

Out of Trouble

Reducing child imprisonment in England and Wales - lessons from abroad

Enver Solomon and Rob Allen



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

www.prisonreformtrust.org.uk

The International Centre for Prison Studies is part of the Law school in King's College London. It undertakes research on the use and practice of imprisonment around the world and consultancy work to assist governments to develop criminal justice and prison systems in line with international human rights standards.

www.kcl.ac.uk/schools/law/research/icps

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

www.theworkcontinues.org

Copyright 2009 Prison Reform Trust

All rights reserved. No part of this publication may be reproduced or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior permission of the copyright owners.

This report was written by Enver Solomon and Rob Allen.

Until 2009, Enver Solomon was deputy director at the Centre for Crime and Justice Studies and led the Centre's public affairs projects. He will shortly be taking up the post of Assistant Director of Policy at Barnardo's. Previously he was head of policy and research at the Revolving Doors Agency and head of policy and communications at the Prison Reform Trust. He has published work on knife crime, youth justice, crime and the media, prison policy and sentencing, and recently co-authored a major analysis of the government's performance against key criminal justice targets, ten years of criminal justice under Labour: an independent audit. Prior to working on criminal justice policy he was a BBC journalist.

Rob Allen has been director of the International Centre for Prison Studies since 2005. He was a member of the Youth Justice Board for England and Wales from 1998 to 2006 and has been an adviser to the House of Commons Justice Committee since 2007. He has written widely on youth justice matters including children and crime: taking responsibility (IPPR 1996) and From punishment to problem solving - A new approach to children in trouble (CCJS 2006).

First published in 2009 by the Prison Reform Trust

ISBN 0946209987

Cover images:

Center for Court Innovation, NYC and Wetherby YOI, Andrew Aitchison www.andrewaitchison.com

Printed by Aquatint BSC

For further information contact:

Penelope Gibbs

15 Northburgh Street

London EC1V 0JR

penelope.gibbs@prisonreformtrust.org.uk

Tel: 020 7689 7742

Contents

Foreword	ii
Introduction	iii
Chapter 1: Alternatives to custodial remand	I
Chapter 2: Dealing with non-compliance	8
Chapter 3: Measures for children under 15	13
Chapter 4: Alternatives for non-violent offenders	16
Chapter 5: Alternatives for violent/serious persistent offenders	20
Chapter 6: Treating substance misuse and mental health problems	24
Chapter 7: Other options	29
Chapter 8: Decarceration case study one: Canada	32
Chapter 9: Decarceration case study two: New York State, USA	41
Chapter 10: Using the fiscal infrastructure to cut imprisonment	48
Conclusions	52
Appendix I: Population and comparative social indicators for five countries	57

Foreword

The number of children and young people sent to prison in England and Wales and the level of reoffending on release indicate that, by any measure, custody is proving an expensive, ineffective tool for addressing youth crime. Imprisonment leaves a lasting mark on the young. And excessive use of youth custody is one of the surest ways to grow the adult prison population of the future. The Prison Reform Trust commissioned this review by the International Centre for Prison Studies so that lessons can be drawn, and applied, from the way in which other countries respond more effectively to young people in trouble.

This is a timely report. Reducing youth crime, and at the same time reducing costly youth imprisonment, is on the agenda for politicians of all parties. Public opinion would support investment in local community solutions to crime. Our SmartJustice poll¹, conducted by ICM across the UK and published in 2008, revealed that 65% of people surveyed believed imprisonment is not the right way to punish young people who commit non-violent crime. Where non-violent, petty offending is driven by drug addiction, the overwhelming majority, 84%, saw compulsory work in the community, coupled with drug treatment, as the most effective way to reduce the likelihood of further offending. Nearly two-thirds of those polled thought that prisons were ‘universities of crime’ for young offenders.

There is considerable scope for further reform of the youth justice system, change in sentencing policy and renewed commitment to reducing child and youth imprisonment. Notably many of the international examples offered by the report authors illustrate the benefits of working across departmental boundaries, opportunities for pooling budgets, and adopting a refreshing ‘do what it takes’ approach to enable young people to get out of trouble.



Juliet Lyon CBE
Director, Prison Reform Trust

Introduction

A radical overhaul of the youth justice system in England and Wales in the late 1990s saw the creation of the Youth Justice Board, new local youth offending teams and investment in the secure estate. The Audit Commission, following its earlier criticism², noted considerable improvements on the old, less integrated system for dealing with youth crime³. There remains however substantial dissatisfaction with aspects of youth justice - not least in the stubbornly high numbers of young people who are remanded and sentenced to custody. Just over ten years from the introduction of sweeping youth justice reform, it is arguably time to turn attention once again to the adequacy of the arrangements for dealing with children in trouble. This report examines lessons that can be learned from abroad, especially where countries have made systematic efforts to reduce their reliance on custodial measures as a way of dealing with such children.

In recent years there has been an expansion in comparative youth justice analysis examining the differences and similarities across countries in their approach to youth crime. A number of publications have been produced bringing together summaries and analyses of various youth justice systems.⁴ At the same time there has been a growing interest by policy makers and reform organisations in cross-national learning and policy transfer from one country to another.⁵ In fact, one of the most recent alternatives to custody introduced in England and Wales – intensive fostering – was modelled closely on a scheme developed in the USA. Other sanctions for young offenders, such as the referral order, have also been inspired by international practice.

This report, commissioned as part of the Prison Reform Trust's strategy to reduce child and youth imprisonment in the UK, focuses specifically on international examples of policies and practices that are used in countries which have relatively low numbers of children in custody or have been developed and implemented in countries to reduce child imprisonment. It looks at alternative sanctions that could potentially be transferred to England and Wales to reduce the number of children either remanded or sentenced to custody. The report does not, therefore, examine a particular intervention programme unless it is delivered as part of a non-custodial court or pre-court disposal nor does it look at preventative work.⁶

Given that some of the sentencing options and interventions already implemented in England and Wales have been informed by international policy and practice, the report concentrates on examples which mostly have not yet caught the attention of policy makers. In particular, it does not look at restorative justice, which has been a clear cross-national trend in youth justice in recent decades⁷ and has been implemented in different formats by youth offending teams. A forthcoming report by the Prison Reform Trust will also explore the positive impact of restorative justice as the centrepiece of youth justice interventions in Northern Ireland.

Drawing information from other countries and jurisdictions is not easy. The definition of a child, the classification of an offence or prison custody for children and the recording of youth justice data vary enormously. Comparable data to that collected in England and Wales is therefore not always available. Robust and accurate statistics are also difficult to obtain. Inevitably there are gaps in the statistics that we have been able to present.

Assessing the impact of the examples presented in the report is also a challenging task. Outcome data is not always robust and evaluations are limited. It is not often that policies and practices are subject to in-depth credible assessment to determine their impact on further offending. Where possible this information has been provided but we have not been able to

verify all of it or check it against criteria used in meta-analytical systematic academic reviews.

The scope of this report has meant it has not been possible to provide exhaustive information for each of the policy examples presented. Those examples that are considered to be most promising for policy transfer may therefore require further investigation.

Finally, in considering the examples set out in this report it is important to recognise that the countries from which the examples are taken vary significantly in terms of population, urbanisation, income inequality, the provision of welfare support, and crime levels. (The data of key social indicators from a sample of countries covered in this report presented in Appendix I clearly demonstrates this). Consequently, the responses to youth crime that have emerged in each country are very different and inevitably reflect the social differences. Any approach to policy transfer needs to be conscious of this fact and the need to adapt policies as they are moved across national boundaries and cultures.

Remit and structure of the report

The primary purpose of this report is to look at specific policy and practice examples from outside the UK and also examples of relevant recent wholesale youth justice reform that has successfully reduced the number of children incarcerated in a particular jurisdiction.

The brief was to look at alternatives to custodial remand; methods for dealing with breach of disposals that do not result in the use of custody; alternative approaches for dealing with children under the age of 15 who have committed violent offences; alternative approaches for dealing with children under the age of 16 who have committed non-violent offences or offences involving low levels of violence; non-custodial penalties that have been used for non-violent offences such as burglary, theft, car crime and drug dealing; and non-custodial options for children with diagnosed mental health disorders.

There are chapters on each of the areas. However, there have been some minor modifications to the structure of the report. Given the lack of distinct options available in any country for children under the age of 16, the report only looks at non-custodial sanctions for non-violent offences committed by all children regardless of their age (see Chapter 4). Also, for under-15 year olds, Chapter 3 does not differentiate between violent and non-violent offences as there are no countries where this happens for that age group.

Chapters 8 and 9 focus on two examples of jurisdictions that have successfully implemented wide-ranging reforms with the explicit goal of reducing the use of custody. Chapter 8 looks at Canada, which provides an example of legislative driven change and Chapter 9 examines New York State in America where extensive administrative reforms have been implemented.

In addition two further chapters are included in order to consider key issues that emerged in the course of the research. Firstly, in the course of conducting the research for this report we came across policies that clearly had an impact on the number of children in custody but were outside of the report's brief. These 'other' approaches, which look at the role of specialist youth police and prosecutors as well as an alternative model of custodial decision-making, are set out in Chapter 7.

Secondly, given the recent interest in England and Wales in looking at ways of making local authorities more accountable for the cost of custody,⁸ Chapter 10 considers examples from three American states that have successfully used a variety of fiscal incentives to reduce custodial placements.

It became clear from studying the reform efforts in different countries that the approach taken to implementation is very important. The effectiveness of new policies depends as much on the quality of implementation as on the type of disposals. In particular, a major national initiative in America to reduce the use of pre-trial detention has sought to identify the key features of good quality implementation. In interviews conducted for the report senior officials also highlighted the importance of getting the implementation process right. Therefore in the conclusions we endeavour to draw out a number of the learning points from this process.

Finally, the report specifically concentrates on options for policy transfer. At the end of each chapter we have therefore included a brief section which sets out how the policies outlined could be applied to England and Wales.

I: Alternatives to custodial remand

The use of custodial remand for children, also known as pre-trial detention, varies across different countries. In many European countries there are tight legal restrictions on the use of remand for children with an emphasis on pre-trial detention being an absolute last resort. In contrast, in the United States custodial remand is more common and the number of children detained pre-trial has increased in recent years. This has become a major concern for juvenile justice reformers and a high-profile national programme operated and funded by the Annie E. Casey Foundation has been launched to address the issue. The foundation's juvenile detention alternative initiative has sought to implement proven community-based interventions to reduce the number of children held in custody awaiting trial or sentencing. It has programmes in 24 states and has had considerable success reducing the average number of children held in pre-trial detention, increasing the use of community alternatives and reducing the rate of children who jump bail or are arrested whilst on bail. For example, in the initiative's main sites in four different states there have been reductions of between 35% and 65% in the average daily number of children in detention over a five year period.⁹

This chapter begins by highlighting some of the reform programmes in America and then goes on to consider alternatives to custodial remand in Europe, including options for imposing legislative restrictions.

Detention diversion advocacy programme¹⁰

The detention diversion advocacy programme (DDAP) was set up in San Francisco California in 1993 and has since been replicated in Baltimore Philadelphia, the District of Columbia, Oakland Maryland and Boston Massachusetts. The Office of Juvenile Justice and Delinquency Prevention in the federal government's Department of Justice have endorsed it as an effective model for diverting children awaiting trial from detention.

The programme is based on the twin concepts of case advocacy and intensive case management. Case advocacy involves a non-legal expert acting on behalf of the child to put forward a case plan to the

court setting out the community services that will be made available to the child and the specific conditions and requirements which will be imposed on them. Intensive case management involves providing the kind of personal support to overcome adversities and facilitate compliance with those requirements, to monitor the child's behaviour and to co-ordinate a range of measures to ensure continuity of care and the development of appropriate attitudes and skills.

In both California and Massachusetts the DDAP is operated by not-for profit organisations that have a track record of working with young offenders and vulnerable children and their families.

Referral and selection

DDAP targets children and young people who are likely to be remanded into custody or are already on remand in custody. These are identified through referrals from the public defenders' office (who provide legal representation in the family and criminal courts), the juvenile probation department, and from community agencies, schools, social service agencies and even families, who are also able to make referrals. Staff make a special effort to establish good working relationships with all youth court personnel - prosecutors, defence attorneys and sentencers.

As the DDAP targets children who are at risk of being detained pre-trial it typically involves some summary offences but mostly more serious indictable offences such as burglary, robbery, drug possession, assault, and weapon-related offences as well as repeat offenders. The programme does not accept children who are accused of sex offences or the use of firearms.

A risk assessment instrument is used to determine eligibility for the programme. The 'detention eligibility form' tabulates a score based on the alleged offence(s), prior guilty findings, open cases, pre-existing probation status, history of failure-to-appear, history of escape/runaway, and warrant status. The score places children in one of three categories:

- release (0-9 points)
- detention alternative (10-14 points)
- detention (15+ points)

The score, however, is akin to a subtotal - what the risk assessment form calls an 'indicated score' - and does not automatically determine where the child is placed. The assessment tool allows for additional consideration beyond the indicated score: adding 'mandatory over-rides' (firearm charges, for example), and 'discretionary over-rides' for both aggravating and mitigating factors.

On completion of the assessment, if the child is deemed eligible for the DDAP a request is made to the youth court judge when the child first appears in court to divert the case to the programme, pending agreement of a case plan. Research in both Boston and San Francisco has found that this occurs in 85% of cases.

The selection process is considered to be very important because, by focusing on children who would previously have been remanded into custody, it ensures that the DDAP remains a true diversion alternative rather than evolving into a net-widening programme - a major risk with all community-based alternatives to custody.

Case advocacy

Once a child has been scored as being eligible for the programme he/she has to agree to participate. If the child agrees an individualised case plan is developed, involving a detailed report that includes specific conditions, types of services and interventions required to support the young person and agreed outcomes. It may also include any conditions that the court stipulates when agreeing to divert the child to the programme. Normally this includes a request for a curfew and also attendance at school. However, depending on the youth court judge, such conditions are not always requested by the court.

The plan is based on an interview conducted by case workers with the child and his/her parent or guardian. This might take place immediately at court or be conducted the next day. The case manager may also decide to contact other relevant professionals such as school teachers.

Case plans typically include provisions for ensuring attendance at school, family interventions/counselling, drug treatment, recreation activities, tutoring and vocational training. It will also include specified objectives, (such as improved grades, meeting curfew requirements to be at home by a certain time after school, remaining drug-free, and making restitution to victims), as a means to evaluate the child's progress. It is the case manager's job to ensure that the young person is able to access the services set out in the plan and to monitor progress.

Whilst preparing the plan staff can also identify areas of need for the child's family. This may include assistance with benefits, or help with housing problems. The case manager will not generally include these in the plan but will actively seek to provide help to the family if possible.

The case plan will cover the period up to the date set for the trial hearing - usually up to 12 weeks. However, in Boston case plans have been operational for up to 19 weeks due to the average length of time from arrest to trial being longer.

Intensive case management

The purpose of intensive case management is to promote successful completion of the DDAP by providing support to children to overcome the adversities and behaviour patterns that can lead to them failing to appear in court and/or committing further offences.

DDAP staff use regular face-to-face visits. In the first few weeks this can be as many as three times a day. By the fourth week it is usually just once a day and then from the sixth or eighth week it is down to three weekly face-to-face contacts. Case workers also carry pagers/mobile phones to enable them to keep in regular contact and respond to crisis calls on a 24 hour basis.

The maximum caseload is ten children per staff member. This enables case workers to provide the intensity of contact and consistent, stable support necessary for them to become role models and

mentors. Some of the most effective case workers have experiences similar to their clients, know the local communities well and are thus quickly able to facilitate trusting relationships with the children. They work with the children to enhance their self-sufficiency and responsibility. In some instances case workers are assisted by a part-time case monitor who provides back up support.

Caseworkers are responsible for making telephone checks to ensure that a child is meeting their daily curfew requirements to be home at a certain time. They also check up on school attendance. Based on their professional judgment and discretion they will determine if a young person should be breached for failing to meet the objectives of the case plan. Children who persistently fail to co-operate with the programme will be returned to court. In most cases they are remanded into custody.

A caseworker in Boston described his role:

I act as a kind of parent and also a mentor, advocate and social worker but I am not a law enforcer, my role is to keep the kid busy and help them move on in society.

Outcomes

Evaluations of the detention diversion advocacy programme (DDAP) in each location have found that between 85 to 90% of young people complete the programme without being arrested or failing to appear in court. A detailed evaluation that included a comparison group of the San Francisco-based programme conducted by the University of Nevada, Las Vegas¹¹ found that:

- The overall recidivism rate of the DDAP group was 34%, compared with 60% for the comparison group.
- 14% of the DDAP group had two or more subsequent referrals, compared with 50% of the comparison group.
- Only 9% of the DDAP group returned to court on a violent crime charge, compared with 25% of the comparison group.

- Only 5% of the DDAP group had two or more subsequent arrests compared with 22% of the comparison group.

A crude cost/benefit analysis conducted by the Boston programme concluded that the DDAP saves as much as \$5m (approximately £3m) per year from avoiding the unnecessary use of custodial remands. The per-diem cost is \$70 (approximately £42) compared to \$225 (approximately £135) for a custodial placement.

Reasons for success

There are a number of reasons which have been identified for the DDAP's apparent success:

Low caseloads – The fact that the maximum case load is 10 is a significant factor, ensuring that caseworkers can spend sufficient time with their clients and develop successful relationships. The average caseload is far lower than for youth probation officers in America.

Case workers – DDAP case workers are from similar backgrounds to the children enabling them to genuinely engage with them. They also exhibit exceptional dedication and commitment to their clients. Critically, they are perceived as being separate from the formal youth justice system and therefore treated with less suspicion by their clients.

Community location – The organisations operating the DDAP often have established links with relevant agencies and the DDAP offices are based in community centres enabling them to be well connected to local service providers. Staff are therefore able to link up services effectively to meet the needs of clients.

Intensive supervision – The 24/7 support enables caseworkers to deflect potential problems for children if, for example, they get into trouble at school or with the police on the street. The caseworker is able to de-escalate the situation and avoid formal action being taken.

Family support – The DDAP does not just support the young person but also seeks to address problems in the family that may be one of the causes of the child's behaviour. Caseworkers can mediate between parents and children, resolving conflict and ensuring the child is able to stay at home. They provide advice and support for parents who are struggling to manage their children's behaviour and/or are finding it difficult to cope due to housing, benefits or employment problems.

Youth court support – DDAP staff work hard to develop good working relationships with all youth court staff, in particular the sentencers. This has meant that youth courts have confidence and trust in the programme rather than regarding it with suspicion. In Boston, the programme was helped by the fact that the youth court judge already acknowledged that pre-trial detention was counter-productive and was therefore pre-disposed to a realistic alternative programme.

After school, evening reporting and support centres

After school and early-evening reporting centres have been set up in a number of US states as alternatives to pre-trial detention, to help reduce the number of children being remanded to custody and to save money. They are operated by not-for-profit organisations which have a track record of working with young offenders. The centres are open between 3pm and 9pm providing supervision to children who would normally be on remand in custody. The goal is to ensure that the children return to court for their scheduled hearings with no new violations.

The first centres were established in Cook County Illinois in the mid-1990s. They have since been replicated in many other states. The information presented below is based on a visit to the centre operating in the Queens area of New York.

Eligibility and referral

Any child at risk of being remanded into custody who has not committed a sex offence, murder, manslaughter or arson is eligible for the

programme. Children with persistent or serious mental illnesses are also excluded.

A risk assessment instrument is used to determine if the child can be admitted to the centre. It examines risk of failure to appear in court and risk of re-arrest. Only those children who score at least in the moderate risk range are eligible for the programme.

The majority of children on the programme have committed robbery or assault offences. Other offences include weapons possession, drug possession, theft and shoplifting. Most of the children are repeat offenders.

A court liaison officer works with court staff, defence lawyers, prosecutors and youth probation to identify potential cases as they come to court for the first time. If a case meets the criteria based on the risk assessment then the final decision rests with the judge. In approximately 90% of cases the judge will agree with the referral and inform the parents that they must complete all the necessary consent forms and their child must participate in the programme. If the child or the parents refuse to co-operate, the child will be remanded into custody.

Assessment

The family and child meet with the programme social worker for a comprehensive assessment as soon as they are accepted on the programme. The assessment is designed to identify needs, strengths, challenges and any potential obstacles to successful programme completion. It also considers any problems the family face that are affecting the child, such as financial concerns or housing issues. The social worker develops a 'strengthening plan' that summarises the child's needs and interests. It also sets out any necessary additional referrals to other services that the social worker will follow up. Staff make an effort to ensure referral services are utilised and that families are linked to the most appropriate and responsive services.

If the court has not already set the terms of a curfew the plan will also set this out. The curfew is an agreed time between the child and parent/guardian that he/she should be home each day on return from the after-school programme. It is

monitored by a dedicated member of the programme staff who makes a check-call to the parent each evening.

The programme

Children remain on the programme for at least 30 days or until the case ends in court. The average length of stay on the programme is just over 60 days.

Children participate in three and a half hours of after-school supervision for up to five days per week, in addition to being monitored for school attendance, meeting curfew requirements and making court appearances. The after-school programme includes group and individual counselling, educational support (computer training, tutoring with homework), behaviour interventions such as anger management and conflict resolution sessions and recreational sports. Children also receive a full evening meal each day which is eaten together with staff before they leave the programme. The costs of their travel to and from the programme are also covered.

Staff keep in regular contact with parents and the child's school, making regular visits depending on the child's progress. They work to resolve any difficulties the child has at school and ensure they remain in school full-time. If a child is not meeting the requirements of the programme a system of graduated sanctions is used including parental conferences, increased home visits and earlier curfew times. Ultimately a child can be returned to court for review. Alternatively if a child is progressing well they can be given the option of being subject only to curfew and school attendance monitoring.

The programme has a capacity for up to 40 children and has six staff with a ratio of around six children to one staff member.

Outcomes

An evaluation of the Cook County scheme found that 90% of young people made their court hearings and remained 'arrest free'.¹² Overall in Cook County the annual number of admissions to custody

declined from 10,200 in 1995 to 4,750 in 2005. The New York programme, which has been running for two years, has so far had an 85% compliance rate and has contributed to the overall reduction in the number of children in custody in New York State (see Chapter 9).

The Casey Foundation calculates that the per-diem cost for an after-school reporting centre is between \$32 and \$35 dollars (around £20), which is much cheaper than a custodial remand bed. Operating costs for custodial places vary enormously throughout the USA but it is not uncommon for them to average \$150 to \$250 (£90 to £150) per bed per day.¹³

Reasons for success

Staff believe the programme has a number of key features which account for the high rate of compliance. These include:

- The simple fact that children can be somewhere after school where they can feel safe, relax and be supported.
- The high level of support provided to the children and the low staff-to-children ratio.
- The fact that the programme is family-centred and seeks to provide support to parents/guardians as well as the children.
- The focus on ensuring that children are linked in to other services and the follow-up support to ensure the service is responsive to the child's needs.

Shelter programme

Non-secure residential alternatives have been set up under the juvenile detention alternative initiative in the United States for children for whom a parent or guardian has not been identified and are therefore homeless. These are children who find themselves held in custody awaiting trial because the court considers it to be the only available option. So-called shelter beds have been established to provide accommodation for these children.

Typically, placement accommodation has been created by contracting with a not-for-profit community based agency to operate a short-term residential facility. Children stay in the shelter for around 30 days or until their trial commences. However, the length of stay can be much shorter if staff are able to locate family members or a responsible guardian and release the child to their care within a few days of placement.

A shelter is relatively small with between 8-20 beds. It is very similar to supported living accommodation or foyer accommodation for homeless young people in the UK¹⁴. Staff provide 24 hour supervision and support with meals. Effective shelter programmes establish strong internal programmes so that children experience consistent and structured activities, including both educational and recreational opportunities. Some provide an educational programme within the shelter; in others the children are supported to attend school. Programmes will typically include individual and group counselling, independent living support, support with homework and transportation for pre-trial court appearances and other court appointments.

Some counties in America provide accommodation by contracting for beds in various group homes (the equivalent of care homes or foyers in England and Wales), 'reserving' a number of places for children who are in need of time-limited residential supervision whilst awaiting trial. Although this can be fiscally and administratively more convenient and avoid high-capital costs, some counties have found that mixing young people on remand into a group home with a different original mission and population poses other challenges and does not necessarily work well.

The Casey Foundation has calculated that shelters cost up to \$130 (approximately £80) per young person per day. An evaluation of a shelter in Chicago found that 96% of children made all court appearances and were not arrested or cautioned whilst on the programme.¹⁵

Night detention

In the Netherlands, where the age of criminal responsibility is 12, children aged 12-17 years old can be held in pre-trial detention for a maximum of 110 days if they are accused of committing serious offences. This can involve night detention during which children are allowed to go to school or work during the day and are required to return to custody each evening and at the weekend.

According to a recent document submitted by the Netherlands government to the United Nations Committee on the Rights of the Child there are plans to extend the use of pre-trial night detention. It states:

*Plans are currently being prepared to ensure that a proportion of pre-trial detention takes place outside young offenders' institutions. The Bill amending the Young Offenders' Institution Framework Act to be presented to the House of Representatives will provide a statutory basis for night detention during pre-trial detention. This can help to preserve continuity in the young person's school or career, since he or she would only be required to remain at the institution at night and in the weekends.*¹⁶

(Committee on the Rights of the Child, 2009)

Legal restrictions¹⁷

A number of European countries have tight legal restrictions on the use of custodial remand for children that are set out in legislation. They include restrictions based on a variety of different criteria, some of which are included in the current English law, others not:

Offence seriousness – In some countries less serious offences are excluded. In Finland pre-trial detention can only be imposed when the offence is punishable with a minimum sentence of two years imprisonment. If the minimum sentence is one year, pre-trial detention is only possible when a child has already jumped bail, is not resident in the

country, refuses to divulge his/her name or address, or gives false information. In the Netherlands there is also a restriction based on the gravity of the offence. Pre-trial detention is only permitted for crimes punishable with more than six years of imprisonment. In Germany it is restricted to specified serious crimes because it is considered that only in those cases is there a greater risk of the defendant committing further crimes. Offences where no unconditional prison sentence is expected are also exempted as this would be considered a violation of the principle of proportionality.

Age – In France pre-trial detention is excluded for children under 16 if they are only prosecuted for low-level offences. In Germany there are additional restrictions for 14 and 15 year olds as the court can use custodial remand if the child has already jumped bail or absconded or has no place of residence.

Evidence – In a number of countries (Austria, Belgium, Finland and Germany) there must be strong evidence or well-founded suspicion that the child has committed the offence and will be convicted if he/she is to be remanded into custody. New youth justice legislation in Canada also sets similar restrictions (see Chapter 8).

Options for policy transfer to England and Wales

Based on the examples presented in this chapter there are various options for policy transfer to England and Wales. Since 2000, the number of children locked up on remand has increased by 41%, with children on remand accounting for 20% of all children in custody at any one time. In 2008/9, 1,484 children were locked up on remand for a week or less – in addition, it is estimated that 75% of children remanded in custody by magistrates or district judges are either acquitted or given a community sentence. There is scope therefore for a change in policy to reduce the number of children remanded into custody.

Several of these options would build on the level of bail support which is currently offered by all youth offending teams (YOTS) through the intensive supervision and surveillance programmes. They are:

- Legislative amendments to introduce greater legal restrictions on the use of custodial remand based on offence seriousness and/or age and/or likelihood of conviction
- The piloting of disposals modelled on the detention diversion advocacy programme or the after-school/evening support centres
- The commissioning of shelter-type accommodation
- The introduction of night detention.

2: Dealing with non-compliance

Compared to their European neighbours, England and Wales stand out for their high use of custody in response to non-compliance with court orders, leading to so-called breach proceedings. The same is also the case in the United States and in Canada, where it is common to use custody to sanction children who do not comply with the conditions of their sentence. Reducing the use of custody for so called 'probation violations' has become a key element of youth justice reform efforts in both countries. This chapter looks at the policies that have been adopted to address high breach rates.

Canada

The Youth Criminal Justice Act (YCJA) 2002 radically reformed the use of custody for children over 12 who are convicted of a criminal offence in Canada (see Chapter 8). One aspect of these reforms related to the introduction of measures and guidelines to restrict the use of custody for children who breach their court orders.

Prior to the introduction of the new legislation, approximately 20% of custodial sentences were given to young people found guilty of breaching conditions of community sentences. Breach was therefore considered to be a major factor contributing to Canada's over-reliance on youth imprisonment.

The YCJA attempted to change this by including a specific provision that a breach of a community sentence on the first occasion cannot result in custody. A child or young person must have breached a previous community sentence for custody to be used.

Guidelines for practitioners published with the legislation also included further means to avoid the use of custody. There was particular concern that conditions of community sentences could set children up to fail, resulting in them being imprisoned for behaviour that would not justify a criminal charge if it were not related to a community order. Advice was issued that stressed that conditions of probation must be assessed as to whether or not they are in accordance with the purpose and principles of sentencing set out in the YCJA (see Chapter 8). The guidance states:

Although a condition may be intended to 'promote the rehabilitation' of the young person, it should be carefully scrutinised to determine whether there is a clear and direct relationship between the condition and a cause of the young person's criminal behaviour. A realistic assessment should be made as to whether the young person will be likely to comply with the condition. In addition, if a condition is essentially an attempt to address child welfare needs of the young person, it should not be imposed. A referral to a child welfare agency under section 35 should be made instead.¹⁸

The YCJA also sets out an alternative approach for dealing with children who fail to comply with their community orders. It involves initiating a review of the probation order to provide an opportunity to make changes to the conditions so that it can be more effective in promoting compliance. The review is held in court and the young person or the parent/guardian has the opportunity to appear. The court can consider altering the sentence or imposing a new non-custodial sentence. Guidelines strongly encourage the use of such reviews:

Reviewing the order, instead of charging the young person with a new offence, is in keeping with the YCJA's objective of reducing the over-reliance on incarceration, particularly for non-violent offences. For a large number of breaches, a review, rather than a charge, is the option that complies with the YCJA's principle that measures taken against young persons must be fair and proportionate to the seriousness of the offending behaviour. In these cases, a review, rather than a charge, is also more consistent with the YCJA's objective of reserving the system's most serious interventions for the most serious offences.¹⁹

Despite the introduction of legislation restricting the use of imprisonment for breach and the guidance setting out a new approach, custody has continued to be used for a high proportion of cases involving technical violations of conditions of a community sentence, such as failing to abide by curfew requirements, non-association requirements or failing to attend probation appointments. Officials in the Department of Justice say that the

restrictions in the new legislation were too weak and the guidance was insufficient to change practice. They say that in retrospect the YCJA should have included a provision that custody could only be used for a breach if a new criminal offence is committed therefore exempting its use for technical violations.²⁰

Continuum of graduated sanctions²¹

The Annie E. Casey Foundation’s juvenile detention alternatives initiative (JDAI) has worked with youth justice probation departments in different states across America to develop alternative responses to breach. They have been encouraged to develop a range of graduated sanctions, such as increasing the intensity of probation supervision, so that custody is used as a genuine last resort.

In Multnomah County in Oregon a grid of proportionate graduated sanctions has been developed for probation officers to use when sanctioning children and young people who breach their conditions (see Figure 1). The grid classifies breaches as minor, moderate or serious and presents sanctions for each type of violation. Staff cannot recommend detention without first using the recommended alternative sanctions as set out in the grid. As a result of the classification process there was a 33% reduction in admissions to custody for technical breaches.²²

Figure 1: Multnomah County continuum of sanctions grid²³

RISK LEVEL	LOW			MEDIUM			HIGH		
	Minor	Moderate	Serious	Minor	Moderate	Serious	Minor	Moderate	Serious
Warning	*								
Problem Solving	*	*		*			*		
Written Assignment				*					
Community Service	* 1 day	* 1-2 days	* 1-5 days	* 1 day	* 1-2 days	* 1-6 days	* 1 day	* 1-2 days	* 1-5 days
Mediation		*							
Court Watch	*	*		*					
Office Report	*	*		*					
Home Confinement Parent Supervision		* 1-3 days	* 3-5 days		* 1-5 days				
Home Confinement Department Supervision			* 3-5 days		* 1-5 days	* 5-10 days			
Day Reporting			* 2-7 days	* 2-4 days	* 4-14 days	* 7-14 days	* 4-10 days	* 7-21 days	* 21 days
Electronic Monitoring			* 5 days			* 5-8 days		* 8 days	* 8 + days
House Arrest						* Up to 4 days		* Up to 8 days	* 8 + days
Forestry Project					* 1 weekend	* 1-2 weekends		* 2 weekends	* 2 weekends
Court School				*	*	*	*	*	*
Detention						* 1-4 days		* 2-5 days	* 2-8 days

In Cook County in Illinois a similar system of graduated sanctions has been implemented. However, staff have to go through a more detailed classification process. First, the child is screened to determine the level of public safety risk. Second, the severity of the breach is identified using a table of offences and behaviours. Third, the risk score and violation severity are cross-referenced on a grid to produce a level of sanction. Fourth, the caseworker selects sanctions from a 'sanction severity table' (see Figure 2).

mentoring programme with students from Sacramento State University who work with children while receiving college credits.

After school reporting centres – children are required to attend after school programmes very similar to those set out in Chapter 1.

Work service programmes – children who breach are required to carry out unpaid work at the weekend on specially organised community service programmes.

Figure 2: Cook County sanctions severity table²⁴

Level One (Low)	Level Two (Medium)	Level Three (High)
Admonishment by probation officer	Require attendance in counselling or group therapy	Judicial admonishment
Impose curfew	Order community service	House arrest after school
Minor to contact probation officer weekly by phone	Minor to contact probation officer weekly in person	More frequent personal reporting to probation officer
Require minor to attend a special programme	School detention where available, or teachers to sign class attendance sheets	Participate in 'personal enrichment programme' sponsored by probation department
Require minor to seek employment	Limit minor's freedom of travel	
Other sanctions	Other sanctions	

Other states in America have developed similar systems of graduated sanctions, drawing from a broad menu of options that include:

Intensive home supervision – the child has to remain at home subject to special oversight rules, such as home visits by a probation officer and frequent call-in or office visit requirements.

Case advocates, trackers, and mentors – a mentor or advocate (rather than a probation officer) monitors compliance by the child (see the Missouri approach below). Mentors/advocates can respond to behaviour compliance problems on a 24 hour basis. For example, in Tarrant County, Fort Worth, Texas, the Juvenile Services Department contracts with a local non-profit youth service organisation (Tarrant County Advocates) to provide intensive one-on-one work with children on probation which supplements the supervision probation staff provide. The case advocates are available to respond to compliance problems on a 24-hour basis. In Sacramento County, California, children can be assigned to a special

Weekend custody – in some states, non-secure weekend custody is applied for a limited time for more serious breaches. In Virginia, an innovative variant of weekend custody is the Richmond weekend community service program. Children have to spend their weekend at community-based group homes. During the day they carry out unpaid community service, maintaining parks and other public property, and in the evenings they participate in group counselling and guidance sessions.

Electronic monitoring – this can be used as a way of strengthening supervision or as a sanction.

Court reviews

In problem-solving community courts, sentencers play an active role reviewing an offender's progress. The Red Hook community justice centre in New York has pioneered this approach.²⁵ Every Wednesday, its court hears youth cases for children aged up to 16 (the maximum age of the youth justice system in New York – see Chapter 9).

Although the court only deals with the equivalent of summary offences, excluding more serious indictable offences, the judge plays a far more active role in the child's community sentence than is the case in ordinary courts.

A court review hearing is set every two weeks or every month to examine a child's progress, in effect holding the young person to account for their behaviour. It is also a means of providing incentives and rewards to encourage compliance and problem solving when children are struggling to meet the requirements of the sentence.

The Red Hook community justice centre has found that the review mechanism is an effective means of ensuring compliance. The judge congratulates a child in court for good progress and develops a positive personal relationship to seek to support them, using the authority of the court in a way which reflects the original philosophy of the juvenile court – as a 'kind and just parent'. If a child is not progressing well they will try to address the reasons behind it. Instead of automatically sanctioning the child, attempts are made to encourage improved behaviour.

Similar court reviews are used in youth drug courts and youth mental health courts (see Chapter 6).

In England and Wales section 178 of the Criminal Justice Act 2003 enables courts to review adult offenders' progress as they complete community orders. This means that when an offender is given a community order, the court can require the offender to come back to court on a regular basis to consider their behaviour during the sentence. At present the provision is only used by the 10 adult community justice courts in England, however the recently published green paper, *Engaging communities in the criminal justice system*²⁶, proposes extending the review power to all magistrates' courts. Evidence suggests that, providing the necessary resources are made available, introducing or extending provision for review will be welcomed by sentencers²⁷.

The power of review is also available for the new youth rehabilitation order, due to be implemented at the end of 2009, as set out in schedule 1,

paragraph 35 of the Criminal Justice and Immigration Act 2008, which includes provisions that are very similar to section 178 of the Criminal Justice Act 2003 for adults.²⁸

Missouri community mentors and problem solving assessments²⁹

The state of Missouri has developed a juvenile justice system which is based on a philosophy of treatment and individualised care. Operated by the Department of Youth Services, the approach is premised on the notion that each child is unique and therefore requires a flexible response that is not based on one specific mode of treatment. Each child is given a comprehensive risk and needs assessment to determine an 'individual treatment plan'.

Consequently, this means that the department takes an individualised approach to violations of court orders. If a child breaches the conditions of their order an assessment is made by the child's case coordinator to establish the reasons for the breach, the risks posed by the child's behaviour and what the response should be, depending on their treatment needs.

Each child retains the same case coordinator throughout their entire court order, ensuring staff provide consistency and continuity. It also enables staff to develop effective relationships with children and respond in accordance with the treatment plan when breaches occur.

The individualised treatment approach means there is not a standardised policy for responding to breach. There are also no prescribed sanctions or rewards. Instead staff work on a case-by-case basis, making decisions that are considered to be most appropriate for each individual child's treatment plan. When making these decisions a problem solving approach is adopted that seeks to address the reasons for the child's behaviour and provide the necessary treatment and support to address it. For example, if a child fails to co-operate with the treatment plan by not attending appointments or refusing to co-operate with the plan's objectives, the case co-ordinator will seek to address the factors which are leading to the child's behaviour rather than using sanctions.

Student community mentors

To support children to meet the requirements of their court order and progress successfully the Department of Youth Services employs university students who operate as community mentors. Their role is to monitor compliance and provide additional support and guidance to each child. The mentors assist children in a variety of ways to help them to lead law-abiding lives in the community. This often involves supporting the child to stay in school, or find vocational training or employment.

In effect the mentors are assisting young offenders to facilitate compliance. They are 'teaching' them important life skills and problem-solving strategies to prevent breach.

The community mentor approach is premised on the idea that children change through building pro-social relationships and contacts. In addition it is also considered to be an effective tool for staff recruitment.

The mentors supplement the work of the case coordinators and support the overall problem-solving approach that is taken in response to children who fail to comply with their court orders.

A non-detention policy for technical violations

Some states in America have adopted a more swift and simple approach of prohibiting the use of custody for technical violations, such as failing to keep appointments or meet curfew requirements. Custody can only be used if a child commits a new criminal offence.

This approach is statewide policy in Florida, where technical violations do not qualify for custody under statutory detention criteria. It is also local policy in some jurisdictions, such as Tarrant County, Texas.

The policy need not necessarily be inflexible. It could include an override procedure that allows technical violators to be detained in exceptional circumstances, for example, where they pose a significant risk of harm or have proved repeatedly unwilling to comply with any terms of community supervision.

(As noted earlier in this chapter, a policy of non-detention for technical violations is the approach that civil servants in Canada say should have been applied when they drew up the country's new youth justice legislation, the Youth Criminal Justice Act.³⁰)

Options for policy transfer to England and Wales

Breach is a significant driver to child custody in England and Wales – indeed in 2007/8, on average 16% of all children in custody were imprisoned for breach (breach of bail or breach of a statutory order)³¹. Based on the policy examples presented in this chapter there are a number of options for policy transfer to England and Wales to reduce the number of children sentenced to custody for breach of a community order. They are:

- Limiting the use of custodial sentences for breach of a community sentence by first-time offenders, so that a child must have breached a previous community sentence before a custodial sentence can be considered.
- Introducing a policy of non-detention for technical violations so that statutory criteria prevent the use of custody for these types of breaches. A custodial sentence could only be considered in cases involving a new criminal offence.
- Using court reviews based on a problem-solving approach as a means of dealing with breach.
- Developing a graduated sanctions grid and classification process.
- Using student community mentors to support and monitor compliance.

3: Measures for children under 15

There are a number of European countries that take either a primarily welfare, or an educational, approach to children under the age of 15 who break the law or commit anti-social acts. This chapter explores both approaches. Firstly it looks at Sweden which, like many European countries, takes a welfare approach. It then looks at a specific programme in the Netherlands and at France which has adopted an educational model. In each country the age of criminal responsibility is higher than in England and Wales. However, applying the approaches to England and Wales would not necessarily require raising the age of criminal responsibility. Instead, a presumption against prosecution for all but the most serious cases could be introduced so that cases could be transferred to social services (children's services in England and Wales) or alternatively, following the French model, a presumption of educational sanctions could be applied. In each case the options for applying the models to England and Wales will be considered.

Sweden³²

The age of criminal responsibility in Sweden is 15 and Swedish law places the entire responsibility for responding to crimes committed by individuals under that age on social services. An offence committed by a child under the age of 15 is considered to be a social welfare matter rather than a criminal justice concern. The role of social services is to address the causes of the child's behaviour and help them and their family or guardian overcome their social problems.

A case can be reported directly to social services or can be referred by the police. If it comes to the attention of the police first they can choose to talk to the child and resolve the matter informally without reporting the incident to social services.

A variety of measures are available to social services to respond to a child's offending behaviour. They are mainly voluntary non-coercive options but coercive options are also available if they are deemed necessary because the child's health or well-being is considered to be in jeopardy.

Most under 15 year olds are dealt with under the Social Services Act 1980, which stipulates that social services should seek co-operation from the child and the family to adopt measures to address the causes of the child's behaviour. Social services hold meetings with the child and his/her family to assess the factors behind the child's behaviour and determine what kind of support is required. If it becomes apparent that there are serious problems in the home (such as poverty, domestic violence or abuse), social services will seek to resolve them.

A support plan for the family and child is developed that include opportunities to receive services such as help with welfare benefits, therapy or parenting guidance. Depending on the nature of the support provided, the family may be assigned a social worker for a longer contact period who will work with the family to provide support to address a range of issues.

This model is similar to the family intervention programmes (FIP) that operate in England and Wales, targeting so called problem families who have been involved in anti-social behaviour with contractual support using methods of assertive out-reach. A contract between the family and the project is drawn up which sets out the changes in behaviour that are expected, support that will be provided and sanctions that will be imposed if behaviour does not improve.³³ The key difference is that the FIP is not purely voluntary as families are threatened with civil orders unless they co-operate with the programme and change their behaviour.

For cases where the child is involved in extensive criminal and anti-social behaviour or there are serious concerns about significant substance misuse, social services can use a care order to place the child either in a care home or with foster parents. In the majority of cases this is done on a voluntary basis. However coercive action can be taken where necessary under either the Care of Young People Special Provisions Act 1990 or the Care of Addicts in Certain Cases Act 1982. Both include provisions which allow for a child to be forcibly taken into custody for the purposes of social services care, although the rules governing such action are very restrictive.

The decision has to be taken by local social welfare boards made up of local politicians and then approved by a county administrative court, a civil court that is completely separate from the country's criminal courts. The final decision can be appealed to higher courts.

It is, generally, very rare for a child under the age of 15 to be forcibly taken into care. However, if it does happen a child can be held in a secure youth care facility rather than in a care home or in foster care. Unlike a care home, these facilities have the right to use compulsion to keep the young people in place and they have secure units. A child's placement in this facility would be reviewed by social services every six months. During the course of 2000, 105 10-15 year olds were held in such a facility.³⁴

Netherlands 'Stop' programme³⁵

In the Netherlands the age of criminal responsibility is 12. Due to widespread public concern about anti-social behaviour by children a special project, 'stop', has been established to provide interventions to children under the age of 12.

Police officers can arrest, but not prosecute, children under the age of 12 who are involved in criminal behaviour on the street, such as vandalism, shoplifting, theft and assault, and then return the child to their parents. Instead of proceeding with prosecution they offer the parents a so-called 'stop-reaction'. If the parents consent together with their child they will take part in a meeting with the stop programme (operated by a non-governmental social services agency) to determine what happened and how the behaviour can be rectified.

The programme typically proposes a learning assignment to the parents and the child, such as playing a special 'stop-game', doing a 'stop-lesson' or homework assignment, writing an essay and/or apologising to the victim. Support can also be provided to deal with any problems the child may have concerning peer pressure, bullying or mental health issues.

Since it began in 2001, on average about 2000 children each year have been referred to stop.

French educative model³⁶

In France children under the age of 13 cannot be convicted or sentenced for a crime irrespective of its gravity. The government is proposing to reduce this age to 12, however children can still be considered criminally responsible as soon as they are 'capable of discernment'. Discernment is generally considered to be between the ages of 8 and 10. Up to the age of 10 only measures of 'protection, assistance, supervision and education', described as educational measures, can be imposed. From the age of 10 to 13 specific educational sanctions/penalties can also be imposed. The judicial youth protection service (PJJ) of the Ministry of Justice carries out all educational measures or sanctions.

Educational measures

Educational measures for children up to the age of 10 include:

- *A measure of liberty under supervision* – regular monitoring of the child who remains with his family.
- *Placement in a facility* – such as a children's home or a secure educational centre (centres éducatifs renforcés, CER) or an emergency placement centre (centres de placement immédiat, CPI).
- *Reparation* – the child is made aware of his responsibility and his place in society and required to pay back the harm he has done through prescribed measures.

Secure educational centres (centres éducatifs renforcés, CER) are residential units where groups of 5-7 children participate in sessions which last for between 3 and 6 months. Through educational provision they aim to transform the children's attitudes and behaviours. There are 47 centres throughout France. The objective is to 'create, through the discovery of a new way of life outside their normal environment, the conditions capable of producing a transformation of their image of the adult world and life in society'.

Emergency placement centres (centres de placement immédiat, CPI) provide residential placements for between 3 and 4 months. The aim

is to provide a break from the home environment so that the child’s situation can be evaluated by a range of services and proposals can be made to provide long term solutions.

Educational sanctions

In addition to educational measures, educational sanctions were introduced in 2002 and are intended to enable youth courts to apply a penalty to minors who have not reached the age of criminal responsibility (13 years) and who previously escaped all punishment.

Educational sanctions include: the confiscation of an object, a ban on associating with the victim or the accomplices in the offence, a ban on going to the place of the offence, reparation and the obligation to participate in some form of civic education. In the event of non-compliance the magistrate can order placement in an institution such as a children’s home or a secure educational centre.

Options for policy transfer to England and Wales

The age of criminal responsibility in England and Wales is one of the lowest in the world (see Figure 3). This position will be reinforced if current proposals to change legislation in Scotland succeed³⁷. Reformers have long sought similar legislative change in England and Wales in line with international norms and standards.

Although the age of criminal responsibility in each country highlighted in this chapter is higher than in England and Wales there are still various options for policy transfer that could be considered. These include:

- A presumption against prosecution for under-15 year olds or under-14 year olds depending on the severity of the offence. Children would be referred by the police to be dealt with by children’s services unless the case was very serious. Alternatively a similar programme to the ‘stop’ initiative in the Netherlands could be established to work with children who are not prosecuted.

Figure 3: Age of criminal responsibility in selected countries³⁸

Country	Age of criminal responsibility
Scotland	8
England and Wales	10
Northern Ireland	10
Australia	10
Netherlands	12
Canada	12
France	13
Germany	14
New Zealand	14
Japan	15
Sweden	15
Italy	15
Norway	15
Spain	16
Belgium	18

- Limited specific sanctions could be used for under-15 or under-14 year olds similar to the educational sanctions used in France for under-13 year olds. There would have to be a presumption against prosecution but instead of being referred to children’s services or a stop-style initiative, youth courts could apply educational sanctions that do not include the option of custody.
- The use of prison for those under the age of 15 could be restricted to those who commit very serious offences. This would, in effect, be a return to the legal situation in England and Wales pre-1994, when custodial sentences could only be given to children aged 15-17, with the exception of younger children who had committed the gravest offences.

4: Alternatives for non-violent offenders

At a conservative estimate, Youth Justice Board statistics suggest that at least a quarter of children in custody at any one time in England and Wales have committed offences which do not involve violence.³⁹ Indeed, over half of all 15-17 year olds entering prison establishments in 2008 had been convicted of non-violent offences.⁴⁰

This chapter explores the kind of alternatives to custody used internationally for non-violent offences. It begins by looking at a disposal that is widely available in the United States for children who mainly commit the equivalent of summary offences, or shoplifting or minor thefts. These would be classified in England and Wales as indictable either way offences as they could be dealt with in either the magistrates' court or the crown court. It then considers three sanctions that are widely used in other jurisdictions as alternatives to custody for non-violent offenders. In those jurisdictions they may also be used for offences involving low levels of violence such as a robbery involving a minor assault.

Teen courts⁴¹

Teen courts, also known as peer youth courts, are common across the United States, where they have developed into a national movement in youth justice. They began 30 years ago and today there are 1,255 programmes. It is estimated that they are processing 100,000 cases per year. In 2007 a national association was established and the first national teen courts conference was held.

In effect, teen courts are specialised diversion programmes for young offenders who admit guilt for first-time minor offences. If they successfully complete the teen court programme they will be diverted from prosecution.

Teen courts operate in the same way as a youth court, except young people are involved in the process alongside adults. The format and operations of teen courts varies greatly. Figure 4 demonstrates that youth peers can play different roles and the courts can include adult legal professionals. However, the fundamental premise is that a teenager is held to account by his/her peers acting as peer juries, lawyers, prosecutors and even judges. Teenagers take an active role in determining the consequences for the criminal behaviour of their peers.

Figure 4: Courtroom models used by teen courts in the United States⁴²

	Adult judge model	Youth judge model	Tribunal model	Peer jury model
Who performs the role of judge in the courtroom?	Adult	Youth	3 Youth	Adult (sometimes no judge)
Are teen attorneys included in the process?	Yes	Yes	Yes	No
What is the role of the teen jury during court?	Listen to attorney presentations, recommend sentence to judge	Listen to attorney presentations, recommend sentence to judge	Usually no jury	Question defendant, recommend or order sentence

Some teen courts are operated entirely by young people. For example, the youth court within the Red Hook community justice centre in New York does not involve any adults in the court process. Staff from the centre support the court's operations but do not take part in it.

Teen courts do not deal with serious indictable offences. They mainly deal with less serious summary offences, such as motoring and public order offences (see Figure 5), but also hear many cases involving shoplifting and low-level thefts which in England and Wales are classified as more serious indictable either way offences and can be dealt with by either the magistrates' court or the crown court.

The child has to admit guilt and agree to go through the teen court process. Usually it will be the child's first recorded offence. The court determines the sanction which can include a letter

of apology, a spell of community service, attendance on an educational programme or even returning to the court to serve on the jury. Compared to the sentence children might have received in the juvenile court in America for a first time non-violent offence, the sanction can be relatively severe.

Although teen courts have been promoted throughout the US as a viable alternative to prosecution, their success is mixed. Evaluations have not produced conclusive evidence that children who have been through the courts are less likely to be reconvicted. Some courts do appear to have reduced the likelihood of reconviction whereas others have not.⁴³

Much depends on the kind of teen court model that is used. There is a need for further research to establish the range of outcomes.

Figure 5: Teen court cases and features⁴⁴

Cases appearing in teen court		Features of US teen courts	
15 year old boy who stole a stereo	14 year old girl who was arrested trying to steal \$280 of merchandise from a department store	Most common administrative arrangement Who usually runs the teen court?	Court or probation agency Private agency Other service agency Local law enforcement Local prosecutor
14 year old girl who stole cigarettes from a store, claiming she did it for a friend	15 year old girl who left a restaurant without paying the bill; sent to youth court even though she later returned to the restaurant and paid the bill	Most common offences What laws have teen court defendants usually broken?	Theft or shoplifting Minor assault Disorderly conduct Alcohol possession or use Vandalism
16 year old female co-defendants who did not open the door for a police officer who followed them home after seeing them commit a driving offence	15 year old boy who was charged with curfew violation	Most common sanctions What are teen court defendants most often ordered to do?	Community service Victim apology Written essay Teen court jury duty Drug/alcohol class or other classes
13 year old girl charged with shoplifting; came to youth court wearing a Winnie the Pooh shirt	16 year old boy who was arrested for shoplifting \$9 worth of merchandise		

Mentor Family Support Order

In the Republic of Ireland, the Irish Children Act 2001 created a range of community-based sanctions available to the courts for juvenile cases. The mentor family support order is a new sanction intended to provide individualised support to the child and his/her family to address the factors behind the child's offending behaviour.

A court may assign a professional mentor to a child and their family to help, advise and support them in efforts to prevent the child from committing further offences. The mentor assists with both educational and welfare needs and is also expected to monitor the child's behaviour. The focus is on both the child and the family as it is recognised that parents/guardians often need as much support as their children.

The child and the parents must consent to the order and it can last for no more than two years. The child continues to be under the supervision of the youth probation service for the duration of the order. Probation officers support the work of the mentor.

An order can specify other conditions, such as curfew requirements, community service or participation in designated programmes.

The order has only been in operation for two years and it has yet to be evaluated.

Suspended sentences

In many European countries, for example Finland, France, Germany and Denmark, custodial sentences are commonly suspended in the cases of children who have committed serious offences such as repeat burglaries or repeat robberies. In Denmark data from 2002 shows that around half of children sentenced for multiple burglaries were given a suspended sentence.⁴⁵

Suspended sentences can last up to one or two years. To be eligible, the offence must reach the custody threshold, but the custodial sentence is suspended for a specified period, and is instead served in the community with specific conditions that are supervised by youth probation officers. Breach of a condition can result in the remainder of the sentence being served in custody.

In Germany about 70% of youth prison sentences are suspended, demonstrating that they are clearly being used in place of custody rather than in place of community sentences. The suspended sentence is considered to be a 'great success as the revocation rate dropped to only about 30%'.⁴⁶ Dunkel suggests there are two reasons for this. Firstly, the German probation service has become more effective in its work with children serving suspended sentences and secondly, the courts have sought to avoid revoking a sentence for as long as possible. This is due to the fact that German youth courts strictly adhere to the principle of using custody as a genuine last resort.

The Canadian Youth and Criminal Justice Act 2004 (see Chapter 8) includes a new suspended sentence, the deferred custody and supervision order, intended for cases that are not serious violent offences. The order can be for no more than six months. The youth court judge sets conditions. Breach can result in the modification of the conditions or in the remainder of the sentence being served in custody. The DCSO has been used relatively frequently but thus far it is not clear if it is being used as intended or in place of community sentences.⁴⁷

The suspended sentences used for children in certain European countries and in Canada are very similar to the suspended sentence order introduced under the Criminal Justice Act 2003 for adult offenders in England and Wales. To date, there has not been any suggestion of a similar sentence being introduced for children.

Day treatment centres⁴⁸

Day treatment centres have been developed in the American state of Missouri as an alternative to residential custody for children from chaotic family backgrounds who have committed both non-violent offences and offences including less serious violence, such as common assault. Described as a type of therapeutic one-room school house the centres are based on the state's treatment philosophy that 'for children to truly change and avoid reoffending, they must go through a process of self-exploration and a change process that addresses their history/family dynamics and how it has influenced their present situation'.⁴⁹

The centres are accredited schools providing the equivalent of a full day's education to the same standards and requirements of mainstream schools. However, the education is more individualised to meet the specific needs of the children.

There is a structured and purposeful daily schedule focused on building 'healthy peer-to-peer and adult-child relationships, self-awareness and insight, skill development, resolution of core issues, behavioural change, and leadership'. Counselling is a key element of the day's activities and is provided in the form of individual, group and family therapy. In addition there are job mentoring programmes, independent living programmes and various community service activities. Parent support groups are also provided.

Placement at the day centre can be open-ended depending on the length of a court order and the progress of an individual child. The centres are also used as a form of 'intermediate care' for children leaving custody.

The key features of the day centre's integrated treatment approach are:

- an individualised and integrated educational approach
- predictable daily group meetings ('sacred time', emotional safety, trauma work, self acceptance and accountability)
- ongoing treatment activities and group circle (educational, conflict resolution, problem solving)
- regular engagement with family and community (empathy and giving back)
- leadership, youth development and recreational opportunities.

Options for policy transfer to England and Wales

The sanctions and sentencing disposals presented in this chapter provide various options for policy transfer to England and Wales to reduce the number of children sentenced to custody for non-

violent offences.

Evidence from a range of opinion polls⁵⁰ suggests that there would be public support for effective alternatives to custody for children who have committed non-violent offences.

- Day treatment centres could be established based on the Missouri model.
- For girls and young women, there is scope to build on the women's centre model developed and extended as a result of Baroness Corston's review of vulnerable women in the criminal justice system.
- A suspended sentence could be introduced as part of a wider set of sentencing reforms to ensure there is not unexpected net-widening.
- Building on the restorative peer panel piloted by Nacro in Preston, peer courts could be used in addition to referral orders for non-violent summary offences, and offences of low-level theft and shoplifting could be diverted from prosecution to a peer court.

5: Alternatives for violent/serious persistent offenders

Many countries have developed alternatives to custody for children who commit violent offences, excluding serious violence such as murder, manslaughter and serious sexual violence. The alternatives are also used for children who are serious persistent offenders repeatedly involved in offences such as robbery, burglary, common assault, theft and criminal damage. This chapter looks at the various alternatives and how they are used in each country.

French educational centres

In France persistent offenders aged 13-18 can be placed in 'centres éducatifs fermés' (CEF) or closed educational centres set up following legislation in 2002. They can be used for teenagers who have been given a judicial supervision order or a conditional (suspended) custodial sentence. A child can remain in the centre for between one and 12 months.

In November 2007 there were 25 centres in operation, all but two of which are managed by licensed private associations.⁵¹

Although they are called closed centres this does not mean they are the same as closed prisons. Placements are made in the framework of judicial control and thus entail the threat of incarceration in prison if a child fails to comply by, for example, absconding from the centre. Security is relaxed and children can even be granted permission to attend the local high school each day.⁵² There is also a high staff-to-child ratio to allow staff to work as effectively as possible with the children.⁵³

Alternative institutional placements

The Irish Children Act 2001 created the residential supervision order as an alternative to a secure custodial placement. This legislation stipulates that a child should reside in a hostel residence which should be reasonably close to the child's usual place of residence or to any place where the young person is receiving education or training or is employed. The hostel must be inspected and certified as suitable for use by the Head of the Probation Service. The order should not exceed one year in duration.

The order has recently come into operation and the new Irish youth justice service is in the process of commissioning hostel placements.⁵⁴

In Denmark the law allows for children to serve a prison sentence in an institution or other place outside the prison system.⁵⁵ A child may serve all or part of a prison sentence in a hospital, in family care or in a specialised drug treatment centre or any other institution, such as a hostel.

In 2001 it was made mandatory that children must serve a prison sentence in an alternative institution unless particular considerations relating to public safety and dangerousness deem it unsuitable.

The length of the prison sentence determines the maximum length of stay in the institution. Probation continues to be responsible for the supervision and oversight of the offender. If a child fails to comply they can be returned to prison to serve the remainder of the sentence.

Juvenile justice initiative

In 2007 the juvenile justice initiative was set up in New York to provide evidence-based alternatives to custody for children who have committed serious offences and/or are repeat offenders. The alternatives were implemented as part of a wide-ranging strategy to reduce the use of custody for children (see Chapter 9). Three community-based intensive therapeutic programmes have been set up for children who previously would have been sentenced to custody. All the programmes are strictly based on models that have been subject to high quality evaluations which show they reduce reoffending by between 30 and 70%.

Functional family therapy (FFT): A small team of highly trained therapists, with a maximum caseload of ten families, provides therapy to the entire family in the home. Therapy takes place over an intensive three to five month period and includes up to 30 one-hour therapeutic sessions. FFT has three phases, which it implements sequentially:

- engage and motivate young people and their families
- develop and implement long-term behaviour plans for each family member

- strengthen families' capacities to utilise community resources.

Multisystemic therapy (MST): A small team of highly trained therapists, with a maximum caseload of six families, provides therapy to the entire family in the home over a six to 12 month period. Therapists visit the home multiple times per week and are also available by phone 24 hours a day. The child's entire social network is considered and relied upon to assist the young person and their family in making positive changes. Therapists use cognitive, behavioural, and family therapies to address issues relating to substance abuse, family dysfunction, negative peer influences, and poor school attachment.

Multidimensional treatment foster care (MTFC): Children are placed with a specially trained foster family which becomes, alongside a family therapist, part of the young person's therapeutic treatment team. For six to nine months, MTFC foster parents, who have 24 hours per day/7 days per week access to programme support, carry out an individualised programme that sets clear rules, expectations and limits to manage behaviour. The foster parents provide a daily report, which relays information about the youth's behaviour to the treatment team and ensures that the programme is being implemented correctly. Simultaneously, the young person's family receives intensive therapy and parenting skills designed to teach them how to provide consistent discipline, supervision, and to encourage them to make changes in their parenting style. The goal is to prepare parents for their child's return home while increasing positive relationships in the family. Upon return, the family then receives multisystemic therapy until the family and young person are able to show sufficient progress. Data show that MTFC reduces recidivism by approximately 60% at a cost significantly lower than custody.

Blue sky project pilots: Blue sky utilises all three evidence-based interventions as a continuum. Children may move from one to another, and back again, depending on the child and family's needs and their response to each modality. The founders

and developers of MST, FFT, and MTFC chose the juvenile justice initiative to be the first site for piloting the blue sky programme.

Each child is given a standard probation order and is allocated to one of the programmes based on an assessment of their probation report and risk of reoffending. Around half of children on the programmes have committed violence against the person offences, around 15% drug offences and the remainder non-violent repeat offending. Eight out of ten of the children's families have had previous involvement with child welfare agencies.

Each child will also have additional conditions attached to their probation order, such as school attendance, a curfew requiring them to be at home at a certain time and restrictions on going to specified places. Ideally these conditions are developed in collaboration with the family and the therapy team.

Each therapy team has an educational specialist to deal with school issues and a resource specialist to link the child with pro-social activities and help families with concrete needs such as housing problems. In addition to the therapy team each child continues to have a probation officer.

Every effort is made to ensure that the programmes are implemented in strict accordance with the programme model. This is seen to be vitally important for the initiative's success.

Although probation determines when to breach a child, the treatment approach means that they seek to problem-solve the causes for the breach rather than taking a strict, prescribed enforcement response.

The costs per child range from \$5,000 (approximately £3,000) to \$18,000 (approximately £11,000) depending on the programme.

Although there are similar intensive fostering pilots currently being used by a number of youth offending teams in England and multisystemic therapy pilots in additional youth offending teams there is not the same coherent model like the juvenile justice initiative.

Multifunctional treatment in residential and community settings (MultifunC)⁵⁶

Based on an analysis of the research and evidence on residential treatment for young people with severe behaviour problems the MultifunC residential treatment model for children with serious, including violent, behavioural problems has been developed in Norway and Sweden. Each facility is a small unit housing only eight children in a non-secure setting with links to local communities. There are six facilities in Norway and three in Sweden. The centres are run by social services but accept children given a custodial sentence that the court decides should be served in a MultifunC centre.

The programme consists of a time-limited period in the residential setting followed by an integrated, focused aftercare period. The total length of the programme depends on an individual assessment, but is usually about 10-12 months including aftercare, with the aim that no child stays longer than six months in the residential centre.

The programme focuses on changing the child's behaviour using cognitive behavioural techniques and social learning theory. Links with local schools are established to support the development of pro-social peer relationships outside the centres, and children attend local schools and access community leisure activities. In addition a great deal of support work is done with parents who are directly involved in treatment planning and are supported according to the principles of multisystemic therapy and parental management therapy.

Comprised of three key components, the programme involves a relatively short stay in the residential centre, intensive aftercare support and parental support and training. The short stay is regarded as critical to avoid institutionalisation and negative influence from peers with similar problems. Aftercare support is also vital as changing a child's behaviour is only considered to be possible if children and their families are supported to adapt in their home settings. Children are allowed periods of leave from the residential centre to prepare them and their families for the return home. Finally, the

programme is premised on the idea that parents need to develop new skills and strategies to succeed in changing their child, and parents are therefore an integral part of the treatment process.

The MultifunC programme and residential centres were set up between 2005 and 2007. An evaluation is currently being carried out and is due to be completed in 2010.

Continuum of secure care

Many jurisdictions have developed what they call a continuum of secure care. Instead of only having secure custodial facilities for children, they have graduated institutions that use different degrees of security. For example, in the autonomous region of Catalonia in Spain, five types of custodial measures are provided by the general directorate for juvenile justice - closed, semi-open, open, therapeutic custody and weekend residence in an education centre.⁵⁷

The US state of Missouri has also developed different levels of residential provision. They include:

- Secure care – these are locked enclosed facilities for the most serious young offenders who have committed serious violent crimes. They house about 30 children who live in open dorm accommodation in treatment groups of 10 to 12.
- Medium care – these are open dorm facilities that are locked but do not have a secure perimeter fence. They have full time teachers and run in-house day schools. Some of the facilities are housed in state parks that operate intensive outdoor programmes.
- Group homes – these are small 10-12 bed homes located in residential communities, where children access local education, vocational training or employment programmes.

Options for policy transfer to England and Wales

The alternatives to custody for violent and/or persistent young offenders presented in this chapter could be transferred to England and Wales in various ways.

- A MultifunC programme based on the developments in Sweden and Norway could be piloted or developed in each regional youth offending team area.
- Therapy teams based on the juvenile justice initiative model in New York could be established serving regional youth offending team areas, providing greater access to the four evidence-based intensive therapeutic programmes that make up the initiative.
- Consideration should be given to the long-term development of continuum of secure care facilities for violent young offenders.

The legislative framework that would allow children to serve custodial sentences in institutions other than secure custodial facilities (for instance drug treatment centres or other residential facilities) already exists, through the Criminal Justice Act 2003. Section 235 of the Act allows for those aged under 18 who are sentenced for serious offences under section 226 of the Act, or for certain violent or sexual offences under section 228 of the Act, 'to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose'⁵⁸. To date, this legislation has not been utilised.

6: Treating substance misuse and mental health problems

It is well established that children in many countries who are sentenced to custody have higher than average substance misuse and mental health problems. Some of the alternatives to custody highlighted in this report include components such as individual or group therapy or counselling that seek to address these needs. In some countries there is also the option to serve a custodial sentence in a treatment facility (see Chapter 5). However, there are few examples of non-custodial penalties that specifically address either substance misuse, mental health or social care needs.

This chapter focuses on approaches that have been taken in America through the extension of problem-solving drug courts and dedicated mental health courts for juvenile offenders. Although their development is still in its early stages and the evidence about their impact is limited, they do provide possible options for application in England and Wales where drug courts and mental health courts are currently being piloted for adults.

Juvenile drug courts⁵⁹

Drug courts have proliferated throughout the United States since the first was opened in California in 1989. They were initially established for adult offenders but since the mid-1990s juvenile drug courts have emerged as an alternative approach for dealing with young drug offenders. They are designed to guide offenders identified as drug-addicted into treatment to reduce drug dependence and improve quality of life for them and their families.

In a typical drug court programme, a judge is supported by a team made up of a drug court coordinator, addiction treatment providers, district/state's attorneys, law enforcement officers, and parole and probation officers, who closely supervise participants. They work together to provide coordinated services to drug court participants. District/state attorneys and public defenders hold their usual adversarial positions in abeyance to support the treatment and

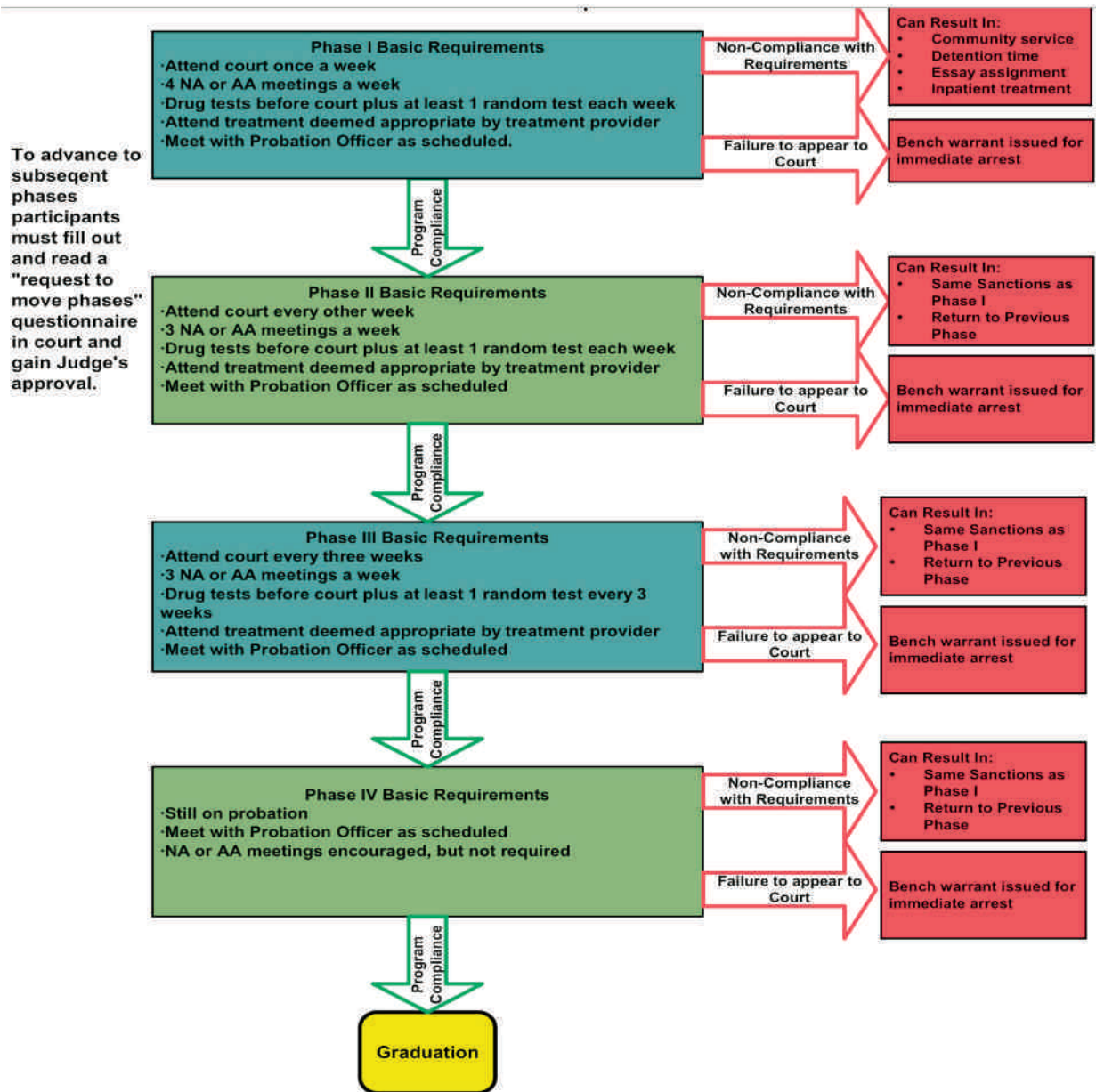
supervision needs of programme participants. The judge plays an active role, regularly reviewing the case and supporting the young offender's progress.

In most juvenile drug courts in America, eligibility criteria covers young offenders who have been found guilty of a drug-related offence and have a history of drug-related offending. However, the courts only deal with relatively minor drug offences, such as possession of small amounts of drugs such as methamphetamine, marijuana and cocaine. Cases that involve possession of large amounts, dealing or manufacturing, or include sexual or violent offences, are not eligible.

Children can be referred from a variety of sources: a parent, treatment agency, probation officer, judge, prosecutor or defence attorney, although they are usually referred by probation. Those selected to participate in the drug court programme can decline the offer - however if they refuse to participate they are most likely to be given a custodial sentence.

A parent or guardian is required to support the young person through the drug court programme, which involves a series of stages that include sanctions and rewards depending on an individual's progress.⁶⁰ As an example, Figure 6 sets out the three phases of the Vanderburgh County, Indiana, juvenile drug court programme. The average time participants spend in the programme is 7 months.⁶¹

Figure 6: Vanderburgh juvenile drug court process⁶²



All participants, no matter what phase they are in, are required to attend school regularly or participate in a training programme three days a week. Each phase also has specific requirements around participation in drug screening, attendance at support groups, and at drug court status hearings. Individualised treatment objectives are identified for each client based on therapists' recommendations and therefore the frequency of required sessions varies depending on the participant.

Aftercare, also called continuing care is an integral part of juvenile drug courts. It is offered by treatment providers and typically begins shortly before the young person graduates from the drug

court programme. The length of aftercare is dependent on the treatment provider's policy but usually lasts at least 90 days.

A key element of the juvenile drug court is the role of the judge/magistrate who actively reviews cases on a regular basis. During drug court sessions the magistrate provides participants with positive encouragement when they show signs of progress and imposes sanctions when they are not following programme requirements (see Figure 6). They get to know participants individually, learning in detail about many aspects of their lives and family in an effort to better connect and understand them.

Outcomes

Most drug courts in America are too new to determine if they are effective and they have developed so rapidly that researchers have not had the time to complete credible outcome evaluations. The Justice Department raises a number of questions about the role of the courts that still need to be answered:

Are drug courts better than the traditional juvenile justice system at stopping or reducing substance abuse in teenage offenders? How serious should a youth's drug behaviour be to justify the added expense and treatment intensity of juvenile drug court? What happens to offenders after they leave the drug court program? Researchers...raise these and other critical questions, but until a body of sound evidence can be compiled, no definitive answers are forthcoming.⁶³

Clearly, questions remain about the need for juvenile drug courts. There continues to be a debate in the US about whether or not drug courts dedicated to juveniles are really necessary. Some argue that the juvenile court already uses a problem-solving approach and recognises the unique circumstances surrounding youth offending, including the use of alcohol and illicit drugs. Even if their need can be established, sceptics question the appropriateness of superimposing the adult model on children whose criminal and drug-using profiles are markedly different from seriously addicted adult offenders.

Juvenile mental health courts⁶⁴

Following the development of mental health courts for adult offenders over the last twenty years, juvenile mental health courts have developed as an alternative for children and young people with mental health needs who are convicted of a range of offences.

While there has been no large-scale evaluation or review of the courts there is a growing interest in their operation as a means of providing effective mental health services to children who enter the youth justice system.

There are far fewer juvenile mental health courts than there are juvenile drug courts. A recent review found just 10 operating in the USA with a further 20 planned. They have emerged in an ad hoc fashion usually initiated by a juvenile court judge or a key politician in response to a large number of children with mental health needs appearing in court and a lack of available services to meet their needs.

The courts operate separately and are typically overseen by a single judge who, in the same way as juvenile drug courts, is actively involved in reviewing each case. The courts adopt a multi-disciplinary team approach to develop treatment plans and monitor treatment compliance and progress and make recommendations to the court.

Some courts have very strict exclusionary criteria for participation, barring any child who has committed violent offences or sex offences, while others use broader criteria and discretion. For example, while the Los Angeles County, California, juvenile mental health court has no formal exclusion criteria, the judge, working in conjunction with a team of juvenile justice, mental health and school officials, uses discretion when dealing with very serious offences.

Courts also have different criteria for mental health eligibility; some will only accept children with the most serious mental health illnesses while others accept children with any identified mental health disorder or issue. The majority of courts, however, exclude those children who only have a diagnosis of conduct disorder or oppositional defiant disorder.

A child can be referred to the court after conviction and prior to sentencing. In some courts a referral can take place whilst awaiting trial and progress can impact on the sentencing decision. Each case is regularly reviewed by the judge to monitor a child's progress and rewards, incentives and sanctions are used as required. Courts might expunge a child's record or drop all charges (depending on the point at which the child is referred to the court) upon successful completion of the treatment programme. Other courts recognise achievements through graduation ceremonies, reduced frequency of judicial review

hearings, or termination of probation. In the event of non-compliance, juvenile mental health courts use a variety of sanctions including electronic monitoring, judicial review, temporary placement in detention, or increased intensity of treatment.

Treatment programmes are provided through formal linkages with existing community-based mental health services. As a result, the services available are largely determined by what is provided in the local community. Typical services provided to a child participating in a juvenile mental health court include traditional mental health services, such as individual, group and family therapy; medication and medication management; and case management services. Some courts will provide specific additional services, such as multisystemic therapy (MST), to children participating in the programme.

Outcomes

The effectiveness of juvenile mental health courts has yet to be determined despite the growing interest in them across the United States. There continues to be some debate about the need for these courts and whether or not the services and programmes could just as easily be provided as part of mainstream juvenile court provision. There are also concerns that more children could be referred to the courts, and therefore become involved in the juvenile justice system, in order to access mental health services.

Juvenile court clinics

Juvenile court clinics have been established in some states in America to ensure that judicial decisions are based on the best available clinical information about a child's mental health needs. The objective of the clinics is to provide information that is 'relevant, timely, accurate, culturally sensitive, and appropriately used'.⁶⁵

The juvenile court clinic in Cook County, Illinois, is a good example of how the clinics have improved the quality of decision making.⁶⁶ It focuses on a number of areas:

- Co-ordination – clinical co-ordinators are assigned to each youth courtroom to assist sentencers, lawyers and probation officers to request and obtain useful

clinical information. Their role is to address common problems found in youth courts including 'vague referral questions that in turn produce generic clinical responses, inappropriate requests for clinical evaluations, untimely receipt of requested information, and insufficient communication between mental health services and the court'.⁶⁷ The coordinators act as the main contact between the court and mental health agencies, documenting requests for information and ensuring a timely response.

- Forensic evaluations – the clinics are also responsible for conducting forensic clinical assessments. After a family has been ordered to undergo a clinical evaluation, the clinical coordinator facilitates the process, which includes evaluating the information request, documenting the request, and arranging an intake interview. The assessment is conducted by a psychologist or psychiatrist who is a member of the clinic's staff, and is delivered to court before the family's next court date.
- Linking with community based mental health services – the clinic does not provide clinical intervention services. Instead, it responds to requests for service provision by providing information on community-based services and linking children and their families to these services. To facilitate this process, the clinic regularly gathers information on community clinical mental health intervention resources on an interactive database. This enhances the likelihood of the court referring children to recommended community-based services.
- Advice, guidance and training – the clinic plays a vital role in advising the court about the need for clinical assessment and evaluation. It also provides education and training for all court staff to help them to better understand and analyse the clinical information they receive.

The Cook County juvenile court clinic is currently being evaluated - however it has already been shown to have contributed to an overall reduction in the number of children sentenced to custody in the county.⁶⁸

Options for policy transfer to England and Wales

There is much evidence on the prevalence of drug and alcohol addictions, and mental health problems, within the child custody population in England and Wales. Thirty six percent of young men in custody cited coming off drugs or alcohol as a problem when arriving in prison⁶⁹ and research conducted by the Youth Justice Board (YJB) in 2004 found that 30% of juveniles in custody had used drugs 'to feel normal', whilst 38% had taken a drug 'to forget everything' or to 'blot things out'⁷⁰. Behavioural and mental health problems are particularly prevalent amongst children in prison, with 85% showing signs of a personality disorder, and one in ten signs of a psychotic illness⁷¹. More recent research conducted by the YJB found that 86% of 17 year old girls in custody had some level of psychiatric disturbances, including long-standing disorders⁷². That the prevalence of substance misuse/ abuse and mental health problems are so disproportionately high amongst children in custody suggests that the current arrangements for screening and diverting these children from the criminal justice system are failing.

As drug courts and mental health courts are being piloted for adults in England and Wales there is a good chance that they could, in the future, be proposed for young offenders. Based on the details provided in this chapter, careful consideration should be given to whether or not such courts should be developed in England and Wales. Lord Bradley's recent review of diversion from the criminal justice system into mental health and social care, although largely focussed on adults, could be used to lead to an improvement in response to children with mental health needs or learning disabilities.

Court clinics that have been developed in America provide an example of how community-based mental health treatment could be improved for children appearing in court in England and Wales.

What both models explored in this chapter have in common is a problem-solving approach utilising the court's authority to encourage and monitor juveniles. There is undoubtedly scope for extending such an approach to the youth court - whether or not specific courts are established.

7: Other options

In the course of conducting the research for this report we came across policies that clearly impacted on the number of children in custody but were outside the report's brief. This chapter looks at these miscellaneous policy options. It outlines three approaches to dealing with children who come into conflict with the law, in Europe, New Zealand and America, that we consider to be influential in ultimately determining how many children are sent to prison.

Specialist child prosecutors

Some European countries (Spain, Holland, Germany) have specialist youth prosecutors who only deal with juvenile cases. They operate in accordance with specific guidelines for juvenile cases with an emphasis on early diversion where possible.

Holland⁷³

The role of specialist youth prosecutors in Holland provides an example of how they can act as gatekeepers determining whether or not a child accelerates through the court system into custody.

In the Dutch criminal justice system, they play a key role exercising wide ranging power. The prosecutor is responsible for all investigating activities of the police. If the case is referred to court he/she is also responsible for the indictment and for recommending a specific penalty.

A prosecutor can dismiss cases unconditionally when it is considered to be in the public interest or is not required by law. However, the presumption is that cases will not be dismissed unless there are very strong public interest grounds.

Alternatively a case can be dismissed with conditions attached. In juvenile cases the prosecutor may meet with the child and the parents and impose a conditional dismissal. The conditions can include an apology, payment of compensation to the victim or the imposition of a community service sanction of up to 40 hours.

It is important to note that whenever a prosecutor decides to dismiss a case unconditionally or conditionally, he must consult a juvenile judge to gain their approval. It is usually the case that consultations take place at tripartite meetings that also involve the local child protection council.

Conditions can also include referral to the child protection council who may ask the judge for a civil child protection measure.

Conditional dismissals are usually imposed for the equivalent of summary cases and property offences.

Germany

In Germany, police do not have the power to divert cases from prosecution. Due to the abuses of police power exercised under the Nazi regime there continues to be a deep-rooted reluctance to grant police extrajudicial powers. Specialist juvenile prosecutors, often in consultation with juvenile court judges, carry out all forms of diversion.

There are four levels of diversion⁷⁴:

- Diversion without any sanction, ie. non-intervention, which is given priority in cases of petty offences.
- Diversion with education whereby diversion measures are taken by other agencies, such as parents or the school, or in combination with mediation.
- Diversion with intervention/obligations which involves a sanction. The prosecutor will propose that the juvenile court judge impose a minor sanction, such as a warning, community service (usually between 10 and 40 hours), mediation, participation at a training course for traffic offenders or certain obligations like reparation/restitution, an apology to the victim, or a fine. Once the young offender has fulfilled these obligations, the juvenile court prosecutor will dismiss the case in co-operation with the judge.

- Diversion following charge if the young offender has, prior to the case coming to court, undergone an educational measure such as mediation and the court concludes that formal proceedings are no longer necessary. In such instances the judge has the power to dismiss the case.

The 1990 reform of the Juvenile Justice Act in Germany emphasised the importance of diversion, particularly for minor offences, and extended the legal possibilities for its application. Diversion can be used for any offence, either summary or indictable. If, for example, a child has committed a robbery and then demonstrates that they have repaired the damage or made another form of apology/reparation to the victim, the case is likely to be dismissed. Consequently a high proportion of cases are diverted. In 2003, juvenile prosecutors dismissed around 70% of all cases from the youth courts.⁷⁵

Specialist youth police

As well as having specialist youth prosecutors some jurisdictions have police officers who specialise in juvenile justice. They act in a similar way to prosecutors, taking extrajudicial decisions and acting as a gatekeeper to the youth justice system. One of the best examples of specialised youth police is the police youth aid programme in New Zealand.⁷⁶ The programme employs police officers who have chosen to specialise in dealing with young people and their families. Their work involves:

- Implementing alternative methods of dealing with young offenders other than through criminal prosecution, where appropriate.
- Liaising with all agencies and institutions concerned with the care, welfare, protection and rehabilitation of children who have come into contact with the police.
- Providing guidance and assistance to parents, schools and other relevant agencies.

- Leading on training and best practice policing work with children and young people.
- Prosecuting and supporting prosecutors in the youth court and representing the police in family group conferences.

Under statutory guidance police are obliged to consider diversion from prosecution unless it is deemed inappropriate due to the seriousness of the offence or the offence history of the perpetrator.

If the incident involves a minor summary offence police can issue an on the spot warning which is followed up in writing to the child's parents. When the offence is more serious the case is referred to the youth aid officers who then decide whether or not to prosecute or divert the case. Based on consultations with the child, the family and the victim, youth aid officers have to consider a number of factors in determining the most appropriate action. These include:

- nature and circumstances of the offence
- previous offence history
- attitude toward the offence and the victim
- response of the child and their family
- family circumstances and the attitude of the family to the child
- impact of the offence on the victim
- victim's views
- effects of previous sanctions imposed on the child
- if the public interest requires criminal proceedings.

The youth aid officer then decides whether or not to take further action or develop a diversion plan with conditions, to proceed to a family group conference or proceed to court.

Conditions of diversion can include: reparation; curfew; attendance at counselling; sport activities; restrictions from association with other groups of children or improvement in school attendance. The majority of offences dealt with in this way are property offences, such as shoplifting, property damage, offences involving motor vehicles, burglary and driving offences.

According to an evaluation of the youth aid programme following implementation, the arrest rate for young offenders dramatically reduced and eight out of ten cases were diverted from prosecution.⁷⁷

Custodial decision making⁷⁸

The administration of the District of Columbia (Washington DC) in America adopts a unique approach to deciding where to place children convicted by the courts.

Under case law interpretation of local statutes, once the court convicts a young person the agency responsible for operating the youth justice system and running all custodial facilities, the Department of Youth Rehabilitation Services (DYRS), has discretion to determine where the child should be placed (in custody or in the community) and for how long up to their 18th birthday.

The court simply passes a sentence of commitment to DYRS and advises on whether it should be a community or custodial sanction. The final decision on the nature of the sentence rests with the department.

DYRS staff use what is described as a structured decision making model and case planning process. This involves using a risk assessment that defines the level of risk the child poses to the public and a mental health assessment to identify emergent and acute mental health disorders. A youth family team meeting which brings together the child, family members, victims, community members, social work and mental health staff, prosecutors and defence lawyers is held to discuss the child's strengths and needs, and create an individualised development plan.

The overall process considers the severity of current and prior offences as well as the child's

individual needs and their family circumstances. It is intended to provide a transparent, consistent and evidence-based process.

In some cases the court will recommend custody but following the structured decision making process DYRS will place the child in the community if it has concluded that it offers a more suitable placement.

Options for policy transfer to England and Wales

Just over half of all 15-17 year olds entering prison establishments in England and Wales in 2008 had been convicted of non-violent offences⁷⁹ – at the same time, the average length of immediate custodial sentences given to children by magistrates courts' for non-violent offences has increased across the board since 1997. The average custodial sentence given for criminal damage offences has gone up from 2.8 months to 7.5 months; for drug offences from 3.6 months to 8.3 months, and for theft and handling stolen goods from 3.2 months to 5.7 months⁸⁰. These increases have not been mirrored across other age groups, where the average sentence length for these particular offences has remained largely static. Most juveniles sentenced to immediate custody have committed non-violent offences. This indicates that imprisonment is still not being used as a measure of last resort for children.

This chapter has highlighted approaches to dealing with child offenders that could ultimately contribute to a reduction in the use of custody. They do not include specific sanctions or disposals that could be transferred to England and Wales, however the roles of specialist youth prosecutors and youth police do merit further consideration, as both play important gatekeeper roles ensuring children who commit less serious offences are diverted from prosecution and could have a considerable impact on controlling the flow of children into the youth justice system here.

The decision making process used in the District of Columbia in America would require a radically different approach if adopted in England and Wales. It therefore needs further investigation and more detailed consideration.

8: Decarceration case study one: Canada

KEY FACTS⁸¹:

- ▶ Age of criminal responsibility is 12. Youth justice legislation in Canada applies to children aged 12 to 18.
- ▶ Is a federation made up of 10 provinces and three territories. The provinces and territories have responsibility for the administration of youth justice.
- ▶ Any given day in Canada in 2007/08, there was an average of 2,018 young people in custody.
- ▶ The youth incarceration rate, the average daily count per 10,000 youth, was 8% in 2007/08, half of the rate in 1999/00 when it was 16%.
- ▶ The rate of admission to secure custody fell by a third from 2003/4 to 2007/8 from 12 per 10,000 to nine.
- ▶ Between 2003/4 and 2007/8, the number of young people entering sentenced custody for property crimes dropped by more than 50%, while the number admitted for violent offences declined by 12%. As a result, among the reporting jurisdictions, 39% of youths admitted to sentenced custody in 2007/8 had been convicted of violent crimes and 27% of property crimes. The reverse was true in 2003/4 when 29% were admitted as a result of violent crimes and 36% due to property crimes.
- ▶ The use of remand has increased since 2003/4 when the Youth Criminal Justice Act (YCJA) came into effect. Prior to the introduction of the YCJA, remand numbers had been relatively stable. The year 2007/8 marked the first time since the introduction of the Youth Criminal Justice Act, that, on any given day, there

were more young people aged 12 to 17 being held on remand awaiting trial or sentencing than those serving a custodial sentence.

- ▶ Youth crime levels peaked in 2003 and have since declined, although violent crime has remained more stable.

Whilst western countries have generally taken a more punitive approach to youth justice reform in recent years⁸² Canada has passed a far more progressive piece of legislation. The 2002 Youth Criminal Justice Act (YCJA) enshrines the principle that custody should genuinely be used as a last resort and that diversion from prosecution should be used for non-violent child offenders. It has resulted in a significant reduction in the number of children being sent to court and far fewer being sentenced to custody. The legislation has certainly met its objective of reserving custody for the most serious violent young offenders.

The nature and content of the YCJA provides an example of the type of legislative reform required to reduce the number of children imprisoned in England and Wales. However, equally important is the political process that led to the reform in Canada, in particular how and why a more progressive piece of legislation was successfully implemented in a country where law and order has been a significant political issue. This chapter therefore not only looks at the key parts of the YCJA and its impact but also considers how the reforms were achieved and the lessons that can be learned from the Canadian experience.

The background

Towards the end of the millennium there was a growing concern in Canada that the youth justice legislation was not working. The Young Offenders Act which came into force in 1984 was criticised by Conservative politicians as being too soft and by Liberals and reformers as resulting in an over-use of custody for non-violent offenders. There was also a widespread concern around the fact that, at that period in time, Canada had one of the lowest rates of youth diversion, and highest rates of youth custody, in the world.⁸³

A cross-party parliamentary committee was established in 1998 to review the legislation, and it concluded that radical reform was needed to reduce the use of custody. Although the Conservative politicians on the committee dissented from the findings, the then Liberal government proceeded with its own vision paper setting out plans for a completely new statute, the Youth Criminal Justice Act (YCJA).

The new legislation was passed by the Canadian parliament in February 2002 with the explicit aim of reducing the number of children sentenced to custody. Indeed the preamble to the act states that:

*...Canadian society should have a youth criminal justice system that... reserves its most serious intervention for the most serious crimes and that reduces the over-reliance on incarceration for non-violent young persons.*⁸⁴

From early on in the process of reform, the then Liberal government made it very clear that a primary goal was a reduction in the number of children in prison. The clarity of this message was very significant when the legislation was implemented and contributed to its success (see below). However, the legislation had an equally important objective - to improve the effectiveness of the responses to the relatively small number of young offenders convicted of serious crimes of violence. Critically, this enabled the government to sell the reforms as being tough on the most serious young offenders.

The Youth Criminal Justice Act's principle and purpose

The YCJA includes a 'declaration of principle' establishing the overall purpose of the youth justice system. It states that it is intended to:

- (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour
- (ii) rehabilitate young persons who commit offences and reintegrate them into society
- (iii) ensure that a young person is subject to meaningful consequences for his or her offence, in order to promote the long-term protection of the public.⁸⁵

The YCJA also sets out the 'purpose' of sentencing, stating that it:

*...is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration.*⁸⁶

Neither this purpose nor the declaration of principle mentions deterrence. This is a notable omission as it suggests that deterrence does not need to be taken into account when sentencing young offenders. Canadian criminologists have suggested that the elimination of deterrence has contributed to the decline in the use of custody for children by the courts.⁸⁷

The key elements of the legislation

There are a number of important elements of the legislation which together contribute to setting clear limitations on the use of custody and encouraging alternative sanctions.

1. Restrictions on the use of custody (even for violent offenders)

Many of the sentencing principles included in the legislation clearly propose limited use of imprisonment.

Firstly, the principle of the concept of restraint in the use of custody states that 'all available sanctions other than custody that are reasonable in the circumstances must be considered'.⁸⁸ Secondly, proportionality is required not just in its own right but also subject to the requirement that 'the sentence must be the least restrictive sentence that is capable of achieving the purpose [of sentencing]'.⁸⁹ Finally there is a limit on the severity of sentencing in the youth court as the sentence must not result in a punishment that is more severe than the punishment that an adult offender convicted of the same offence in similar circumstances would receive.

Having articulated general sentencing principles, the legislation then prescribes specific criteria that have to be met before a young offender can be sentenced to custody. This explicitly establishes four barriers to custody, described by the Canadian Supreme Court as 'gateways'.

A youth justice court shall not commit a person to custody ... unless

- (a) the young person has committed a violent offence [or]**
- (b) the young person has failed to comply with non-custodial sentences [or]**
- (c) the young person has committed an ... offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt ... [or]**
- (d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.⁹⁰**

It is notable that breach of a community sentence for the first time cannot result in custody. A young person must have breached a previous community sentence for custody to be given.

In specific rulings the Canadian Supreme Court has emphasised the need to narrowly construe the four gateways, ruling, for example, that the third provision generally requires a minimum of three prior judicial findings of guilt.⁹¹

Even if a case meets one of the four provisions a number of other custody-related principles must still be considered before a court can impose a custodial term.

The first restriction is a clear reminder to the court of the importance of the principle of restraint in the use of custody stating that if one of the provisions apply:

...a youth justice court shall not impose a custodial sentence... unless the court has considered all alternatives to custody raised at the sentencing hearing that are reasonable in the circumstances, and determined that there is not a reasonable alternative, or combination of alternatives, that is in accordance with the purpose and principles [of sentencing at the youth court level].⁹²

A second principle to be observed before a custodial sentence is imposed is intended to discourage courts from escalating the severity of the sentence in response to further offending by up-tariffing and imposing a custodial sentence. It states: 'The previous imposition of a particular non-custodial sentence on a young person does not preclude a youth justice court from imposing the same or any other non-custodial sentence for another offence.'⁹³ This clearly allows courts to impose alternatives to custody on consecutive occasions.

The third principle significantly restricts the use of custody for welfare purposes, setting out that a court 'shall not' use custody as a substitute for a child protection, mental health or other social measure. As is currently thought to be the case in England and Wales, under the previous Canadian youth justice legislation courts often used custody for children because they could see no way of providing what were thought to be necessary social interventions for vulnerable at-risk children.

The legislation also requires courts to consider a pre-sentence report as well as any sentencing proposal made by the young offender or his legal representative. It also allows for the possibility of the convening of a conference before sentencing to facilitate receiving advice from family or community members, or allowing for a victim-offender meeting before sentencing.

Finally, when a court imposes a term of custody there is a requirement to provide reasons why 'it has determined that a non-custodial sentence is not adequate'⁹⁴ to achieve the purpose of sentencing set out in the legislation. This is yet another provision of the YCJA that clearly creates a further barrier to the imposition of a custodial sentence.

2. Diversion

The YCJA is clearly intended to reduce the number of children coming to court, particularly first-time offenders and children accused of minor offences, by encouraging the use of diversion. It states:

*Extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence.*⁹⁵

In addition, statutory guidance to police officers states that they 'shall' consider whether an out-of-court solution is adequate before taking a case to court. The YCJA also makes clear that extrajudicial options should not be precluded in cases where a young person has already been given one or has previously been found guilty of a separate offence. The explicit purpose is to avoid escalating the severity of the criminal justice sanction in response to subsequent offending.

An extrajudicial provision can only be used if there is sufficient evidence to prosecute a child in the youth court. It also requires the child or young person to 'accept responsibility' for the offence that is alleged to have been committed and to consent to the imposition of the sanction. A youth who denies responsibility for the offence or objects to a specific sanction is referred to youth court.

3. Custodial remand

Prior to drawing up the YCJA there were concerns that children were being remanded to custody unnecessarily, in cases, for instance, where a judge was concerned that a homeless young person might be at risk of harm. The YCJA therefore contains provisions intended to reduce custodial remands.

The legislation specifies that pre-trial detention shall not be used as a 'substitute for appropriate child protection, mental health or other social measures'.⁹⁶ It also makes clear that a youth should only be detained before sentencing in circumstances in which an adult could be detained.

In Canada, pre-trial detention can only be used for adults in order to assure attendance in court or for reasons of public protection or safety.

In addition the YCJA allows for a rebuttable presumption that detention on grounds of public safety/protection should only occur if the youth could receive a custodial sentence under the provisions set out in the act, ie the case would have to meet one of the four 'gateways'.

4. Non-custodial sentences

In order to encourage judges to sentence fewer children to custody, the YCJA created a number of new community-based alternatives to custody. Most of these, such as attendance centre orders and intensive supervision and support orders, are the same as those available in England and Wales. However there is one new sentence, the deferred custody and supervision order (DCSO), which is particularly interesting.

The DCSO is effectively a suspended custodial sentence that allows the court to permit the child to remain in the community for the duration of the order, subject to supervision by probation officers. In the event of breach the child may immediately be placed in custody for the balance of the sentence without the need for another court hearing. The sentence can only be imposed for a period of up to six months, and not for serious violent offences.

The DCSO is only to be imposed if the court concludes that a custodial sentence must be imposed. In effect, the sentence represents the last opportunity for the court to spare a child from custody, with them on a much shorter leash than if serving a community sentence.

5. Sentencing young offenders as adults

Although much of the YCJA is intended to reduce the use of custody for less serious young offenders, the legislation balances this less punitive approach by including provisions to facilitate harsh sentencing of the most serious young offenders as adults.

If a child or young person is charged with murder, attempted murder, manslaughter, aggravated sexual assault or found guilty of a third 'serious violent

offence' there is a presumption of transfer to trial in an adult court and adult sentencing. According to the YCJA, the initial onus was on the defendant to satisfy the court why they should not be dealt with as an adult, however the Canadian Supreme Court subsequently ruled that this provision was unconstitutional and that the crown must always justify imposing an adult sentence on a child.

The impact

Overall the YCJA has successfully resulted in fewer children being sentenced to custody.

Official data shows that between 2002/3 and 2003/4, the year the YCJA came into operation, there was a substantial fall in the number of children sentenced to custody, declining from 14,118 to 9,570 a decline of 32% and the largest annual change since 1991/92.⁹⁷ Since 2003/4 the decline has remained constant. In addition, the average daily rate of sentenced children in custody fell by 37% between 2002/3 and 2007/8.⁹⁸

According to a recent analysis by Canadian criminologists, and an unpublished internal analysis by the Canadian Department of Justice, the decline can be attributed to:

- A significant drop in the number of children charged by police, and an increase in the use of various methods of pre-court diversion. In 2003, the year that the YCJA came into effect, the rate of children charged by police dropped by 18% from the previous year (from 4,490 per 100,000 to 3,690) and the rate of children dealt with by alternatives to charging increased by a similar amount. For the first time since youth justice statistics were collected, more young people apprehended by the police were dealt with by alternatives to charging than by the laying of a criminal charge. Since 2003, the rates of children charged and cleared have remained almost constant, and show no signs of returning to their pre-YCJA levels.
- A reduction in the number of cases in the youth court. Between 1999/0 and 2005/6 there was a 28% decline in the number of

cases heard in the youth courts. The most dramatic year on year decrease (16%) was seen in 2003/4, just after the YCJA came into force. This downward trend continued with another 10% drop in 2004/5 and slowed down in 2005/6 with a 2% reduction.

- A substantial decline in both the rates and proportion of custodial sentences given in the youth court. The proportion of cases given a custodial sentence almost halved between 2002/3 and 2006/7, falling from 27% to 16.6% and the rate of custodial sentences dropped by 35% in 2003/4, and by a further 36% over the following three years.

The analysis by the Canadian criminologists concludes:

...the police, prosecutors and judges in Canada have responded to the admonition in the preamble that the Act is intended to 'reduce the over-reliance on the incarceration of...young persons.' Youth courts have generally recognised the limited accountability of [young people] in comparison to adults and focused on the need to impose community-based sentences that 'promote...rehabilitation and reintegration into society.' However, in cases involving more serious offences or youths with lengthy records who have not responded to community-based options, youth courts have continued to impose custodial sentences. Further, while the presumption for adult sentencing for the most serious youth offenders has been ruled unconstitutional, adult sentences are still imposed in a small number of cases involving very violent [young people] where the crown satisfies the youth court that this is an appropriate sentence.⁹⁹

It is important to note that the decline in the use of custody has not been accompanied by an increase in youth crime. An internal analysis by the Department of Justice found that the youth crime rate in Canada, which is measured as the number of children accused of an offence per 100,000 of

the youth population, was on the rise until it peaked in 2003, and has since decreased. In other words, since the implementation of the YCJA overall youth crime has fallen. In particular property crime by children has fallen substantially although the youth violent crime rate remained relatively stable over the years.

Although the decline in the number of children imprisoned is clearly a success it does hide some outcomes that were hoped for but have not been achieved. An internal analysis conducted by the Canadian Department of Justice has identified two primary failures:

Custodial remand – the number of children remanded into custody has continued to rise. In 1999/00, about one in five (19%) children in custody on an average day was awaiting trial. This rose to more than two in five (42%) in 2005/6 and by 2007/8, on any given day, there were more young people aged 12 to 17 being held on remand awaiting trial or sentencing than those serving a custodial sentence. However, the rate of children on remand (the number of children on remand per 10,000 in the population) has remained broadly the same as under the previous legislation. Officials in the Department of Justice say that the remand provisions have not had the impact intended because unlike the sentencing provisions they were not a comprehensive reform of the pre-trial stage of the youth justice process. Legislative reform that would be most likely to reduce the use of pre-trial detention would involve a comprehensive, stand-alone, pre-trial detention code for children that includes clearly defined and specific, restrictive grounds for detention, similar to the restrictions on custodial sentences in the YCJA.

Breach – the use of custody for breach has continued unabated. This is reflected by the fact that administration of justice offences which include failure to comply with court orders and failure to appear in court, account for the highest proportion of offences that result in custody. Officials in the Department of Justice say that this is

because the legislation does not include sufficient restrictions on the use of custody for technical violations.

Despite these two facts, it would be fair to conclude that the YCJA has been a qualified success in achieving its objective to reserve custody for violent young offenders.

How reform was achieved

Although Canada has a reputation for having a more liberal political culture, in particular compared to the USA, and for traditionally exercising restraint in the use of custody¹⁰⁰ there was no guarantee that the legislation would succeed. The Canadian media had a reputation for publicising criminal justice failures and, in general, promoting punitive responses. Canadian politicians, who had a tendency to seek knee-jerk responses to high profile crimes, often endorsed harsher sentences.

Based on interviews with senior civil servants who were responsible for overseeing the drafting of the YCJA¹⁰¹, its passage through Parliament and its subsequent implementation, a number of factors can be identified which explain how the reforms were successfully delivered.

1. Strong political commitment

As already noted, the Liberal government and its then Prime Minister, Jean Chretien, were committed to reforming youth justice legislation. They accepted that the number of children imprisoned for non-violent offences was too high. In principle they were therefore committed to only using custody for serious repeat young offenders and serious violent young offenders. The reform commitment therefore had two key elements. Firstly, there was an acceptance of the need for 'more effective alternatives [to custody] for non-violent, low-risk [young people]'¹⁰². Secondly, there was recognition that there was 'an inability to deal with violent and repeat offenders'¹⁰³ and change was needed. These dual commitments were made very clear in the vision paper on youth justice reform which preceded the YCJA.

2. Soft and tough

The dual objectives were seen in the Department of Justice as being both softer and tougher on young offenders. In fact, at the time, the Minister of Justice, Anne McLellan, was from the state of Alberta which favoured a more punitive approach to youth crime. She accepted that there were too many children in custody but wanted to ensure a no-excuses approach was taken towards serious child offenders. She explicitly made it clear to civil servants that the legislation had to include tough measures for violent and persistent young offenders and requested that there should be a presumption of custody for particular serious, violent youth crimes.

3. Clear messaging and agenda setting

From very early on in the reform process, the government set the agenda for progressive change by suggesting that Canada imprisoned too many children. The fact that child imprisonment was proportionally as high as in the USA by the year 2000 was considered to be a failure. This firmly set the political agenda and the terms of the political debate. It also set a more progressive framework for thinking about how to respond to youth offending.

4. Winning support from key stakeholders

There was recognition in the Department of Justice that there had to be buy-in and support from all the major criminal justice agencies, particularly the police. As it happened, the police saw the merits of early diversion and fully supported diverting as many children as possible away from the courts at the earliest opportunity. Sentencers were also supportive of fewer children being sent to court for minor low-level offending. In particular, police support was considered critical to seeing off opposition to the legislation from victims groups and opposition politicians who argued it was too soft.

5. Managing the message with the media and the public

Considerable thought and planning was given to how to 'sell' the legislation to the public and the media. Focus groups were conducted to test out how messages would play with the public. They carefully worked out which messages would play best and it became important that the whole

government and cabinet could see that thought had gone into this. In addition, strategic briefings were held when the bill was first published, with key journalists targeted for background briefings and careful preparation carried out to ensure key stakeholders were ready to make supportive statements. Not surprisingly, a prominently publicised aspect of the Act highlighted in the Department of Justice's first press release was the provision intended 'to respond more firmly and effectively to the small number of the most serious, violent young offenders' in order to address the 'disturbing decline in public confidence in the youth justice system' in Canada.¹⁰⁴

6. A break from the past

The decision to replace the old youth justice legislation with an entirely new statute, rather than amending existing legislation, led to a clear break from the past and the introduction of a new youth sentencing framework. Practitioners had to rethink their approach to decision-making instead of ignoring or blocking changes. What happened under the previous legislation was no longer relevant, and the explicit provisions required all agencies to think about alternatives to custody.

7. Timing

The reform process was very lengthy, beginning with a parliamentary review, then the equivalent of a green paper, and finally publication of a bill, with the legislation taking nearly four years to pass through parliament. This long timeframe allowed for constituencies of support to be built, for a wide ranging consultation process and, critically, for the philosophy behind the reforms to be understood by the professionals who would be implementing it.

8. Education and training

A lot of energy and resources were put into educating sentencers and all key youth justice professionals so they understood the rationale for the legislation and how it should be implemented. A detailed programme of training for sentencers was implemented and substantial training was undertaken with probation staff to ensure their pre-sentence report recommendations were in accordance with the principles and objectives of the legislation. In contrast, on previous occasions the Department of Justice had not invested

adequate resources in training and education for new legislation.

9. Funding

The introduction of the YCJA was accompanied by transitional federal government funding to encourage the establishment of more community-based programmes. As the administration of youth justice is the responsibility of the Canadian provinces, this was critical to ensuring that the resources were in place to allow for effective delivery.

10. The federal structure

The Canadian federal administrative and political structure was advantageous because the province of Quebec had a long history of supporting a welfare approach to youth crime. Given the political necessity for any government to maintain the support of Quebec public opinion the more liberal attitudes in the province helped constrain pressures to be tough.

Sustaining the reforms: how they were not derailed

Perhaps unsurprisingly, following implementation of the YCJA there were a number of high profile cases involving children who had committed serious crimes being given non-custodial sentences. The Liberal government, however, managed to avoid them blowing up into a major crisis by blaming sentencers for misunderstanding the provisions in the legislation and by ensuring that key stakeholders, particularly the police, remained firmly behind the reforms.

The Supreme Court also helped to reinforce the philosophical underpinnings of the legislation, ruling that the four gateways to custody should be narrowly construed and also that the presumption of custody for three serious offences was unconstitutional.

In the 2006 election the Conservative opposition defeated the Liberal government which had successfully overseen the youth justice reforms, and law and order became a major political battleground, with the new government making a commitment to review the YCJA. However, it was only able to form a minority government and other political developments conspired to

undermine its authority. A second election took place at the end of 2008 and during the campaign the Conservatives again pledged to create a new youth justice law that would be more punitive. After it failed to win enough votes to become a majority government and was forced to form a second minority government, far more important issues, such as the global financial crisis and health care funding, have dominated the national political debate.

Lessons from the Canadian experience

There are a number of lessons for reform efforts in England and Wales that can be drawn from the Canadian experience.

- Gateways to custody and judicial discretion – the inclusion of explicit hurdles or ‘gateways’ to the use of custodial sentences clearly restricted the ability of the courts to imprison non-violent young offenders. The presumption in favour of diversion and against custody for these offenders was critical in reducing the number of children in prison. The additional barriers on the use of custody, in particular on welfare grounds, further limited judicial discretion. The need for specific limitations and control of judicial decision-making are clearly very important.
- Importance of whole system reform – the YCJA introduced reforms to the entire youth justice process for children. This demonstrates that there needs to be wide ranging reform that addresses mechanisms for diversion as well as sentencing options. Reducing the number of children in prison through legislative reform requires the introduction of new sentencing options and alternatives to custody as well as provisions to reduce the number of children being charged, appearing in court and then sentenced to custody.
- Appealing to both ‘left’ and ‘right’ – senior civil servants in the Department of Justice stress that the YCJA was successful because it could be used to appeal to both progressives and conservatives. The provisions allowing for the sentencing of

serious young offenders as adults were emphasised very early on in order to sell the reforms as a means of toughening-up legislation. Ironically, this led many youth justice advocates and reform-minded academics to openly oppose the legislation when it was first published. At the same time, however, the clear statement in the preamble to the Act and provisions in the legislation made clear that there should be a far more selective use of imprisonment.

- Managing the media message – what is said and how it is said matters greatly. Considerable thought was given to managing the reform messages and targeting them at specific audiences. This was particularly the case when the legislation was first unveiled. Overall, the government was well prepared to set the agenda for reform and shape the terms of the debate.
- Professional education and training – all those who worked on the YCJA highlighted judicial education and training as being extremely important. A lengthy period of training was specifically built into the delivery process by the Department of Justice as officials had learned from past experience that the courts, probation and the police needed to be grounded in the principles, provisions and objectives of the legislation. The importance of training for all practitioners should not be underestimated.
- Support from across the criminal justice system – there was wide-ranging support from all the criminal justice agencies, most importantly the police, who were instrumental to the YCJA's success, underlining the importance of stakeholder buy-in. If legislative reform is to succeed it needs to have the firm support of all the criminal justice agencies.
- Resourcing – the Department of Justice budgeted to ensure there were funds available to support implementation. Without appropriate resourcing, legislation can be rendered meaningless. Experience in England and Wales following the introduction of the 'custody plus' and 'custody minus' sentences in the Criminal Justice Act 2003 demonstrate this all too well.

9: Decarceration case study two: New York State, USA

KEY FACTS:

- ▶ New York State law does not explicitly set an age of criminal responsibility as any child can be technically charged with a criminal offence.
- ▶ It is commonly accepted the age of criminal responsibility is seven.
- ▶ The youth justice system covers children up to their 16th birthday.
- ▶ Children who commit criminal offences are dealt with in the family court with the exception of the most serious violent cases, which are waived into the adult court.
- ▶ New York State includes New York City (NYC) but the city has its own administration for juvenile justice separate from the State's. In NYC juvenile justice comes under the city's probation service and in New York State it is run by the Office of Children & Family Services (OCFS).
- ▶ NYC and the counties that make up the administrative municipalities of New York State provide pre-trial custodial places. They are paid for by the counties but 50% of the costs are reimbursed by the State government. Custodial facilities for sentenced children, known as placements, are provided by the State government (OCFS) or its contractors and are paid for by the State and counties equally.
- ▶ 60% of children sentenced to custody are from New York City.
- ▶ The total number of children in custody has declined from 3,179 at the end of 2000 to 2,318 at the end of 2006, a 27% reduction.
- ▶ The average annual detention cost for one young person in secure custodial detention in 2007 was \$201,115 (approximately £125,000).
- ▶ In 1999 the most recent year for which data is available, a study for the New York state government found that 81% of boys and 45% of girls released from its custody were rearrested within 36 months.
- ▶ The population of New York State is 19 million, 23% of whom are under 18.
- ▶ Overall there has been a sustained decline in juvenile crime in recent years, although there has been an increase in juvenile arrests in New York City since 2004.

New York State provides a good example of wide ranging administrative reform that has resulted in fewer children being either remanded or sentenced to custody. With the explicit support of their political masters, juvenile justice leaders have sought to increase the number of children diverted from prosecution and introduce alternatives to custody. As a result custodial beds have been left empty and the state has closed four juvenile jails.

Background

By 2000 the number of children imprisoned in New York State was steadily increasing at great cost to the state government. At the same time a new analysis found that reconviction rates were over 80%. The high costs and very poor outcomes prompted a rethink.

The reforms began in New York City (NYC) where in 2003 a newly appointed Commissioner of Probation, Martin Horn, set up 'Project Zero'. Six out of every 10 children in sentenced custody in New York State were from NYC. 'Zero' stood for the goal of sending no children to juvenile prisons outside the city. The intention instead, was for them to remain in the community, at home with their families, so they could continue to attend school and participate in intensive therapy sessions aimed at helping them get on the right

path from inside their own neighbourhoods.

Project Zero had five very clear goals; to:¹⁰⁵

1. Demonstrate to youth justice stakeholders that the ‘incarceration approach’ was failing to ensure public safety and was hurting children.
2. Create a philosophical approach to tackling youth crime that promoted both public safety and child welfare.
3. Create consistency and rationality in determining which children should be sent to custody.
4. Create a culture that values community-based, in-home solutions to youth crime.
5. Create a set of alternatives to custody for judges to use when sentencing.

The New York City Department of Probation restructured its juvenile assessment, court reporting and supervision functions and worked with stakeholders to improve decision making both pre-court and at the sentencing stage. It also introduced a wider range of alternatives to custodial remand and more community alternatives to custodial sentences.

Other counties (local municipalities) within New York State also adopted a wider range of alternatives to custody. They specifically targeted children considered to be at low or moderate risk of reoffending and worked with the courts to promote greater use of alternatives for them. The reform efforts in New York City and across New York State led the state government to make a clear commitment to reform the juvenile justice system and further reduce the number of children locked up. The Commissioner for Children and Family Services, Gladys Clarion, stated: ‘I don’t say this proudly, but we preside over a pipeline to prison... And we can’t tolerate that any longer’.¹⁰⁶

New York State Governor, David Paterson, has set up a taskforce on transforming juvenile justice to establish a state-wide process of improving the youth justice system. The taskforce is developing

detailed options to reduce the use of custody for children. When launching the taskforce, Governor Paterson made a strong commitment to restrict the use of custody for children:

*It is imperative that our State seek alternatives to a costly system that is not serving New York’s children, families and communities well. With 80% of the children in New York’s custody released and rearrested within three years, reform of New York’s juvenile justice system will not only provide those children with necessary services for success, but will translate into safer communities across the State.*¹⁰⁷

The taskforce is due to report by the end of 2009. Unpublished draft recommendations include proposals for a custody threshold based on a particular risk assessment score intended to result in probation only recommending custody to the court if a case is assessed as being of high-risk to the public.¹⁰⁸ The taskforce will also propose a graduated response to breach similar to that adopted in other parts of America (see Chapter 2) and the use of day centres as alternatives to custody (see Chapter 4).

The reforms

Detailed reviews were conducted to find the decision points where policy and practice could be changed. This resulted in the implementation of wide-ranging reforms at three critical stages – at arrest prior to prosecution, in court when determining whether or not to remand into custody, and at the sentencing stage.

Pre-court diversion

When a child is first arrested by the police they are referred to a probation officer. Probation has the statutory authority to decide whether or not to recommend diverting the case from prosecution. Probation will therefore conduct interviews with all concerned parties, including the arresting officer and the complainant, the parents or guardians and the child, to determine whether or not the case should be referred for formal court proceedings or diverted from prosecution. If the case is to be diverted then the victim or, if the victim is not available or the crime is victimless, the police, have to agree.

Previously probation was not encouraged to divert low-level cases and the police were unwilling to support it. However, police and probation leaders have jointly sought to change the culture and promote greater use of diversion. Probation officers have been given training and provided with guidance to ensure more cases are diverted. Consequently they have felt more confident and supported in recommending that greater numbers of cases are not referred for prosecution. The result has been a significant increase in the proportion of cases diverted pre-court from 10% in 2002 to 30% in 2008. The actual number of cases diverted has increased over that period by 234%.

When a case is diverted the child has to meet specified conditions and may also be required to attend specific programmes. Typically, conditions relate to school attendance or attending a mediation programme or substance misuse programme. There has been a concerted effort to improve the quality of diversion programmes and services, which are operated by probation or the voluntary sector, in order to demonstrate that this is an effective option.

Diversion lasts for between 60 and 120 days. Probation determines the conditions and programmes/services for each case and then monitors a child's progress. If the child complies the case is dismissed – if he/she fails to comply it goes to prosecution.

Remand decision making

In order to improve the quality of remand decision making, a risk assessment instrument (RAI) was created to rationalise the decision to detain or release a child pre-trial while the case is pending. The RAI is an evidence-based assessment tool completed by probation staff and used by the court. It determines the risk of a child reoffending whilst awaiting trial and the likelihood of the child failing to return to court. It has become part of everyday practice for children in the family court and resulted in fewer children being remanded to custody.

A 'continuum of alternatives' to pre-trial detention (known as alternative to detention programmes) have also been established, providing supervision

and service options based on a child's risk level determined by the RAI. There are three tiers:

Tier 1: Low risk children are subject to a community monitoring programme which involves compliance monitors checking each evening that the child has remained at home from an agreed curfew time. They also have to maintain full school attendance.

Tier 2: Medium risk children are placed on an after-school programme (see Chapter 1).

Tier 3: Intensive community monitoring is combined with probation supervision. Each probation officer has a caseload of no more than 15 children.

Tier 1 and Tier 2 programmes are operated by voluntary sector agencies. Tier 3 is operated by the youth division of the probation service.

Children can move between tiers depending on their progress and as a form of reward or sanction.

Sentencing decisions

A review of sentencing decisions found that the most significant factor in determining whether the court sentences a child to custody was the recommendation made in the pre-sentence report compiled by probation for the court, known as the investigation and recommendation report (I&R). However, it also found that there was considerable variation and that probation officers were idiosyncratic in their decision-making.

To achieve greater consistency and to improve the quality of recommendations a research-validated instrument was created to supplement the I&R. The probation assessment tool (PAT) aims to improve the pre-sentencing report process by 'refining the quality of assessments and by guiding probation officers to the most appropriate recommendations that benefit the [young person] and the community'.¹⁰⁹

PAT looks at two key areas – the needs of a child in terms of services required and the risk of further offending. It is specifically designed to separate the two issues so that decisions about

custody are based on the level of risk to the community rather than the presumption that needs alone should trigger custody.

Once completed, the form gives an 'Asset level' (high, medium or low) for the likelihood of the child offending. It also provides a summary of the full needs of the child in order to ensure appropriate services are identified in the final recommendation to the court.

Following the implementation of the PAT there were immediate and dramatic results. From 2004 to 2008 the proportion of custody recommendations declined from 38% to 20%. The actual number of custodial admissions declined from 1,257 to 853.

Alternatives to custody

Alongside the development of the PAT supplementary decision-making tool, a number of alternatives to custody sentencing options were implemented. These include:

Juvenile justice initiative (JJI)

The juvenile justice initiative uses evidence-based therapeutic interventions for children convicted of more serious indictable offences as well as more serious repeat offenders. Children are given a probation order but are referred to the initiative where they are assessed by professional clinicians who determine whether they should be placed on one of three programmes – functional family therapy (FFT), multisystemic therapy (MST) or multidimensional treatment foster care (MDTFC).

The majority of children are given either FFT or MST with fewer being placed in MDTFC. The initiative ensures that there is strict adherence to the evidence-based modalities of each intervention. (See Chapter 5 for a detailed description of the JJI).

Esperanza

Esperanza was developed as a specific alternative to custody programme for children who would otherwise be given a prison sentence. They are typically children who come from chaotic families, are repeat offenders who have committed robberies, assaults, burglaries or been charged with drug possession or small scale drug dealing. Many

are in the early stages of 'gang' involvement. The programme does not take offences that have involved the active use of firearms but have had cases of firearm possession. It very rarely takes cases involving sex offences.

Esperanza is different from the juvenile justice initiative as it is not based on a specific evidence-based model of intervention but uses its own organically developed model more loosely based on the evidence from what works with children from troubled backgrounds. However, it is aimed at the same type of children who are referred to the JJI. Although there are some differences in the referral criteria¹¹⁰ there is close coordination to determine which programme is most appropriate.

Each child and their family receive six months of in-home counselling from an Esperanza field counsellor, who works in a complementary fashion with the child's probation officer. Esperanza's services help the child and their family to communicate and solve problems using a variety of therapeutic approaches. All the work is home-based. The counsellor will see the child and the family at least three times a week, providing intensive family support. The focus is on providing the family with the tools to move forward and solve the factors that are behind the child's offending. It is an intensive therapeutic cognitive based approach.

Counsellors work with the child and family to develop a treatment plan that includes realistic goals. It will always include some kind of agreed curfew whereby the child has to be at home by a certain time. The parents will then be responsible for ensuring the curfew is met and counsellors will do regular random checks. The family is supported to address a wide range of needs including benefit/housing problems. This might involve accompanying the parent to the benefit office. An additional key focus is supporting the child to stay in school and improve their performance. Counsellors are trained social workers/therapists supported by a clinical director, with a maximum caseload at any given time of no more than six children. They are accessible to the child and family seven days a week. Counsellors seek to form pro-social relationships with the children, supporting them to successfully negotiate through society.

Given that so many of the children are from black and minority ethnic backgrounds they also work to address feelings of oppression/discrimination.

Each case lasts six months, after which the child will continue to be supervised by probation for the duration of their community sentence, which could be another six or 12 months. The idea is that in the six months the family is supported to become able to independently address the underlying problems and not become dependent on help.

The programme has now become a stand-alone voluntary sector organisation, although it inevitably works closely with the courts and probation.

In terms of outcomes:

- Nearly two thirds (64%) of children have successfully completed the programme, a higher proportion than children with similar profiles.
- In 2007 only 16% of children on the programme were re-arrested.
- Three quarters (74%) of children have remained out of custody within nine months of completing the programme.

Esperanza costs on average \$26,250 (£16,000) per child, considerably less than a custodial placement – in 2007, the average annual detention cost for one young person in secure custodial detention was \$201,115 (approximately £120,000).

Enhanced supervision probation

Enhanced supervision probation (ESP) is a more intensive form of probation for children who are at medium to high risk of reoffending. ESP probation officers have low caseloads (around 15) and are provided with discretionary 'wrap-around' funds to provide additional service support. For example, probation has purchased professional tutoring services when needed and computers for children.

Staff are specially trained to work with the children but they do not use any counselling or

therapy, though they might refer a case to specialist mental health services. ESP is more similar to the intensive supervision and surveillance programme in England and Wales, than either the JJI or Esperanza.

The impact

- The number of cases diverted pre-court increased from 10% in 2002 to 30% in 2008.
- Fewer children are being remanded into custody and this is then having an impact on sentencing decisions with courts more likely to sentence children to alternatives to custody.
- Between 2000 and 2006 the number of children in custody in New York State declined by 27%, from 3,179 at the end of 2000 to 2,318 at the end of 2006.
- There have been significant reductions in the number of admissions to custody for violence against the person offences, which fell by 22% from 977 in 2000 to 762 in 2006 and for property crimes, which fell by 17% from 919 to 766 over the same period. However, the biggest decline has been for drug offences, which halved, falling from 315 to 146 over the same period.
- Between 2002 and 2007 the number of children sentenced to custody from NYC declined by 25%.
- Four juvenile detention facilities have been closed, saving an estimated \$16m (£10m).
- New York City estimates that Project Zero has saved \$43m (£26m) due to the reduction in the use of custody.
- Overall there has been a decline in youth crime in New York State, although since 2004 the number of children arrested in New York City has increased by 36%.

How reform was achieved

Based on interviews with senior practitioners¹¹¹ who are leading reform efforts, a number of factors can be identified which explain why the reforms were implemented.

Political commitment to reform – there was a firm political commitment to reform made by Mayor Bloomberg in New York and then the governor, David Patterson, of New York State. Both were determined to drive through wide-ranging fundamental changes on an unprecedented scale.

The impetus for this political change came from a growing recognition that the juvenile system was failing. Research by the state government found high rates of reconviction which forced policy makers to rethink the over-reliance on incarceration. At the same time, evidence was emerging from research in the United States that there were community-based programmes/interventions that had far better outcomes. Presented with this evidence politicians accepted that reform was necessary.

The fact that the key criminal justice leaders, including the Probation Commissioner and the head of the family courts, are political appointments made by the mayor in New York City and the governor in New York State has made it easy for them to implement their reform commitments.

Financial pressures – the pressure on budgets has been a key factor in reappraising the cost of custody. The need to cut spending has therefore provided an opportunity to implement cheaper alternatives. Had there not been an economic downturn the imperative for reform would not have been so strong.

Decline in crime rates – the overall decline in crime rates, particularly in New York City, has meant that the media gaze is no longer focused on the response to offending and this is no longer a prominent public or political issue. This has provided the cover to embark on a far more progressive reform agenda.

Stakeholder support – the key youth justice agencies all had leaders who have been willing to

push forward a new approach and challenge the old cultures. This has particularly been the case for the Probation Commissioner and the Chief of the Law Department's family court division, who have worked to fundamentally change the decision-making mentality so that custody is regarded as a genuine last resort. Police leaders were also critical in supporting greater use of pre-court diversion, as were judges, who supported the initiatives.

Lessons

There are a number of lessons which can be identified from the New York experience for reform efforts in England and Wales:

1. Administrative reform is possible with the right political commitment and stakeholder buy-in

The reforms in New York were achieved without introducing new legislation. This demonstrates that if there is the political commitment and support from leadership in all the criminal justice agencies, radical administrative reform can result in a decline in the use of custody.

2. Whole system reform

A detailed assessment was made of every stage of the youth justice process in order to determine what reforms were necessary. This then informed changes to decision making at the prosecution, the pre-trial and sentencing stages. This whole-system approach was vital to the success of the reforms, and also ensured that fewer children were entering the courts.

3. Need for objectivity and uniformity in court recommendations

One of the key reforms introduced was the use of supplementary assessment tools at both pre-trial and sentencing stage which led to improved decision-making and the use of custody for more serious cases. In effect, objective assessments have resulted in an informal custody threshold being set whereby low or medium risk cases are not sentenced to custody.

It may be the case that a supplementary

risk assessment tool is needed to inform court remand decision-making in England and Wales. At the very least, the bail supervision and support profile currently used where bail, bail support or a remand to local authority accommodation is being proposed as an alternative to custodial or court-ordered secure remand, should be reviewed to achieve greater consistency and improve court decision-making.

4. Discretion for probation/youth offending staff over diversion

That probation staff in New York have the authority to make decisions about pre-court diversion is of particular interest, and whilst a decision still requires police support, this clearly gives greater leverage over the use of diversion. If youth offending team staff played a similar role in England and Wales, it could be argued that there would be greater opportunity to divert high numbers of low risk children from prosecution.

5. Low caseloads matter

A key feature of all the alternatives to custody profiled is the low caseloads of probation staff in New York. Staff working on the enhanced supervision probation programme have a maximum of 15 cases and both the Esperanza and JJI programmes have even fewer. It is considered to be extremely important for staff to have the time and capacity to work closely with children and their families without being overloaded. Clearly, low caseloads matter when working with children who have multiple problems and are from chaotic backgrounds.

6. Family approach

The alternatives to custody in New York have adopted an approach that involves working with both the child and their family. Interventions directly involve parents/guardians and also actively work with them to address their separate social problems. This family-centred policy is considered critical to ensuring a child is able to change their life, and suggests that

community sentences for children who previously would have been sentenced to custody need to be more family-orientated.

7. The role of the voluntary sector

Many of the alternatives to custody in New York are operated by the voluntary sector, which has played a key role, for example in delivering the monitoring and after-school programmes which operate as alternatives to custodial remand, demonstrating how the voluntary sector could be used to deliver progressive alternative-to-custody programmes in England and Wales.

8. Cultural and attitudinal change

All senior practitioners who were interviewed recognised the importance of cultural and attitudinal change amongst front-line staff. Juvenile justice leaders made the commitment to reform and then delivered cultural change in each of their agencies. Through a combination of training and guidance, staff in the police, prosecution, and probation services all recognised the need for reform and the merit of reserving custody for more serious, violent young offenders.

I0: Using the fiscal infrastructure to cut imprisonment

This report has thus far focused on both legislative reforms and administrative system and policy reforms that have been implemented in countries to reduce the use of custody for children. In addition to these reforms another means of achieving the same outcome is to change the fiscal infrastructure of juvenile justice funding. Several states in America have done this and provide informative examples of how to alter financial structures so there is less of an incentive to resort to imprisonment.

The structure of governance in the USA lends itself to the use of fiscal incentives to produce policy outcomes. For example in 1988, in response to overwhelming evidence that minority youth were disproportionately confined in the nation's secure facilities, Congress amended the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 so that all states participating in the federal government's formula grants programme address disproportionate minority confinement (DMC) in their state plans. In 2002 the requirement was extended so that states must address disproportionate rates of contact with the justice system, not simply rates of detention.

In most American states, youth offending is dealt with at the county level – the equivalent of the local authority level in England and Wales – where children and young people are charged by local police and processed by local courts. The cost of providing the equivalent services of a youth offending team are covered by the county which pays for youth probation, drug treatment, mental health counselling and community sanctions. However, if a child is sentenced to custody they are usually sent to a state-run prison at no cost to the county which means it can be cheaper to use custody than alternative community-based sanctions. In effect this is the same as England and Wales with central government paying the full cost for custodial places.

The structure of spending on youth custody in America has often led to undesirable results. Counties commonly lack the financial means or incentive to expand local programmes or services

so fewer of these options exist for children than demand would otherwise necessitate. Without sufficient local community-based programmes and services, local courts have had little choice but to remand or sentence children to custody. At the same time there has been no incentive to invest in prevention programmes to reduce the use of imprisonment.

To address this situation a number of states have changed their youth justice funding formulas, with the result that more children are being dealt with at home in the community, reducing the use of custody and delivering significant financial savings. This chapter provides brief outline descriptions of the most prominent examples which have been recognised by the federal government and/or national advocacy groups.¹² The examples merit further consideration as part of efforts to look at how local councils in England and Wales could be held accountable for the cost of child imprisonment.

RECLAIM Ohio

In the early 1990s, Ohio was faced with a rising child prison population resulting in overcrowding and burgeoning costs. In response, the state legislature created RECLAIM Ohio (reasoned and equitable community and local alternatives to the incarceration of minors) in 1993. The programme was piloted in nine counties for two years, and resulted in a 42% year-on-year reduction in the number of children sentenced to custody in those areas. This success led to the initiative being rolled out across the state in 1995.

Ohio is made up of 88 administrative counties with each one having at least one juvenile court. The court is responsible not only for sentencing but also for the implementation of the sentence – each juvenile court therefore has a dedicated probation service that is managed by a chief officer accountable to the court's senior administrative officer. The probation team delivers community disposals and also contracts with other voluntary and private sector providers.

RECLAIM is essentially a funding initiative which encourages juvenile courts and their probation staff to develop or purchase a range of community-based options to meet the needs of each juvenile offender or child at risk of offending.

By diverting children from custody, courts and probation have the opportunity to increase the funds available locally through RECLAIM.

RECLAIM Ohio operates by giving each court's probation department a fixed funding allocation from the state based upon a four-year average for the number of court convictions for indictable offences. Thus, counties with a higher number of convictions receive more funds. However, financial deductions are made for the number of custodial beds that each county used in the previous year. In other words, the fewer children the county sends to state run prisons, the more money it will receive in the next year. This funding structure encourages counties to develop or purchase a range of community-based options to meet the needs of children who have been convicted or who are at risk of offending.

Under the formula, each court is given a number of 'credits' based on the court's four-year average of youth convictions for indictable offences. Those credits are reduced by one credit for each state-run custodial bed day used during the previous year and two-thirds of a credit for each locally-operated custodial bed. Each court's percentage of the remaining credits statewide translates into that court's percentage of the total RECLAIM funds allocated to the court and its probation team.

RECLAIM is premised on the recognition that more serious violent crimes should be sentenced to state custodial facilities. The financial incentive is to keep children who do not represent a risk to public safety in the community. The formula therefore specifically excludes serious and violent crimes (all homicides, manslaughter, kidnapping, rape, serious sex offences and certain firearms offences). RECLAIM funding is not reduced for counties if a child is sentenced to custody for any of these offences.

Official data and evaluations by the state government show that RECLAIM has succeeded in substantially reducing the number of children sentenced to custody.

The number of children in custody has fallen from 2,600 in 2002 to 1,555 in 2008. In January the state administration announced plans to close a custodial facility holding 176 boys.

REDEPLOY Illinois

Each year approximately 1,800 children are sentenced to custody in the state of Illinois. Of these, nearly half have committed property offences. Given the high cost of custody and the growing recognition amongst Illinois's politicians that custody for non-violent young offenders produced poor outcomes, there was a rethink of how to incentivise counties to make greater use of alternatives to custody. The outcome was the development of REDEPLOY Illinois in 2005.

REDEPLOY is designed to give counties financial support to provide community services to children who would otherwise have been sentenced to custody. In return, counties commit to reducing custodial sentences. The funds fill gaps in local programming and services available for young offenders, allowing counties to reduce their reliance on custody.

Participating counties agree to cut the number of juveniles they send to state prisons by at least 25% below the average of the previous three years. The reduction can be in the overall population or in any specific population. In return, the state reimburses the counties for money they spend managing children in the community.

The programme has resulted in counties investing substantial resources in locally-based programmes and services to support children who previously would have been sentenced to custody. They have also diverted funds into local substance misuse and adolescent mental health provision.

The programme was piloted in a number of counties and is due to be rolled out across the state later this year. Since it began in 2005, there has been a 15% reduction in the average number of annual new admissions to state juvenile prisons.

Pennsylvania Act 148

Act 148 in Pennsylvania was established in 1976 to create an incentive for counties to develop additional capacity for local youth programmes for children who offend or are at risk of offending. It does not mandate what services counties must provide but instead creates an incentive structure that drives county planning in a clear direction. The state government reimburses the counties for

most of the costs of community-based services for children, while counties are required to pay 40% of the cost of imprisoning a child in a state prison. This incentive structure encourages counties to use more community alternatives to custody.

Specific reimbursements in the legislation include:

Keeping children in a home environment – Act 148 provides for reimbursement of 80% of the cost of services designed to keep children at home rather than sending them to custody, such as after-school programmes, evening reporting centres, out-patient mental health treatment or drug treatment. In appropriate cases it can include foster care or adoption, but the high reimbursement rates create an incentive to keep children in their home environment.

Keeping children in their original communities – when the court determines that a child should be removed from their home, Act 148 favours a placement that allows the child to remain in the local community and continue their schooling. Reimbursement rates generally run at 80% for placement in group homes or other types of non-secure residential or treatment programmes that allow children to attend local schools, use local recreational facilities, or attend local training and vocational programmes in their communities.

Using less restrictive options – Act 148 discourages the most restrictive placements by setting the lowest reimbursement rates for pre-trial detention in local facilities (50%) and custodial detention (60%). Thus, the financial cost of the most secure and restrictive placement is the most onerous for the county.

Act 148 fundamentally changed the nature of youth justice services in Pennsylvania and the way they were delivered. In the three years after it was enacted, state subsidies for community programmes nearly doubled. This investment increased the number of children placed in the community while decreasing the number of

children sent to state custody. From 1981 to 1984, the use of custody declined by 24%, while the number of children in the community increased by 20% and day treatment programmes increased by 52%. Over the next two decades, the number of children sentenced to custody continued to decline.

In the first few years after Act 148's reimbursement formulas came into effect, concerns raised at both the state and county levels led to further reforms and inspired a budget-planning process to support and sustain local youth services.

The state was concerned that Act 148 functioned like an uncapped entitlement. On the other hand, counties were concerned about being locked into an annual budget formula. If there was a sudden change in the service needs for a given year, such as an increase in foster care placements, the counties could run out of state funds to meet local needs well before the end of the fiscal year.

Act 148 was amended in the early 1990s to create a system of needs-based planning and budgeting. Each county's welfare agency, with the participation and authorisation of the local courts and probation department, develops a plan that shows both the predicted service needs for young offenders coming to court and how much those services will cost. The state government receives the submissions, calculates the approved costs for all 67 counties, and submits an aggregate budget allocation request to the legislature that takes into account the state share of county services. Needs-based planning and budgeting allows counties to plan more accurately and request funding for the services they need. It also allows the state to better meet the demand for services.

More recently, needs-based planning and budgeting was administratively incorporated into a larger integrated children's services plan at the county level in 2004. This expanded the number of agencies working with children who were involved in the process to include, for example, mental health and drug and alcohol services. This effort contributed to eliminating the silos of service provision.

Options for policy transfer to England and Wales

Secure accommodation for children in England and Wales cost £297m in 2008/09 and accounted for 63% of the Youth Justice Board's budget – in contrast, £33m (7% of the YJB budget) was made available for the intensive supervision and surveillance programme (ISSP) a community-based alternative to custody, and £36m was spent on prevention programmes¹³. In addition, recent research conducted by the Foyer Federation suggests that the true costs of custody in young offender institutions (YOIs) may be even higher¹⁴. As well as being the most expensive, custodial sentences have the highest reoffending rate of all sentence types given to children, with the most recent statistics showing that 75.3% will reoffend within a year of release¹⁵ – this figure has little changed since 2000.

These factors lend weight to the current consideration being given to making local authorities in England and Wales more accountable for the cost of child imprisonment. The approaches used in Ohio and Pennsylvania in particular are possible options that could inform developments in England and Wales. Consideration could also be given to making receipt of funds from central government contingent on the development of policies to reduce disproportionate custodial rates for black and minority ethnic young people.

Conclusions

The aim of this concluding section is to draw out the key learning points from the report as well as highlighting important elements in the process of implementing successful reforms. Much of the learning is taken from North America rather than Europe because it is in parts of the USA and in Canada that the most conspicuous recent efforts have been to reduce custodial numbers. In much of Europe, the structure of youth justice and the prevailing philosophy for responding to youth offending serve to keep the use of custody at a much lower level than in England and Wales.

Policy transfer

In any area of public policy, learning and applying lessons from other countries is not straightforward. Within criminal justice there are examples of successful and unsuccessful policy transfer. Probation, for example, emerged as an alternative to punishment throughout the world in a relatively short period of time at the end of the nineteenth century. On the other hand, more recent efforts in the UK to introduce a number of more specific initiatives such as unit fines, night courts and intermittent custody – all of which operate successfully in various jurisdictions – have been abandoned at an early stage.

While this is not the place to analyse the reasons for those failures, it goes without saying that any attempt to import measures which operate in one context needs to be informed by a thorough analysis of both the host context in which the initiative currently operates, and the context into which it might be transferred. A much more detailed exercise than has been possible in this report would need to be undertaken before any of the measures discussed here were introduced in England and Wales.

The examples on which we report are taken from countries whose overall approach to youth justice varies enormously – from Sweden, where no children under 15 can be prosecuted, to New York, whose age of criminal responsibility is seven and where children are waived into the adult criminal court when charged with serious crimes. The basic parameters and structures of the youth justice system clearly provide the underlying

context in which particular measures are developed. This context must be kept in mind.

Introducing alternatives to prison, for both adults and juveniles, needs particular care because of the danger of alternatives fuelling, rather than draining, the numbers who are locked up. Analysis of the most successful recent period of juvenile decarceration during the 1980's showed that this was achieved by starving the system of candidates for custody through large scale diversion from prosecution by the police, combined with systematic efforts to keep as many young offenders as possible as far down the tariff of penalties as possible. Carefully targeted intensive supervision schemes were reserved for the most serious and persistent cases for whom custodial placements were highly likely.¹¹⁶

Programmes and processes

As well as programme content (for instance, the kind of community-based facilities and measures which are available to supervise delinquent children) attention needs to be paid to process – the way the police, prosecutors, social workers, probation staff, courts and prisons make decisions about cases which result in some young people participating in such programmes. This is particularly important if these programmes are going to have an impact on custodial numbers. It is of course possible to focus reform efforts on one part of the juvenile justice system, for example reducing pre-trial detention, which has been the focus of the Annie E. Casey Foundation's national initiative in America. The Netherlands has recently legislated to remove the possibility of life sentences for juveniles. However, if there is to be a sustained reduction in child imprisonment a more thoroughgoing and comprehensive reform is necessary. In Canada and New York State, reductions in the number of children imprisoned came as a result of reforms implemented from the point of police questioning through to sentence, with decision-making at each stage addressed.

One of the lessons identified by Martin Horn, Commissioner of Probation for New York City, is the need for every step of the process to be analysed.¹¹⁷ The reforms he led clearly demonstrate the importance of considering decision-making at every stage of the youth justice process in order

to reduce the number of non-violent young offenders being sent to custody.

Programmes

This report covers aspects of both programme content and process. In terms of programmes, much of the material in Chapters 1-7 is self explanatory. While it is difficult to draw general lessons, measures worth further exploration include:

- The development of a problem-solving approach by courts, in which they have a continuing interest in cases after disposition and review progress.
- A greater focus on work with families, as well as young people themselves, utilising structured, evidence-based programmes and well-trained staff.
- The development of intensive wraparound services for individuals, facilitated by low caseloads, partnerships between different service providers, neighbourhood location and evening and weekend availability of staff.
- The deployment of mentors from a variety of backgrounds (including students and people from deprived neighbourhoods).
- A strengths-based approach which concentrates not only on weaknesses, or so called 'criminogenic needs', but on the capacity for young people to change and progress.
- The need for a wide range of institutional facilities of varying degrees of security, control and links with families and community.
- The important role played by police and prosecutors in the reform process.
- The need for systems which monitor and review progress and results.

Perhaps the most important reflection is that a good number of these measures could build on work which is currently being undertaken in England and Wales – whether under the aegis of community justice centres, bail support, intensive supervision and support or youth offending team or voluntary sector initiatives.

Processes

In terms of process, a number of examples are given of efforts to minimise the risk of net widening which can result when introducing a new sentencing disposal. Ensuring that there are explicit criteria for determining detention eligibility has been critical to reform efforts. In the absence of legislative custody thresholds and barriers (as is the case in Canada), jurisdictions, in particular states in America, have developed objective admission policies and practices. This has involved specific risk-assessment instruments to determine eligibility based on high, medium and low-risk child offenders. With explicit detention criteria, law enforcement officials, the courts and probation staff have established in advance which children are eligible for secure detention or alternatives to custody.

The experience in New York State (see Chapter 9) shows that supplementary assessment tools can also be used to avoid net widening when necessary. In the US, states that have sought to reduce the number of children detained pre-trial as part of the juvenile detention alternative initiative have reviewed and modified assessment instruments to ensure medium-risk offenders are eligible for placement in detention alternatives. For example, in Cook County, Illinois this led to an increase in admissions to non-custodial programmes while admissions to custody decreased.

There is clearly a strong case for reviewing Asset, the assessment instrument used in England and Wales, to ensure there is greater objectivity and uniformity in pre-sentence report recommendations.

Practitioner culture

Linked to this is a question of practitioner culture and attitude. Much of the change in New York City has come through the recommendations made by

probation staff to courts about the need for placement. The number of recommendations for placements has fallen substantially – from 50% of all cases to a sixth of cases. There is some evidence that a relatively high number of custodial sentences in England follow a proposal by the YOT or at least the absence of a proposal for a credible alternative. This contrasts sharply with successful decarceration in the 1980's, which was characterised by a crusading zeal on the part of practitioners to keep juveniles out of custody.

Developing community-based alternatives to custody thus requires a philosophical and attitudinal shift by staff. They have to develop new working practices, attitudes and habits premised on the notion that custody is a genuine last resort. If alternatives to custody are to work, staff must adopt a new approach to assessment, to working with children and their families, and to planning a web of support to help them succeed.

The experience of policy reform has shown that identifying and developing a continuum of community-based alternatives is insufficient if it is not matched by cultural shift. In European countries which imprison fewer children than England and Wales, there is a far greater emphasis on welfare and pedagogical practices which have resulted in a different philosophical approach emphasising the need to keep children out of custody.

Ultimately, achieving a change in staff culture and attitudes is important for embedding the reforms. No reforms can endure if frontline staff are not convinced that reform is worthwhile.

The wider stakeholders – police, prosecutors and courts

There is also the question of how the other players in the system – police, prosecutors and in particular judges and magistrates, respond to efforts to reduce custody. The counter-revolution in juvenile justice in England and Wales in the early 1990's was led in part by the police who abandoned their enthusiasm for cautioning and diversion in favour of a desire to crack down on persistent young offenders who they claimed were responsible for very large amounts of crime. The involvement of police in diversion in Germany and

New Zealand seems well worth further study. So too do the ideas of specialist prosecutors and problem-solving courts.

In New York City, the appointment by Mayor Bloomberg of a new reform-minded chief of the Law Department's family court division was instrumental in delivering the shift in policy emphasis away from custody towards the community. The mayor has also been able to appoint more progressive judges to sit in the family court, although many remain who are more conservative. The ability of the executive to exercise considerable influence has undoubtedly enabled the reform process. The risk tools have also provided compelling evidence that many of those previously sent to secure placements are dysfunctional rather than dangerous, and work with families is therefore seen as a rational and credible response.

One of the most important elements needed to develop effective alternatives to custody, whatever the structure of accountability, is the joint commitment from all the criminal justice agencies. This involves the leaders of the courts, police, prosecution service, youth offending service and schools acknowledging the problems with the current system: the inappropriateness of many admissions to custody; the ineffectiveness of custody; poor decision-making; system failure; disproportionate impact on particular groups; and high caseloads. Once these problems are acknowledged, a consensus can be established in support of the need for reform, as was case in both New York State and Canada. The support provided by senior police leaders in Canada was particularly important in addressing concerns raised by victims groups.

Overall, all juvenile justice practitioners – custodial staff, police, probation officers, prosecutors, lawyers and judges – need to understand the nature and purpose of any proposed alternatives to custody, though sentencers are particularly important, as without their cooperation, the courts will not refer sufficient numbers of children who would have otherwise have been incarcerated. Perhaps, therefore, no leader or agency is more important to detention reform than the head of the youth court, and it is no

surprise that Canadian officials identified the work that was done with sentencers and their understanding of the reforms as a critical factor in their success.

The politics of youth justice

Of course juvenile justice is a highly politicised area of policy-making that is volatile and uncertain. Policy can suddenly shift in response to high-profile cases or crimes. Assessing the political climate is therefore critical to any reform initiative.

Jurisdictions where reforms have been successful have been characterised by strong political commitment to change, with politicians who have been prepared to actively make the case for reducing the use of custody for non-violent child offenders. They have accepted the evidence put to them by officials and not been afraid to defend new reforms publicly, even when high profile cases have resulted in reforms being scrutinised by the media.

The wider political context has also been important to the way in which reforms have been implemented, contributing to an overall consensus in support of change that has ensured reforms have not been undermined by lingering punitive practices. This has helped to avoid, for example, the 'up-tariffing' which occurred following the introduction of the intensive supervision and surveillance programme in England and Wales.

In the US state of Missouri, for instance, where wide-ranging reforms were implemented over many years, during which time control of the state government switched between Democrats and Republicans, political buy-in was identified by youth justice leaders as being a key factor in embedding the reforms. They worked hard to develop good relationships with key politicians, gaining their commitment to support efforts to effect change. This ensured there was political cover for their work, without which the reforms would not have succeeded.¹¹⁸

Sustaining political support requires work to ensure that the public and media do not become hostile. Managing the message so that the media does not publicly maul new policies is a

particularly important part of any reform effort. In Canada, considerable work was put into testing messages with focus groups and also working with the media to ensure the right message was presented in the press. Messages were also carefully tailored for different audiences – the public, provincial leaders, the courts and judiciary.

One possible strategy is not to over-publicise potentially controversial policies. To some extent, this was the approach taken in New York, where leaders felt that the tabloid quality of much of the daily media meant the reforms would only be covered when a terrible crime happened. Thus, officials intentionally made minimal efforts to publicise their reform efforts.

Alternatively, proactive approaches have been used at a local level to start a conversation with the local media and educate reporters about the key issues. This was the approach taken by the Annie E. Casey Foundation's work to promote alternatives to pre-trial detention which produced a special toolkit – using media advocacy to promote detention reform.¹¹⁹

Whatever media strategy is adopted it is clear that, where reforms have worked, considerable attention has been given to developing an appropriate public relations strategy to ensure they are not knocked off-course by a hostile press.

Costs and responsibility

The final lesson from other jurisdictions demonstrates that even when reforms are a consequence of national change in legislation they have to be delivered at the local level. At the same time it is possible to deliver wide-ranging reform by focusing efforts on administrative change at the local level, as was the case in New York. In addition financial mechanisms have been used in other parts of America to successfully incentivise local reform.

Whilst youth justice in England and Wales is delivered locally by youth offending teams, reform efforts are normally driven centrally by the Youth Justice Board and the Ministry of Justice or Department for Children Schools and Families through the Joint Youth Justice Unit. It could be

argued that, for reform to succeed, it needs to be driven at the local level, as attempts to build collaborative support amongst stakeholders can best be achieved here. Strong local leadership is also vital.

In particular, the reform process in New York could inform youth offending team and local authority practice in England and Wales. A similar attempt at wide ranging reforms supported by local stakeholders could address decision-making at each stage of the youth justice process to deliver significant reductions in the number of children from each local area sent to custody.

There are also lessons to be learned from the financial measures that have been implemented in some US states to deliver youth justice reform at the local level, and current discussions in England and Wales around making local government more responsible for the costs of custody should not be seen simply as a governmental wheeze to reduce demand for custody, but instead as part of a broader effort to re-locate responsibility for children who offend more firmly at the local level, with resources currently spent on custody reinvested into a range of community-based measures for young offenders and their families. The youth crime action plan could be further developed to pave the way for this approach in England and Wales.

Long-term reform

Reform is a long-term proposition that is often very fragile. High staff turnover is common in juvenile justice, and new practitioners who do not understand that the world has changed can easily undermine reforms. Equally, budgets can be cut as financial priorities change, and high profile cases can challenge even the most effective risk-management systems. Finally, wider factors, such as an influx of offending young women, drug users or children with mental health problems, can change offender populations.

Vigilance and adaptation to change are therefore extremely important to ensure that reforms are sustained over the long-term. The Annie E. Casey Foundation initiative found that the sites that were capable of adapting to changed circumstances were most successful. For example, if one risk

assessment failed, they developed another. The Foundation notes that 'they tested it, built support for it, validated it, and demonstrated its value to stakeholders. If circumstances changed, they changed the instrument and continued a process of renewing support for it'.¹²⁰ It is striking that this did not happen following the introduction of the Asset assessment tool in England and Wales in 2000.

Continuous promotional efforts were made to sustain the Foundation's initiative, and key to this was the use of good data to provide objective reports of progress. In addition, training was important, as was the institutionalisation of reform with written policy and procedure manuals, ring-fenced budgets and on-going political patronage for the reform process.

Despite the need for a cautious approach to policy and practice transfer, this report demonstrates that there are many lessons to be learned from abroad, not only in terms of different sanctions and disposals, but also how best to approach reform using both legislative and administrative measures, and how best to sustain it.

Appendix I: Population and comparative social indicators for five countries

	Population 2008 (million)	Crime victimisation rates (%) 2004/05 ¹²¹	Income inequality (Ginicoefficient) mid-2000s ¹²²	Child poverty rate (%) mid-2000s	Young males not in education employment or training (%) 2006	Gross public social spending (% of net national income) 2005
Denmark	5.5	19	0.23	3	5	38
Germany	82	13	0.30	16	4	36
United Kingdom	61	21	0.34	10	9	27
Canada	33	17	0.32	15	8	22
United States	301	18	0.38	21	7	20

Source: CIA Factbook 2008; Society at a Glance 2009 – OECD Social Indicators, available at: http://www.oecd.org/document/24/0,3343,en_2649_34637_2671576_1_1_1_37419,00.html

References

- 1 Prison Reform Trust/SmartJustice (2007) ICM poll interviewing 1,034 adults aged 18 and over across the UK.
- 2 Audit Commission (1996) *Misspent youth: Young people and crime*, London: Audit Commission.
- 3 Audit Commission (2004) *Youth justice*, London: Audit Commission.
- 4 See, for example, Muncie, J. and Goldson, B. (eds.) *Comparative youth justice*, London: Sage; Junger-Tas, J. and Decker, S. (2006) *International handbook on juvenile justice*, Kluwer Academic Publishers; Tonry, M. and Doob, A.N. (eds.) (2004) Youth crime and youth justice: Comparative and cross-national perspectives. *Crime and Justice: A review of research*, 31.
- 5 See, for example, Howard League for Penal Reform (2008) *Punishing children: A survey of criminal responsibility and approaches across Europe*, London: Howard League for Penal Reform.
- 6 For a discussion of approaches taken in other countries to youth crime prevention see Allen, R. (2008), 'European perspectives on prevention' in Blyth, M. and Solomon, E. (eds) *Prevention and youth crime: Is early intervention working?*, Bristol: Policy Press.
- 7 For a detailed discussion of how restorative justice has been developed for young offenders in many jurisdictions see, Hazel, N. (2008) *Cross national comparison of youth justice*, London: Youth Justice Board.
- 8 In an interview in *The Independent* on 12 May 2009 the chair of the Youth Justice Board, Frances Done, said she had asked ministers to consider new ways of making councils financially accountable for the numbers of children sent to prison.
- 9 See: www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx
- 10 The information presented in this section is based on interviews with DDAP staff in Boston, local evaluation data and internal reports. It also draws extensively on Sheldon (1999) *Detention diversion advocacy: An evaluation*, Washington: US Department of Justice.
- 11 Sheldon (1999) *Detention diversion advocacy: An evaluation*, Washington: US Department of Justice.
- 12 DeMuro, P. (2005) *Consider the alternatives: Planning and implementing detention alternatives*, Baltimore: Annie E. Casey Foundation.
- 13 Ibid.
- 14 For an example of a foyer project in England see: <http://www.canglejunction.com>
- 15 DeMuro, P. (2005) *Consider the alternatives: Planning and implementing detention alternatives*, Baltimore: Annie E. Casey Foundation.
- 16 United Nations (2009) *Written replies by the government of the Netherlands to the list of issues prepared by the Committee on the Rights of the Child in connection with the consideration of the third period report of the Netherlands*, New York: UN Committee on the Rights of the Child.
- 17 The information in this section is drawn from: Dunkel, F. and Pruin, I. (2009) *European Committee on Crime Problems: Summary analysis of the national replies to the questionnaire related to the treatment of juvenile offenders*, Strasbourg: Council of Europe.
- 18 Department of Justice, YCJA guidance on youthsentencing options available at: www.justice.gc.ca/eng/pi/yj-jj/repos-depot/3modules/04you-ado/3040301h.html
- 19 Ibid.
- 20 Interviews with senior officials in the Department of Justice youth policy section (see Chapter 8).
- 21 This section draws on two reports: Steinhart, D. (2001) *Pathways to juvenile detention reform: Special detention cases - strategies for handling difficult populations*, Baltimore: Annie E. Casey Foundation; DeMuro, P. (2005) *Consider the alternatives: Planning and implementing detention alternatives*, Baltimore: Annie E. Casey Foundation.
- 22 Steinhart, D. (2001) *Pathways to juvenile detention reform: Special detention cases - strategies for handling difficult populations*, Baltimore: Annie E. Casey Foundation.
- 23 DeMuro, P. (1999) *Consider the alternatives: Planning and implementing detention alternatives*, Baltimore: Annie E. Casey Foundation.
- 24 Steinhart, D. (2001) *Pathways to juvenile detention reform: Special detention cases - strategies for handling difficult populations* Baltimore: Annie E. Casey Foundation.
- 25 The information about Red Hook is based on a visit to the Centre to observe the youth court and interviews with court staff.
- 26 Ministry of Justice/ Home Office (2009) *Engaging communities in criminal justice green paper*, London: Office for Criminal Justice

- Reform.
- 27 Hough, M. et al (2003) *The decision to imprison: sentencing and the prison population*, London: Prison Reform Trust. See also *Rethinking crime and punishment: The manifesto* (2008), London: Esmee Fairbairn Foundation.
- 28 The authors are grateful to Tim Bateman of Nacro for providing this detail.
- 29 Information in this section is based on an interview with Tim Decker, Director of the Missouri Department of Youth Services and unpublished reports provided by him.
- 30 Interviews with senior officials in the Department of Justice youth policy section (see chapter 8).
- 31 Youth Justice Board (2009) *Annual workload data 2007/8*, London: Youth Justice Board
- 32 This section is based on: Janson, C. (2004) 'Youth justice in Sweden' in *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M. and Doob, A.N., (eds), Chicago: Chicago University Press; Sarnecki, J. and Estrada, F. (2004) *Juvenile crime in Sweden - A trend report on criminal policy, the development of juvenile delinquency and the juvenile justice system*, Stockholm: Stockholm University Department of Criminology.
- 33 See Nixon, J. and Parr, S. (2008) 'Family intervention projects and the efficacy of parenting interventions' in *Prevention and youth crime: Is early intervention working*, Blyth, M. and Solomon, E. (eds) Bristol: Policy Press.
- 34 Janson, C. (2004) 'Youth justice in Sweden' in *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M and Doob, A.N., (eds), Chicago, Chicago University Press.
- 35 This section draws on: Junger-Tas, J. (2004) 'Youth in the Netherlands' in *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M. and Doob, A.N., (eds), Chicago: Chicago University Press, and information about Stop available at: <http://www.halt.nl/index.cfm/site/Halt%20English/pageid/D9BCE30A-E081-2F5B423208CA6A137D89/index.cfm>
- 36 This section draws on information from: *Project best, concise presentation of juvenile justice in France* available at: www.best.spj.cz/dokumenty/analysis_ENGLISH_from_French.doc; Wyvekens, A. (2004) *The French juvenile justice system – working group on juvenile justice*, available at: [www.esc-](http://www.esc-eurocrim.org/files/french_juvenile_justice.doc)
- [eurocrim.org/files/french_juvenile_justice.doc](http://www.esc-eurocrim.org/files/french_juvenile_justice.doc)
- ; Allen, R. (2009) 'Custodial establishments for juveniles in Europe' in Dunkel, F. and Junger-Tas, J. (eds) *Reforming juvenile justice*, New York: Springer.
- 37 Proposals to raise the age of criminal responsibility to 12 in Scotland are currently going through the Scottish Parliament as part of the Criminal Justice and Licensing Bill.
- 38 Data from House of Commons (2009) *The age of criminal responsibility in England and Wales*. Standard Note SN/HA/3001, London: House of Commons.
- 39 Data from House of Commons (2009) *The age of criminal responsibility in England and Wales*. Standard Note SN/HA/3001. London: House of Commons. 33 had committed motoring offences and 84 had committed public order offences. The number in custody for minor assaults is not given. For the full list of offences that are classified as either a summary offence, an indictable either way offence (which can be dealt with in either the magistrates' court or the crown court) or indictable only offence see Ministry of Justice (2008) *Criminal Statistics: England and Wales 2007*, London: Ministry of Justice, Appendix 3 and Appendix 4.
- 40 Ministry of Justice (2009) *Offender Management Caseload Statistics 2008* London: Ministry of Justice – calculated where violent offences include: violence against the person; sexual offences; robbery; arson; kidnapping; affray; violent disorder; threat/disorderly behavior.
- 41 This section draws on the research presented in Butts, J. A., Buck, J., & Coggeshall, M. B. (2002) *The impact of teen courts on young offenders*, Washington DC: Urban Institute, and includes figures from that report.
- 42 Butts, A. et al (2002) *The Impact of teen courts on young offenders*, Washington DC: Urban Institute.
- 43 Povitsky, W., Connell, N., Wilson, D. and Gottfredson, D. (2008) 'An Experimental Evaluation of Teen Courts', *Journal of Experimental Criminology*, 4, 137-163.
- 44 Butts, A. et al (2002) *The Impact of teen courts on young offenders*, Washington DC: Urban Institute.
- 45 Kyvsgaard, B. (2002) 'Youth Justice in Denmark' in *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M. and Doob, A.N., (eds), Chicago: Chicago University Press.
- 46 Dunkel, F. (2009) *Juvenile justice in Germany*

- (forthcoming).
- 47 Bala, N., Carrington P. J., and Roberts, J.V. (2009) 'Evaluating the Youth Criminal Justice Act after five years – A qualified success', *Canadian Journal of Criminology and Criminal Justice* vol. 51, no. 2.
- 48 The information in this section is based on a telephone interview with Tim Decker, director of the Missouri Division of Youth Services and a presentation he gave on 1 December 2008 at the Harvard School of Government criminal justice program, 'Young people in the juvenile justice system – perspectives from Missouri'.
- 49 Presentation by Tim Decker, director of the Missouri Division of Youth Services on 1st December 2008 at the Harvard School of Government Criminal Justice Program, 'Young people in the juvenile justice system – perspectives from Missouri'.
- 50 Smart Justice/ Prison Reform Trust (2007) ICM poll interviewing 1,034 adults aged 18 and over across the UK.
- 51 Detrick, S. et al (2008) *Violence against children in conflict with the law - A study of indications and data collection in Belgium, England and Wales, France and the Netherlands*, Amsterdam: Defence for Children International.
- 52 Based on a visit to one of the centres where two of the children were attending the local lycee each day.
- 53 Dunkel, F. and Pruin, I. (2009) *Summary analysis of the national replies to the questionnaire related to the treatment of juvenile offenders*, Strasbourg: Council of Europe.
- 54 See: <http://www.iyjs.ie>
- 55 Kyvsgaard, B. (2004) 'Youth justice in Denmark' in *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M. and Doob, A.N., (eds), Chicago: Chicago University Press.
- 56 This section is based on e-mail correspondence with Tore Andreasson who developed the MultifunC model and his report Multifunctional treatment in residential and community settings.
- 57 Allen, R. (2008) 'Custodial establishments for juveniles in Europe' In Dunkel, F. and Junger-Tas, J. *Reforming Juvenile Justice*. New York: Springer New York.
- 58 Houses of Parliament (2003) *Criminal Justice Act 2003* UK: The Stationery Office Limited www.opsi.gov.uk/acts/acts2003/ukpga_2003_0044_en_18#pt12-ch5-l1g235
- 59 Information in this section is based on a range of process evaluations of juvenile drug courts in America disseminated by the US Department of Justice at: www.ojp.usdoj.gov/BJA/evaluation/program-substance-abuse/drug6.htm
- 60 A range of graduated sanctions include: essay writing; increased numbers of required NA/AA meetings; increased numbers of court sessions; increased numbers of drug screens; community service work; home detention; inpatient treatment, and termination.
- 61 NPC Research (2007) *Indiana Drug Courts: Vanderburgh County Juvenile Drug Court, Program Process Evaluation*, Oregon: NPC.
- 62 NPC Research (2007) *Indiana Drug Courts: Vanderburgh County Juvenile Drug Court, Program Process Evaluation*, Oregon: NPC.
- 63 Department of Justice (2006) *Drug courts: the second decade*, Washington: Department of Justice.
- 64 This section draws on Cocozza, J.J. and Shufelt, J.L. (2006) *Juvenile mental health courts: an emerging strategy*, Delmar: National Centre for Mental Health and Juvenile Justice.
- 65 Skowrya, K.R. and Cocozza, J.J. (2007) *Blueprint for change: a comprehensive model for the identification and treatment of youth with mental health needs in contact with the juvenile justice system*, Delmar: National Centre for Mental Health and Juvenile Justice.
- 66 Information about the Cook County juvenile court clinic draws on: Skowrya, K.R. and Cocozza, J.J (2007) *Blueprint for change: A comprehensive model for the identification and treatment of youth with mental health needs in contact with the juvenile justice system*, Delmar: National Centre for Mental Health and Juvenile Justice; Biehl, J. & Kahn, B. (2002) 'A practice model for acquiring and using clinical information in juvenile court', *Youth Law News* 12(2).
- 67 Ibid.
- 68 Center for Children's Law and Policy (2008) *The second century: juvenile justice reform in Illinois*, Washington: Center for Children's Law and Policy.
- 69 HM Inspectorate of Prisons/ Youth Justice Board (2009) *Children and Young People in Custody 2006-2008 – An analysis of the experiences of 15-18 year olds in prison*, London: Youth Justice Board.
- 70 Youth Justice Board (2004) *Substance Misuse and the Juvenile Secure Estate*. London: Youth Justice Board
- 71 Children's Rights Alliance for England (2002), *Rethinking child imprisonment*, as cited in

- Legal Action*, February 2008.
- 72 YJB (2006) *Female health needs in young offender institutions*, London: Youth Justice Board.
- 73 This section is based on Junger-Tas, J. (2004) 'Youth justice in the Netherlands' *Youth crime and youth justice: Comparative and cross-national perspectives*, Tonry, M. and Doob, A.N., (eds), Chicago: Chicago University Press.
- 74 Dunkel, F. (2008) 'Juvenile justice in Germany' in Junger-Tas, J. and Decker, S.H. (eds) *International handbook of juvenile justice*, London: Springer; e-mail correspondence with Frieder Dunkel.
- 75 Ibid.
- 76 This section draws on: Bergeron, J. (2004) *Justice for children: Detention as a last resort, innovative initiatives in the East Asia and Pacific Region*, East Asia and Pacific Regional Office: UNICEF.
- 77 Crime and Justice Research Centre (2002), *Police youth diversion: Final report*, Wellington: Victoria University of Wellington.
- 78 This section is based on an interview with, and documentation provided by, Marc Schindler, Chief of Staff, Department of Youth Rehabilitation Services, Washington DC.
- 79 Ministry of Justice (2009) *Offender management caseload statistics 2008* London: Ministry of Justice – calculated where violent offences include: violence against the person; sexual offences; robbery; arson; kidnapping; affray; violent disorder; threat/disorderly behavior.
- 80 Ministry of Justice (2009) *Sentencing statistics 2007*, England and Wales, London: Ministry of Justice.
- 81 All data provided by the youth justice policy section of the Department of Justice and from Kong, R. Youth custody and community services in Canada, 2007/8 www.statcan.gc.ca/pub/85-002-x/2009002/article/10846-eng.htm#a4
- 82 See: Muncie, J. and Goldson, B. (eds) (2006) *Comparative youth justice*, London: Sage.
- 83 Doob, A. N. and Sprott, J. B. (2004), 'Changing Models of Youth Justice in Canada', in Tonry, M. and Doob, A. N. (Eds.). *Youth crime and youth justice: Comparative and cross-national perspectives; Crime and Justice: A Review of Research*, 31, pp.185-242; Department of Justice, Canada (2002), *YCJA explained*, Ottawa: Department of Justice Canada. At: <http://canada.justice.gc.ca/eng/pi/yj-jj/repos-depot/index.html>
- 84 Youth Criminal Justice Act 2002, p1.
- 85 Ibid. section 3 p6.
- 86 Ibid. section 38(1), p38.
- 87 Bala, N., Carrington P. J. and Roberts, J.V. (2009) 'Evaluating the Youth Criminal Justice Act after five years – A qualified success', *Canadian Journal of Criminology and Criminal Justice* vol. 51, no. 2.
- 88 Youth Criminal Justice Act, 2002, section 38 (2)(d).
- 89 Ibid. section 38 (2)(c).
- 90 Ibid. section 39 (1).
- 91 Bala, N., Carrington P. J. and Roberts, J.V. (2009) 'Evaluating the Youth Criminal Justice Act after five years – A qualified success', *Canadian Journal of Criminology and Criminal Justice* vol. 51, no. 2.
- 92 Youth Criminal Justice Act, section 39(1).
- 93 Ibid. section 39(4).
- 94 Ibid. section 39(9).
- 95 Ibid. section 4(c).
- 96 Ibid. section 29(1).
- 97 Doob, A. N. and Sprott, J. B. (2005), *The use of custody under the Youth Criminal Justice Act*, Ottawa: Department of Justice, Canada.
- 98 Bala, N., Carrington P. J. and Roberts, J.V. (2009) 'Evaluating the Youth Criminal Justice Act after five years – A qualified success', *Canadian Journal of Criminology and Criminal Justice* vol. 51, no. 2.
- 99 Ibid.
- 100 Doob, A. N. and Sprott, J. B. (2009), 'Reducing child imprisonment in Canada', *Criminal Justice Matters*, No 75.
- 101 Interviews were conducted with Catherine Latimer and Stephanie Robinson, senior officials in the youth policy section of the Department of Justice and with George Thomson, former permanent secretary in the Department of Justice.
- 102 Department of Justice, Canada (1998), *A strategy for the renewal of youth justice*, Ottawa: Department of Justice, Canada.
- 103 Ibid.
- 104 Department of Justice, Canada, press release (Department of Justice), 12 May 1999.
- 105 The goals are set out in the 'Project Zero' document available at: www.nyc.gov/html/prob/downloads/pdf/project_zero.pdf
- 106 City Limits, 28 February 2008, available at: www.citylimits.org/content/articles/viewarticle.cfm?article_id=3511
- 107 Office for Children and Family Services, press release, 10 September 2008, available at: www.ocfs.state.ny.us/main/news/2008/2008_09_10_juvenilejusticetaskforce.html

- 108 Provided by Al Siegel, deputy director of the Center for Court Innovation and chair of the taskforce's committee on alternatives to custody.
- 109 Probation assessment tool manual, 2004.
- 110 For example, Esperanza does not take cases that have additional pending prosecutions and does not work with families who require translation services.
- 111 Interviews were conducted with Martin Horn, head of probation in New York City, Alfred Siegel, deputy director of the Center for Court Innovation and member of the juvenile justice taskforce, Abby Leslie, Executive Director of New York City Children's Services juvenile justice initiative and Jenny Kronenfeld, Director of the Esperanza programme.
- 112 This chapter draws on two reports: Justice Policy Institute (2009) *The costs of confinement: Why good juvenile justice policies make good fiscal sense*, Washington: JPI; Justice Policy Institute (2006) *Cost-effective youth corrections: Rationalizing the fiscal architecture of juvenile justice systems*, Washington: JPI. It is also based on information provided by officials in Ohio and Illinois.
- 113 Youth Justice Board (2009) *Annual report and accounts 2008-09*, London: Youth Justice Board.
- 114 'YOIs cost £100k a place, says report' (30 July 2009) *Children and Young People Now*.
- 115 Ministry of Justice (2009) *Reoffending of juveniles: results from the 2007 cohort* London: Ministry of Justice.
- 116 Allen, R. (1991) 'Out of Jail: The Reduction in the use of penal custody for male juveniles, 1981-1988' in *The Howard Journal*, 30: 1. London: Howard League for Penal Reform.
- 117 City of New York Department of Probation Juvenile Operations, presentation by Martin F. Horn, Commissioner, 11 March 2009.
- 118 Interviews were conducted with Tim Decker, Director, Missouri division of youth services and Gary Strangler, former director, Missouri division of youth services.
- 119 Available at:
www.aecf.org/~media/PublicationFiles/JDAI_4_Media.pdf
- 120 Schwartz, R.G. (1999) *Pathways to juvenile detention reform: Promoting and sustaining detention reforms*, Baltimore: Annie E. Casey Foundation.
- 121 Percentage of people reporting crime victimization over the previous 12 months, from: Van Dijk J., Van Kesteren, J. and Smit Paul, P. (2008) 'Criminal victimisation in international perspectives - Key findings from the 2004-2005 international crime victims survey and European survey on crime and safety', *WODC Publication no 257*.
- 122 The Gini coefficient is a measure of statistical dispersion. It is defined as a ratio: a low Gini coefficient indicates more equal income or wealth distribution, while a high Gini coefficient indicates more unequal distribution.

Reducing child imprisonment in England and Wales - lessons from abroad

In recent years there has been an expansion in comparative youth justice analysis examining the differences and similarities across countries in their approach to youth crime. A number of publications have been produced bringing together summaries and analyses of various youth justice systems. At the same time there has been a growing interest by policy makers and reform organisations in cross-national learning and policy transfer from one country to another. In fact, one of the most recent alternatives to custody introduced in England and Wales – intensive fostering – was modelled closely on a scheme developed in the USA. Other sanctions for young offenders, such as the referral order, have also been inspired by international practice.

This report, commissioned as part of the Prison Reform Trust's strategy to reduce child and youth imprisonment in the UK, supported by The Diana, Princess of Wales Memorial Fund, focuses specifically on international examples of policy and practice used in countries which have relatively low numbers of children in custody or those that have been developed and implemented in countries in order to reduce child imprisonment. It looks at alternative sanctions that could potentially be transferred to England and Wales to reduce the number of children either remanded or sentenced to custody.

