour, needs, and individual circumstances. It also provides the child with an opportunity to speak about what is happening in their life. Panels consist of three trained volunteers who can make legally binding decisions, with the central aim of ensuring the child is cared for and protected. Those can include supervision orders, conditions around school, support services, or residence. Designed to represent protective measures if the child is at risk, the Scottish system represents a public health approach to child offending.

New Zealand has the same MACR as England and Wales at 10, but for those aged between 10 and 14, as with Ireland, there is a stratification approach. Those aged 10 or 11 can only be prosecuted for the most serious crimes (murder or manslaughter – this extends to rape and aggravated sexual assault in Ireland for that age group). For those aged 12 and 13, New Zealand only allows for prosecution for murder, manslaughter or offences carrying a maximum penalty of 14 years or life imprisonment (though a rare exception is allowed for an offence carrying a maximum penalty of 10 years' imprisonment if that child also had a prior conviction for murder, manslaughter or a maximum 14 years' imprisonment offence). New Zealand also still has a rebuttable presumption of *doli incapax* for those aged between 10 and 14. The system contains a number of measures for those below the MACR or for whom their behaviour cannot be prosecuted – the Family Group Conference system (FGCs) is available to those with or without charges in the form of Care and Protection FGCs or Youth Justice FGCs respectively. These meetings are run by welfare services and have a restorative justice and rehabilitation approach.

Portugal's MACR is 16. Children aged 12 to 16 may be subject to the Educational Guardianship Law which has a focus on education and social reintegration and includes community service, educational centre attendance and other supervised interventions. Restorative measures are available for those whose behaviour is deemed minor. Those under 12 can only be subject to child protection measures promoted by the family and child courts or by the local Commissions for the

[17] Youth Justice Legal Centre, 'Out of Court Resolutions (September 2025), YLJC #15 Legal Guides, (available at: https://yjlc.uk/sites/default/files/attachments/2025-11/YJLC-Guide-Out%20of%20Court%20Resolution_0.pdf).

[18] A table setting out differences in approach internationally is appended to this report, (available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC12935286/). The table is a supplement to the following recent article: Delmage, E., Anderson, P., Blower, A., et al., 'The Minimum Age of Criminal Responsibility Internationally – History, Systems, and the Future' (2026). Criminal Behaviour and Mental Health, 36(1), 21–32.

[19] Section 1 of the Children (Care and Justice) (Scotland) Act 2024 has increased the age of referral to 18.

Protection of Children and Young People (1999).

Each of these share certain common features, including a focus on the child's needs, an understanding that their behaviour is a symptom of a need, a commitment to non-stigmatisation, and the objective of re-integration.

In section 6 we consider the importance of rehabilitation, both from the child's perspective, but also for the pragmatic reason that it reduces recidivism and so brings with it wider societal benefits.

Doli incapax

In England and Wales, the rebuttable presumption of *doli incapax* applied at common law to children aged from 7 to 13. That had been so since at least the time that Hale was writing in the 18th century,[20] and probably much earlier. After 1933, when the MACR was set at 8, the presumption continued to apply by force of the common law in respect of children aged from 8 to 13. And then from 1963 until 1998, the presumption remained applicable for children aged from 10 to 13.

The presumption operated so as to require the prosecution to prove that the child knew that their conduct was "seriously wrong".[21] Its abolition in 1998 meant that children as young as 10 could be prosecuted without any freestanding requirement (beyond proving *mens rea* in the usual way) to establish that they were aware of the seriousness of their conduct.

It might be thought that, from the perspective of the putative child defendant, *doli incapax* is an unequivocally positive principle; one that favours substantive equality over formal equality.[22] It has, however, been the subject of criticism. Most notably perhaps, the United Nations Committee on the Rights of the Child recommends the MACR of 14 and is opposed to the presumption. In General Comment No 24 (2019), it observed:[23]

"Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualised assessment of criminal responsibility, the committee has observed that this leaves much to the discretion of the court and results in discriminatory practices."

In particular, a rebuttable presumption may disproportionately favour White children. Research suggests that children from Black, Asian and other minoritised communities experience adultification in the criminal justice system; a form of bias that treats racialised children as more grown up and 'street wise' than White children. This is covered further in section 4.

A further argument in favour of a bright-line approach to the MACR is that this allows clarity from the very outset of an investigation of the ways in which a child suspected of offending may be dealt with. Conversely, a key disadvantage of models which require the establishment of a particular degree of intellectual development, or a certain understanding of 'right' and 'wrong', is that this is only likely to be determined once the child is already some way into – and often deep into – the criminal process.

Furthermore, notwithstanding concerns about unfair application or its utility in

[20] See Hale, M., History of the Pleas of the Crown (1778 ed), Vol.1, Ch. 3. Hale himself traces the principle back to the reign of Edward III, in the 14th Century.

[21] See for example R v Gorrie (1918) 83 JP 136, per Salter J, and JM (A Minor) v Runeckles (1984) 79 Cr. App.R. 255 per Mann J, both cited in R v JTB [2009] UKHL 20, in which it was confirmed that s.34 of the Crime and Disorder Act 1998 had had the effect of abolishing not merely the presumption of doli incapax but also the defence itself.

[22] Hamer, D., Crofts, T., 'The Logic and Value of the Presumption of Doli Incapax (Failing That, an Incapacity Defence)' (2023). Oxford Journal of Legal Studies, 43(3), 546–573.

[23] General comment No. 24 (2019) on children's rights in the child justice system, at [26].

practice,[24] *doli incapax* (or the various international analogues) is long overdue for an update. It relies heavily on the concept of knowing 'right' from 'wrong' in almost all of the 66 countries in which it is still used. This is not in keeping with the developmental science we now have available which would suggest that decision-making in teenagers is influenced not by a measured consideration of the morality of one course of action versus another, but by stresses, impulsivity, mental health problems, peer pressure, a lack of consequential thinking and a lack of the emotional maturity necessary to restrain one's actions.

The Law Commission recognised this in 2010, in the context of its consultation on Unfitness to plead.[25] Following consultation, in 2016 the Law Commission ultimately suggested an alternative process by which a defendant's "developmental immaturity" would be taken into account by a court when considering whether it would be appropriate to proceed to trial.[26] A further recommendation was mandatory screening for developmental immaturity of children under the age of 14. The Law Commission thereby recognised the fact that we now have a much greater understanding of the areas of strength and the areas of challenge in the developing brain (see section 2). Neither of the above suggestions have, to date, been taken up.

In light of the concerns expressed by the United Nations, and the careful discussion of the more pertinent question of developmental immaturity in the Law Commission consultation paper and report cited above, we do not consider that there would be value in returning to a test of *doli incapax*.

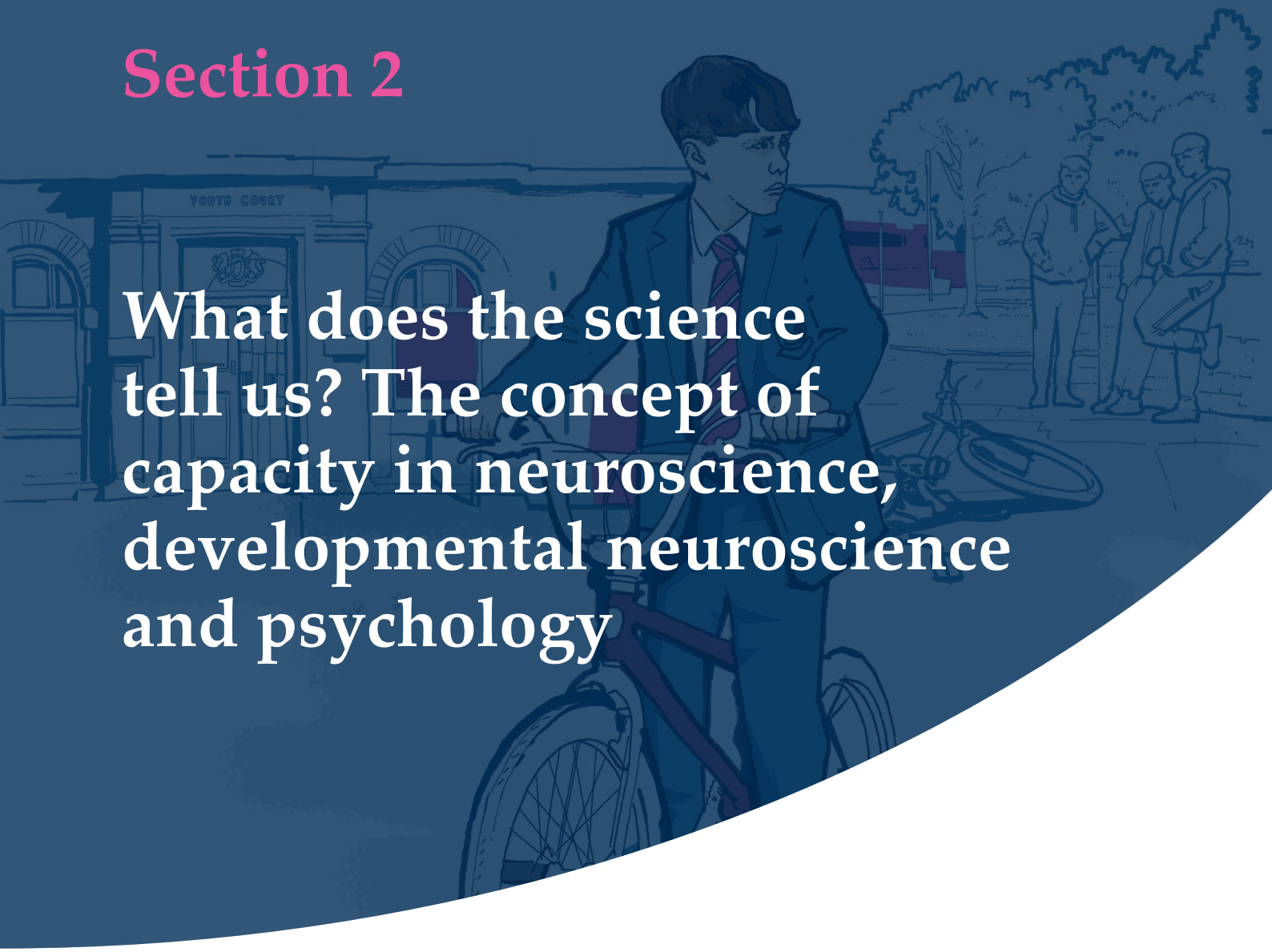
With the jurisprudential scene set, our focus now turns to scientific evidence that may enable a more informed understanding of the inappropriateness of attributing criminal liability to those as young as 10.

[24] Stokes suggested in 2000 that in practice it was easily rebutted (especially in cases involving serious offending); an observation also made by Lord Lowry in 1995: 'the courts, lacking really cogent evidence, often treat the rebuttal as a formality'. C (A Minor) v DPP [1995] 2 All ER 43. See Stokes, E., 'Reflections on the Death of a Doctrine' in: Pickford, J., (ed.) 'Youth Justice Theory and Practice' (2000). Routledge-Cavendish, London.

[25] Law Commission, Unfitness to Plead (The Law Commission Consultation Paper No 197), (available at: Unfitness-to-Plead-Report-Consultation-paper.pdf). See from 8-38 to 8-69.

[26] Law Com No 364 (n 14).

Section 2



What does the science tell us? The concept of capacity in neuroscience, developmental neuroscience and psychology

Brain development in adolescence

Adolescence, defined as the period of life between 10 and 24,[27] is a stage of prolonged brain development. Longitudinal neuroimaging (structural MRI) studies carried out over the past three decades have shown that grey matter volume peaks in late childhood and then gradually declines throughout adolescence and into the mid-twenties, while white matter gradually increases throughout childhood, adolescence and early adulthood.[28]
A recent study identified a key turning point in late childhood, followed by continued non-linear changes in white matter connectivity through early adulthood, up to around age 32, highlighting the prolonged and dynamic nature of human brain development.[29]

Neuroplasticity and capacity for change

These structural changes reflect key microstructural neuro-developmental processes: myelination and growth of axons, which increases the speed and

[27] Sawyer, et al., 'The age of adolescence' (n 1).

[28] Mills, K. L., Goddings, A.-L., Herting, M. M., et al., 'The developing adolescent brain: A neuroscientific perspective on the challenges and opportunities of the second decade' (2016). Trends in Cognitive Sciences, 20(4), 253–255; Tamnes, C. K., Herting, M. M., Meuwese, R. I. R., Mills, K. L. 'Structural brain development across adolescence' (2017). Biological Psychiatry, 81(12), 978–980; Bethlehem, R. A. I., Seidlitz, J., et al., 'Brain charts for the human lifespan' (2022). Nature, 604(7906), 525–534.

[29] Mousley, A., Bethlehem, R.A.I., Yeh, F. C., Astle, D., 'Topological turning points across the human lifespan' (2025). Nature Communications, 16, 10055.

reliability of communication between brain regions,[30] and synaptic pruning, which refines synaptic connections. These neuro-developmental processes are determined by a combination of genetics, environmental input and experience.[31] For example, synaptic connections that are frequently used are strengthened, while synapses that are rarely activated are eliminated (in a process called synaptic pruning). Thus, environmental and social experiences actively shape the development of neural circuits, reinforcing some pathways and pruning others.[32] This is an example of neuroplasticity, the way in which the brain adapts to environmental input.

The prolonged development of the adolescent brain means that it is particularly sensitive to experience and environmental input.[33] This allows for efficient learning and capacity for change, but it also increases vulnerability to negative or stressful environmental influences.

It has been argued by scientists and youth justice lawyers that the heightened neuroplasticity in the adolescent brain should shift youth justice away from strictly punitive approaches and toward rehabilitation that harnesses the developing brain's plasticity and capacity for change.[34]

The prefrontal cortex and cognitive control

Development is not uniform across the brain: sensory and motor regions mature earlier (by the early teens) than anterior regions, such as the prefrontal cortex, which continues developing into the mid-to-late twenties.[35] The prefrontal cortex supports judgement, decision-making, working memory, planning, inhibiting inappropriate or impulsive behaviours, and self-control. Developmental psychology research has demonstrated that these cognitive functions continue to mature throughout adolescence, mirroring the structural development of prefrontal brain regions.[36] Consequently, adolescents are more likely than adults to act impulsively and to prioritise immediate rewards over long-term outcomes.[37]

Limbic regions, such as the amygdala and ventral striatum, which drive emotional and motivational responses and immediate reward seeking, develop earlier than the prefrontal cortex and are highly sensitive to rewarding and emotional stimuli in adolescence.[38] The developmental

[30] Fields, R. D., 'Myelination: An overlooked mechanism of synaptic plasticity?' (2005). The Neuroscientist, 11(6), 528–531; Giorgio, A., Watkins, K. E., Douaud, G., et al., 'Longitudinal changes in grey and White matter during adolescence' (2010). NeuroImage, 49(1), 94–103; Palmer, C. E., Pecheva, D., Iversen, J. R., et al., 'Microstructural development from 9 to 14 years: Evidence from the ABCD study' (2022). Developmental Cognitive Neuroscience, 53, 101044; Dipnall, L. M., Yang, J. Y. M., Chen, J., et al., 'Childhood development of brain White matter myelin: A longitudinal T1w/T2w-ratio study' (2024). *Brain Structure and Function*, 229(1), 151–159.

[31] Huttenlocher, P. R., Dabholkar, A. S., 'Regional differences in synaptogenesis in human cerebral cortex' (1997). Journal of Comparative Neurology, 387(2), 167–178; Petanjek, Z., Judaš, M., Šimić, G., et al., 'Extraordinary neoteny of synaptic spines in the human prefrontal cortex' (2011). Proceedings of the National Academy of Sciences USA, 108(32), 13381–13386.

[32] Casey, B. J., Cohen, A. O., Galvan, A., 'The beautiful adolescent brain: An evolutionary developmental perspective' (2025). Annals of the New York Academy of Sciences, 1546, 58–74; Wilbrecht, L., Davidow, J. Y., 'Goal-directed learning in adolescence: Neurocognitive development and contextual influences' (2024). Nature Reviews Neuroscience, 25(3), 176–194.

[33] Larsen, B., Luna, B., 'Adolescence as a neurobiological critical period for the development of higher-order cognition' (2018). Neuroscience & Biobehavioral Reviews, 94, 179–195.

[34] Scott, E., Duell, N., Steinberg, L., 'Brain development, social context, and justice policy' (2018). Washington University Journal of Law & Policy, 57(1), 13-74; Steinberg, L., 'The influence of neuroscience on US Supreme Court decisions about adolescents' criminal culpability' (2013). *Nature Reviews Neuroscience*, 14(7), 513–518; Steinberg, L., Scott, E. S., 'Less guilty by reason of adolescence: developmental immaturity, diminished responsibility and the juvenile death penalty' (2003). *American Psychologist*, 58(12), 1009–1018.

[35] Giedd, J. N., Blumenthal, J., Jeffries, N. O., et al., 'Brain development during childhood and adolescence: A longitudinal MRI study' (1999). Nature Neuroscience, 2(10), 861–863; Sowell, E. R., Thompson, P. M., Leonard, C. M., et al., 'Longitudinal mapping of cortical thickness' (2004). Journal of Neuroscience, 24(40), 8821–8831; Bethlehem, et al., 'Brain charts for the human lifespan' (n 28).

[36] Tervo-Clemmens, B., Calabro, F.J, Parr, A. C., et al., 'A canonical trajectory of executive function maturation from adolescence to adulthood' (2023). Nature Communications, 14(1), 6922.

[37] Blakemore, S-J., Robbins, T. W., 'Decision-making in the adolescent brain' (2012). Nature Neuroscience, 15, 1184-1191.

[38] Hare, T. A, Tottenham, N., Galvan, A., et al., 'Biological substrates of emotional reactivity and regulation in adolescence during an emotional go-nogo task' (2008). Biological Psychiatry, 63(10), 927-34.

imbalance between the hypersensitive limbic system and the slow developing prefrontal cortex is proposed to result in difficulty inhibiting responses to emotionally salient information and heightened risk-taking.[39] This does not mean adolescents lack moral understanding, but that their decision-making is more context-dependent and less consistently regulated than that of adults.

Social reorientation and peer influence

Adolescence is characterised by a shift towards peers.[40] Adolescents tend to be highly sensitive to social exclusion and highly susceptible to peer influence, shifting their attitudes, decisions and behaviours towards peer norms. Adolescent risk-taking, such as dangerous driving, substance use and other experimental or criminal behaviours, increases in the presence of peers. Experimental studies have shown that young and mid-adolescents' perception of risk is more influenced by teenagers than by adults, whereas childrens' and adults' risk perception is more influenced by adults than by teenagers.[41] Other lab-based studies have shown that adolescents take more driving risks when with friends compared with when they are alone, while there was no change in the risk-taking behaviour of adults over 25 years when alone versus with friends.[42] This peer-driven amplification of risk reflects the heightened social sensitivity of the adolescent brain rather than an inability to understand consequences.[43]

Research from multiple disciplines has demonstrated that peer associations are a primary catalyst for anti-social and criminal behaviour in adolescence.[44] The tendency towards anti-social behaviour is influenced by the behaviour of a young person's immediate social circle and peers.[45] Adolescents are more likely to engage in anti-social or criminal behaviour when accompanied by peers than when alone.[46]

The social brain and perspective taking

The network of brain regions involved in understanding and interacting with other people, often termed the social brain network, undergoes substantial structural and functional maturation during adolescence.[47] Key regions within this network include the medial prefrontal cortex, temporoparietal junction, posterior superior temporal sulcus and anterior temporal cortex. Brain imaging studies in adults suggest that each of these regions plays a distinct role in understanding other people's minds and predicting their behaviour.[48]

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39 Heller, A. S, Casey, B. J., 'The neurodynamics of emotion: delineating typical and atypical emotional processes during adolescence' (2016). Developmental Science, 19(1), 3-18.

40 Andrews, J.L., Foulkes, L., Bone, J. K., and Blakemore, S-J., 'Amplified concern for social risk in adolescence: Development and validation of a new measure' (2020). Brain Sciences, 10(6), 397; Blakemore, S-J., Mills, K., 'Is adolescence a sensitive period for sociocultural processing?' (2014). Annual Review of Psychology, 65, 187–207; Steinberg, L., Monahan, K. C., 'Age differences in resistance to peer influence' (2007). Developmental Psychology, 43(6), 1531-1543.

41 Knoll, L. J., Magis-Weinberg, L., Speekenbrink, M., Blakemore, S-J., 'Social influence of risk perception during adolescence' (2015). Psychological Science, 26(5), 583-592.

42 Gardner, M., Steinberg, L., 'Peer influence on risk taking, risk preference, and reward evaluation in adolescence and adulthood' (2005). Developmental Psychology, 41(4), 625–635.

43 Telzer, E. H., Ichien, N. T., Qu, Y., 'Mothers know best: redirecting adolescent reward sensitivity toward safe behavior during risk taking' (2015). Social Cognitive and Affective Neuroscience, 10(10), 1383-91.

44 Shaw, C. R., The natural history of a delinquent career (1931). University of Chicago Press.

45 Ahmed, S., Foulkes, L., Leung, J. T., et al., 'Susceptibility to prosocial and anti-social influence in adolescence' (2020). Journal of Adolescence, 84, 56-68; Moffitt, T. E., 'Adolescence-limited and life-course-persistent anti-social behavior: A developmental taxonomy' (1993). Psychological Review, 100(4), 674-701; Kim, J., Fletcher, J. M., 'The influence of classmates on adolescent criminal activities in the United States' (2018). Deviant Behaviour, 39(3), 275-292; McGloin, J. M., Thomas, K. J., 'Peer influence and delinquency' (2019). Annual Review of Criminology, 2, 241-264.

46 Reiss, A. J. Jr., Farrington, D. P., 'Advancing knowledge about co-offending: Results from a prospective longitudinal survey of London males' (1991). Journal of Criminal Law and Criminology, 82, 360.

47 Blakemore, S-J., 'Development of the social brain during adolescence' (2008). Quarterly Journal of Experimental Psychology, 61(1), 40-49; Mills, K. L., Lalonde, F., Clasen, L., et al., 'Developmental changes in the structure of the social brain in late childhood and adolescence' (2014). Social Cognitive and Affective Neuroscience, 9(1), 123-131; Blakemore, et al., 'Is adolescence a sensitive period for sociocultural processing?' (n 40).

48 Frith, U., Frith, C., 'The social brain: allowing humans to boldly go where no other species has been' (2010). Philosophical Transactions of the Royal Society London. Series B, Biological Sciences, 365(1537), 165-76.

During adolescence, the ability to take someone else's perspective and understand their mental states, such as their intentions, is still developing.[49] Studies indicate that perspective taking abilities are still developing, particularly in everyday situations that also draw on other maturing cognitive processes, such as inhibitory control.[50]

Implications for criminal responsibility

Developmental timing varies across individuals, so neuroscience cannot determine culpability in any single case.[51] However, it can provide general principles relevant to children and young people. Evidence shows that the adolescent brain is still maturing in ways that are essential for judgement, impulse control and decision-making, especially in emotional or social contexts. Due to heightened neuroplasticity, adolescents are more vulnerable than adults to negative environmental influences, while at the same time, more capable of positive change.

These developmental factors may have implications for criminal responsibility in areas such as:

- Decision-making capacity at the time of the offence
- Impulsivity and the ability to regulate and control behaviour
- Consideration of consequences of actions
- Judgement of risks and benefits
- Moral reasoning in emotionally or socially charged situations
- Ability to take the victim's perspective
- Abstract thinking and counterfactual reasoning
- Susceptibility to peer influence
- Working memory demands, for example, in court settings
- Capacity for planning and premeditation

In addition, adolescent neurocognitive development supports differentiated treatment: rehabilitative approaches might be more effective than purely punitive ones, given the greater capacity for change during this period. These developmental principles have been recognised in major United States Supreme Court judgments limiting the harshest penalties when they are applied to children.[52]

Conduct disorder

The aforementioned studies relate to brain development in typically developing children and adolescents – but what of the child at risk of offending? Do their brains differ structurally and functionally? In fact, children in contact with the justice system may indeed be at a biological disadvantage as many have sustained a form of disturbance to the brain (through factors like direct acquired brain injury, malnutrition, exposure to alcohol and other drugs in utero, and through abuse) in comparison to children not in the justice system.[53] Reasons for this difference may include poor prenatal care, a lack of early life access to appropriate physical and mental health support from families (including healthy diets, which allow the brain to grow normally), exposure to violence and other traumatic experiences,

[49] Dumontheil, I., Apperly, I. A., Blakemore, S-J., 'Online usage of theory of mind continues to develop in late adolescence' (2010). Developmental Science, 13(2), 331-338.

[50] De Lillo, M., Ferguson, H. J., 'Perspective-taking and social inferences in adolescents, young adults, and older adults' (2023). Journal of Experimental Psychology: General, 152(5), 1420-1438.

[51] Foulkes, L., Blakemore S-J., 'Studying individual differences in human adolescent brain development' (2018). Nature Neuroscience, 21(3), 315-323.

[52] e.g., Roper v Simmons, 2005; Miller v Alabama, 2012 (related to appeals of two 14 year old boys).

[53] Sarkar, S., Craig, M. C., Catani, M., et al., 'Frontotemporal White-matter microstructural abnormalities in adolescents with conduct disorder: a diffusion tensor imaging study' (2013). Psychological Medicine, 43(2), 401-411; Sarkar, S., Dell'Acqua, F., Walsh, S. F., et al., 'A whole-brain investigation of White matter microstructure in adolescents with conduct disorder' (2016). PLoS One, 11(6), e0155475; Sebastian, C. L, De Brito, S. A., McCrory, E. J., et al., 'Grey matter volumes in children with conduct problems and varying levels of callous-unemotional traits' (2016). Journal of Abnormal Child Psychology, 44(4), 639-649.

limited access to other healthcare resources, lack of access to prosocial education experiences and exposure to factors that may damage brain development (such as head injuries, drugs and alcohol, and the effect of poor socio-economic conditions). The heightened neuroplasticity in childhood and adolescence, described above, means that the developing brain is particularly sensitive to stressful or adverse environments.

Conduct disorder is the most common mental disorder in childhood and one which is strongly associated with offending behaviour. For example, rates of conduct disorder average 62% in juvenile detention and correctional facilities,[54] which is much higher than the community incidence. Studies relating to children with conduct disorders demonstrate differences in grey matter volumes in the brains of children with conduct disorder in comparison to those without.[55]

It is important to note that children suffering with conduct disorders are also frequently children who have experienced abuse and trauma. Brain structural abnormalities have been found in those experiencing childhood trauma.[56] There are also functional differences.[57] Childhood adversity is itself linked to violent crime,[58] with some studies showing an 11-fold increase in the likelihood of being arrested for an aggressive offence for young people traumatised in early life,[59] alongside cognitive, educational and employment challenges.[60] Mistreatment is also associated with psychological problems, and with changes in the hypothalamic-pituitary-adrenal axis – overactivity of this hormonal axis can result in an increase in impulsive aggression, whilst underactivity can result in non-responsiveness to punishment and increased instrumental aggression (namely aggression to serve a separate purpose).[61] Whilst not all children experiencing mistreatment will commit offences, they may be especially vulnerable to poor decision-making and impulsive judgements and therefore more susceptible to negative learning from anti-social settings.

Punishment, as opposed to care and support, for repeatedly traumatised children as a method of shaping their behaviour is very rarely an effective strategy. Traumatised children have experienced lifelong punishment through early-life trauma, which has not been contingent upon whether they have been 'good', 'bad' or 'neutral'. As such, for children in this group, a system of positive incentives is often effective, whereas punishment as a shaping mechanism tends to fail.[62] In effect, it

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54 Beaudry, G., Yu, R., Langstrom, M., et al., 'An updated systematic review and meta-regression analysis: mental disorders among adolescents in juvenile detention and correctional facilities' (2021). Journal of the American Academy of Child and Adolescent Psychiatry, 60(1), 46-60.

55 Fairchild, G., Passamonti, L., Hurford, G., et al., 'Brain structure abnormalities in early-onset and adolescent-onset conduct disorder' (2011). American Journal of Psychiatry, 168(6), 624-633; Fallon, J., 'Neuroanatomical background to understanding the brain of the young psychopath' (2006). Ohio State Journal of Criminal Law, 3(2), 341-367.

56 De Brito, S. A, Viding, E., Sebastian, C. L., et al., 'Reduced orbitofrontal and temporal grey matter in a community sample of maltreated children' (2012). Journal of Child Psychology and Psychiatry, 54(1), 105-112; Kolla, N. J., Gregory, S., Attard, S., et al., 'Disentangling possible effects of childhood physical abuse on gray matter changes in violent offenders with psychopathy' (2014). Psychiatry Research, 221(2), 123-126; Lim, L., Radua, J., Rubia, K., 'Gray matter abnormalities in childhood maltreatment: A voxel-wise meta-analysis' (2014). American Journal of Psychiatry, 171(8), 854-863; Malhi, G. S, Pritha, D., Outhred, T., et al., 'The effects of childhood trauma on adolescent hippocampal subfields' (2019). Australian and New Zealand Journal of Psychiatry, 53(5), 447-457.

57 McCrory, E. J., De Brito, S. A, Kelly, P. A., et al., 'Amygdala activation in maltreated children during pre-attentive emotional processing' (2013). The British Journal of Psychiatry, 202(4), 269-276.

58 Kolla, N. J., Malcolm, C., Attard, S., et al., 'Childhood maltreatment and aggressive behaviour in violent offenders with psychopathy' (2013). Canadian Journal of Psychiatry, 58(8), 487-494.

59 Boswell, G. R., 'Violent Victims' (1995). The Prince's Trust; English, D. J., Widom, C. S., Bradford, C., 'Childhood victimization and delinquency, adult criminality, and violent criminal behaviour: A replication and extension' (Final Report) (2002). (NCJRS 192291) Washington, DC: U.S. Department of Justice.

60 Mills, R., Kisley, S., Alati, R., et al., 'Cognitive and educational outcomes of maltreated and non-maltreated youth: A birth cohort study' (2019). Australian and New Zealand Journal of Psychiatry, 53(3), 248-255.

61 Kiehl, K. A., Smith, A. M., Hare, R. D., et al., 'Limbic abnormalities in affective processing by criminal psychopaths as revealed by functional magnetic resonance imaging' (2001). Biological Psychiatry, 50(9), 677-84.

62 De Valk, S., Van der Helm, G., Beld, M., et al., 'Does punishment in secure residential youth care work? An overview of the evidence' (2015). Journal of Children's Services, 10(1), 3-16.

may serve only to retraumatise the individual (especially where it involves removal from home, distancing the child from that home, removing their liberty and placing them in, often, excessively restrictive settings at a formative age in terms of brain development).[63] The consequences of periods of incarceration add to pre-existing disadvantages and disengage the individual from their family and community, which can hinder the processes of social reintegration thought to reduce recidivism.[64]

Any decision to punish a child must also factor in the impact of labelling – children passing through adolescence are essentially in a stage of identity acquisition, in which they learn about what they are good at and what they are not, and in which social groups they can place themselves, as a means of working out who they are.

Even low-intensity involvement with the justice system can have an unfortunate and unintended consequence of signalling to the child that offending, and being a 'young offender', is part of their identity and thus can increase the risk of recidivism.[65] This is covered in greater length in section 6. This is especially true for comprehensive lifestyle changes like being imprisoned. As such, the direct harms from the punishment itself may be compounded by an enduring sense of injustice both for an individual child who has experienced it and for onlookers who may form the view that it is unfair to impose punishment on vulnerable children with the aim of deterring others. Indeed, the notion of deterrence being a useful strategy for this group and for children in general has been repeatedly criticised.[66]

Impact on engagement in criminal proceedings

It is clear that children and young people in conflict with the law present substantially higher rates of neuro-developmental and mental health difficulties compared to their peers in the general population.[67] This includes elevated rates of disorders of intellectual development or learning disability, with 51% of child offenders in a UK sample scoring an extremely low or borderline IQ.[68] Elevated rates of developmental language disorder (DLD) have also been identified in child offenders, with evidence of DLD increasing risk of recidivism.[69]

Cognitive function, in a broad sense, may be considered critical to the question of whether a child is able to participate in criminal proceedings. A seminal study in the United States assessed the "adjudicative competence" of children, concluding that approximately one third of children aged 11 to 13 and approximately one fifth of children aged 14 to 15 were

63 Lambie, I., Randell, I., 'The impact of incarceration on juvenile offenders' (2013). Clinical Psychology Review, 33(3), 448–459.

64 Bateman, T., Hazel, N., Wright, S., 'Resettlement of young people leaving youth custody: lessons from the literature' (2013). Beyond Youth Custody.

65 Farrington, D., Osborn, S., West, D., 'The persistence of labelling effects' (1978). The British Journal of Criminology, 18(3), 277-284; Krohn, M. D., Lopes, G., Ward, J. T., 'Effects of Official Intervention on Later Offending in the Rochester Youth Development Study' in: Farrington, D., Murray, J., (eds.) 'Labeling Theory: Empirical Tests, Advances in Criminological Theory' (2014). Transaction Publishers, New Brunswick, 18, 179-207; McAra, L., McVie, S., 'Youth justice?: The impact of system contact on patterns of desistance from offending' (2007). European Journal of Criminology, 4(3), 315-345; Murray, J., Blokland, A., Farrington, D., et al., 'Long-Term Effects of Convictions and Incarceration on Men in the Cambridge Study in Delinquent Development' in: Farrington, D., Murray, J., (eds.) 'Labeling Theory: Empirical Tests, Advances in Criminological Theory' (2014). Transaction Publishers, New Brunswick, 18, 209-235; Petrosino, A., Turpin-Petrosino, C., Guckenburg, S., 'The impact of juvenile system processing on delinquency' (2010) in: Farrington, D., Murray, J., (eds.) 'Labeling Theory: Empirical Tests, Advances in Criminological Theory' (2014). Transaction Publishers, New Brunswick, 18, 113-149.

66 See for example Crofts, T., Delmage, E., Janes, L., 'Deterring Children From Crime Through Sentencing: Can It Be Justified?' (2023). Youth Justice, 23(2), 182-200.

67 Beaudry, et al., 'An updated systematic review' (n 54).

68 Chitsabesan, P., Kroll, L., Bailey, S., et al., 'Mental health needs of young offenders in custody and in the community' (2006). The British Journal of Psychiatry: the Journal of Mental Science, 188, 534-540.

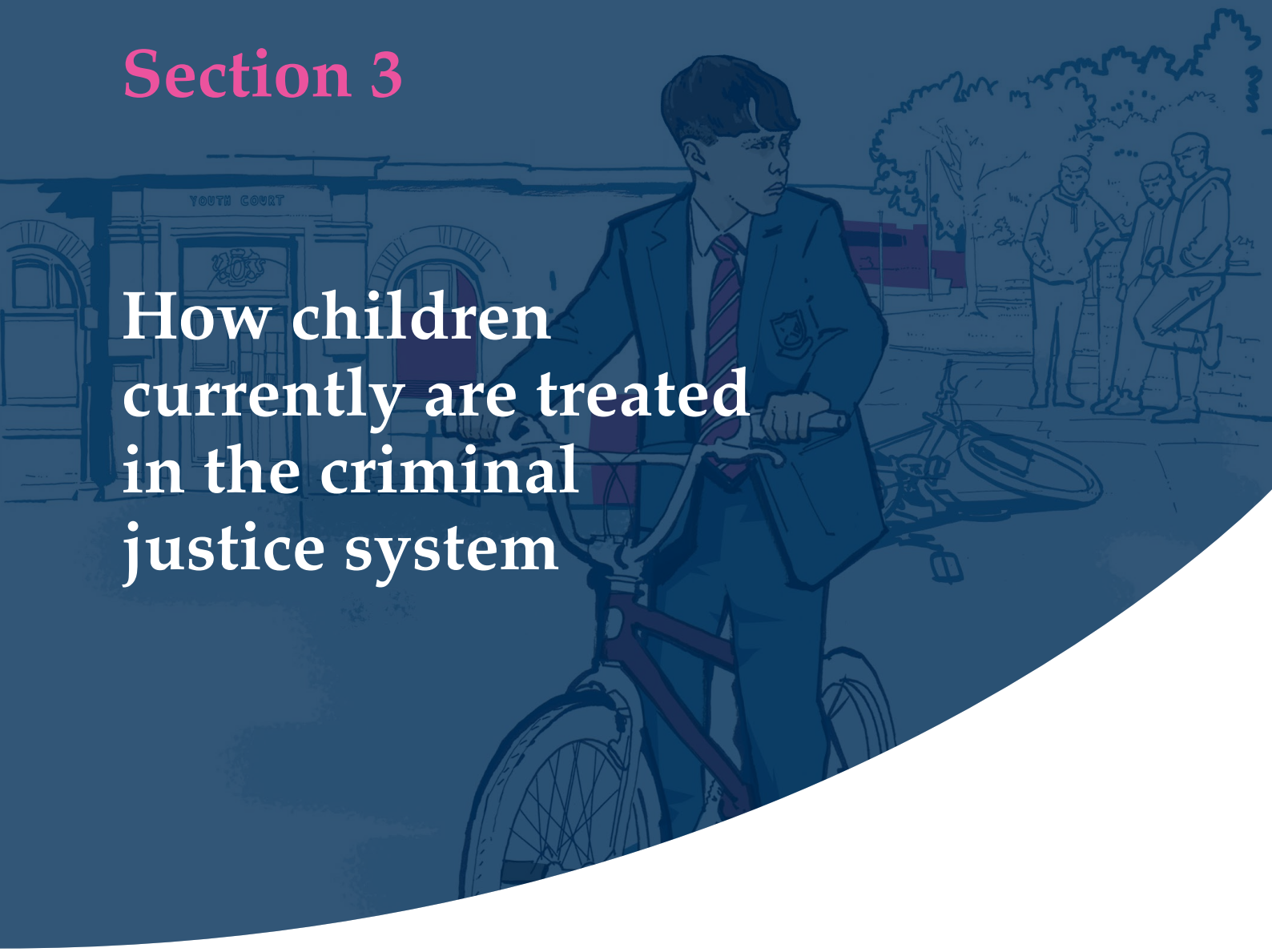
69 Winstanley, M., Webb, R. T., Conti-Ramsden, G., 'Developmental language disorders and risk of recidivism among young offenders' (2021). Journal of child psychology and psychiatry, and allied disciplines, 62(4), 396-403.

as impaired in capacities relevant to adjudicative competence as seriously mentally ill adults who would likely be considered incompetent to stand trial.[70]

These findings are part of a growing body of evidence that raises questions regarding the ability of children to engage meaningfully in criminal justice processes and raises concerns regarding the adverse consequences of such engagement. As is evidenced in the later sections of this report, these concerns are not of merely theoretical significance but are borne out by the practical working of the courts.

[70] Grisso, T., Steinberg, L., Woolard, J., et al., 'Juveniles' competence to stand trial: a comparison of adolescents' and adults' capacities as trial defendants' (2003). Law and Human Behavior, 27(4), 333.

Section 3



How children currently are treated in the criminal justice system

Statistics

Before looking at the processes applied to children in the criminal justice system, it is worth noting the size of the cohort of young children under consideration.

The following table sets out the figures, derived from the Ministry of Justice (MoJ), for the year to March 2025: [71]

Event	Number (all ages)	Number (years 10–14)[72]
Arrests of children	58,298	
Cautions administered to children	3,927	
Children taken to court	18,355	
Children sentenced by a criminal court	12,977	1,590
Community sentence imposed	9,371	
Custodial sentence imposed	613	22
Other sentence imposed	2,993	

[71] MoJ Youth Justice Statistics: 2024 to 2025 supplementary tables (available at: https://www.gov.uk/government/statistics/youth-justice-statistics-2024-to-2025).

[72] NB this data does not appear to be readily available for all of the categories listed in the table.

As can be seen from the table above, of the 1,590 children aged 10 to 14 found guilty of offences in the year to March 2025,[73] only 22 received sentences of immediate custody. That is similar to the figures from the past 5 years, with the exception of the year to March 2024, when there were 36 sentences of immediate custody for those aged 10 to 14.[74]

The small number of immediate custodial sentences imposed on younger children makes it clear that any argument for criminalisation of this cohort cannot realistically be supported by an appeal to the need for criminal process in order to protect the public, even for the short duration of a custodial sentence. There are other means of restricting liberty without the requirement of a criminal process. Some of these mechanisms are discussed in section 5.

Vulnerability of children in the criminal justice system

Children in contact with the criminal justice process are amongst the most vulnerable and disadvantaged in society, having high levels of dispositional vulnerabilities, overlaid with trauma and other adversities. Clinical research in the UK and internationally, conducted with children in the criminal justice system (predominantly in secure settings), suggests that child suspects and defendants have a substantially raised prevalence of a number of neuro-disabilities, cognitive disabilities and developmental disorders.[75] In 2022, a Department for Education and MoJ analysis revealed that 80% of the children in England who had been cautioned or sentenced had special educational needs, rising to 86% for those dealt with for serious violence.[76] Likewise the prevalence of neurodivergent conditions (including autism spectrum condition and attention deficit hyperactivity disorder – ADHD) amongst justice-involved children is significantly raised.[77] Additionally, communication disorders appear to be concerningly high amongst children who offend (a reported prevalence rate of 60–90% in comparison with 5–7% in the general child population).[78]

The co-occurrence of these issues, and with other vulnerabilities, has also been noted amongst children.[79] Children with a learning disability, for example, were 6 times more likely than their peers to have a psychiatric or neuro-developmental disorder.[80] Studies have also identified the frequent co-occurrence of neuro-developmental disorders with traumatic brain injury amongst children in contact with youth justice services.[81] Reduced intellectual functioning, in particular, will not only challenge a child's ability to engage with the significant cognitive demands of the criminal justice process,

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73 The statistics do not enable the identification of the 10 to 13 year old cohort.

74 The Youth Justice White paper 2026 states that no custodial sentence was given to children under 12 in the last five years.

75 See for general discussion: McAra, L., McVie, S., 'Raising the minimum age of criminal responsibility: lessons from the Scottish experience' (2024). Current Issues in Criminal Justice, 36(4), 386–407; Michael Sieff Foundation, 'Justice for children with SEND & neurodivergence' (2025), (available at: https://www.michaelsieff-foundation.org.uk/wp-content/uploads/2025/04/SEND-Neurodivergence-and-Youth-Justice-Report-Sieff-Foundation-2025.pdf).

76 Department for Education and Ministry of Justice, 'Education, children's social care and offending: Descriptive statistics' (March 2022), (available at: https://www.gov.uk/government/publications/education-childrens-social-care-and-offending#full-publication-update-history).

77 Kirby, A., 'Neurodiversity – a whole-child approach for youth justice' (July 2021). HM Inspectorate of Probation, (available at: Neurodiversity – a whole-child approach for youth justice).

78 Bryan, K., Freer, J., Furlong, C., 'Language and communication difficulties in juvenile offenders' (2007). International Journal of Language & Communication Disorders, 42(5), 505-520; Gregory, J., Bryan, K., 'Speech and language therapy intervention with a group of persistent and prolific young offenders in a non-custodial setting with previously un-diagnosed speech, language and communication difficulties' (2011). International Journal of Language & Communication Disorders, 46(2), 202; Snow, P., 'Speech-Language Pathology and the Youth Offender: Epidemiological Overview and Roadmap for Future Speech-Language Pathology Research and Scope of Practice' (2019). Language, Speech & Hearing Services in Schools, 50(2), 324.

79 Kirby, 'Neurodiversity' (n 77).

80 Emerson, E., Hatton, C., 'The mental health of children and adolescents with learning disabilities in Britain' (2007). Advances in Mental Health and Learning Disabilities, 1(3), 62.

81 Chitsabesan, P., Lennox, C., Williams, H., et al., 'Traumatic Brain Injury in Juvenile Offenders' (2015). Journal of Head Trauma Rehabilitation, 30(2), 106; Kent, H., Williams, H., 'Traumatic Brain Injury' (August 2021). HM Inspectorate of Probation (Traumatic brain injury).

but has been linked to increased suggestibility, acquiescence and compliance in interview,[82] and thus to false confessions.[83]

Mental health considerations for children

Particular considerations arise when analysing the potential correlation, connection and/or impact of mental health issues and/or conditions in children and (putative) criminal acts.[84]

Children experiencing mental health issues are substantially more likely than their peers to find themselves in conflict with the law.[85] Although the rates of severe mental health disorders, such as schizophrenia, may not be high amongst young defendants and suspects, many are likely to present with severe childhood-onset conduct disorders,[86] anxiety and mood disorders (which peak in adolescence),[87] and post-traumatic stress disorder.[88] Many lifelong mental illnesses begin in adolescence, and so a child's condition may be undiagnosed or untreated, and this presents a significant challenge for the youth justice system.[89] Sometimes no medical attention may be sought at all as parents or guardians do not realise that there may be a mental health condition (which may qualify as a disability) engaged at all. Indeed, as the NSPCC puts it:[90]

"Babies and young children aren't able to verbally communicate their feelings. Older children and young people may not want, or feel able, to discuss their mental health. This might be because they:

- Worry they won't be taken seriously
- Believe others won't understand
- Have had a negative experience talking about their thoughts and feelings in the past
- Feel that no one can help them
- Fear being dismissed or labelled an attention seeker or 'crazy'"

Therefore, there will be children and adolescents who are charged with criminal offences who have mental health conditions which may well have affected their actions, which are not known at the time, and have not been the subject of any diagnosis, let alone treatment.[91]

It may be said that the criminal justice system recognises issues such as capacity, diminished responsibility and automatism, which are dealt with as defences or in assessing fitness to stand trial or as mitigating factors in sentencing. However, this again, may well miss the particular vulnerability and sensitivity of children, which when considered in light of what is now known about the neuro-developmental stages of the child and adolescent brain, suggests that mental

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82 Milne, R., Clare, I., Bull, R., 'Using the cognitive interview with adults with mild learning disabilities' (1999). Psychology, Crime & Law, 5(1-2), 81; Gudjonsson, G., 'The psychology of interrogations and confessions: A handbook' (2003). Wiley, New York; Clare, I., Gudjonsson, G., 'Interrogative suggestibility, confabulation, and acquiescence in people with mild learning disabilities (mental handicap): Implications for reliability during police interrogations' (1993). The British Journal of Clinical Psychology, 32(3), 295.

83 Sir Henry Fisher, 'Report of an inquiry by the Hon. Sir Henry Fisher into the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road, London SE6' (HMSO 1977).

84 Rice, S., Baker, D., Purcell, R., Chanen, A., 'Offending behaviour and mental ill-health among young people: Reducing recidivism requires integration with youth mental health care' (2024). Journal of Global Health, 14, 03001.

85 Knapp, M., Ardino, V., Brimblecombe, N., et al., 'Youth Mental Health: New Economic Evidence' (2016). London School of Economics and Political Science, Personal Social Services Research Unit.

86 Vizard, E., 'Child Defendants: Occasional Paper 56' (2006). Royal College of Psychiatrists.

87 Kessler, R., Berglund, P., Demler, O., et al., 'Lifetime prevalence and age-of-onset distributions of DSM-IV disorders in the National Comorbidity Survey Replication' (2005). Archives of General Psychiatry, 62(6), 593; Merikangas, K., He, J. P., Burstein, M., et al., 'Lifetime prevalence of mental disorders in U.S. adolescents: results from the National Comorbidity Survey Replication - Adolescent Supplement (NCS-A)' (2010). Journal of the American Academy of Child and Adolescent Psychiatry, 49(10), 980.

88 Steiner, H., Garcia, I., Mathews, Z., 'Post traumatic stress disorder in incarcerated juvenile delinquents' (1997). Journal of the American Acaddemy of Child and Adolescent Psychiatry, 36(3), 357.

89 Knapp, et al., 'Youth Mental Health' (n 85).

90 NSPCC, 'Child mental health: recognising and responding to concerns' (8 October 2025), (available at: https://learning.nspcc.org.uk/child-health-development/child-mental-health).

91 92% of children with speech language and communication needs are undiagnosed before entering the justice system – see Bryan, et al., 'Language and communication' (n 78).

health illness may play a particularly serious role in putative criminality in children. Criminalising them may then operate as a barrier to the effective specialised treatment they need, and which they may not receive in the criminal justice system or in detention.
It has been recognised that the cohort of children entering the criminal justice system has become more complex and the MoJ has acknowledged that there has been increasingly vulnerability in this cohort (over and above age itself) including by reason of a startlingly high level of mental health issues.[92]

HM Prison and Probation Services (HMPPS) has also recognised the prevalence of mental health issues in justice-involved children:[93]

"Mental health problems often appear differently in younger age groups than they do in adults, manifesting as behavioural problems, self-destructive or high-risk behaviour or social withdrawal, all of which can mask underlying problems. Mental health needs can be misinterpreted as bad behaviour or dismissed as normal adolescent acting out."

The issue of neurodivergence (ie autism spectrum disorder – ASD, and ADHD) is addressed above, but there are many mental health conditions which can affect children, including depressive illnesses, bipolar or personality disorders, and delusional disorders. Their assessment and treatment are titrated according to their age and circumstances, noting that the overlay of puberty and associated hormonal and other changes may mean that a definitive diagnosis is difficult to make, even where medical or psychiatric expertise has been sought.

Other vulnerabilities

Many children coming into contact with the youth justice service are likely to experience a further intersecting level of difficulty, arising from adverse life experiences or other childhood disadvantages. There are clear links between offending behaviour and psychosocial adversity,[94] and child suspects and defendants have a significantly raised likelihood of having suffered childhood trauma, including childhood abuse (sexual, physical or emotional), familial violence, traumatic brain injury, parental absence and bereavement.[95] Experience of family violence, for example, has been consistently associated with offending,[96] particularly violence[97] and child to parent assault.[98] As explored in section 4 under the heading of disproportionality, children who have been excluded from school are over-represented in secure institutions in England and Wales – representing 25% of children in the secure estate.[99] Whilst accounting for less than 1% of the child

92 Parliament, 'Children and Young People in Custody (Part 1): Entry into the youth justice system, Complexities of the cohort (12 November 2020), (available at: https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/306/30606.htm#:~:text=Complexities%20of%20the%20cohort&text="Of%20those%20children%20admitted%20to,were%20previously%20looked%20after%20children).

93 HM Inspectorate of Probation, 'Youth justice – specific areas of delivery' (10 March 2023), (available at: https://hmiprobation.justiceinspectorates.gov.uk/our-research/evidence-base-youth-justice/specific-areas-of-delivery/mental-health-yj/).

94 See for example, Craig, J., Piquero, A., Farrington, D., et al., 'A little early risk goes a long bad way: Adverse childhood experiences and life-course offending in the Cambridge study' (2017). Journal of Criminal Justice, 53, 34; Fox, B., Perez, N., Cass, E., et al., 'Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders' (2015). Child Abuse & Neglect, 46, 163.

95 Liddle, M., et al., 'Trauma and young offenders: a review of the research and practice literature' (2016). Beyond Youth Custody; Obsuth, I., Johnson, K. M., Murray, A., et al., 'Violent Poly-Victimization: The Longitudinal Patterns of Physical and Emotional Victimization Throughout Adolescence (11–17 Years)' (2018). Journal of Research on Adolescence, 28(4), 786; Vaswani, N., 'The Ripples of Death: Exploring the Bereavement Experiences and Mental Health of Young Men in Custody' (2014). Howard Journal of Criminal Justice, 53(4), 341.

96 Stuart, M., Baines, C., 'Safeguards for Vulnerable Children: Three studies on abusers, disabled children and children in prison'(2004). Joseph Rowntree Foundation; Jennings, W., Piquero, A., Reingle, J., 'On the overlap between victimization and offending: A review of the literature' (2011). Aggression & Violent Behavior, 17(1), 16.

97 Kushner, M., 'Betrayal Trauma and Gender: An Examination of the Victim–Offender Overlap' (2020). Journal of interpersonal violence, 37(7-8), NP3750.

98 Holt, A., Lewis, S., 'Constituting child-to-parent violence: Lessons from England and Wales' (2021). The British Journal of Criminology, 61(3), 792; Simmons, M., McEwan, T., Purcell, R., Ogloff, J., 'Sixty years of child-to-parent abuse research: What we know and where to go' (2018). Aggression and Violent Behavior, 38, 31.

99 Children's Commissioner, 'The educational journeys of children in secure settings' (27 February 2025), (available at: https://www.childrenscommissioner.gov.uk/resource/the-educational-journeys-of-children-in-secure-settings/).

population, 65% of children in the secure estate report having been in the care of the local authority at some time in their lives.[100] Indeed children with any level of social care contact are more likely to have a criminal conviction or caution than children with no such experience, and the more significant the involvement with the social care system the higher the likelihood of conviction.[101]

Children under police investigation

Evidence from the earliest stages of the criminal justice process raises the question of whether a child, particularly 10 to 13 year olds, can fairly be tried. Adjustments of the process for children on first contact with the police and through criminal investigation are strikingly limited and variably implemented. Research suggests that in this sharply adversarial context children, and particularly younger children, are simply unable to exercise effectively the rights which are intended to make it fair to fix them with criminal responsibility for their actions.

There is no distinction between children and adults at the point of arrest either in the legislation (Police and Criminal Evidence Act 1984 – PACE) or statutory guidance (PACE Code of Practice G), beyond the prohibition on arrest at school. Case law is clear that less intrusive options should be considered before moving to arrest,[102] however this is not reflected in guidance. Nor does the relevant legislation in England refer to a child's rights under the UN Convention on Rights of a Child to be arrested and detained as a last resort and for the shortest appropriate period.[103]

An inexperienced policing frontline are not currently required to be trained in Child First[104] or child-centred approaches and often lack the confidence to take less intrusive action short of arrest.[105] There is also a striking lack of support from partner agencies at the point of arrest. Social services are very rarely able to offer safe spaces for children and there is no routine engagement of the youth justice service at this point. Children, as a result, are commonly arrested in circumstances where this is not required by the criminal justice process, but where there is no other available mechanism to keep them safe.[106] Longitudinal research has identified that justice system contact, including arrest and detention, is associated with increased offending.[107] Yet the availability of arrest for younger children has meant that the gaps in social welfare provision are being filled by coercive police responses, funnelling the most vulnerable children into criminal justice processes, rather than support and preventive engagement.

There were just over 62,000 detentions of children in the year to March 2025 (a decrease of 2% on the previous year), including 1,802 aged 10 to 12, and 25,640 aged 13 to 15.[108] However, research indicates that the majority of those arrests

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[100] Prison Reform Trust, 'Bromley Briefings Prison Factfile' (February 2026), (available at: https://prisonreformtrust.org.uk/publication/bromley-briefings-prison-factfile-february-2026/).

[101] Whitehead, S., McDonald Heffernan, C., Leyland, A., 'Safeguarding Futures: Reducing the risk of criminal justice involvement for children in contact with the social care system' (2025). The Centre for Justice Innovation and the Centre for Care.

[102] ST v CC of Nottingham Police [2022] EWHC 1280 (QB).

[103] UNCRC article 37, see for Wales the Rights of Children and Young Persons (Wales) Measure 2011 c.02 s 1.

[104] The Child First approach is discussed at greater length in section 6. Its basic tenets are (1) seeing children as children; (2) developing children's pro-social identities for positive outcomes; (3) collaborating with children; and (4) diverting from stigma.

[105] Kemp, V., Bevan, M., 'Child Centred Policing in Greater Manchester: Frontline officers' engagement with children suspected of offending' (July 2025). *The University of Nottingham*. (available at: https://www.nottingham.ac.uk/research/groups/criminal-justice-research-centre/documents/gmp-scoping-study-of-frontline-officers-engagement-with-children.pdf).

[106] Ibid; see for a 5-force study Kemp, V., Bevan, M., 'Children in Police Custody: Piloting Child First Approaches in Police Custody' (2026, forthcoming). Nuffield Foundation. (available at: https://www.nuffieldfoundation.org/project/child-first-children-in-police-custody).

[107] McAra, L., McVie, S., 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime' (2010). Criminology & Criminal Justice, 10, 179. Again, see further section 6.

[108] Youth Justice Board, 'Youth justice statistics: 2024 to 2025' (published 29 January 2026), (available at: https://www.gov.uk/government/statistics/youth-justice-statistics-2024-to-2025).

will result in no further action being taken (56%) and children will be charged in approximately a fifth of cases (21%).[109]

A child detained by the police following arrest experiences essentially the same process in the same environment as an adult suspect. They are not dealt with by officers or police staff with specialist training or in fully separate facilities, and they often come into contact with adult arrestees in holding areas and during booking-in.

Children are commonly held in adult cells, whilst so-called 'juvenile cells' tend to be internally identical to adult cells, often distinguishable only by signage, sometimes by a greater proportion of glazing in the door or internal paint colour.[110]

Children are subject to the same initial detention periods as adults, 24 hours in the first instance (PACE s41) and 45% of children were detained overnight in the year to March 2024.[111] Research suggests that children are detained on average for approximately 11½ hours.[112] Children often decline food and recount significant distress in spending many hours alone in a cell.[113]

Age-differentiated protection in legislation and guidance is extremely limited and variably operationalised. The only significant and consistently implemented adjustment is the support of an appropriate adult (AA), who is required to attend the police station and must be present with the child for significant events in their detention, such as for the explanation of legal rights, for strip and intimate searching, and for interview.[114] A wide range of supportive duties are ascribed to the AA including providing advice and assistance, ensuring due process, assisting understanding and exercise of their rights, and enabling communication.[115] However, despite the significance and complexity of the role it is primarily fulfilled by a parent or guardian,[116] inevitably untrained and provided with minimal information about the role, or by lay volunteers. Although the AA is required to be notified and their attendance secured "as soon as practicable",[117] in practice contact with the AA for many children is often heavily delayed and focused on the period around the police interview.[118]

Significantly, there is no requirement for a child to be interviewed by an officer with any specialist training in interviewing children or vulnerable people. Nor is there any access to an intermediary for the many children with significant communication needs. The legislation requires all children to opt into legal advice (PACE s58(1)), and although rates of uptake continue to improve for children, younger children (age 10 to 13) are consistently the least likely to request a lawyer.[119] After long periods in detention, children relate struggling to engage with questioning, and research suggests that full comment interview occurs in approximately 20% of child

[109] Kemp, V., Carr, N., Kent, H., Farrall, S., 'Examining the impact of PACE on the detention and questioning of child suspects' (2023). Nuffield Foundation. (available at: https://www.nuffieldfoundation.org/wp-content/uploads/2021/07/Kemp-Examining-the-impact-of-PACE-on-the-detention-and-questioning-of-child-suspects.pdf).

[110] Bevan, M., 'Children in Police Custody: Adversity and adversariality behind closed doors' (2024). Oxford University Press.

[111] Home Office, 'Police powers and procedures: Other PACE powers, England and Wales, year ending 31 March 2024' (2025).

[112] Kemp, et al., 'impact of PACE' (n 109).

[113] Bevan, M., 'The pains of police custody: a recipe for injustice and exclusion?' (2022). British Journal of Criminology, 62(4), 805.

[114] PACE Code C 3.15, 3.17, 11.15 and Annex A.

[115] PACE Code C 1.7A.

[116] PACE Code C 1.7(b).

[117] PACE Code C 3.15.

[118] Kemp, et al., 'impact of PACE' (n 109); Bevan, 'Children in Police Custody' (n 110), Ch 4, p168ff.

[119] Kemp, V., Pleasence, P, Balmer, N. J., 'Children, young people and requests for police station legal advice: 25 years on from PACE' (2011). Youth Justice, 11(1), 28; Kemp, et al., 'impact of PACE' (n 109); Kemp, et al., 'Piloting Child First Approaches' (n 106)

cases.[120] Custody's primary purpose as a mechanism for obtaining reliable evidence is frequently entirely frustrated. Often it serves simply to engender in children hatred and distrust of the police, and the wider justice system.[121]

Better legislative protections for children in police custody have long been argued for, without success. Even if the resources and political will for reform were secured, research piloting Child First measures in 5 police forces has concluded that the constraints and intrinsically adversarial nature of police custody mean that better protections alone are unlikely to enable many children, particularly younger children, to meaningfully engage their fair trial rights.[122] A child coming to the attention of the police for suspected criminal behaviour should be a red flag for the authorities as it indicates that the child's needs are not being met and it should enable the engagement of supportive and preventive assistance. At present, criminal justice responses to the youngest children at this early stage can alienate children and their families from the support which is essential for desistance.

Capacity assessment and alternative procedures for children who cannot fairly be tried

The extreme vulnerability of the group of children in contact with the criminal justice process,[123] and their reduced adjudicative competence by virtue of their natural developmental immaturity,[124] makes the identification of those children who may lack the capacity to participate effectively in criminal justice processes particularly important. Yet this identification is haphazard at best.

There is no statutory requirement for a child to be screened for conditions that may challenge their capacity to participate effectively at trial. The issue of capacity to stand trial is discussed at greater length later in this report. As indicated above, the Law Commission has proposed mandatory screening for all under-14s appearing for the first time in court (where no previous assessment had occurred), but this has not been accepted.[125]

In police custody, fitness to detain (FTD) and fitness for interview (FFI) decisions are made by the custody officer, who can seek the input of the healthcare professional, typically a nurse with accident and emergency experience (PACE Code C 12.3), but neither is required to have any child and adolescent specialism or training. Many custody suites have liaison and diversion practitioners who may have mental health and learning disability training, but they tend to be all ages practitioners and are specifically excluded from the FTD/FFI assessment.[126] The remedy for FFI in custody for adults is support from an appropriate adult. Since children are mandatorily required to have an AA, the FFI assessment for children is rarely carefully engaged with by custody officers.[127]

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120 All-Party Parliamentary Group on Children in Police Custody (APPGCPC), 'Making children's rights a reality in police custody' (2025), (available at: https://appgchildrenincustody.org/wp-content/uploads/2025/07/For-website-APPG_CPC_full_report_v.03-final.pdf).

121 Bevan, 'The pains of police custody' (2022) (n 113); APPGCPC (2025) (n 120).

122 Kemp, et al., 'Piloting Child First Approaches' (n 106).

123 McAra, et al., 'lessons from the Scottish experience' (n 75).

124 Lamb, M., Sim, M., 'Developmental Factors Affecting Children in Legal Contexts' (2013). Youth Justice, 13(2), 131; Grisso, T., 'The competence of adolescents as trial defendants' (1997). Psychology, Public Policy, and Law, 3(1), 3; Grisso, et al., 'Juveniles' competence' (n 70).

125 Government response to the Law Commission report on 'Unfitness to Plead', Policy Paper, Recommendation 10.65, p25, (available at: https://assets.publishing.service.gov.uk/media/653fc1c646532b000d67f553/law-commission-response-unfitness-plead.pdf, published 25 October 2023).

126 NHS England and NHS Improvement, 'Liaison and Diversion Standard Service Specification 2019', (available at: https://www.england.nhs.uk/wp-content/uploads/2019/12/national-liaison-and-diversion-service-specification-2019.pdf) p17.

127 Bevan, 'Children in Police Custody' (n 110), p268ff.

If, after interview, the child is referred to youth justice services for an out of court resolution, they may be seen, as part of their prevention and diversion assessment, by a speech and language or child and adolescent mental health worker Child and Adolescent Mental Health Services (CAMHS). Whilst a child who is charged may previously have had an assessment by the youth justice service, this is not a given. Whether a child is assessed for participation difficulties once in the court process will depend substantially on their presentation to their legal representatives (who are currently not required to have child specialist training), and those representatives' ability to access liaison and diversion services at court or obtain legal aid funding for a full assessment.

If a child being prosecuted in the Crown Court is identified as potentially lacking the ability to participate effectively in trial, they will be subject to unfitness to plead provisions.[128] The common law test for unfitness, the 1836 Pritchard test updated in M(John),[129] has been widely criticised as setting too high a threshold for unfitness, for its disproportionate emphasis on intellectual ability, its failure to capture those who are unable to make decisions in a rational way (as required in the Mental Capacity Act 2005 – MCA) and its incomplete alignment with the "effective participation" test under Article 6 of the European Convention on Human Rights.[130] It offers no adjustment to accommodate the particular participatory challenges of children. Additionally, the evidential requirement for two registered medical practitioners,[131] means that acquiring appropriate evidence for a child to be found unfit, which commonly involves psychological assessment, requires additional reports and is thus likely to result in substantial delay.

The trial of facts which follows a finding of unfitness has similarly been criticised as giving rise to unfairness, particularly in relation to issues commonly arising for children: secondary participation, and the operation of the defences of self-defence, accident and mistake.[132] There is no scope for the judge to decline to proceed with the trial of the facts, which would likely be appropriate in many child cases, in part because the disposal options that follow a positive finding of facts are similarly ill-suited to children. These options are limited to a hospital order (detention in a secure hospital, with the potential for a restriction order), a supervision order or an absolute discharge.[133] A hospital order requires a treatable mental illness which will rarely be the issue for children with participation difficulties, and secure beds for children are nationally very limited. Supervision orders are very rarely imposed because of issues identifying suitable supervision and offer no advantage over social welfare approaches outside the criminal justice system.[134] An absolute discharge presents no support for the child, or protection for the community.

The unfitness to plead provisions are not applicable in the Youth Court, where the majority of child defendants are prosecuted. Nor is it appropriate for a child to be committed for trial to engage the Crown Court provisions.[135] The procedures applicable in the Youth Court have been subject to even greater criticism

[128] Criminal Procedure (Insanity) Act 1964 (CP(I)A).

[129] Pritchard (1836) 7 C&P 303, 173 ER 135; M (John) [2003] EWCA Crim 3452, [2003] All ER 575.

[130] SC v United Kingdom (2005) 40 EHRR 10 (App No 60958/00) at [29], see also T v United Kingdom App No 24724/94 and V v United Kingdom App No 24888/94, reported as a joint decision in (2000) 30 EHRR 121. For full discussion see Law Com No 364 (n 14), para 3.11ff.

[131] CP(I)A s4(6) and 8(2).

[132] Law Com No 364 (n 14), para 5.27ff.

[133] CP(I)A s5(2).

[134] Law Com No 364 (n 14) para 6.13ff.

[135] R (on the application of P) v Derby Youth Court [2015] EWHC 573 (Admin).

than the Crown Court provisions and are widely acknowledged to be manifestly inadequate.[136] The only statutory procedure (under s37(3) Mental Health Act 1983 – MHA), is applicable only to those suffering from a mental disorder (within the terms of s.1 MHA 1983) and only in respect of imprisonable offences. The outcomes are limited to a hospital order (rarely suitable for a child, as discussed above) or a guardianship order, which is only available for those aged 16 years and above.

For children with other participatory difficulties the only alternative is for their representative to make an application to stay proceedings on the basis that they are unable to participate effectively in the process.[137] Stays are an exceptional remedy and very rarely granted, especially before evidence in the trial has been heard.[138] In addition, the stay simply ends the proceedings, providing no ongoing support or intervention for the child.

The Crown Prosecution Service (CPS) Youth Court observed, in responding to the Law Commission's report, that full trial or plea is often proceeded with even where a child may have significant participation difficulties,[139] raising significant concerns about the fairness of proceedings for these most vulnerable of child defendants.

The previous government accepted the need for the wholesale reforms of unfitness to plead processes proposed by the Law Commission for both Crown and Youth Court,[140] subject to parliamentary time, but there is currently no timeframe for such legislation. For now, despite the acknowledged prevalence of significant participatory challenges amongst child defendants, the processes currently in place for identifying children who cannot fairly be tried are fundamentally inadequate. This gives rise to a significant risk of an unfair trial or lengthy alternative proceedings that ultimately result in either disposal options that are likely to be unsuitable or ineffective, or a stay that provides no intervention for the child or protection for the public.

Children in the Youth Court

Youth Courts are specialist magistrates' courts where the vast majority of cases concerning children aged 10 to 17 are presided over by specially trained district judges and magistrates.[141] They have greater sentencing powers (up to two years Detention and Training Order) than the adult magistrates' court which, in tandem with the significantly lower sentences that children receive compared to adults and the allocation guidance encouraging the Youth Court to retain jurisdiction for trial even where its sentencing powers may ultimately be insufficient, explains why so few cases are sent to the Crown Court.[142]

Youth Courts are subject to a range of adjustments intended to make them more suitable for children, including the courtroom being closed to the public, automatic reporting restrictions, less formal courtroom layouts, and specialist multi-agency youth justice services teams to address issues of bail, remand and sentence.[143] Despite this, there are

[136] Law Com No 364 (n 14) p229ff; Bevan, M., 'Effective Participation in the Youth Court' (2016). Howard League What is Justice? Working Papers 21/2016, (available at: https://howardleague.org/wp-content/uploads/2016/04/HLWP_21_16.pdf#:~:text=Effective%20participation%20in%20the%20youth%20court%20Miranda%20Bevan,than%20adults%20when%20they%20face%20a%20criminal%20allegation).

[137] R(TP) v West London Youth Court [2005] EWHC 2583 (Admin), [2006] 1 WLR 1219; CPS v P [2007] EWHC 946 (Admin), [2008] 1 WLR 1005.

[138] R(TP) v West London Youth Court (n 137), Scott Baker LJ at [27].

[139] Law Com No 364 (n 14) para 7.46.

[140] Ministry of Justice, Government response to the Law Commission Report 'Unfitness to Plead' (published 1 November 2023), (available at: https://www.gov.uk/government/publications/government-response-to-the-law-commission-report-unfitness-to-plead).

[141] Children and Young Persons Act 1933 Part III.

[142] Sentencing Act 2020, Pt 10, Ch 2.

[143] Children and Young Persons Act 1933 Part III, ss45-49.

still significant issues that face children appearing in the Youth Court.[144] One such issue is the variability of legal representation and consequential adverse impact on children in the justice system.[145] Although it is recognised that child suspects and defendants require lawyers with specialist knowledge and expertise,[146] there is no mandatory requirement for lawyers who represent or prosecute children to undertake specialist training.

In March 2026, the MoJ established an Expert Advisory Group to examine the introduction of mandatory training. The Bar Standards Board (BSB) already recognise that specialist skills, knowledge and attributes are crucial when carrying out this type of work and require barristers to register to practise in the Youth Court. There is no equivalent requirement in the Crown Court or for solicitors or CILEX advocates in the Youth Court to have specialist expertise. These inherent challenges are compounded by system-wide failings. Two key ones are highlighted below.

The first is common to all participants in the criminal justice system but inevitably has the most severe effect upon children; the significant delays between the commission of an alleged offence and a charging decision being made. In the year to March 2025, the average time from offence to charge for a child was 136 days, an increase of 139% on 2015 figures. The overall time from offence to completion in the Youth Court in the year to March 2025 was 230 days, the joint highest on record.[147]

While the Crown Court backlog has received the most public attention in the last 5 years, the delay caused by the time taken for a charging decision is a long-standing problem which affects all cases and has increased significantly over recent years. While the impact upon a potential defendant of any age is significant, this is particularly so in relation to children who not only suffer the anxiety of uncertainty but also grow and mature such as to make the later revisiting of past misdemeanours particularly detrimental. They also frequently cross significant age thresholds, in particular turning 18 and no longer receiving the protections of the Youth Court, the specialist youth justice teams, child-specific sentencing regime, anonymity and the adjusted criminal records regime for children. One day they have these protections and the next day they might be alone.

Secondly, youth justice services suffer the same resourcing issues as the adult probation service, but with greater impact upon the children whose welfare depends upon it. This includes shortages in specialist mental health and wider welfare provision, and inconsistent engagement by children's social workers.[148]

As with every tier of the criminal justice system, but with greater vulnerability to shortfalls, the Youth Court can only function effectively and meet its objectives if sufficient resources are made available to courts, prosecution agencies, defence representatives, the police and those agencies who support children who come

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144 As identified in 'Time to get it right: Enhancing problem-solving in the Youth Court' (2020) ICPR/Birkbeck/Centre for Justice Innovation, (available at: https://justiceinnovation.org/sites/default/files/media/documents/2020-06/time_to_get_it_right_final.pdf) and Michael Sieff Foundation, 'Justice for children with SEND & neurodivergence' (2025), (available at: https://www.michaelsieff-foundation.org.uk/wp-content/uploads/2025/04/SEND-Neurodivergence-and-Youth-Justice-Report-Sieff-Foundation-2025.pdf).

145 Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court Chaired by Lord Carlile of Berriew CBE QC, Sieff Foundation, 2014; Youth Proceedings Advocacy Review, Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEx), 2015; 'It's a Lottery: Legal Representation of Children in the Justice System', 2023, YJLC, Review of the Youth Justice System in England and Wales by Charlie Taylor, 2016.

146 See for example the Lord Chief Justice's observations in R v Grant Murray and Henry, R v McGill, Hewitt and Hewitt [2017] EWCA 1228 and the Chief Magistrates' foreword to the Good Practice Guidance on Certificates for Assigned Advocates in the Youth Court – Youth Justice: Quality of Advocacy Working Group (November 2023).

147 Youth Justice Board (2026) (n 108).

148 CFJI 2020 (n 144), p25ff.

into the system. This has not been the position for many years.

Children in the Crown Court

Although only around 5% of cases involving child defendants are sent to the Crown Court, those cases are the most serious and complex, involving the most vulnerable children who face the most severe punishment. Approximately 50% of children in the Crown Court receive a custodial sentence compared with 3% in the Youth Court.[149]

The formality of the 'adult' Crown Court, the architecture (including secure docks) and legal attire, the number of people present in court, and the publicity that often surrounds cases involving children who appear there, make it extremely difficult for children (and especially younger children) to participate in ways that are meaningful. The protections and adaptations that are designed into the Youth Court, and which are intended to facilitate children's effective participation and protect their welfare, are not automatically extended to the Crown Court. Furthermore, Crown Court judges who sit in cases involving children (and pass sentence), the advocates who represent or prosecute them, and the juries who try them, are exactly the same whether a defendant is a child or an adult, with no additional training required.

In *V v UK* ECHR[150] and *SC v UK* ECHR[151] the European Court of Human Rights (ECtHR) examined the compatibility with Article 6 of the European Convention on Human Rights (ECHR) of Crown Court trials involving very young children (the defendants were, at the time of the trials, all aged 11 years old). In *V v UK*, the European Court held that:

> "The applicant's trial took place over three weeks in public in the Crown Court. Special measures were taken in view of the applicant's young age and to promote his understanding of the proceedings: for example, he had the trial procedure explained to him and was taken to see the courtroom in advance, and the hearing times were shortened so as not to tire the defendants. Nonetheless the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of 11... There is considerable psychiatric evidence relating to the applicant's ability to participate in the proceedings".

The court continued:

> "It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings".

In both *SC* and *V v UK*, the court held that despite adaptations to the proceedings, the children's very young age meant that they were unable to participate effectively in their trials and Article 6(1) ECHR had been breached. Following these landmark decisions, legislation[152] and court practice directions were introduced in England and Wales that set out a framework of special measures and adaptations to trial proceedings that were intended to support children – especially younger children – to participate in Crown Court proceedings.[153]

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149 Youth Justice Board (2026) (n 108).

150 16 December 1999, Application No. 24724/95.

151 15 June 2004, Application No. 60958/00.

152 Youth Justice and Criminal Evidence Act (YJCE) 1999, s33A (use of live link to give evidence). The YJCE Act extends a range of other special measure to vulnerable witnesses but, other than live link (s33A), these do not extend to defendants. However, courts can exercise their inherent powers to extend equivalent rights to vulnerable defendants (including child defendants).

153 Practice Direction Crown Court: Youth Defendants [2001] 1 WLR 659 was introduced following V v UK. For the latest version, see Crim PD 2023 (as amended November 2025) (see especially 6.4).

There is now better understanding of children's speech, language and communication needs, and of the prevalence of the additional communication needs of children accused of serious offending (over 70% of sentenced children are estimated to have a speech, language and communication need).[154] This has led to better support in some Crown Court proceedings, particularly in the most serious and high-profile cases.[155] Yet adults still over-estimate the ability of children to follow, understand and process the complex communication that takes place in the Crown Court and trials will fall into the rhythm of the speed appropriate to an adult defendant in the dock. Too often expert reports (which includes a speech, language and communication assessment) are commissioned only for sentence, or 'ground rules' (eg agreed modes of questioning or prescribed breaks in the proceedings) or are not adhered to due to pressures of time around the trial itself.

So, while mindfulness about the place, capacity, cultural and social awareness of children in the Crown Court is improving, it is a relatively recent change, and adaptations designed to aid understanding and participation are followed in an inconsistent manner. To take one further example, provisions allowing children to be seated in the well of the court (ie the restricted, open area that is situated between the public seating area and the judge) are highly welcomed and are especially important for children with vulnerabilities additional to age, or those who are shyer, slower to speak up and more easily intimidated. However, practical concerns – including around space in the courtroom and security – are often used to justify placing the child in the dock.[156] Applications that a child sits outside the dock often are not made by defence (or prosecution) barristers.

Individual courtrooms vary significantly in size and a trial with multiple defendants usually brings even larger courtrooms towards their maximum capacity. In a particularly serious or complex trial – and these are the types of cases in which children will be sent to the Crown Court – each defendant is often represented by two counsel, namely leading and junior counsel. There may also be an intermediary, a parent, and the child's solicitor in attendance. Furthermore, where children sit in the well of the court this will often give rise to a security presence in the courtroom. Experience shows that where judges are met with these practical challenges, this may result in adaptations not being made rather than such adaptations being considered fundamental to a child's right to a fair trial.

Time is also a constraint. A 10-minute break every 45 minutes is a commonly suggested adaptation for children. While accepted in principle, the additional loss of time in each session of the court day can come to feel undesirable in practice. If children are removed to the cells, a 10-minute break either becomes 20 minutes or offers no real break to the child because it takes so long to move them around the building. There can also be a sense of jury frustration at the level and length of interruptions to the evidence, illustrative of a lack of recognition of the importance of these adaptations. It is therefore rare to find the frequency and length of breaks committed to at the start of a child's trial maintained throughout the trial. In practice then, children are unlikely to maintain concentration sufficient to

[154] See YJB/MOJ 'Assessing the needs of sentenced children' (2021), (available at: https://assets.publishing.service.gov.uk/media/604a3ee28fa8f540179c6ab7/experimental-statistics-assessing-needs-sentenced-children-youth-justice-system-2019-20.pdf).

[155] For example, in the trials of the two children convicted of murdering Brianna Ghey in Warrington and the 15 year old boy convicted of murdering Harvey Willgoose in Sheffield.

[156] Recent guidance now suggests that anyone under the age of 18 within the Crown Court is to be referred to as a child, and any group to be referred to as children. The relevant Judicial College Bench Book has, as of 2025, changed its name from 'Youth Defendants in the Crown Court' to 'Child Defendants in the Crown Court.' The authors suggest this reflects the lack of legal difference between a child and a 'young person,' promotes consistency across other areas of law, avoids conflation with a 'young adult' who is over 18 and under 25 and reinforces the premise that children are not 'mini adult[s].'

follow proceedings, undermining their ability to participate effectively. This will often be even more pronounced in the case of younger children. The adult courts do not serve young children justly in criminal law proceedings.

Children in the Crown Court are also at significant risk of deprivation of liberty during the course of their criminal proceedings. In the year to March 2025, children remanded into custody accounted for 44% of the average child custodial population.[157] However, almost two thirds (62%) of children remanded into custody did not receive a sentence of immediate custody (including 71% of those sentenced in the magistrates' court). Remand is also an area of significant ethnic disproportionality (as indeed is in the case of adults), with Black children accounting for 28%, children of mixed ethnicity 18% and children of Asian and other ethnic groups 16% of the custodial remand population. In some of the most serious cases, concerns about risk and dangerousness intersect with a shortage of appropriate secure accommodation. Where local authorities are unable to identify placements, children may remain in custody for extended periods. Decisions about continued detention are therefore influenced not only by the gravity of the allegation but by the availability of welfare infrastructure. Whilst the current government has pledged to bear down on this issue,[158] even very substantial increases in funding are unlikely to result in a significant change in this position.

The Court of Appeal in *Ahmed & Others*[159] reaffirmed that children are not to be treated as "cut-down versions of adult offenders" and that the children guideline[160] must ordinarily be followed when sentencing adults for offences committed under the age of 18.[161] Similarly, *R v ZA*[162] emphasised the need to engage fully with child-specific sentencing guidelines and other guidance, and for judges to explain clearly the sentence, including why custody is unavoidable,[163] given the evidence on how little children understand during sentencing and how excluded they feel from the process.[164] Together, these authorities have strengthened the sentencing position. They do not, however, resolve the procedural reality that a defendant who 'ages into' the Crown Court loses the environmental and participatory adaptations designed for children.

In summary, there is a growing recognition of the different needs and capacities of children as suspects and defendants, the importance of adjusting processes to accommodate their age and lack of maturity and to facilitate their effective participation. The pre-charge phase lags behind the progress made in the Youth and Crown Court. This is regrettable given that this phase is the gateway to the system and the only experience of the criminal process for the majority of children. Even in the courts, the adjustments that are available are inconsistently applied, variably received by children themselves and liable to fail in ensuring a fair process in which children can meaningfully participate.

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157 Youth Justice Board (2026) (n 108).

158 Ministry of Justice, 'A Modern Youth Justice Service: Foundations Fit for The Future' (2026), (available at: https://www.gov.uk/government/publications/a-modern-youth-justice-service-foundations-fit-for-the-future).

159 [2023] EWCA Crim 281.

160 Sentencing Council, 'Sentencing Children and Young People Definitive Guidance' (2017).

161 §32 concludes "In each case, the issue for the court to resolve will be whether there is good reason to impose on the adult a sentence more severe than he would have been likely to have received if he had been sentenced soon after the offence as a child."

162 [2023] EWCA Crim 596.

163 If the court deems the offence serious enough to pass the custody threshold, it must consider whether a youth rehabilitation order with intensive supervision and surveillance can be imposed instead. If it cannot, the court must explain why.

164 Howard League for Penal Reform, 'Sentencing Children: A Guide for Adults Supporting Children Facing Sentencing in the Criminal Courts' (2018), (available at: https://howardleague.org/wp-content/uploads/2021/04/D_ADULT_Guide.pdf); Hollingsworth, K., 'Kinder Justice: Communicating Legitimacy to Children in the Sentencing Courts' (2024). Social & Legal Studies, 34(4), 532-557.

Section 4

Disproportionality

Disproportionality is a feature of the criminal justice system at every level (save, as is generally acknowledged, in respect of the verdicts of juries,[165] where variations in life experience, and ranges of biases, are understood to be corrected through the sharing of views). However, disproportionality is not only found within the criminal justice system, but is also a wider problem across a range of state institutions.

School exclusion statistics

In the 2023/24 academic year there were 10,900 permanent school exclusions.[166] This is equivalent to 13 permanent exclusions for every 10,000 pupils. The trend over the past 10 years has been a gradual increase in permanent exclusions: in 2012/13 to 2013/14 there were only 6 permanent exclusions for every 10,000 pupils. Boys are more than twice as likely to be permanently excluded as girls.[167]

[165] See for example, Lammy, D., 'The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian, and Minority Ethnic Individuals in the Criminal Justice System' (2017). HMSO, at p 31–32: "Juries are a success story of our justice system. Rigorous analysis shows that, on average, juries – including all-White juries – do not deliver different results for BAME and White defendants. The lesson is that juries are representative of local populations – and must deliberate as a group, leaving no hiding place for bias or discrimination."

[166] All of these figures are taken from the Department for Education, 'Suspensions and permanent exclusions in England: academic year 2023/24', (available at: https://explore-education-statistics.service.gov.uk/find-statistics/suspensions-and-permanent-exclusions-in-england/2023-24).

[167] 0.18 compared to 0.08 (during the 2023/24 academic year).

The permanent exclusion rate for pupils with an education, health and care plan (EHCP) is over three times higher than the permanent exclusion rate for pupils who have no identified special educational needs (SEN).[168] Meanwhile, the permanent exclusion rate for pupils who are receiving SEN support but do not have an EHCP, is over 5 times higher than the permanent exclusion rate for pupils who have no identified SEN.[169]

The permanent exclusion rate for pupils who are of mixed ethnicity (White and Black Caribbean) is two and a half times higher than the average permanent exclusion rate.[170] For Gypsy, Roma and Traveller pupils, the permanent exclusion rate is three and a half times higher than the average permanent exclusion rate.[171] Meanwhile, for pupils of some ethnicities, the permanent exclusion rate is well below the average permanent exclusion rate: this includes Chinese, Indian and Bangladeshi pupils.[172]

The permanent exclusion rate for pupils eligible for free school meals (FSM) is over 5 times higher than the permanent exclusion rate for pupils who are not FSM-eligible.[173]

The peak year groups for school exclusion are Year 9 and Year 10 (ie 13 to 15).[174] In recent years, there has been a considerable increase in permanent exclusions of younger pupils: there was a 22% increase in permanent exclusions of primary school pupils in the 2023/24 academic year when compared the 2022/23 academic year.

Excluded children in the criminal justice system: the 'school-to-prison' pipeline

After controlling for individual, household, and education factors, children who have been suspended or excluded from school were 8 times more likely to have a police record for serious violence than children who have not been suspended or excluded from school.[175]

Compared to their matched controls, children who were permanently excluded were twice as likely to have a conviction or caution for serious violence and over twice as likely to have one for homicide or near-miss homicide within 12 months of their exclusion.[176]

In the report, Exclusion from school and risk of serious violence: a target trial emulation study, Rosie Cornish and Iain Brennan review the UK-specific empirical evidence for a school exclusion-offending relationship.[177] Their article includes the following descriptions of recent studies:

"A joint report by Department for Education and MoJ (2022),[178] using a linkage of national education and justice records, demonstrated that permanent exclusion from school is a relatively common event in the lives of teenagers later convicted of serious violence. Of the 1.63 million pupils in England who were aged 16 years between 2012 and 2015, approximately 1% had been permanently excluded. Of these, 15% had a caution or

168 0.26 compared to 0.08 (during the 2023/24 academic year).

169 0.41 compared to 0.08 (during the 2023/24 academic year).

170 0.33 compared to 0.13 (during the 2023/24 academic year).

171 0.43 compared to 0.13 (during the 2023/24 academic year), although caution is recommended when interpreting the rates for Gypsy/Roma children (and, indeed, Traveller of Irish Heritage children) due to small population sizes.

172 0.01, 0.02 and 0.04 respectively compared to 0.13 (during the 2023/24 academic year).

173 0.33 compared to 0.06 (during the 2023/24 academic year).

174 0.39 and 0.40 respectively compared to an average permanent exclusion rate of 0.13 (during the 2023/24 academic year).

175 Rollings, J., Cornish, R. P., Brennan, I., Teyhan, A., 'Association between school exclusion, suspension, absence, and violent crime' (Youth Endowment Fund, 2025).

176 Cornish, R., Brennan, I., 'Exclusion from School and Risk of Serious Violence: A Target Trial Emulation Study' (2025). British Journal of Criminology, 65(6), 1221-1240.

177 Ibid.

178 Department for Education and Ministry of Justice, 'Education, Children's Social Care and Offending' (2022), (available at: https://assets.publishing.service.gov.uk/media/6227a9b58fa8f526dcf89e17/Education_children_s_social_care_and_offending_descriptive_stats_FINAL.pdf).

conviction for serious violence before age 18, compared to around 1% of those who were not excluded.

"This report (ibid.) also provides information about the timing and ordering of offending and school exclusion. Of children who were convicted or cautioned for serious violence and who were permanently excluded at any point during their time in school, the exclusion preceded the offending by at least 1 month in 62% of cases and followed the offence by at least 1 month in 21% of cases, demonstrating that the association is not universally in one direction…

"A longitudinal study[179] of people in Edinburgh that combined self-report and administrative records found that having been excluded by age 14 was associated with an increased risk (odds ratio 1.5; 95% confidence interval: 1.1–2.3) of having perpetrated serious offending at 15."

Black and minoritised children in the criminal justice system

Black and minoritised children fare worse at every stage of the criminal justice process. It is important to note that minoritised includes Gypsy, Roma and Traveller children who are often overlooked and who deserve a proper engagement strategy so that all children are considered equally. The disparities for Black children must be viewed against a background of discriminatory practices seen within almost all public institutions.

Black children are, and have historically been, treated as adults. This adultification is a practice rooted in discrimination. Black children are seen and treated as less vulnerable, less innocent and more criminally inclined than their White counterparts. The unfair use of stereotypes, cultural or musical expression, and the now discarded 'gangs' matrix has meant that Black children do not benefit from the same allowances, made for the very fact of their childhood, as White children do. The intersectionality between race, class and gender only compounds an already troubling picture.

While there has been progress in some respects, the disparity still exists, and the effects are real and tangible. Recent government data from the Youth Justice Statistics 2024/2025[180] demonstrate a continued contrasting and worrying disparity in outcomes for Black and minoritised children who enter the criminal justice process. This is the same regardless of whether it is at the stop and search phase, or the sentence and rehabilitation phase. Black and minoritised children consistently, through no fault of their own, fare worse. It is also notable that of all minoritised children, Black children are the most adversely impacted overall.

An increase in the MACR would undoubtedly benefit those most disproportionately affected by their contact with the criminal justice process. This includes a reduction in the higher rates of cautions, remands to custody and harsher sentences. A reduction in the criminalisation of Black children, many of whom are very young and impacted by social, mental health and neurodivergence issues, will not only benefit the children affected but wider society as a whole. The evidence shows the need for a fair, balanced, and constructive upward adjustment to the MACR.

Youth justice statistics 2021 to 2025

Black children continue to be over-represented across most stages of the youth justice system. Compared with

[179] McAra, L., McVie, S., 'Negotiated Order: The Groundwork for a Theory of Offending Pathways' (2012). Criminology & Criminal Justice, 12(4), 347–375.
[180] Youth Justice Board (2026) (n 108).

the previous year (2024), there have been increases in volumes involving Black children across several stages of the youth justice system, including arrests, first time entrants and children cautioned or sentenced. This follows decreases that had occurred in previous years across many of these areas.[181]

Mixed ethnicity children continue to be over-represented across several stages of the youth justice system. Compared with the previous year (2004), there was an increase in the proportion of mixed ethnicity children who were cautioned or sentenced. Mixed ethnicity children were also over-represented within the custodial remand population, and over the last 10 years, the proportion of mixed ethnicity children in custody has increased despite overall reductions in custody across all ethnic groups.[182]

When considering what has been termed the 'gateway to the youth justice system', a similar pattern is seen.

Stop and search

In the year ending March 2025 there were around 95,900 stop and searches of children, a decrease of 7% on the previous year. Stop and searches involving children accounted for over 1 in 5 stop and searches where age was known.

Black children were involved in 18% of stop and searches (where ethnicity was known). This was 12% higher than the proportion of Black children aged 10 to 17 in the 2021 population and the only ethnic group to be over-represented compared with the population.[183]

The stop and search of Black children has long been a contentious issue both for policing and for Black children particularly. It is often a Black or minoritised child's first brush with the criminal justice system and often informs their negative approach to and experience of policing more generally. It is widely known by Black children that they are likely to be stopped by the police at a disproportionate rate to their White friends, even though the overwhelming majority of stop and searches of Black children result in no action being taken, the experience is one that is profound and lasting.

The number of stop and searches of children aged 10 to 17 in England and Wales per 120,000 in the years ending March 2021 to 2025 has fluctuated with an overall decrease from 115,599 in March 2021 to 95,897 in March 2025.[184] Black children remain over-represented throughout the relevant period.

As set out above, in the year ending March 2025, Black children were involved in 18% of stop and searches, where mixed ethnicity and Black children were the only ethnic groups to be over-represented compared with the general population. However, the extent of this over-representation has continued to decrease over time.

Compared with the previous year, there was an 11% decrease in the number of stop and searches of Black children. This was the highest decrease by ethnicity and compares with a 7% decrease for stop and searches of Asian children, a 6% decrease for stop and searches of White children and no change for stop and searches of mixed ethnicity children.

181 Ibid (1. Gateway to the youth justice system).
182 Ibid.
183 Ibid.
184 Ibid (1.1 Stop and searches of children aged 10 to 17).

Arrests
In the year ending March 2025, the number of arrests of White children decreased by 3% compared with the previous year, while there were increases for all other ethnic groups, with a 7% increase for arrests of both Black and mixed ethnicity children and an 8% increase in arrests of Asian and other children.[185]

Cautions
In the year ending March 2025, the number of youth cautions issued to Black children increased from around 350 to around 420, representing a 21% increase compared with the previous year. Over the same period, the number issued to White children fell by 10%. As a result, the proportion of youth cautions issued to Black children increased by 3% while the proportion issued to White children decreased by 3%.[186]

First time entrants to the youth justice system

While the number of first-time entrants (FTEs) among White children decreased by 8% compared with the previous year, the number for Black children increased by 8%, the first year-on-year increase for this group in 8 years. The number of child first-time entrants from another ethnic background increased by 66% from the previous year.[187]

Sentencing of children for indictable offences by ethnicity

In the year ending March 2025, the number of occasions on which children were sentenced at court for indictable offences varied by ethnicity, however changes compared with previous periods should be treated with caution due to the large increase in the proportion of sentence occasions where ethnicity was unknown.

In the latest year[188] there were around 3,800 sentencing occasions for children whose ethnicity was unknown, accounting for 42%, and this was the largest group for the second consecutive year.

There were around 3,800 sentencing occasions for White children, accounting for 41% of total sentencing occasions (a slightly lower proportion than unknown due to the number of sentencing occasions being rounded). There were around 730 sentencing occasions for Black children, accounting for 8% of total sentencing occasions and around 430 sentencing occasions for mixed ethnicity children, accounting for 5% of total sentencing occasions. There were around 300 sentencing occasions for Asian children, accounting for 3% of total sentencing occasions and around 120 sentencing occasions for other children, accounting for 1% of total sentencing occasions.

Children on remand in custody
In the latest year, minoritised children continued to be over-represented within the custodial remand population, with Black children accounting for 28% of the remand population, mixed ethnicity children making up 18%, and Asian and other children accounting for 16% of the remand population.[189]

Adultification of Black and minoritised children
The concept of adultification is where notions of innocence and vulnerability are not afforded to certain children, and this is determined by people and institutions who hold power over children and young

[185] Ibid (figure 1.7).
[186] Ibid (figure 1.9).
[187] Ibid (figure 2.1).
[188] Ibid (figure 5.5).
[189] Ibid, figure 6.2.

people. When adultification occurs outside of the home it is always founded within discrimination and bias. There are various contexts of adultification and all relate to a child's personal characteristics, socio-economic influences and lived experiences. Regardless of the context in which adultification takes place, the impact is that children's rights are either diminished or overlooked.[190]

Examples of adultification

We used the term adultification defined by the Office of the Independent Prevent Commissioner (OIPC). It takes place when a child is not treated like a child and a level of understanding and communication beyond the child's developmental age might be expected of them. This includes communicating to or referring to the child as if they were an adult.

An example of adultification would be when a Black child is given a criminal sanction through police intervention where a White child would be excused from the same actions on the grounds of their age. It may also occur when safeguarding and the welfare of the child have not been considered or have not been given appropriate weight.[191]

The justice system too readily treats children from minoritised backgrounds as inherently prone to criminality. This inevitably results in an alienating and traumatic experience for the child, their family and the community they live in. The continued use of stop and search has worsened these experiences. Treating children from minoritised backgrounds as objects of suspicion is not an effective approach to managing and deterring crime.[192] Minoritised girls and young women in the justice system face serious safeguarding issues. Laws and procedures already exist to protect these children, but renewed efforts are necessary to ensure these laws are properly enforced.

Treating children as children

Children must be recognised as, and treated as, children. This includes referring to children in all relevant legislation and policies. The evidence demonstrates the benefits of diverting children from the youth justice system and the corrosive effect of custody for children is universally accepted by the various agencies that form the youth justice system.[193]

The mistreatment of Black and minoritised groups is well documented. Various reports and inquires have examined the problems and made recommendations for improvements. Key among these are:

- The Scarman report[194] followed the Brixton riots in 1981. Lord Scarman chaired an inquiry, resulting in a report, which warned that urgent action was required to prevent racial disadvantage becoming an "endemic, ineradicable disease threatening the very survival of our society".
- The MacPherson report[195] was published after an inquiry into the racially motivated murder of Stephen Lawrence in 1993 and the subsequent police investigation. The inquiry was intended to enable the criminal justice system to learn from what went wrong and it concluded that the investigation into Stephen Lawrence's murder had been "marred by a combination of professional incompetence, institutional racism and a failure of leadership".

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190 Listen Up, 'Pushing Forward: Short Guide Testing Learning in Adultification in Child Safeguarding Practices in England' (2025), (available at: https://listenupresearch.org/wp-content/uploads/2025/06/Pushing-Forward_Short-Guide.pdf).

191 IOPC, 'Bitesize learning: Adultification' (2024).

192 JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System' (2021), p2, (available at: https://cdn.prod.website-files.com/67becde70dae19a9e5ea2bc3/689f556627ddaea14c80512a_JUSTICE-Tackling-Racial-Injustice-Children-and-the-Youth-Justice-System.pdf).

193 Ibid, p 3.

194 Scarman, L., 'The Brixton Disorders 10-12 April 1981: Report of an Inquiry by the Rt. Hon. Lord Scarman' (1981). HMSO, Cmnd. 8427.

195 Macpherson, W., 'The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny' (1999). HMSO, Cm. 4262.

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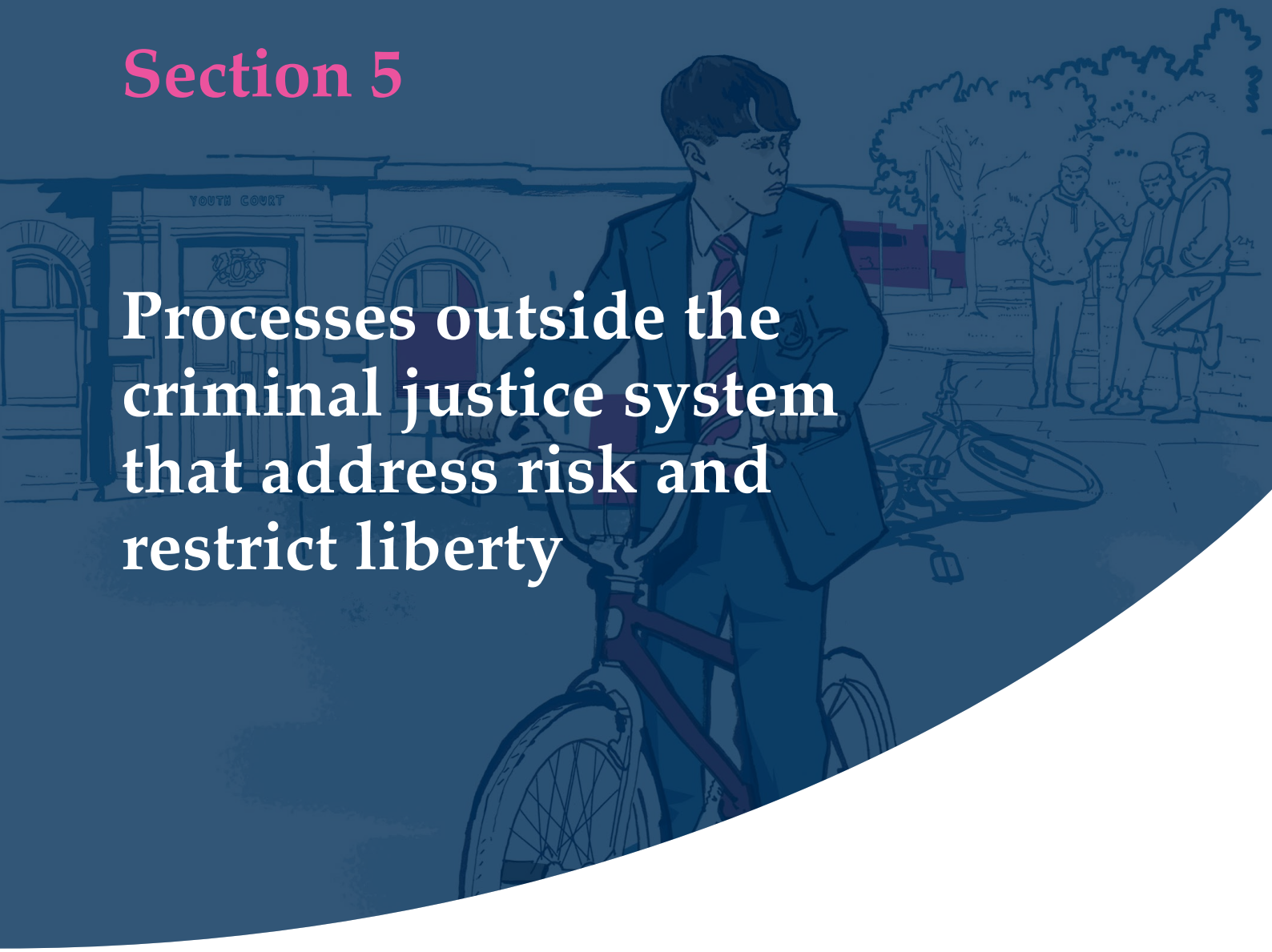
- The Young review[196] was chaired by Baroness Young in 2013. The primary goal of this review was to identify how to improve the negative outcomes experienced by Black and Muslim male offenders between the ages of 18 and 24. The report highlighted concerns around the drivers that bring young adults into the criminal justice system, the disproportionate use of stop and search, and the risk-driven nature of policing.
- The Lammy review[197] was led by David Lammy MP and published in 2017. This review examined the treatment and outcomes of minoritised individuals in the criminal justice system and analysed data that had not previously been made available to scrutiny. It concluded that "Black, Asian, and minoritised individuals still face bias, including overt discrimination, in parts of the justice system".

[196] Young, L., 'The Young Review' (2014). T2A Alliance.

[197] Lammy, D., 'The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian, and Minority Ethnic Individuals in the Criminal Justice System' (2017). HMSO.

Section 5



Processes outside the criminal justice system that address risk and restrict liberty

The criminal justice system is not the only mechanism available to the state to deal with children who are suspected of offending behaviour. The removal of the youngest children from the criminal justice system would not lead to a situation in which the state had no control over the behaviour of children whose conduct placed them and others at risk. While none of the mechanisms discussed below can be considered perfect in its present form, their demerits are largely those which also manifest themselves in the criminal justice system, and they each have the advantage that they avoid the stigmatisation attached to criminalisation.

That such children need help, and not the stigmatisation that criminalisation carries, is a central tenet of the child-focused argument. But from the perspective of society, too, an approach that combines elements that include the rehabilitative, restorative, family, welfare and health support would prove of value in the long run, by reducing the risk of (re)offending.

The state already has powers to deal with the limited number of children engaged in high-risk behaviour who require secure containment, but whose ages fall below the MACR. Civil as well as criminal processes exist to ensure that detention, where necessary, is not arbitrary, lasts for the shortest period necessary, and is imposed in the least restrictive circumstances possible, in keeping with Articles 9, 25 and 37 of the UNCRC.

Where there is a need for detention of a child, there are two main non-criminal frameworks through which detention may

be authorised and managed for children and young people, each involving judicial oversight: MHA 1983 processes and family court processes. We deal with each below, while noting that in most cases deprivation will not be justified by the child's conduct, and that the lesser forms of care or supervision orders are more likely to be appropriate.

Safeguarding falling short of detention or deprivation of liberty

In many cases risk may be managed and reduced through welfare measures, health care (CAMHS), education and other community-based interventions which fall short of detention or deprivation of liberty. In this way, children may be safeguarded, diverted from criminalisation, and supported to reduce their risk to themselves and others.

Duties of local authorities not requiring court orders

Local authorities have a range of duties and powers towards children who are vulnerable and engaging in, or at risk of engaging in, criminal behaviour, including (but not limited to):

- A general duty under s17 CA 1989 to provide services to any "child in need" living in their area, in order to safeguard and promote the welfare of those children
- A duty under s20 CA 1989 to accommodate children under certain circumstances; broadly, this is where a parent is unwilling or unable to care or consents to accommodation
- A power under s20(4) CA 1989 to provide accommodation to a young person aged between 16 and 21 where this would safeguard or promote their welfare
- A duty under s21 CA 1989 to receive and accommodate children or young people removed from home by police using their emergency powers
- General duties under s22 CA 1989, towards children accommodated by them to safeguard and promote the welfare of a child and to make use of services available for children, including a particular duty to promote the child's education and achievement
- Under s47 CA 1989 a duty to investigate where a child living or found in their area has been taken into police protection or where there is reasonable cause to suspect the child is suffering or likely to suffer significant harm, and upon the conclusion of such investigation to take such action as is necessary to safeguard or promote that child's welfare. That action may include issuing public law proceedings pursuant to s31 CA 1989, seeking a supervision or care order. The latter will give the local authority shared but overriding parental responsibility for the child, enabling the local authority to take most decisions for a child or young person, including around accommodation, notwithstanding parental objection

Care and supervision orders made under CA 1989

These orders require application to the family court. A care or supervision order may be made if a child is suffering or likely to suffer significant harm attributable to the care given to the child or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give them or if the child is suffering or likely to suffer significant harm attributable to them being beyond parental control.

Interim orders may be made where there is reasonable cause to believe that this 'threshold' is met for state intervention. Whilst proceedings are pending there is judicial oversight of the detail of the care plan for the child, including over whether removal from parental care is necessary and proportionate. Ultimately, the execution and adjustment of the plan

will be a matter for the local authority post-final orders.

Cases involving children who are engaging in, or at risk of engaging in, criminal behaviour, including cases involving 'gangs', county lines, sexual exploitation, trafficking or modern day slavery, regularly result in the issue of care proceedings and the making of public law orders aimed at promoting the child's welfare, and safeguarding them from harm, which will include their exploitation by others engaging in criminal behaviour or harm arising from their own criminality.

A child's care plan will identify the child's holistic needs (eg for education, placement, physical, emotional and mental health needs, assessment needs and needs vis-à-vis family contact), and such a plan will be subject to regular statutory review.

Intervention may be in the form of interventions with individual children and their family, for instance, through the creation of a safety plan or family agreement, to supervision or support of a family, through to removal of a child and placement with a safe family member or in foster or residential care. This work may be undertaken with the agreement of a family without the issue of proceedings, or under the auspices of proceedings, and subsequently through the operation of any public law order made.

Risk may also be reduced through contextual safeguarding, which considers cohorts of children and the places and spaces they spend their time, seeking to create safety in those contexts (which may include the young person's family or home, peer group, school and neighbourhood). Again, this work may be undertaken with the agreement of a family without the issue of proceedings, or under the auspices of proceedings, and subsequently through the operation of any public law order made.

SENDIST Tribunal and High Court
Separately, local authorities also have specific duties to make special educational provision in respect of some children with special educational needs and/or disability, through the statutory education and health care plan system, overseen by the SENDIST Tribunal via statutory appeals.

Many children with special educational needs, including but not limited to neurodiversity, behavioural difficulties associated with abuse, trauma or attachment or relationship needs, or arising from parental substance misuse during pregnancy will also be subject to safeguarding interventions or family court involvement, including public law orders. Their parents may well themselves have multiple similar vulnerabilities.

Deprivation of liberty orders and secure accommodation orders

The family court has two routes by which a child can be lawfully deprived of their liberty: deprivation of liberty orders (DoLs) and secure accommodation orders (SAOs).

The applicant for both types of order will be the local authority, and the vast majority of orders are made in ongoing care proceedings or where the child is already subject to an interim care order under s38 CA 1989, or following the conclusion of such proceedings and the making of a final care order, where behaviour has escalated. The purpose of such orders is to keep the child safe, and in the case of a SAO, it may be to keep others safe from the child.

The DoLs and SAOs are separate from any criminal investigations or prosecutions. However, it is often the case that children who are made subject to DoLs, or SAOs, will also have police involvement in their lives either before such a placement or during it. It is sometimes the case, for

example, in child exploitation investigations (eg county lines), that a DoL is made in circumstances where a criminal charge or a remand into custody may put that child at further risk. If a SAO is sought in respect of a child under the age of 13, the permission of the Home Secretary must be obtained. There is no age requirement or consideration in terms of DoL applications, but with a younger child, it may be that the steps required to keep them safe are no different to the usual parenting of a child of that age (and case law is evolving as to the circumstances in which court authorisation is required in such cases).

Deprivation of liberty orders

On 4 July 2022 the National DoLs Court was established. The launch was announced by the President of the Family Division, Sir Andrew McFarlane.[198] Its headquarters are at the Royal Courts of Justice. Hearings are conducted remotely and first hearings are often listed at short notice.

A DoL is made pursuant to the inherent jurisdiction of the High Court. In family cases, the applicant local authority must persuade the court that permission should be granted pursuant to s.100 of the CA 1989 to invoke the inherent jurisdiction. The test applied is that an order is being sought that is not otherwise provided for by the CA 1989. DoLs are permissive orders and must only be used when the child's welfare and safety require it.

Common restrictions relate to restraint, locking of doors and supervision. A care order empowers a local authority to restrict access to a mobile telephone, since the restriction of access to a mobile telephone is covered by s.33 CA 1989 and is treated as an exercise of parental responsibility. This enables a local authority who holds parental responsibility pursuant to a care order, and on consultation with the parents, to prescribe when the child can have access to a phone and how it may be monitored.

It is recognised that the deprivation of any child's liberty is one of the most draconian powers available to the family court. The number of DoL applications was not published in administrative data until July 2023 by the MoJ, but research by the Nuffield Family Justice Observatory (NFJO has highlighted the increasing use of DoLs over the past 7 years. Data from Children and Family Court Advisory and Support Service (Cafcass) showed that in 2017/18, there were around 100 applications. In 2024, 1,280 children were subject to applications to deprive them of their liberty; a 7-fold increase.[199]

In light of the increase in the use of DoLs for children, the MoJ began the compilation of DoL statistics two years ago. The most recent data (December 2025) shows a total of 381 applications in the quarter from July to September 2025, a total of 1,059 applications in the year to the date of this report, a 7-fold increase compared to Cafcass statistics for 2017 to 2018. The July to September 2025 data showed that 86% of applications were for children over the age of 13, and that there had been a sharp increase in applications for younger children (0 to 12), which saw a 52% increase from 33 in April to June 2025 to 50 in the quarter from July to September 2025. Patterns of gender remained similar to previous quarters; there were slightly more girls (51%) than boys (48%) subject to deprivation of liberty applications.[200]

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198 He retired in 2026 and was succeeded by the Rt Hon Lord Justice Stephen Cobb.

199 Nuffield Family Justice Observatory, 'Two years since Deprivation of Liberty orders tracked by the Ministry of Justice, 2,606 children have been subject to Deprivation of Liberty applications' (25 September 2025), (available at: https://www.nuffieldfjo.org.uk/news/two-years-since-deprivation-of-liberty-orders-tracked-by-the-ministry-of-justice-2606-children-have-been-subject-to-deprivation-of-liberty-applications).

200 Nuffield Family Justice Observatory, 'New data shows rise in the number of children aged 12 and under deprived of their liberty under the authority of the High Court', 18 December 2025', (available at: https://www.nuffieldfjo.org.uk/news/data-released-by-the-ministry-of-justice-shows-rise-in-number-of-children-under-12-deprived-of-their-liberty).

Secure accommodation orders

SAOs seem, anecdotally, to have fallen into abeyance with the development of case law pertaining to DoLs, the lack of sufficient places in 'secure accommodation' that satisfy the statutory requirements, and possibly the broader shortage of suitable accommodation for looked after children. The legal framework for secure accommodation is set out within section 25 of the CA 1989, which requires a court to determine whether it is satisfied that the child in respect of whom the order is sought meets the following criteria:

> (a) "that
> i. he has a history of absconding and is likely to abscond from any other description of accommodation; and
> ii. if he absconds, he is likely to suffer significant harm or
> (b) That if he is kept in any other description of accommodation he is likely to injure himself or other persons"

Lord Justice Baker in *Re B (Secure Accommodation)*[201] set out a list of questions to be asked in determining whether the relevant criteria under Sections 25(1) and (3 are satisfied. Those questions require a court to consider not only whether the statutory test is met, but also whether the proposed order safeguards and promotes the child's welfare, and whether it is proportionate (ie do the benefits of the proposed placement outweigh the infringement of rights?).

It will be obvious that there is likely to be an overlap between children suspected of criminal offending and those in respect of whom applications for SAOs are made. However, the decision of the local authority to apply for an order under s25 CA 1989, and the decision of the court that any such order should be made, are required to be justified as being the best option to meet the needs of the child, rather than for the purposes of preventing criminality. It is recognised, however, that one of the benefits of such orders is likely to be the reduction of a risk of offending, by the removal from the child of circumstances in which such offending may be more likely than otherwise.

Concerns raised over the use of secure accommodation orders and deprivation of liberty orders

The NFJO identifies the following learning in respect of this cohort of children:

- There is a lack of appropriate accommodation, and the workforce is not equipped to provide high quality, trauma-informed care
- Children rarely present with a single 'problem' – but their cases are often managed by single agencies, or several agencies working as separate entities
- Services are fragmented and, as a result, professionals rarely have the full story or detailed understanding of a child's individual needs or circumstances
- It becomes unclear who has overall responsibility – and children risk falling between the gaps or being placed on pathways managed by single agencies that fail to meet their multiple, overlapping needs
- Disputes between agencies about a child's care are not uncommon, and there is a system-wide focus on managing risk at the expense of children's other needs. Little attention is paid to the long-term, damaging consequences of subjecting children to restraint and living in isolation for long periods of time, or to the unsustainable costs of this approach[202]

[201] [2019] EWCA Civ 2025.

[202] Nuffield Family Justice Observatory, 'New data shows rise in the number of children aged 12 and under deprived of their liberty under the authority of the High Court', 18 December 2025 (available at: https://www.nuffieldfjo.org.uk/news/data-released-by-the-ministry-of-justice-shows-rise-in-number-of-children-under-12-deprived-of-their-liberty).

The NFJO has also stated that:

"Deprivation of liberty orders authorise the deprivation of children in what are often unsuitable, unregulated settings, used to keep them safe in the absence of other options (such as a secure children's home) and are driven by short-term crisis planning. The NFJO has highlighted how children on DoLs may have intersecting needs related to mental health concerns, self-harm, having a disability and/or experiences of criminal and sexual exploitation. Many of these children will have long and traumatic histories and involvement with services; however, it is often the combined impact of these multiple and intersecting needs – rather than the impact or 'severity' of any individual risk factor – that increases a child's vulnerability."[203]

A letter circulated by Mr Justice Henke DBE, the Family Presiding Judge for the South Eastern Circuit (South), sets out a number of matters for DoL judges to consider when determining an application for a DoL in relation to an unregulated placement.[204] The need to issue such guidance perhaps tells its own story about the problems in this area, given that the list includes the following matters that judges are enjoined to consider:

- Evidence that planning permission has been obtained for the premise to operate as a children's home
- Evidence of the placement provider actively progressing Ofsted registration
- Requiring the children's guardian to visit the placement itself and thereafter considering the evidence of their observations upon it
- Requiring the local authority to establish a regular scheme of visits to the placement, preferably weekly although individual circumstances may require a different regime of visiting
- Requiring a senior member of the local authority leadership team to have regular oversight of the placement given its unregulated status
- Requiring the local authority to commit to regular communication with the child who is to be placed and to ensure that they visit that child (in person or virtually) at least once a week, and that the child is seen during those visits and spoken to alone (in the absence of any member of staff)

A child who becomes looked after by a local authority as a result of safeguarding concerns is, regrettably, at risk of placement disruption and, consequently, educational disruption (a particular difficulty for SEN children), and as a result of the shortage of suitable placements, supporting important relationships with family may be challenging due to distance. Typically, CAMHS will decline to provide services with a child whilst care proceedings are ongoing or where their longer-term placement plan is unclear, leaving children especially disconnected and vulnerable.

A SAO or a DoL may (at least temporarily) reduce the risk of criminality. However, without appropriate support and services to meet the child's holistic needs (eg around relationships, trauma or mental health, neurodivergence, therapeutic, or education), these orders may not be successful in the long term, particularly without a proper focus on the overall wellbeing and needs of a child. Placements that merely contain children without meeting their broader needs and restriction of liberty or secure orders, may not reduce the risks that children will engage

[203] Nuffield Family Justice Observatory, 'Two years since Deprivation of Liberty orders tracked by the Ministry of Justice, 2,606 children have been subject to Deprivation of Liberty applications', 25 September 2025 (available at: https://www.nuffieldfjo.org.uk/news/two-years-since-deprivation-of-liberty-orders-tracked-by-the-ministry-of-justice-2606-children-have-been-subject-to-deprivation-of-liberty-applications)

[204] Nuffield Family Justice Observatory, 'Deprivation of Liberty orders' (n 200).'

in or become the victims of criminality. Appropriate resourcing of these broader civil and family law detention orders is key.

Ethnicity

In 2023, the NFJO considered the issue of the ethnicity of children in care proceedings in England and Wales.[205] They highlighted significant difficulties with reliable data and consequent difficulties in interpreting the patterns that are apparent. However, the limited data available suggests that Black and Asian children, on average, receive legal orders that we class as 'less interventionist' than their White counterparts.

Black and Asian children are, on average, older upon entering care proceedings for the first time. They live in more deprived local authority areas, although the deprivation levels in the local neighbourhoods they live in are similar to those of White children and children from mixed or multiple ethnic groups. And their cases take longer to conclude. It is also the case that a higher proportion of Black and Asian children have a SAO or DoL than White and mixed or multiple ethnicity children.

Mental Health Act processes

Civil law protections for those subject to detention via, for example, the MHA 1983 come in the form of (automatic and/or requested) Managers' Hearings and Mental Health Review Tribunals, as well as independent powers vested in the clinical team to discharge patients from hospital when they have recovered from their illness and are safe enough to live more independently. It is crucial, therefore, that similar safeguards are made available to those children who might be detained via other legal powers if the MACR is raised. Being mindful that the older children get, the more autonomous they become, making the protection of their rights increasingly important.

In summary, there exists a range of mechanisms open to the state to deal with children exhibiting behaviour which justifies intervention. Most such children can be managed, supported and rehabilitated without recourse to detention.

Containment in unsuitable placements can increase distress and isolation and increase the risks of harm to a child, which may not decrease their risk of criminality. Indeed, it could be counter-productive. However, detention, if carried out in an appropriate setting, with appropriate support to meet a child's holistic needs, can support their diversion from and/or cessation of criminality, and reduce their risk of criminal exploitation.

Success requires access to appropriate and timely placements and services from a range of stakeholders, and coordination between those services,[206] which is not always possible. The increase in the use of DoLs may in some cases indicate a failure in provision or coordination of appropriate services and/or placements at a point when it is most likely to be effective. However, even against the background of the criticisms of these regimes that has been identified above, they carry the benefit that those subject to such orders do not bear the stigmatisation of a criminal conviction, as opposed to criminalisation of young children.

The point is not that such orders as currently determined are necessarily proper alternatives to criminal proceedings; arguably they are not because the processes by which they are made do not include the due process safeguards.

[205] Ibid.

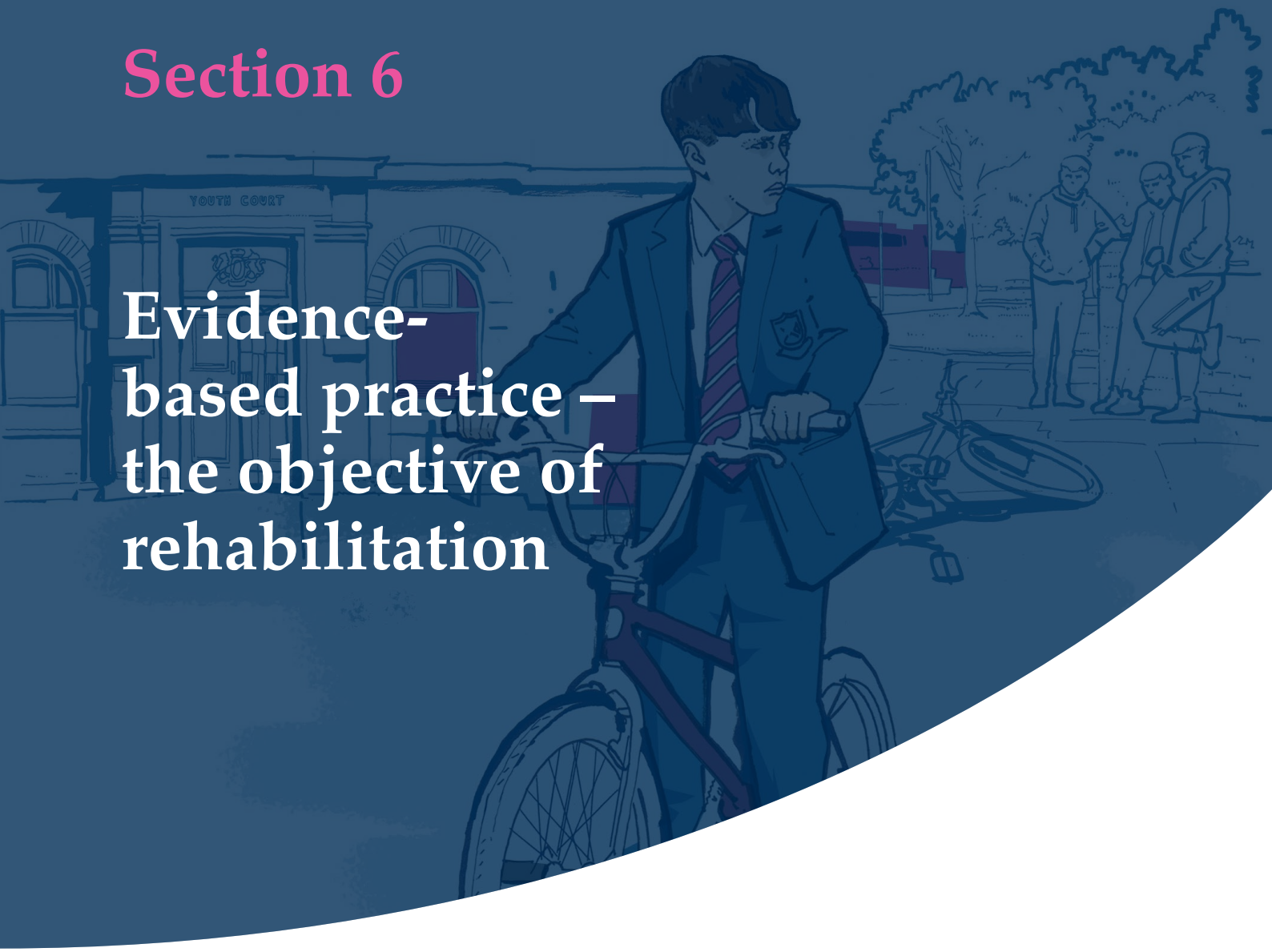
[206] Lambie, I., 'The prison pipeline: Why early intervention is the best solution' (2022). International Journal of Birth and Parent Education, 9(3).

Section 5

We have drawn attention to the protective orders available to the family court because there is some basis for suggesting that they may, if properly used and adequately resourced, be a route by which putative offending behaviour is calmed as an incidental, but predictable, benefit to the primary purpose to which the order is directed. It is important to acknowledge that there are anecdotal reports that the current inadequate arrangements, together with the emotional impact of confinement and isolation, may be such that risk-taking behaviour is exacerbated.

A consequence of a properly resourced and regulated system of secure accommodation, if it is developed, should be a diversionary effect.

Section 6



Evidence-based practice – the objective of rehabilitation

There is a wealth of research that suggests that raising the MACR leads to better outcomes for vulnerable children and reduces the likelihood of re-offending. These studies show that the criminal justice system is, in and of itself, criminogenic. That is, it increases the likelihood that children will re-offend.

Why? Because 'system contact' (ie being arrested, charged, prosecuted and/or punished) increases stigma, and impacts negatively on children's developing identities, their attachment to and engagement in education, their peer relationships, their employment opportunities, their mental and emotional health, and their social integration.

Increasing the MACR removes, reduces, or delays a child's exposure to criminal justice processes and the associated harms, and will lead to better outcomes for children including reducing the likelihood of re-offending. As the Law Commission noted back in 2016 in its report Unfitness to plead:[207]

"Young people convicted between the ages of 10 to 13 are likely to become the most persistent offenders, with longer and more prolific careers. Quite apart from the moral obligation to respond to their vulnerability, intervening at an early stage to assist these younger defendants presents a cost saving in the long term."

[207] Law Com No 364 (n 14), at 7-108.

Section 6

The evidence of the impact of 'system contact' on re-offending

Research from a number of jurisdictions over the past 25 years demonstrates that early criminal justice involvement changes a child's developmental trajectory and increases the likelihood of offending. The most relevant study for England and Wales, given its jurisdictional proximity, is the Edinburgh study of youth transitions. This longitudinal study of 4,300 young people, led by McAra and McVie (2007),[208] confirms that the strongest predictor of continued offending is not the child's behaviour but the timing and depth of justice system contact; that is, the age at which they enter and how far through the system they progress (ie from initial arrest to, at the deepest level, custody). Their analysis reveals that system involvement acts as "a catalyst for further offending," largely through stigma and labelling, reduced opportunities, and altered peer networks.

The findings in the Edinburgh study are consistent with research from other jurisdictions. Bernburg and Krohn (2003),[209] for example, point to similar reasons why contact with the criminal justice system has a criminogenic impact. Their longitudinal analysis shows that formal intervention increases the likelihood of criminal offending into early adulthood because it reshapes identity and increases exposure to others with criminal identities, and that official labelling reduces children's educational attainment and employment.[210] Notably, even minor justice contact produces measurable disruption. A systematic review by Petrosino et al (2013) which spanned jurisdictions also found that formal processing increases, rather than decreases, offending.[211] There is thus very strong evidence that criminal justice involvement in and of itself increases offending. That is, it is a causal factor and not only a correlative.[212]

Given this, when policies and practice adopt a punitive approach that focuses on 'responsibilising' children, as was the case in 1998 when the then Labour government proposed the abolition of the presumption of *doli incapax* for children aged 10 to 14, it is likely to lead to more, not fewer, children being drawn into the criminal justice system, leading to a vicious circle of re-offending.[213]

Systems that reduce the number of children brought into the criminal justice system, through diversion and raising the MACR, are therefore less likely to result in an increase in crime amongst this cohort. This evidence base is central to the Child First policy agenda that now dominates youth justice in England and Wales.

The term Child First was first coined by Case and Haines[214] and it is the prevailing narrative underlying policy, standards and guidance developed across the youth justice system. The Child First framework has shaped youth justice research and policy over (at least) the past 5 years and governs the work of the Youth Justice Board and youth justice services in

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[208] McAra, et al., 'Youth crime and justice' (n 107), 179-209.

[209] Bernburg, J. G., Krohn, M. D., 'Labelling, Life Changes and Adult Crime: The direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood' (2003). Criminology, 41(4), 1287-1318.

[210] Ibid. See also Gatti, U., Tremblay, R.E., Vitaro, F., 'Iatrogenic effect of juvenile justice' (2009). Journal of Child Psychology and Psychiatry, 50(8), 991-998.

[211] Petrosino, A., Turpin-Petrosino, C., Guckenburg, S., 'Formal System Processing of Juveniles: Effects on Delinquency' (2013). No. 9 of Crime Prevention Research Review. Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services.

[212] McAra, et al., 'Youth crime and justice' (n 107), 211–230 and (2023): 'Overall, therefore, these findings from the Edinburgh Study cohort suggest that formal agency contact, rather than offending behaviour, during early adolescence played the defining role in increasing the probability of conviction amongst those who were convicted at an early age' (2023, p 403).

[213] McAra, et al., 'lessons from the Scottish experience' (n 75).

[214] See e.g. Case, S., Haines, K., 'Children First, Offenders Second: Positive Promotion: Reframing the Prevention Debate' (2015). Youth Justice: An International Journal, 15(3), 226-239.

England and Wales,[215] police forces,[216] the CPS[217] and the secure estate for children.[218] As noted, it captures the evidence,[219] developed over many years, of what is known to increase the likelihood of children's rehabilitation and reduce their (re-)offending.[220]

A Child First approach is articulated through its 4 tenets:

- Seeing children as children (prioritise best interest and recognise their particular needs, capacities, rights and potential)
- Developing children's pro-social identities for positive outcomes (promote children's individual strengths and capacities to develop pro-social identity for desistence)
- Collaborating with children (encouraging active participation, engagement and wider social inclusion)
- Diverting from stigma (promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention)

The evidence that underpins these tenets, and upon which the Youth Justice Board place great reliance, is based on the evidence outlined above, and highlights in particular the benefits – including in terms of cost-effectiveness – of diversion programmes (and thus the minimising of stigmatisation or labelling effects which can lead to further anti-social and criminal behaviours) over criminalisation.[221]

There is therefore an extremely robust evidence base – one relied on by (*inter alia*) the Youth Justice Board – that bringing children into the criminal justice system is more likely to result in further offending, and that diversionary programmes are therefore more beneficial both to the individual child, to the public, and therefore, in terms of cost-effectiveness. While the current police-operated scheme of out-of-court resolutions is plainly improvable,[222] it is a sensible starting point from which an enhanced diversionary model should be helped to grow.

The relationship between the evidence on system contact and the minimum age of criminal responsibility

The empirical imperative

The research findings set out above, which demonstrate the relationship between system contact and re-offending, should inform the setting of the MACR. In Scotland, as noted elsewhere in this report, the MACR has recently been raised from 8 to 12 and the evidence on the harms of criminalisation were a major driver in that reform. The compelling findings from McAra and McVie's Edinburgh transitions study showed that early contact with the criminal justice system was the strongest predictor of persistent offending were particularly persuasive.[223] Crucially, the

[215] See e.g. Youth Justice Board, Strategic Plan 2024-27: the YJB's strategic objectives, (available at: https://www.gov.uk/government/news/strategic-plan-2024-27-the-yjbs-strategic-objectives).

[216] For example, see the Metropolitan Police Service Children Strategy, (available at: https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/mcs/met-children-strategy/).

[217] See Children as Suspects and Defendants CPS Prosecution Guidance, (available at: https://www.cps.gov.uk/prosecution-guidance/children-suspects-and-defendants).

[218] See e.g. Youth Justice Board, 'Inside the Oasis Restore secure school' 4 October 2024, (available at: https://www.gov.uk/government/news/inside-the-oasis-restore-secure-school).

[219] Case, S. Browning, A., 'Child First Justice: The research evidence-base' (2021). Loughborough University.

[220] The Youth Justice Resource Hub, 'A guide to Child First', (available at: https://yjresourcehub.uk/wp-content/uploads/media/Child_First_Overview_and_Guide_April_2022_YJB.pdf).

[221] McAra, L., McVie, S., 'Causes and Impacts of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35' (2022). The University of Edinburgh.

[222] See in this regard the October 2025 report of HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire and Rescue Services: The effectiveness of diverting children from the criminal justice system: meeting needs, ensuring safety, and preventing reoffending – HM Inspectorate of Probation.

[223] Ibid.

increase in the MACR in Scotland to 12 has not led to an increase in youth crime. The increase in the MACR has also led to improved outcomes for children because of increased coordination between education, health services and social services helping to prevent further offending through diversion to more welfare-based and rights-consistent support. Conversely, a Danish study from 2025 shows that lowering the MACR (in Denmark) has had a negative impact upon rates of juvenile crime and engagement in education.[224]

However, whilst the evidence was used to support an increase to the age of 12 in Scotland, McAra and McVie argue that the findings from the Edinburgh study specifically support an increase of the MACR to 15 years. They identify three sets of findings that support such an increase. First, the relationship between vulnerability and offending (or "needs" and "deeds" as they put it) continues into and intensifies in the early teenage years. Second, most children who enter the criminal justice system for the first time are already over the age of 12. Therefore, the protection against the criminogenic effects afforded by an increased MACR would be felt only by a small number of children. In the year to March 2025, there were just 233 first-time entrants to the criminal justice system aged between 10 and 12, only one of whom received a sentence of immediate custody.[225]

Finally, minimal criminal justice intervention during early teenage years "is likely to support the natural process of desistence from offending, whereas formal system contact acts to precipitate rather than diminish, the development of criminal careers". Therefore, there is, as McAra and McVie note, a very strong "empirical imperative" [226] for reform of the MACR to (at least) 15, rather than the more conservative increase in Scotland (and that proposed in various and unsuccessful private members' bills in England and Wales) to 12 years.

The ethical imperative

There is a strong "ethical imperative" for reform.[227] That is, that increasing the MACR is a fairer and more just approach to children whose involvement in offending is often the result of social disadvantage (including poverty), victimisation, trauma, or other vulnerabilities that are closely associated with involvement in the criminal justice system.[228] These issues have already been covered above, including in sections 2 and 4, but can be brought back into focus.

Studies consistently show that the children most likely to be criminalised are those with the greatest needs. For example, McAra and McVie (2010) find that children experiencing poverty, exclusion, school disengagement and prior victimisation are more likely to be brought into the criminal justice system.[229] Children who are neurodivergent and/or who have communication difficulties or a learning disability are also over-represented.[230] Hughes et al (2020)[231] also point to evidence of wider determinants including poor mental health and trauma, and how they are amplified by social marginalisation and inequality. They

[224] Damm, A.P., Larsen, B.Ø., Nielsen, H.S., et al., 'Lowering the Minimum Age of Criminal Responsibility: Consequences for Juvenile Crime' (2025) Journal of Quantitative Criminology, 41, 495–521.

[225] Youth Justice Board, MoJ Youth Justice Statistics: 2024 to 2025 supplementary tables, (available at: https://www.gov.uk/government/statistics/youth-justice-statistics-2024-to-2025).

[226] McAra, et al., 'lessons from the Scottish experience' (n 75)

[227] Ibid., p 386.

[228] Ibid.

[229] In the Australian context, see the evidence cited by Ransley, J., McGee, T. R., Leilani, R., et al., 'A review of arguments for raising the age of criminal responsibility' (2024). Current Issues in Criminal Justice, 36(4), 372.

[230] As already identified above, in section 2.

[231] Hughes, N., Ungar, M., Fagan, A., et al., 'Health determinants of adolescent criminalisation' (2020). The Lancet Child & Adolescent Health, 4(2), 151-162.

suggest that young people are made susceptible to criminal behaviour and criminalisation by a combination of health difficulties and social disadvantages. As explained in section 4, it is also very well evidenced that Black and minoritised children and care-experienced children are over-represented in the criminal justice system. Therefore, given the evidence on the relationship between system contact and re-offending, we can see that criminalisation functions to reinforce inequalities rather than addressing the causes of harmful behaviour. As such, the solution to offending by children is not fixing them with criminal responsibility, but making improvements to the environments within which they live.[232]

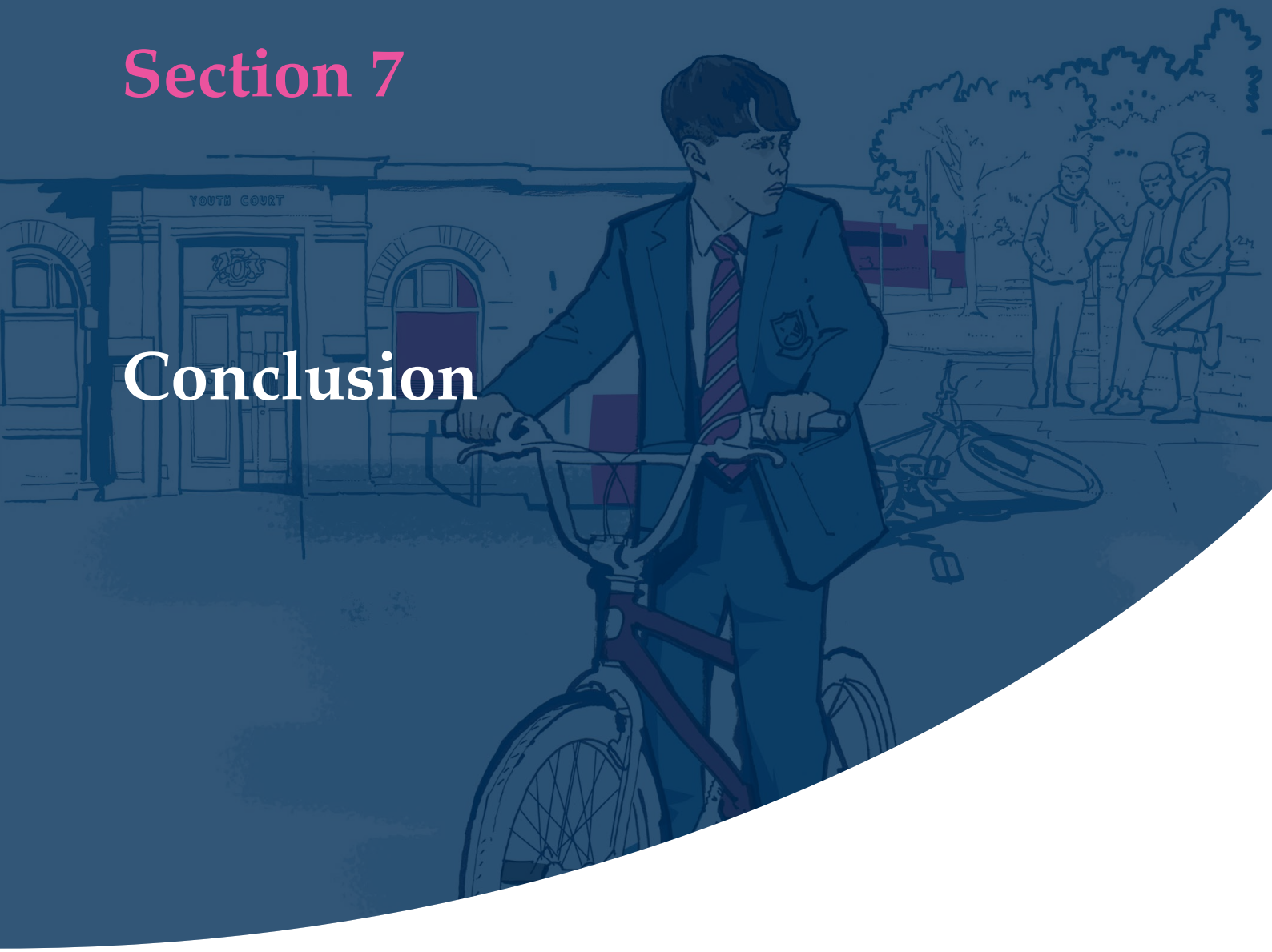
These circumstances are often beyond the child's own control, particularly for younger children, and it is no surprise therefore that responding to the child's offending, as we do in England and Wales from the age of 10, with a system of punishment that is premised on the idea of individual responsibility is unlikely to reduce re-offending. Indeed, as we have seen, it increases it. Instead, as McAra and McVie argue, providing welfare-based and trauma-informed responses would "considerably reduce the long-term damage caused by the justice system contact."

There is an additional ethical argument to be made: that clinical and empirical evidence increasingly reveals that children, particularly aged 10 to 14, lack adjudicative competence and are unable meaningfully to exercise the rights which are essential to the fairness of the criminal process. In particular, whatever adjustments are made to the procedures, children routinely struggle to participate effectively in justice processes, rendering their conviction and punishment fundamentally unfair.

In summary, the evidence overwhelmingly supports the conclusion that early criminal justice involvement undermines public safety and has adverse outcomes for the child by increasing future offending and perpetuating and punishing underlying vulnerabilities and disadvantage.

[232] See also Billingham, L., Irwin-Rogers, K., 'Against Youth Violence: A Social Harm Perspective' (2022). Bristol University Press.

Section 7



Conclusion

Drawing this report together, the argument for raising the minimum age of criminal responsibility is clearly established on the evidence.

Children who are presently subject to criminalisation at a young age are among the most vulnerable and disadvantaged members of society. They are substantially more likely to present with neuro-developmental and mental health difficulties than their peers, and to have been excluded from school. At a crucial time in their adolescent development, when the plasticity of the brain renders it particularly sensitive to experience and environmental input, what is required is support and appropriate intervention for younger children to protect the public and prevent further harm.

We recognise that victims of crime and those who are harmed, who are themselves often children, will also be impacted by raising the minimum age of criminal responsibility. The proposed reform is intended to reduce the incidence of future crimes by focusing the state's attention on appropriate interventions by which their offending risk may be minimised. Such interventions must also be accompanied by support for those who are harmed.

Neither the children concerned, nor society as a whole, benefit from criminalisation. The child is stigmatised; the idea that they are a 'young offender' becomes a corrosive part of their still-developing identity; and their risk of reoffending is not optimally addressed. The impact of criminalisation on an

already vulnerable cohort is particularly harmful, as it entrenches detachment from society and hinders the processes of social reintegration, which can help prevent recidivism.

Conversely, the benefits of diversionary programmes can be of enhanced value at the stage of adolescence, when a child's identity is forming, and positive social networks built through a rehabilitative framework can benefit both the child and society as a whole in reducing the risk of re-offending. If necessary, there are also existing alternative mechanisms to restrict the liberty of a child in order to protect the public.

At present, a relatively small number of younger children (ie those under 14) are processed in the criminal courts, and a vanishingly small number of those are sentenced to custodial terms upon conviction. For this cohort, the criminal justice system continues to experience real difficulties in dealing with them fairly despite ongoing improvements.

Given the developmental stage of younger children and the prevalence of additional communication needs, there are real challenges in ensuring that they can understand and participate effectively in criminal proceedings. Furthermore, both at the point of entry and once within the criminal justice system, Black and minoritised children continue to receive disproportionately adverse treatment, including through adultification, which entrenches and exacerbates pre-existing inequality.

Accordingly, the case has long since been made that criminalisation of younger children is not justified at the level of principle and counter-productive in practice – both to the children involved and society as a whole. It is also unnecessary, in light of available alternative means by which the risk of future offending behaviour and public safety can be addressed.

In particular, it is clear from the research (summarised in section 6) that a strengthened – and properly resourced – approach to diversion, perhaps modelled on the existing out of court resolutions scheme, would have the potential to improve outcomes for society, through the reduction of offending, one child at a time.

Our considered conclusion is that the MACR should be raised to 14. The age of 14 would align the law in England and Wales with the United Nations guidance and the international norm. It would also be more commensurate with the scientific understanding of brain development.

We have considered whether there should be an exception, such that the MACR remains lower than 14 for certain very serious crimes, and we caution against such an exception.

We recommend that a bright-line approach has the advantage of clarity – for police, prosecutors, courts, children and families. There would be considerable difficulties in determining, particularly at the early stages of criminal proceedings, whether or not a child would be liable for an offence that fell within any such exception, particularly if liability would change depending on assessments of *mens rea.*

Furthermore, often the difference between a very serious and a less serious offence, when committed by children, is serendipity (or lack of) in relation to the outcome, rather than the child's premeditated or planned intention. Therefore, there is no scientific foundation for prosecuting one child but not another.

In relation to the fairness of an exception, the United Nations advises against

stratification by seriousness of offence because it can result in perverse outcomes that may reflect the disproportionality elsewhere in the system. Case by case assessments risk inconsistency and unfairness.

A bright-line also reflects and adopts the established approach, developed though the Sentencing Children and Young People Guidelines[233] of focusing upon the child,[234] rather than the offence, which can be read across when considering the MACR.

In conclusion, we recommend that the MACR be raised. This reform is long overdue. We agree with the United Nations, the Child Rights International Network (CRIN), and with the view that the MACR should be a bright-line of 14.

MACR at 14 provides a clear and developmentally informed threshold below which children are not rendered criminally culpable. Children under 14 who commit harmful acts can still receive intervention through child protection, education, welfare, mental health and family support without being criminalised.

A higher MACR allows greater scope for diversion and rehabilitation, better serving prevention of a younger child becoming the older child who commits serious crime and, by doing so, protects those who would be the victims of the future.

[233] Sentencing Council, 'Sentencing children and young people' (2017). Effective from 1 June 2017, (available at: https://sentencingcouncil.org.uk/guidelines/sentencing-children-and-young-people/)

[234] Ibid.,

Working group members

Co-Chair: Kirsty Brimelow KC
Kirsty is elected Chair of the Bar Council of England and Wales (2026). She is the former Chair of the Criminal Bar Association (2021–2023) and former Chair of the Bar Human Rights Committee of England and Wales (2012–2018).

Kirsty was appointed Queen's Counsel (King's Counsel) in 2011. She practises in criminal, international and public law from Doughty Street Chambers. She is an accredited mediator. Kirsty has held consultancies to UNICEF Nigeria, UNICEF Myanmar and Coram Children's Legal Centre, London and Organisation for Security and Co-operation in Europe' before (OSCE). She has led training on international child rights across multiple jurisdictions, including India, over the last two decades. She has acted for child defendants in conflict with the law, including in the criminal courts in England and Wales. Kirsty led the submission of Female Genital Mutilation Protection Orders and advised government on legislation. The orders passed into the Serious Crime Act 2015.

Kirsty is the author of Child Rights Manuals. She has given expert evidence on sexual offences to Group of Experts on Action against Violence against Women and Domestic Violence and successfully advised the Danish Ministry in changing their sexual offences law to consent based rape law. Kirsty is a Bencher of Gray's Inn. She sits as a Recorder and as a Deputy High Court Judge. Kirsty is a Fellow of the Royal Society of Arts.

Co-Chair: Dominic Lewis
Dominic Lewis is an experienced criminal barrister who both prosecutes and defends. He has practised from the Chambers of Robert O'Sullivan KC, at 5 Paper Buildings, since shortly after his call in 2000. Dominic has been on the Bar Council's Law Reform Committee for over ten years and is currently one of the Vice-Chairs.

Kate Aubrey-Johnson OBE
Kate Aubrey-Johnson is a barrister and mediator at Garden Court Chambers. As a children's rights specialist, criminal and public lawyer she regularly advises on issues affecting children in the criminal justice system.

Kate is co-author of Youth justice law and practice (LAG, 2019) and a consultant editor for Halsbury's Laws of England. She has contributed to Crown Court Compendium on communicating sentences to children and was on the Sieff working group on justice for children with SEND and neurodivergence (April 2025). Kate Co-Chairs the MoJ's Youth justice advocacy working group.

Whilst on sabbatical, Kate worked at Just for Kids Law where she set up the Youth Justice Legal Centre. She is co-founder and trustee of Lawyers Who Care, a mentoring charity for care experienced aspirational lawyers.

Dr. Miranda Bevan
Dr Miranda Bevan is a lecturer in law at King's College London, specialising in criminal law and criminal justice. Before moving to academia Miranda practised as a criminal barrister (2 Hare Court, 2000–2012). She was also lawyer with responsibility for the Law Commission's 2016 Unfitness to plead report (Law Com No 364). Her current research focuses on the experiences of children and young people when detained as suspects in police custody, and more widely on the effective participation of children and vulnerable adults in the criminal justice process.

Working group members

Professor Sarah-Jayne Blakemore PhD FBA FMedSci FRS
Sarah-Jayne Blakemore is Professor of Psychology at the University of Cambridge, where she leads the Developmental Cognitive Neuroscience Group. Her group's research focuses on the development of the social brain in adolescence, with a particular emphasis on social cognition, peer influence and sensitivity to social context. She has advised government departments, authored books including Inventing ourselves, mentored a large number of early career researchers and has received several international awards for her research. She has been elected an Honorary Fellow of St John's College Oxford, a member of the American Academy of Arts and Sciences and a Fellow of the British Academy, the American Association of Psychological Science, the Academy of Medical Sciences and the Royal Society.

Peter Carter KC
Peter Carter KC has been in silk since 1995. He is a member of Doughty Street Chambers. His practice is principally in cases of commercial fraud, terrorism, and human trafficking.

He is a former Chair of the Bar Human Rights Committee and was a special adviser to the Joint Parliamentary Committee on the Modern Slavery Bill and the Frank Field review of the act. He chaired the Bar working group on the Investigatory Powers Bill. He is currently leading counsel to an inquiry into a major financial institution.

Dr Richard Church
Dr Richard Church is a consultant psychiatrist with specialist registration in forensic psychiatry as well as child and adolescent psychiatry. He is Chair of the Adolescent Forensic Psychiatry special interest group at the Royal College of Psychiatrists and on the board of the European Association for Forensic Child and Adolescent Psychiatry, Psychology and other Professions. He has nearly 20 years of experience as a medico-legal expert witness in court proceedings involving young people. He is currently employed by Cygnet Health Care as a consultant forensic psychiatrist and a regional medical director. He also delivers lectures to postgraduate students at King's College London on the topic of youth justice and mental health of young people in conflict with the law.

Tom Cockroft
Tom Cockroft is a barrister. He specialises in public law, crime and extradition. He was appointed by the Attorney General as Junior Counsel to the Crown in 2022 and undertakes a range of high-profile work for government departments. Much of his current work is in large-scale national security litigation and public inquiries, inquests arising from deaths in custody, and judicial reviews in relation to immigration and prison law.

Dr Enys Delmage
Dr Enys Delmage is a consultant in adolescent forensic psychiatry and senior lecturer at the University of Otago. He works in New Zealand's only inpatient adolescent secure service and has a special interest in the interface between children and the law, with a focus on the minimum age of criminal responsibility internationally. He has written articles and book chapters on the subject of children and the law and is a member of an international research group studying criminal responsibility in children in various countries around the world. He has presented at a number of international conferences and is currently working on a book on the same subject of the setting of the minimum age, along with law professor colleagues.

Working group members

Laith Dilaimi
Laith was called to the Bar in 2011. He practises from Old Square Chambers. He is ranked by the legal directories for employment law and education law. He contributes the education chapters to Bloomsbury professional on discrimination law; he is a former Chair of Independent Appeal Panels and Independent Review Panels in relation to school admissions and school exclusions; he has been an equality and diversity and SEND link trustee of a multi-academy trust; and he is a former Director of the Education Law Association. He is on the Attorney-General's B Panel of Counsel.

Rose Glanville
Rose Glanville practises from 30 Park Place Chambers in criminal and public/administrative law. Alongside her domestic practice, Rose has an international and comparative profile with a professional interest in Europe and the rule of law. She has participated in legal exchanges to the Netherlands (Anglo-Dutch Exchange) and France (Paris Bar Inns of Court scholarship). She also sits on the Legal Affairs Committee of the Welsh Centre for International Affairs (now Cymru Global).

Rose is Chair and founder of the Young South Wales Bar, Welsh representative to the Young Barristers' Committee of the Bar Council, and Junior Officer to the Honourable Society of Gray's Inn Barrister's Committee.

Professor Kathryn Hollingsworth
Kathryn Hollingsworth is a Professor of Law and Criminal Justice at the University of Sheffield, and co-convenor of the Centre for People's Justice (funded by the Arts and Humanities Research Council). Her research focuses on children's rights especially in the context of criminal justice, and she is particularly interested in children's access to justice, sentencing, communication in the courtroom, and children's perceptions and understanding of legitimacy. She is currently a member of the advisory board of the Youth Justice Legal Centre and Chair and a Director of the Children Rights and Youth Justice CIC.

Matthew Kerilis-Thomas
Matthew Keliris-Thomas was called to the Bar in 2019. He practises solely in criminal law from 3 Temple Gardens Chambers. Matthew regularly represents youth clients in the Youth Court – including clients as young as 11 or 12 years old for offences of robbery, possession with intent to supply Class A and sexual offences. As sole and led junior counsel he has variously acted for youth clients facing trial at the Crown Court. This has included allegations ranging from drug and acquisitive violent offences to attempted murder at the Old Bailey. Matthew is a member of the Bar Council and its Law Reform Committee.

Eleena Misra KC
Eleena is the Chair of the Law Reform Committee of the Bar Council of England and Wales having served on committee for many years and contributed to numerous wide ranging consultation responses on its behalf. She is a specialist employment barrister and silk with complementary expertise in professional discipline and regulation, and public law, particularly active in the healthcare and education sectors.

Eleena's cases range from high value financial services disputes, injunctions involving confidential information and restraint of disciplinary proceedings, and investigations into sensitive sexual misconduct allegations.

She is qualified in forensic medicine and is currently leading the legal team for the largest cohort of bereaved families in the Lampard inquiry into mental health deaths. Eleena is a Bencher of Middle Temple, a fee paid employment judge, a

trustee of the Stock Exchange Dramatic and Operatic Society, and a Director of a community arts centre in Surrey. And a very busy parent too.

Ross McQuillan-Johnson
Ross McQuillan-Johnson practises in crime, regulatory and professional discipline. Alongside practice, Ross is actively involved in representative work within the profession. He is an elected member of the Bar Council's Young Barristers' Committee. He sits on the Criminal Legal Aid advisory board and the Bar Council's Regulatory Panel. He also co-founded and Chaired the South Wales Young Bar Committee, a sub-committee of the Wales and Chester Circuit. Ross practices from St Johns' Chambers in Manchester.

Alison Moore
Alison Moore is a specialist family law barrister at 1GC Family Law with extensive experience in complex public and private law children proceedings. She is regularly instructed on behalf of local authorities, parents, children and children's guardians in cases involving serious non-accidental injury, sexual abuse, neglect, chronic medical conditions, fabricated or induced illness, wardship and international elements.

Alison has particular expertise in cases involving vulnerable parties and witnesses and is recognised for her careful, forensic approach to complex factual and expert evidence. She is experienced in working with intermediaries and in adapting advocacy to support effective participation by vulnerable clients and witnesses within family proceedings.

Alongside her practice, Alison contributes to family law policy and professional training. She is the family law representative on the Bar Council Law Reform Committee and regularly delivers training on advocacy for the Family Law Bar Association involving vulnerable witnesses.

Benjamin Newton KC
Benjamin was called to the Bar in 2004 and took silk in 2023. He specialises in criminal law with particular expertise in financial crime, homicide, and serious sexual offences and in addition to first instance cases regularly advises on and conducts fresh criminal appeals. He also has experience in extradition, courts martial proceedings, and criminal-related public law. He was appointed a Recorder of the Crown Court in 2020 and a judge in the First-tier Tribunal (Mental Health) in 2021. He has been a member of the Bar Council's Law Reform Committee since 2020 and is also the Chair of Governors at a school for pupils with special educational needs.

Laurie-Anne Power KC
Laurie-Anne is a leading criminal barrister and media consultant. Her practice includes serious criminal offences such as homicide, terrorism, and complex fraud. She has appeared before both domestic and international courts and worked on the international criminal trials in Sierra Leone with a specific focus on the use of child soldiers, and sexual slavery in the context of war. She was the Treasurer of the Criminal Bar Association between 2020 and 2023 and was instrumental in the government negotiations on renumeration for the criminal Bar, with a particular focus on the disparity in renumeration for women and ethnic minorities.

She is the Co-Chair of the Bar Council's Race Panel which produced the updated Race at the Bar report in 2025. In 2025 she was appointed to the advisory board of the Global Counsel Forum, a platform for legal professionals to learn, share, and network. The forum' fosters a tight-knit network of support and empowerment, for a more inclusive and empowered future for Black legal and under-represented professionals.

Working group members

Lucy Reed KC
Lucy Reed KC is a children law specialist based at St John's Chambers in Bristol. Lucy is a Recorder (children), Vice-Chair of the Family Law Bar Association and a trustee of educational charity, the Transparency Project. Lucy is the author of The family court without a lawyer – a handbook for Litigants in person, and co-author of Transparency in the family courts – publicity and privacy in practice and Dictionary of public law children. Lucy acts for all parties in public and private law proceedings concerning children, including those involving serious child protection concerns. Lucy is an approved facilitator for the Family Law Bar Association's ICCA approved advocacy and the vulnerable training programme.

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