

Youth Justice

Local and Global

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Trends in Youth Justice

Objectives

- This chapter will consider what we understand as ‘the facts’ of youth crime.
- The reader will be introduced to the different ways young people come to be identified as offenders.
- The chapter will discuss trends and patterns of offending by young people.
- The reader will also be provided with an overview of sentencing and the outcomes of the youth justice process.

How Do We Establish the ‘Facts’ About Youth Crime?

We do know that youth crime is the focus of considerable attention, from criminologists, policy-makers, politicians, social welfare and criminal justice agencies, the media and the general public. Each of these constituencies, along with young people themselves, of course, has an interest in establishing ‘the facts’ of youth crime, both about its extent and about how to respond to it effectively. There is a widespread consensus that these are important issues, deserving of the effort required to obtain credible answers.

In effect, there are several key questions associated with these concerns:

1. Who become classified as young offenders?
2. What crimes do they commit?
3. How are their offences dealt with by the criminal justice system?
4. What are the effects and outcomes of criminal justice interventions with young people?
5. What are their experiences of criminal justice?

As we shall see, merely seeking to determine how to tackle these questions will pose significant problems of definition and calculation; and this is an extremely

important point. Whilst making every effort to achieve clarity and certainty, we must equally avoid the temptation to over-simplify or make definitive claims about an area of human activity where these aims are likely to be highly problematic. If we consider drug-taking, for example, we know that it is widespread, with about 20–25% of school students in England reporting that they have ever used drugs according to government estimates (NHS Digital, 2019). In some countries, though, drug use is not treated as a criminal matter. So, is simple drug use by young people a crime? And, if so, who are the criminals: drug users, addicts, suppliers? Should we differentiate between those who sell to their friends and those involved in organised drug distribution, such as ‘**county lines**’? Is it just those who are caught who are criminals, or all those involved? Should we treat those who are caught as offenders, or as a health risk? And, what about legal drugs – why should alcohol and cigarettes be treated differently? And so on...

This example is cited to illustrate the many and complex issues facing us when seeking to identify and then quantify the level of offending within the youth population; and then to consider how to respond to crime. We must proceed with caution, and perhaps recognise that in place of simple facts, we must very often rely on assumptions and inferences, drawing on our own powers of judgement.

Who become classified as young offenders?

As we can see from the example of drug use, relying on ‘official’ figures about youth crime and young offenders would only tell us part of the story. Most offending does not come to the attention of the authorities; and most of that which is reported is not detected. Several systemic factors account for this shortfall, including under-reporting and the limited capacities of crime enforcement agencies (MacDonald, 2002). It might therefore be helpful to start not with the official records, but with what young people themselves have to tell us about their involvement in crime and anti-social behaviour.

Self-report studies

According to Farrington (2001), self-report studies of young offenders can be traced back to the 1940s in the United States and the 1960s in the United Kingdom. Self-report studies adopt the quite logical approach of trying to identify the level and nature of youth offending by asking young people about their involvement. In one sense, this might well be an obvious step, but it does not entirely resolve the problem of trying to establish an accurate picture. For example, depending on the context (surveys are often school based), some potential respondents may be excluded from taking part, whilst others might be discouraged from answering with complete honesty. There are also problems, of

course, of recollection, and of knowing what counts as a 'crime'. Nonetheless, self-report studies have proliferated, and now represent a substantial contribution to criminological knowledge, although they have tended to concentrate their focus on certain types of crime, perhaps more commonly associated with young people.

Short and Nye's (1957) survey of 2,358 14–17-year-olds in Wisconsin and Illinois is believed to have 'triggered' much of the subsequent work in this area of inquiry (Farrington, 2001: 5). Notably, amongst its major findings was the observation that there was no identifiable relationship between social class and offending, with the implication that the formal structures and processes of the justice system might be generating a distorted picture of the distribution of youth crime. The apparent concentration of offending by young people amongst particular – poorer, minority ethnic – communities thus appears to be an artefact of discriminatory criminal justice mechanisms and processes.

Similarly, other disparities between the official picture and self-reported crime began to emerge with subsequent studies. Gold and Reimer's (1975) longitudinal study found a decline of self-reported offending by young people of 20% between 1967 and 1972, whilst the same period saw a 29% increase in the number of cases coming to the juvenile court (Farrington, 2001: 6). Importantly, these early studies demonstrated the value of obtaining estimates of criminal behaviour which were not dependent simply on the highly selective nature of official statistics. It became possible to establish a clearer sense of patterns and trends than might be shown simply as a result of changes in recording practices or staffing levels. Maguire and Pastore (1999), for example, established a significant level of continuity over time, reporting very similar levels of car theft and shoplifting amongst American youth in 1996–98 as ten years previously.

In the United Kingdom, early self-report studies were carried out by Willcock (1974) and Belson (1975). Interestingly, these two studies, one national and the other based in London, showed considerable variations in offending levels, with around 3% of respondents stating that they had committed a burglary in Willock's study covering England and Wales; whilst the comparable figure for London reported by Belson was 18%. Other European countries, too, began to adopt the self-report survey as a means of determining the extent and distribution of crime amongst young people, in an attempt to discover the true extent of criminal activity lying beyond the official figures. These countries included Sweden, Denmark, Germany and the Netherlands (Junger-Tas and Marshall, 1999).

As Junger-Tas and Marshall have pointed out, however, the conduct of this kind of exercise also tended to illustrate the wide range and lack of precision in the types of behaviour deemed to be 'criminal'; and in particular, self-reporting relies on a huge variety of localised, cultural and individual-level definitions of what actually constitutes an offence. In addition, the choice of samples, response

rates, location of the survey (often school-based), and the actual method used (interviews or questionnaires) might all impact substantially on the findings generated. Despite these concerns, Junger-Tas and Marshall, writing in 1999, concluded that the quality and reliability of self-report studies had improved significantly over previous decades.

Major UK studies of the 1990s began to offer more depth to our knowledge of patterns of youth crime (Graham and Bowling, 1995; Flood-Page et al., 2000). Graham and Bowling found that, according to their own accounts, a very small proportion of young people were identified as being responsible for more than a quarter of all offences committed amongst their peers. This particular survey, of 1,721 young people aged 14–25, supplemented with an additional ‘purposive sample’ of 808 participants from ethnic minorities (to ensure a sufficiently large representative sample size), identified that a much larger number, a quarter of males and one in eight females, admitted offending during the previous year. The survey was also able to determine that 15 was the peak age of offending for girls/young women, compared to 18 for boys/young men.

This survey (the Youth Lifestyle Survey) was subsequently repeated, and largely confirmed the initial findings (Flood-Page et al., 2000), and this time went on to provide an insight into the so-called ‘risk factors’ associated with patterns of serious or persistent offending behaviour. Young people more likely to report more substantial involvement of this kind were also more likely to report involvement with drugs, experience of ‘poor’ parental supervision, or having friends who were also involved in criminal activity.

In the early 2000s the Youth Justice Board commissioned a series of annual Youth Crime Surveys, later discontinued, which were helpful in demonstrating a fairly consistent picture of the distribution of offending amongst young people. Around a quarter of young people surveyed acknowledged that they had offended within the previous 12 months, and around 60 per cent consistently stated that they had ‘ever’ offended. Somewhat frustratingly, the final report on these surveys suggested the beginnings of a change in the overall pattern, with only 19% stating that they had committed a crime within the previous year (Anderson et al., 2010). Possibly this might have indicated the early signs of a downward trend, mirroring a similar decline in the number of official reports of youth crime.

In Scotland, the *Edinburgh Study of Youth Transitions and Crime* has also generated a wealth of material on the experiences and perceptions of young people, and the longitudinal nature of this study has been particularly helpful, as well as its scale, involving over 4,000 young people from that city. In particular, the Edinburgh study has informed our understanding of pathways into and out of crime, and distinctive offending patterns and profiles attributable to young people. The study shows, for example, a peak age of offending somewhat younger than other studies (age 14); and at the same time, it shows that this ‘peak age’

actually varies according to the type of offence (McVie, 2005: 9). Fare-dodging, for example, increases in frequency at least up to the age of 16, whilst carrying weapons tends to peak at around 14, once total offending is disaggregated.

Having been carried out in a series of data sweeps, the Edinburgh study is also able to identify distinctive offending patterns. Ten per cent of those surveyed over the series had never reported carrying out an offence of any kind; whilst, on the other hand, around a third had offended in the period prior to each repeat of the survey (McVie, 2005: 11). And, similarly to the analysis provided by Flood-Page et al. (2000), the Edinburgh study was able to identify factors associated with the likelihood of offending. In particular, persistent or serious offenders were found to be more likely themselves to have been the victims of harmful or abusive behaviour by their own accounts (McAra and McVie, 2010a: 185); patterns and pathways into and out of offending could depend on 'critical' moments or incidents in young people's lives, such as school exclusion in the early teens (p. 190); and, being identified as 'at risk' by way of contact with statutory services might result in young people being 'labelled', and thus more likely to become officially identified as offenders (p. 189).

As well as gaining some insight into the extent of offending amongst young people, and the factors which might be associated with them getting involved in crime, or becoming criminalised, we are also able to glean important insights into the distribution of offending, notably by ethnic group, or gender. The analysis of previous American studies carried out by Elliott and Ageton (1980) identified that little difference had been identified in self-report studies between respondents according to their ethnic origin. By contrast, official reports and records showed 'significant differences by both class and race' (p. 95). However, closer and more recent analysis, particularly of more serious offences, has suggested a more complex picture, with self-reported arrests (rather than offences) showing consistency with official arrest rates irrespective of ethnic background (Piquero et al., 2014).

In the UK, the study by Graham and Bowling (1995) found little difference between White and African-Caribbean respondents in their reported rates of involvement in violence, property offences or damage. However, subsequent surveys generated mixed findings (May et al., 2010), with only those of Asian origin reporting a consistently lower rate of offending than those from other ethnic groups. When other relevant factors are taken into account, ethnicity is not viewed as 'independently predictive of offending' (May et al., 2010: 20).

However, as May et al. (2010: 21) go on to argue:

In summary, existing evidence suggests that while the lower prevalence of offending among Asian/Asian British young people might account for the under-representation of that group in the figures for detected youth crime, overall patterns of delinquency are unlikely to explain the over-representation of Black/Black British young people.

Official records and statistics

The picture provided by official statistics does not appear to reflect young people's own accounts of their involvement in crime, then, particularly in relation to ethnicity. It is likely to be the case that what we might term 'official records' represent more serious offences and more sustained involvement of particular young people; so, in this respect, they will certainly differ. Much relatively minor offending (petty shoplifting, for example) is likely not to be followed up, or simply remains undetected, whereas more serious crimes (of violence, say) are more likely to attract closer attention and the concerted efforts of criminal justice agencies to ensure that they are dealt with satisfactorily.

In England and Wales, this pattern has almost certainly become more apparent as the numbers of children and young people processed by the justice system has declined steeply over an extended period of time. By 2018/19, when 21,700 young offenders were dealt with formally and received a caution or a court sentence, this number represented an 82% decline over a 10-year period (Youth Justice Board/Ministry of Justice, 2021: 2). This illustrates very well the suggestion that statutory processes and the ways in which they are organised and implemented will inevitably play a very substantial part in defining the population formally classified as offenders.

A decline of this scale is unlikely to be accounted for simply by changing patterns of behaviour, or personal characteristics, but we can also safely assume that changes in the practices of criminal justice agencies and recording methods must play a part. This conclusion can also be drawn from the disparity between the findings of self-report studies of the early 2000s (see above), which showed a fairly constant level of offending by young people's own accounts, on the one hand, and on the other, the rapid rise in the numbers formally processed, largely because of a change in the policing targets set by government: 'in 2007, the number of substantive youth justice disposals imposed was 20% higher than in 2003' (Bateman, 2015: 9) (see Chapter 8 for further discussion).

The official statistics do suggest certain patterns in the distribution of the population of young offenders. According to the youth justice statistics for England and Wales in 2018/19: 'boys made up 51% of the general 10–17 population in England and Wales but accounted for 85% of the total number of children who received a caution or sentence in the latest year. This proportion has been steadily increasing over the past ten years' (Youth Justice Board/Ministry of Justice, 2021: 18).

Similarly, the age distribution of young offenders according to these figures indicates that criminal activity is associated with age, with 77% of all young offenders being 15–17, compared to only 23% being between 10 and 14. As with gender, this is largely consistent with self-report studies which indicate that young males make up the greater proportion of offenders; in addition, the peak

age of offending is in the mid to late teens, for both males and females, as we have seen.

In relation to ethnicity, there appears to be an identifiable trend towards increased over-representation of certain ethnic groups among the young offender population. The proportions of both Black children and those from a mixed ethnic background cautioned or sentenced increased substantially from 2010 to 2019 – from 6% to 11% and from 4% to 8% respectively. By 2018/19, this meant that the proportion of Black children or young people identified as offenders was three times what would be expected from the general population figures. This figure is clearly not consistent with the evidence reported above of the prevalence of offending amongst different ethnic groups suggested by self-report studies. Once again, it suggests that we must consider the contribution to these disparities of ‘system’ effects, especially in the light of repeated evidence of institutional racism revealed by major inquiries (MacPherson, 1999; Lammy, 2017).

These observations certainly suggest that we should treat the official figures with some scepticism. Their relationship to the underlying behaviours and self-attributed criminal activities of young people is not straightforward, and the processes they represent may, themselves, contribute to the criminalisation (or not) of certain groups of young people. Nonetheless, however problematic they are, these figures do represent the processes which determine how young people, and their crimes, are dealt with by the justice system, and they are therefore a key focus of critical interest in terms of understanding these outcomes (see Chapter 8 for a further discussion).

What crimes do young people commit?

Of course, alongside our attempts to understand who the young offenders are, it is important to gain some idea of the types of criminal (and anti-social) behaviour for which they are believed to be responsible. For various reasons, it is likely that the nature of youth crime will look rather different to the profile of criminal activity across the population, and it will be helpful to explore this distinctive pattern of behaviour.

Thus, in 2018/19, across England and Wales, the official figures showed a changing pattern of youth offending, largely because of an increasing likelihood that what are seen as more minor offences would be disposed of informally, usually by way of a police warning. Offences of ‘violence against the person’ comprised 30% of all ‘proven offences’ by children and young people (aged 10–17) in 2018–19, and theft and handling stolen goods accounted for a further 11%, slightly more than criminal damage. Other offences, including burglary, robbery, ‘motoring’ offences and sexual offences made up smaller proportions of the overall total.

Even within these global figures, though, the seriousness of offences may not be represented simply by the category to which they are assigned, especially if falling under a catch-all heading such as ‘violence’. When recorded formally, each offence is assigned a ‘gravity score’, a form of categorisation devised for the Police National Legal Database, in order to provide a finer gradation of offence gravity. Accordingly, only a small proportion of ‘violent’ offences committed by children/young people in 2018/9 were categorised with a gravity score of five to eight (Youth Justice Board, 2021: 23), whereas for burglary, robbery or sexual offences over half of these were rated at this level. As the Youth Justice Board (2021: 24) reports, very few crimes committed by young people fall into the most serious (gravity score eight) category (140 – 0.3% in 2019/20).

Significantly, the annual statistics had begun to incorporate a specific reference to ‘knife crime’ at this point. The pattern of knife crimes committed and dealt with over time differed somewhat from the continuing decline in youth crime in general. From 2009 until 2013, the number of knife crimes committed by young people fell from over 6,000 to fewer than 3,000, according to the official figures. From that point on, though, there was a steady increase to 2018/2019, although by 2019/20, the number had stabilised at around 4,400. Of these, though, 97% were identified as ‘possession offences’ and 3% as ‘threatening with a knife or deadly weapon’ (Youth Justice Board, 2021: 26). This type of offence might be viewed as inherently ‘serious’, but only 12% led to an immediate custodial sentence, whilst 29% were dealt with by way of a caution.

As Bateman observes, however, there is something of a paradox here, as far as the official figures are concerned:

[Whilst] official statistics understate the extent of youth crime, they also, and for similar reasons, tend to exaggerate its seriousness. Minor incidents are more likely to remain undetected because victims are less inclined to report them and, where the police are notified, they may not merit the allocation of resources necessary for detection and processing. Where children engaged in such activities are apprehended, the authorities frequently use their discretion to avoid a formal outcome. (Bateman, 2017: 18)

As a result, then, the profile of offending by young people might be somewhat misleading if we rely solely on official figures. As Bateman also points out, self-report studies tend to show that incidents of theft are the most common offences carried out by children and young people, whilst: ‘Discussion of youth criminality tends to focus on high profile, more serious incidents, such as gang-related activities, robbery, violence against the person and, particularly in the recent period, knife-crime’ (Bateman, 2017: 18).

It might nonetheless be argued that the apparent imbalance in our knowledge of youth crime may, indeed, misrepresent the whole picture whilst at the

same time actually helping to keep the focus on those crimes which are of greatest significance and lead to the greatest harm. In this sense, then, we might draw the conclusion that official statistics are helpful because they do focus attention on matters of greatest concern. However, there is a risk, too, that this leads to excessive fear and blame being directed towards young people, disproportionately. Knife crimes involving young people under the age of 18, for example, represented only about a tenth of the overall knife crime figure for the year ending March 2019 (Office for National Statistics, 2019).

At the same time, official figures, and the formal interventions they represent, may not capture well the complexity of the issues surrounding some offences, such as 'county lines' drug distribution, which is widely believed to involve young people extensively (Turner et al., 2019). According to a report commissioned by The Children's Society, as many as 46,000 children may be involved in 'county lines' networks, whereby they are recruited to travel to deliver drugs on behalf of suppliers. Whilst this is reported often to involve coercion and the exploitation of children, crime figures seem to show that this phenomenon is also associated with an increase in their criminalisation, with notable increases in those arrested for possession with intent to supply Class A drugs between 2015/16 and 2017/18. This example highlights another distinctive feature of the crimes committed by or attributed to young people, and this is to do with the interplay between their behaviour and their circumstances.

This may partly be to do with certain features of 'growing up', such as neurological changes, the importance of peer relationships or a relative absence of adult commitments and responsibilities, or it may be to do with specific circumstances and pressures to which young people are distinctively subjected. Young people are more 'visible', for example, to the extent that they may spend a large part of their time in public places, so they are perhaps more likely to be associated with various forms of anti-social behaviour and disorder offences. On the other hand, as just noted, there are certain vulnerabilities to which certain young people are exposed, which might also be viewed as criminogenic. Here, though, the link appears to exist between prior experience, or current circumstances and particular types of offence, rather than a more generalised sense of 'criminality'. For example, Batchelor's (2005) study of young women's involvement in crime in Scotland documented the close association between prior experiences of violence and abuse as victims, and their own violent behaviour:

If you let people walk all over you, people will and people do [...] See if you stand back and let them hit you, they will keep hitting you. If you hit them back, then they usually stop. You have to be violent in here because I would say 70 percent of the lassies *are* violent, so if you're not then you won't get nowhere. You get bullied and you don't get any respect. It's simple. (Karen, quoted in Batchelor, 2005: 369)

Importantly, here we can see that patterns of youth crime are contextual, and very likely to be shaped by past experiences, as well as perhaps more contingent factors such as influence and opportunity. Thus, perhaps, there is an argument for disaggregating crime figures and adopting a more focused and nuanced approach to the task of identifying patterns and trends in young people's offending behaviour.

How are young people's offences dealt with by the criminal justice system?

Given that young people's crimes vary significantly in nature and impact, with very few demonstrating the highest levels of gravity, we could certainly expect the justice system to respond in very different ways according to the nature of the offence. Indeed, this does appear to be the case, with much low-level youth crime dealt with informally, or by way of some form of 'diversionary' measure, whilst custodial or other secure options are available, and used relatively infrequently, for those whose offences are deemed to be the most serious or to represent the most substantial continuing risk to others.

Firstly, though, it is important to acknowledge that there is considerable international variation in the way in which the crimes of the young are dealt with; and this is clearly reflected from the outset in different approaches to attributing criminal responsibility (see Chapter 5). In fact, there are substantial variations in law and policy on the question of whether or not and at what age children should be held (criminally) responsible for their actions. Of course, these legislative provisions are subject to change, but the following link provided by Child Rights International (CRIN) provides some idea of the kind of variations to be found: <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>.

Even though most countries do provide for children to be held criminally responsible for their actions at a specified age, there is also a wide consensus that they should be diverted from the formal justice system where possible. As a result, it is frequently found to be the case that a very substantial proportion of those coming to the attention of criminal justice agencies are then dealt with in ways which are intended to minimise their impact, and to enable them to avoid the possible stigma associated with a criminal record. In England and Wales, much offending by young people is dealt with informally. Even though the number and proportion of those formally processed who were cautioned showed a rapid decline during the 2010s, this tended to mask the extent to which police and Youth Offending Teams (YOTs) were dealing with many reported offences without recourse to such processes.

Dealing with Offences Informally: Community Resolution

Community resolution (CR) – is an alternative way of dealing with less serious crimes that allows the police to use their professional judgement when dealing with a child who has committed an offence. This approach would normally seek to resolve the offence in an informal way that brings closure for the victim, where one has been identified, in a timely manner. It may involve the young person doing something that ‘puts right’ the offending to the satisfaction of the victim and should take account of their views. Initial CRs may often be delivered directly by the investigating police officer, without the child having been arrested. This is sometimes referred to as ‘Street RJ (restorative justice)’. A CR may also be given where, following consideration of the options available, it is more suitable than a caution. Receipt of a CR is recorded in local police systems but is not recorded on the Police National Computer (PNC) and does not form part of a formal criminal record. (HMIP/HMICFRS, 2018: 6)

Informal disposals of this kind constitute a significant proportion of the overall ‘outcomes’ delivered to children and young people who are identified as offenders, with cautions representing between 30% and 80% of the overall ‘throughput’ of YOTs (HMIP/HMICFRS, 2018: 14), although they are largely unacknowledged in official statistics (p. 12).

Although we must be cautious about comparability, New Zealand/Aotearoa, which shares a relatively low age of criminal responsibility with England and Wales, also makes extensive use of ‘out of court’ disposals (Spier and Wilkinson, 2016: 2). In that country, in 2013: ‘39% of child offenders were warned and 53% of cases were resolved by Alternative Action’, that is, informal resolution by way of reparation to victims or community work, outside the formal court process. A relatively small percentage were dealt with by way of Family Group Conferences or prosecution. New Zealand’s use of Family Group Conferences to seek positive resolutions for youth crime is distinctive, and closely linked with its overarching commitment to restorative practices. It does bear some resemblance, however, to the Scottish Children’s Hearing System (see Chapter 6 for a fuller discussion), which also presides over all but the most serious offences, and which is geared as much towards promoting child welfare as to the attribution of guilt and punishment.

Trends in youth justice, then, suggest both a widespread decline in the numbers of offences by children and young people, and, in parallel, an increasing commitment to responses which bypass the court system and an associated reliance on non-penal measures. The emergence of restorative disposals as a significant feature of youth justice systems has been noteworthy. As restorative justice more generally has become widely accepted as a legitimate objective of

the criminal justice process, it has begun to feature across the range of disposals available for offences attributed to young people. Significantly, the principles of restorative justice are applicable at any point in the process; and so its growing influence and presence can be observed across the spectrum from informal disposals through to custodial sentences. Speaking in 2017, the Chief Executive of the Youth Justice Agency in Northern Ireland said:

Restorative practice is at the heart of the work of the Youth Justice Agency in Northern Ireland. It provides young people with an opportunity to play an active part in the resolution and repair of the harm caused by their actions. But importantly, it also gives victims a much needed voice that is sometimes absent from the traditional justice process. Communities too can benefit from the reparation work undertaken which can often help restore broken relationships. (Declan McGeown, 20 November 2017, launch of Restorative Justice Week: www.justice-ni.gov.uk/news/restorative-practice-heart-youth-justice-system)

In Northern Ireland, restorative interventions are promoted both as alternatives to the court process, and through the court process itself, whereby an order can be made for young people and their families to attend a ‘youth conference’, to address and resolve the issues associated with an offence by a young person (see Chapter 6 for a fuller discussion). Over the period 2008–2013, between 1,600 and 2,100 conferences were instituted each year, with a 76–78% completion rate (Marder, 2020). These conferences are similar in nature and purpose to the Family Group Conference model in New Zealand and the Referral Order process in England and Wales, and, according to Marder, similar approaches have been widely adopted throughout Europe, in Georgia, Albania, Belgium and Finland, for example.

As offences become more serious, or young people are deemed to be persistent offenders, though, more formal procedures and more punitive outcomes appear more prevalent, with sentences progressing through community disposals, usually with an element of compulsion, to forms of custodial detention. In England and Wales, the courts have available the Youth Rehabilitation Order (YRO), introduced in 2009, a composite sentence which enables them to combine elements of punishment, welfare and, indeed, restoration (from a ‘menu’ of 18 available requirements) and thus, potentially integrating the varied objectives of youth justice under a common framework. Bateman’s (2017: 45) analysis of the YRO is somewhat sceptical. He points out that its many elements were often available under previous legislation under different names, and there was already the option of combining these in many cases.

Perhaps as a result, the YRO did not have any substantial effect in displacing other disposals available to the court, particularly in terms of reducing the

proportion of custodial sentences imposed (Youth Justice Board, 2021: 28). In 2015/16: 'the YRO accounted for one quarter of all disposals compared with an equivalent figure of 30% in the year ending March 2009' (Bateman, 2017: 45), and by 2019/20 this figure was still around 22%. Notably, though, there does seem to have been a tendency for the intensity of YRO requirements to increase over time:

the proportion of orders that contain five or more requirements [increased] from 2% in 2010/11 to 6% in 2013/14, and 11% in 2015/16. While this might, for some cases, reflect the use of higher-end community sentencing as an alternative to a custodial disposal, thereby contributing to the reduction in child imprisonment, it may also be an indication that community disposals, in at least some instances, are becoming more intrusive. (Bateman, 2017: 46)

Two of the most commonly used requirements of the YRO, according to Bateman, consist of 'supervision' (33%), and the imposition of a 'curfew' (14%), which seems to epitomise the underlying intention, at least, of combining a welfare element with a punitive sanction.

Norway's approach to community sentencing of young people incorporates similar principles and components, despite its very different framework for the delivery of youth justice. In that country, the minimum age of criminal responsibility is 15, but for those children aged 15–18 who are prosecuted, there has been no special provision in terms of judicial proceedings, and they are dealt with by adult courts (Winterdyk et al., 2016). However, within this framework, courts do have specific sentences available to them for young people in this age range, notably 'Youth Punishment', which incorporates a number of elements to be found in other jurisdictions, including an initial 'conference', reparation to offence victims, and a combination of elements of support and punishment, comparable to those found in the YRO. Despite this apparent consistency in practice across national boundaries, and despite some criticism of its practices by international observers, there is also a widely held view that Norway's model of youth justice is, overall, considerably less punitive than most other countries. However, concerns are raised about its treatment of marginalised or minority communities, as elsewhere (Winterdyk et al., 2016: 116). (For a discussion of comparative youth justice see Chapter 4.)

At the apex of the youth justice system stands penal custody, alongside other forms of secure institution provided specifically for children and young people. Current trends suggest that, in parallel with a falling crime rate, there has been a similar decline in the use of custody for young people. In England and Wales, there has been a substantial fall from the peak figure in the early 2000s of over 3,000 children in custody (Bateman, 2017) to substantially below

1,000 by 2020. Similar dramatic progress is reported elsewhere, as in Canada, for example:

On an average day in 1997, 3,825 young people (ages 12 to 17) were serving sentences in Canadian youth prisons. By 2015, that number had decreased to 527, an 86 percent reduction. This is a drop from 157 per 100,000 12- to 17-year-olds to 23. (Doob et al., 2018)

Importantly, these figures represent the *rate* of incarceration rather than the number, thus taking account of any changes in overall population figures. As in the case of England and Wales, the decline in the use of youth custody in Canada did not seem to be mirrored in substantial changes in the imprisonment rate for adult offenders. Schiraldi (2020) also reports a halving in the use of youth incarceration in the United States from 2000 onwards. Certainly, within anglophone ‘Western’ nations, there appears to have been a common trend emerging (see Chapter 8 for a further discussion about the possible reasons for this decline in numbers and its effects).

Against what many would see as an encouraging backdrop of falling custody rates, some concerns remain, however. Firstly, it appears that the conditions for those young people experiencing custody are sometimes unacceptable. Willow (2015) and Simmonds (2016) have reported that custody is a disturbing experience for young people, where many (46%) feel ‘unsafe’ (Bateman, 2017: 53). Violence between residents is also reported to be at a significant and increasing level, compounded by the regular and often painful use of ‘restraint’ techniques (physical methods of control) by staff (Shenton and Smith, 2021). Between 2010 and 2016 in England and Wales, the number of assaults per 100 children in custody increased from 9 to 18.9 per month, and the monthly number of ‘restraints’ used by staff on children rose from 17.6 to 27.8 per 100 children (Bateman, 2017: 53), and by 2018–2019, this figure had risen significantly again, to 46.6 per 100. Custody for children appears to be becoming a more unpleasant and even dangerous place. Bateman (2017: 53) also reports that:

minority ethnic children are less likely to think that staff treat them with respect than their white peers (58% against 68%) and more likely to consider that they have been victimised by staff (39% compared to 26%). This is no doubt reflected in the fact that more than half of BAME boys indicate that they have been physically restrained by comparison with just over one in three white boys.

This disproportionate treatment of ethnic minority children and young people within the custodial estate only serves to amplify the unequal treatment they experience throughout the operation of the justice system. Of particular concern have been the divergent trends for those subject to custodial sentences.

Whilst the overall number of young people has declined substantially, as noted previously, this has resulted in a strikingly disproportionate representation of Black children, in particular, in the secure estate (see Chapter 8 for more discussion of these trends). Cunneen and Tauri (2019) report, too, that Indigenous youth in Australia are 23 times more likely to experience custody than their non-Indigenous peers. So, once again, we can conclude that there is a broad pattern of discriminatory outcomes for minority (non-White) youths across many parts of the Anglophone world.

Youth justice outcomes

Looking beyond the pattern of agency practices and disposals, we might also ask the question of what do youth justice processes and systems achieve? How well do they succeed in delivering the objectives set for them, such as, in the English/Welsh context, the ‘principal aim’ of preventing offending by children. Typically, objectives are set for youth justice systems in terms of reducing levels of reoffending, and this is very often the default criterion against which interventions are judged. As Field (2007) has acknowledged, the shift of emphasis from promoting children’s welfare (at least jointly) to an exclusive emphasis on reducing levels of crime is associated with the reform programme of the New Labour government (1997–2010), and in particular the major legislative initiative of the *Crime and Disorder Act 1998*. As Field (2007: 314) also acknowledges, these changes were not always welcomed, and practitioners certainly expressed the view that this represented a ‘narrowing’ of focus, with the potential dilution or loss of focus on a range of important objectives of intervention beyond merely preventing further offending. For many practitioners, indeed, the view was that (re-)offending and welfare were so closely linked that attending to children’s needs was essential if the aim was to reduce the possibility of further offending:

If you take the needs of the young person, if their basic needs aren’t being met, their welfare needs, how on earth can they actually concentrate on not offending? If they are homeless, you are not going to address that offending behaviour because as far as they are concerned, they have got a priority need that they have to sort out before they are going to sit and listen to anything you have got to say. So I think it goes hand in hand ... (youth justice worker quoted in Field, 2007: 314)

Here, from the practitioner perspective we can see that there is an argument for considering a broader range of objectives and outcomes in youth justice than simply the issue of whether or not levels of offending are reduced. This viewpoint finds echoes in the emerging emphasis on ‘desistance’ and the ways in which pro-social outcomes for young people are bound up with positive changes across different aspects of their lives (McNeill and Weaver, 2010). Disposals and

interventions in youth justice, then, are to be judged on a range of outcomes, of which levels of (re)offending is one, undoubtedly, but others, such as obtaining secure accommodation or employment, developing positive relationships or achieving improved health, are also to be considered, to the extent that they contribute to the achievement of ‘good lives’ (Ward and Brown, 2004).

Despite these caveats, we will firstly consider what is known about reoffending rates for young people, based principally on official figures. These figures are presented in terms of ‘proven’ reoffending, usually over a period of a year following conviction for an earlier offence (Ministry of Justice, 2020). Thus, for example, the reoffending rate for ‘juvenile’ offenders in England and Wales for the period January to March 2018 was 39.2%. This figure is reported to have fluctuated between 36.3% and 43.6% in the period from 2006 to 2018. Those with a higher number of previous offences are also reported to be considerably more likely to reoffend (Ministry of Justice, 2020: 9). There is also considerable variation depending on the offender’s previous sentence or disposal, with 26.8% of those cautioned committing a further offence within a year, as compared to 67.6% of those receiving an initial custodial sentence (Ministry of Justice, 2020: 12). This type of figure, of course, raises significant questions about the deterrent effect of punitive sentences on young people, and custody in particular.

More detailed analysis reveals a number of other patterns in reoffending by young people. Males, for example, reoffend at a consistently higher rate than females over time, and in 2017–2018, the respective figures were, for males, 40.5%, and for females, 27.4%. Official figures also suggest that reoffending rates for Black young people are higher than those for other ethnic groups (Youth Justice Board, 2021: 65). This disparity is perhaps also a sign of systemic effects which leave young Black people at more risk of being criminalised at all points of the justice process. Youth Justice Board figures also suggest that reoffending rates correlate with the severity of previous disposals, with a custodial sentence most likely to lead to a further offence, followed progressively by Youth Rehabilitation Orders, ‘other’ non-custodial sentences and cautions (Youth Justice Board, 2021).

Bateman’s (2017) analysis of patterns of reoffending acknowledges that there is no straightforward correlation between type of disposal and its effect on the likelihood of further offending. He recognises that children who receive the most severe penalties are those whose pattern of offending is more deeply entrenched; they are thus perhaps more likely to reoffend irrespective of the sentence imposed. However, as Bateman (2017: 56) also observes:

analysis by the Ministry of Justice suggests that, even when relevant factors ... are controlled for, lower level community sentences are associated with significantly better reoffending outcomes than high intensity, community-based disposals. (Recidivism rates are 4% lower for the former type of order.) Moreover, children who receive custodial sentences of between

six and 12 months are significantly more likely to reoffend than a comparison group sentenced to a high level community penalty (again a four percentage point difference).

That is to say, there is some evidence that the severity of the sentence or other disposal is, itself, associated with a greater likelihood of a young person committing further crimes. This conclusion was also accepted by the government-commissioned *Taylor Review* of youth justice in England and Wales (Taylor, 2016).

Several possible reasons have been suggested for this. These include:

- The possibility that young people are subject to negative peer influences, through mixing with others who have similar or greater levels of involvement in crime;
- The effects of ‘labelling’ as young people are increasingly identified as serious or intractable offenders by criminal justice agencies and others;
- Exclusion from certain opportunities on the grounds of having a criminal record;
- The effects of ‘dislocation’ from the normal institutions of society – family, educational settings, non-delinquent peer groups;
- Loss of contact with ‘pro-social’ influences; or
- The inadequacy of post-sentence resettlement or rehabilitation provisions.

In combination, these factors are all believed to play a part in reinforcing the involvement of children and young people in offending and reducing their capacity to resume a valued law-abiding place in the community.

Hazel and Bateman (2020) draw attention to the persistently high levels of reoffending by children and young people on leaving custody in England and Wales; although they also acknowledge that this is an international problem. They note that effective resettlement of young people post-custody has been an explicit priority for policy-makers for a prolonged period, at least since the introduction of the *Detention and Training Order* in 1998. The aim was to provide a ‘seamless intervention that offered a continuity of provision from the point of entry to the custodial institution, into the community’ (Hazel and Bateman, 2020: 72); and this was further underlined with the publication of a Youth Justice Board resettlement framework in 2005. Again in 2010 and 2018, the YJB is reported to have re-emphasised this commitment, under governments of different political compositions.

The authors point out that resettlement models have been extensively evaluated, and there is evidence to suggest that certain approaches can be effective: ‘reoffending was less likely when any organised activity – including education, training, employment or any constructive leisure – had been arranged for the child to occupy them on release’ (Hazel and Bateman, 2020: 75). They are concerned, however, to note that repeated studies and investigations have found

little progress has been made towards consistently implementing models of good practice. They suggest that this is partly so because of the limited, short-term, atomised and procedural focus of much resettlement planning and preparation.

Resettlement has only been considered instrumentally as a means to prevent reoffending and: ‘there has been no attempt to identify a high-level aim for resettlement beyond preventing reoffending’ (Hazel and Bateman, 2020: 80). Hazel and Bateman argue instead that the intrinsic value of resettlement should be recognised, and that it should be reconceptualised as an element in the young person’s ‘desistance journey’ from a ‘pro-offending’ to a ‘pro-social’ way of life. Instead of applying a pathologising risk management model (Gray, 2011), services should invest in supporting the young person to develop their own sense of agency and capacity to make decisions to their own benefit.

Meanwhile Aizer and Doyle (2015) have carried out a substantial study of the effects of ‘incarceration’ in America, identifying similarly poor long-term consequences as seems to be the case in England and Wales:

incarceration for this population could be very disruptive, greatly reducing the likelihood of ever returning to school and, for those who do return, significantly increasing the likelihood of being classified as having an emotional or behavioral disorder. (Aizer and Doyle, 2015: 759)

The evidence thus seems to suggest that longer-term adverse consequences for those young people receiving the more severe punishments for their offences go well beyond increased reoffending rates, and potentially lead to very longstanding problems across a range of aspects of their lives, including adverse health outcomes, for example (Schnittker and John, 2007).

Young people’s experiences of youth justice

As is the case elsewhere in this book, we introduce the perspective and experiences of young people themselves at this point, because the subjective aspects of their youth journey provide an important dimension of our understanding of the subject; and also, as a matter of principle, and consistent with the argument that, in matters affecting them, children and young people’s voices need to be heard and taken into account.

There has been a growing interest reflected in the youth justice literature in reporting the views of young people and understanding their experience of criminal justice interventions directly through personal accounts. As Sandøy (2020: 912) puts it, ‘sociological approaches’ have tended to highlight ‘gaps’ between the idealised expectations of criminal justice disposals and lived realities. Punishment effects can be distinguished, for example, between those which have ‘concrete’ effects, such as loss of liberty or other constraints, and those which have ‘symbolic’ effects, by which Sandøy means loss of autonomy or ‘personhood’

(p. 913). As he comments: 'It follows from this that punishment experiences in custodial and non-custodial settings may take similar forms' (p. 913).

Sandøy's own study of young people involved in drug offences diverted from formal judicial processes in Norway indicates that some of the benefits to young people involved were offset by their feelings of being treated unreasonably and excessively through the imposition of programme conditions. The young people in this study had consented to a 'conditional waiver of prosecution', which meant that they had to undertake some form of alternative activity or additional requirement in order to qualify. These conditions usually involved drug testing, and sometimes additional requirements such as regular monitoring appointments (several times a week in some cases). Whilst young people did express a feeling of being 'pardoned' for their infractions, they also experienced the imposed conditions as restrictive:

It's a bit tiresome. You must base your entire day on coming here [the drug testing centre], preferably as early as possible. If you come here when it opens, you get priority. But it's a bit like ... if I finish school late, you must come here right away, and if you don't make it, you have to wait in line. And you can't do anything else before you've been here, so it's a bit like your whole day is based on you coming here. (Tommy, 15, quoted in Sandøy, 2020: 916)

In another case, a young person had to attend an 'intensive supervisory programme' for six months, which had the effect of making him feel 'the whole thing cuts me off from other youth and from other people' (Anders, 16, quoted in Sandøy, 2020: 919). As Sandøy concludes, young people's experiences of punishment have often concentrated on the more obviously restrictive forms of penal sanction such as incarceration or community programmes involving extensive demands, but this may have overlooked the common grounds these experiences share with apparently less restrictive regimes, or even 'alternatives' to punishment.

McAlister and Carr (2014) discuss young people's experiences of restorative justice interventions, which, like, diversionary approaches, could be expected to feel rather different to young people than conventional forms of punishment: 'restorative justice is embedded in the language of inclusion, participation, and rights. Particularly suited to young people due to its "informal" and sometimes diversionary nature, it incorporates the rights and views of victims and young people' (McAlister and Carr, 2014: 244). And yet, as they acknowledge, restorative justice can be experienced as 'punitive, exclusionary and shaming'. In restorative youth justice conferences young people are expected to engage with others affected by their offences, including victims, and to achieve an agreed form of resolution.

However, from the perspective of young people the effects of restorative interventions are complex. Some young people found the challenge of accounting for their behaviour in front of the victim daunting, and 'punitive' (McAlister and Carr, 2014: 247). On the other hand, some appear to treat the conference as a

kind of performance, where: ‘you just have to sit down, and basically pretend, or not pretend, say you’re sorry and look like you’re sorry and that’s it ...’ (Garrett, 17, quoted in McAlister and Carr, 2014: 249). On the other hand, as the authors also found, young people’s accounts of custodial regimes are also varied, with some, at least, finding them relatively less punitive than might be expected: ‘Life is so easy in here [Woodlands Juvenile Justice Centre]. You have no worries about people looking for you, no worries about nothing. You have no worries about going hungry and getting food and things like that’ (Robbie, 16, quoted in McAlister and Carr, 2014: 249).

In highlighting the complexities of young people’s experiences of restorative justice or what might be seen as a conventionally punitive regime, McAlister and Carr draw attention to the difficulties of drawing straightforward conclusions about the treatment of young offenders and its relationship to policy demands or popular expectations. Apparent innovations such as restorative justice are, in fact, as encumbered with familiar demands and perceptions as forms of punishment which have been in place for very many years:

Young people’s accounts of their experiences of these two justice interventions – youth conferencing and custody – provide an illustration of the range of rationalities at play within the youth justice system. The mix of responsabilization, restoration, welfarism and punitiveness is evident. (McAlister and Carr, 2014: 251)

To provide further illustration of the variations in young people’s perceptions, we can consider what happens at the far end of the scale, where young people are subjected to violence in custody, in the form of restraint by staff. For some, at least, this is a normal and even justifiable feature of the custodial regime: ‘They [institutional staff] are trained to do it. At the end of the day they’re just doing their job. Every time I’ve been restrained it’s been my fault for fighting’ (young person, quoted in Shenton and Smith, 2021: 168).

Clearly, for others, this is an unacceptable and harmful experience, associated in the past with the deaths of children in custody: ‘One poor kid I saw him and he hadn’t done a thing wrong. He got smacked onto the ground, had his glasses smashed You get restrained for anything inside, not sitting at the right seat at dinner, two screws get hold of you’ (young person, quoted in Shenton and Smith, 2021: 168).

Conclusions: Making Sense of Patterns and Trends in Youth Justice

In this chapter, we have offered a relatively brief overview of the changing patterns of offending, interventions and outcomes in youth justice, concluding

with some reflections on the experiences of young people themselves. We have been able to identify some common international trends, such as the widespread evidence of declining rates of offending amongst young people, both in terms of self-reported crimes and official records. (We discuss these trends further in Chapter 8.)

In parallel with declining crime rates, criminal justice interventions also appear to have changed in shape and intensity, moving towards a greater reliance on more informal, diversionary measures; and indeed, there has also been an increasing use of restorative models of practice. Nonetheless, use of custody remains the default position for the most serious or persistent offenders. Here, too, we see the sharpest evidence of the unequal and discriminatory treatment of young people from ethnic minorities. Young people's subjective accounts also offer us some insights, in the sense that the lived reality of the criminal justice process remains an essentially punitive and often discriminatory experience (Cox, 2013), with effects which are not only direct and material (loss of liberty, restricted movements), but also indirect and symbolic (feeling excluded, damaged sense of self). These complex and contradictory aspects of the experience are to be found at all points of the justice continuum, with significant implications for the ways in which we conceptualise youth justice and how we understand the deeper currents underlying apparently dramatic changes in patterns of offending and outcomes.

Further Reading

Bateman, T. (2020) *The State of Youth Justice 2020*. National Association for Youth Justice, [https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sept-\(1\).pdf](https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sept-(1).pdf)

This is the most recent in a series of publications commissioned by the National Association for Youth Justice which provides a detailed and extensive overview of patterns and trends in youth justice, accompanied by an insightful in-depth commentary.

Hazel, N. (2008) *Cross-national Comparison of Youth Justice*. London: Youth Justice Board.

Although a little dated by now, this is one of very few attempts to provide detailed evidence of patterns and trends in youth justice internationally. It offers a useful template for similar work in future.

Youth Justice Board (2021) *Guide to Youth Justice Statistics*. Youth Justice Board, www.gov.uk/government/statistics/guide-to-youth-justice-statistics/guide-to-youth-justice-statistics

A helpful source to assist in navigating official publications on recorded trends in youth crime and sentencing.