

# **The Case of Children in Prison: State-Inflicted Violence**

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## **Abstract**

In June 2018, 883 children were incarcerated in secure custody in England and Wales, the majority in young offender institutions. Children in prison are an especially vulnerable category, firstly because they are children, and secondly because of their characteristics. Nearly half are from black and minority ethnic communities, 40 per cent are from the care system, and most have the literacy and numeracy levels of primary school children. Many have mental health issues, or learning difficulties or autism, which go unrecognised until after incarceration because screening and assessment are poorly timed and operated.

It is widely agreed that all children have basic needs - for food and shelter, physical safety, emotional security, stability, love, positive role models and access to learning, including social skills. As it currently operates, imprisonment only delivers the first of these on a consistent basis.

Reactions to incarceration indicate just how vulnerable imprisoned children are. These include fear, extreme distress, violence, deteriorating mental health, self-harm and suicide. Responses to these reactions routinely include restraint (which has resulted in deaths), segregation, pain infliction, strip searches and the use of riot gear.

This paper argues that, bearing in mind the needs of children, the system as it has been and is being delivered, constitutes a systematised form of torture.

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## **1. Extent of the Problem**

Governments all around the world have given undertakings that they will prioritise the rights of children. The United Nations Convention on the Rights of the Child (UNCRC) has set out principles and standards for laws and practices that deal with children, and Article 19 vows to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”. States all around the world have signed up to and ratified the UNCRC more

widely and quickly than to any other international convention. The United States is a significant exception. Worldwide, only the states of Somalia, South Sudan and the USA have failed to ratify this treaty.

So it is startling to discover that across the world there are in excess of one million children in prison, where they are liable to suffer violations of many kinds. This paper will detail the extent and nature of child imprisonment in the jurisdiction of England and Wales within the UK, which has the highest level of child imprisonment in Europe. The age of criminal responsibility in England and Wales is 10 years old, so children between the ages of 10 and 17 can be arrested, charged and criminalised. Every year, many hundreds of 10 and 11 year olds receive youth cautions or court convictions. The use of tasers on children is increasing. Along with Switzerland, England and Wales has the lowest age for criminal responsibility in Europe. The Equality and Human Rights Commission has called for it to be raised, to bring it into line with other European countries. In Germany, for instance, it is 14, in Sweden 15 and in Portugal 16. Clearly, in England and Wales, there is a punitive impulse toward children as young as 10 which just isn't present within the systems of our European neighbours.

In December 2018, there were 861 children in custodial institutions in England and Wales, 71 per cent in young offender institutions, and 18 per cent in secure training centres. The children incarcerated in these institutions suffer much violence, and exist in a state of fear and insecurity. Bullying is rife. They are housed in cells, and are locked up for long periods at a time. It is these that this paper is primarily focusing on. The remaining 11 per cent of children in custodial institutions were held in a secure children's home, the only form of custody which is required by law to employ staff with recognised professional qualifications in childcare ([theguardian.com/carolyne-willow](http://theguardian.com/carolyne-willow), accessed 16<sup>th</sup> June 2019).

Child imprisonment in England and Wales has a well-established history. Very many names have been applied to what is essentially imprisonment, as if calling the institutions something other than prison can mask their function. Even today on the Government website, there is a defensive disclaimer that children are not housed in adult prisons. The first institution designed exclusively for children was set up in Parkhurst Prison in 1838, and since then there has been an array of failed experiments, variously called reformatories, industrial schools, borstals, approved schools, remand centres, detention centres, community homes, youth centres, detention and training centres, young offender institutions and secure training centres (Goldson 2009). To this sorry list we can currently add immigration detention facilities.

We are a society that is extremely vocal on the subject of parenting, and nurturing the young. And it is widely agreed in our society that security, stability, consistency, love, education, structure and positive role models are required in order to socialise children into becoming functioning adults. So it is all the more surprising that when these aspects are missing from their lives, and through neglect, abuse or other trauma, they find themselves in trouble, the state responds by locking them up in violent institutions, where their security is compromised and where their social and emotional needs cannot be met.

## 2. Characteristics of Children in Prison

The Prison Reform Trust commissioned a study of children who, within a period of six months, from July to December in 2008, went into some form of custody. Around 40 per cent of those six thousand children had been on the child protection register. About 70 per cent were known to social services for one reason or another. Very many had truanted, and experienced a bereavement or neglect. Many had mental health needs which had not been treated. Many had learning disabilities. So in nearly all cases, the indicators of vulnerability are present. The vulnerability persists throughout life: seven out of ten children released from custody subsequently re-offend within a year, and adults who die in prison are extremely likely to have been imprisoned as children.

A particularly disturbing characteristic concerns ethnicity. More than half of the children who are currently imprisoned in young offender institutions are from black and ethnic minority backgrounds, and 23 per cent self-identify as Muslim. In secure training centres 42 per cent of children identify as being from a black or other minority ethnic background, and 13 per cent as Muslim. The Lammy Report of 2017 detailed an excoriating account of the pathways that lead to black children being

disproportionately imprisoned, compared with their white peers. The pathway often begins with exclusion from full-time education, and continues with patterns of behaviour that attract stop and search responses. Choices of whether to arrest, to prosecute, or to divert in a programmed way from custody, are exercised in such a way as to lead inexorably to the result that over half the boys in young offender institutions are from an ethnic minority. When properly resourced, youth offender teams can reduce the use of custody overall, and they have had success, but this success has not extended to children from ethnic minorities.

As part of its unannounced inspection regime, HM Inspectorate of Prisons conducts surveys of the children who are detained in secure training centres and young offender institutions. So to add to the plethora of data gathered by other bodies, we have the perceptions of the children themselves, and year on year, this data shows us trends. The surveys have been carried out since 2001, in order to understand and record the perspectives of those children incarcerated. In young offender institutions, the surveys have been part of the annual unannounced inspections since 2008. In 2012-13, HM Inspectorate of Prisons began jointly inspecting secure training centre with OFSTED and with the CQC (Care Quality Commission). These are now inspected annually on an unannounced basis.

In February 2017, HM Inspector of Prisons warned the then Minister for Victims, Youth and Family Justice that no secure training centre or young offender institution could be classified as safe enough to hold children, because of the levels of violence. In the following year, the Chief Inspector reported on some improvements in levels of safety at some establishments, but this did not translate into increased feelings of safety amongst the children. 34 per cent in secure training units and 40 per cent in young offender institutions reported that they had felt unsafe since coming into custody. As we shall see from discussion of some of the self-inflicted deaths that occur often very quickly after entry, the institution does not have long to get it right. Clearly these are places that are intrinsically violent: 56 per cent of children in secure training centres and 50 per cent of children in young offender institutions reported having been physically restrained ([justiceinspectorates.gov.uk](http://justiceinspectorates.gov.uk) accessed 20<sup>th</sup> June 2019).

### 3. Conditions Inside

In the government's Joint Committee on Human Rights, under the Chair of Harriet Harman earlier this year, MPs heard unanimous evidence from doctors, lawyers and inspectors about the use of pain-inducing restraints and the use of solitary confinement on the 2,500 children held in prisons, mental health units and secure children's homes. The Human Rights Committee reported that restraint and separation practices, as currently used, were clearly not compliant with human rights standards and caused short and long term harm to children in the form of physical distress and psychological harm, and could contribute to a cycle of life-long problems.

One example of physical harm was to an autistic boy whose arm was broken whilst being restrained in a privately run, locked rehabilitation unit. His arm was forced up behind his back until the right humerus bone snapped. The Howard League for Penal Reform told the Committee that in young offender institutions, children were locked in their cells for over 23 hour a day for days on end.

The Report recommended that pain-inducing restraints should be banned in young offender institutions, and that restraint itself should be monitored rigorously and its use recorded. They also called for the use of separation and isolation to be regulated, monitored and recorded so that data could be viewed annually (<http://www.independent.co.uk>, Ministers Under Pressure to Ban Use of Pain-Inducing Restraint and Solitary Confinement on Children in Detention, accessed 8<sup>th</sup> July 2019).

This Report was published in April 2019, but similar data has had plenty of exposure prior to this. It sometimes seems that an institution confining children merely has to have a spotlight shone on it, and evidence of unlawful practices is exposed. In 2016, a BBC Panorama documentary was made undercover inside Medway secure training centre, which housed boys and girls from 12 to 18 years of age, and it showed staff boasting about their use of inappropriate restraint techniques. It subsequently emerged that there had been a robust history of abuse allegations, including a letter sent by two whistle-blowers 12 years previously to the Youth Justice Board, G4S, the Social Services Inspectorate and a Home Office minister. The letter had been ignored.

G4S was stripped of its contract to run Medway, and the Ministry of Justice took over the running of it. A joint inspection by Ofsted, HM Inspectorate of Prisons and the Care Quality Commission this

year found that restraint is still being used inappropriately in response to non-compliance, such as a refusal to go to bed. Inspectors witnessed a prolonged restraint being used, coupled with a pain-inducing technique. They found that most children had experienced the use of force or physical restraint, and there had been 330 restraints involving force on the part of staff members over the previous six months. Medway is to be closed next year.

In 2015, the Children's Commissioner said that about a third of the nearly 900 children incarcerated could expect to spend some time in isolation. The Government is on record as claiming that this is not solitary confinement, but medical professionals have reported that this is just a semantic defence, and children are locked in cells for longer than 22 hours a day, sometimes as a punishment, with just a mattress and a sink, and without any meaningful human contact. In July 2017, a 16 year old boy was deemed by the High Court to have suffered a breach in his human rights by being kept in solitary confinement for 23 and a half hours per day at Feltham Young Offenders Institution ([bbc.co.uk/victoria](http://bbc.co.uk/victoria) Derbyshire, accessed 16<sup>th</sup> June)

#### 4. Deaths of Children in Prison

Since 1990, 33 children have died in child prisons. In 2000, the Youth Justice Board for England and Wales has had responsibility for commissioning places in prison for children, and since then 16 boys have died in custody, 15 allegedly self-inflicted, and one, Gareth Myatt, who died at the age of 15 after being restrained and held down by three prison officers, because he had refused to clean a sandwich toaster which he said he had not used. Gareth was 4 ft. 10 in. tall, and weighed six and a half stone. One of the officers restraining him was over 6 ft. tall and weighed 16 stone. Adam Rickwood was 14 and on remand when he took his own life after being unlawfully restrained by four adult officers (coroner's verdict). Kevin Henson, Philip Griffin, David Dennis and Ian Powell, were on remand. Two sixteen year old boys, Kevin Jacobs and Joseph Scholes, were known self-harmers. Mark Dade, age 16, was drug dependent but no arrangements had been made to manage withdrawal.

As with adult deaths in custody (Medlicott 2001), it is startling how early on in the imprisonment experience many self-inflicted deaths occur, and I have discussed how the initial shock of imprisonment in a cell disrupts place identity in such traumatic ways that suicide seems the only escape. For 17 year old Ryan Clarke, it was his first time in custody, and he had only been remanded for 19 days when he died. He had been in care since he was 16 months old. In custody, this troubled, vulnerable and emotionally damaged youth was bullied and intimidated, and the inquest into his death highlighted very many serious failings on the part of the young offender institution holding him. Anthony Redding was serving a 4 month sentence, and had spent the first two weeks on the health care wing. He had been on the wing in a cell for only 5 days when he took his own life. David Dennis, age 17, had only been remanded in custody for 8 days when he did the same. Joseph Scholes, a known self-harmer, died, age 16, only 9 days in to a two year sentence.

I have dwelt on these boys because their deaths tell us a lot about the savagery of the penal system. Locking up vulnerable young boys in cells on remand, sometimes for months, is a calculated injustice when they have not as yet been convicted of any crime. It is all the more shocking to know that many of their particular needs and vulnerabilities are known by, and recorded by, the system. At the time of his death, sixteen year old Gareth Price had been on remand for four months. This is a long, long time for anyone, but in the life of a teenager separated from home and family, it is a small lifetime. Regardless of the injustice of remanding innocent children into custody, and regardless of the fact that children should not be put in prisons at all, no criminal justice process involving children should take this long to come to trial.

#### 5. Conclusion

There is a serious problem in our society with what we might term the punitive impulse. Despite the prison system being overcrowded, underfunded and understaffed, England and Wales sends more people to custody every year than any other country in Western Europe (Prison Reform Trust, 24<sup>th</sup> June 2019, accessed 2<sup>nd</sup> July 2019). Not all countries share our punitive culture: Norway, for instance, has a truly rehabilitative intent and works very hard to re-socialise prisoners. As a consequence, their recidivism rate is a fraction of that of England and Wales.

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This punitive impulse is particularly virulent, damaging and expensive when it is applied to children. There is no evidence that prison as punishment works for children, and plenty of evidence to show that it does the opposite, creating lifelong recidivists and vulnerable members of society who will go through life without ever achieving their true potential, and often leaving a trail of havoc, harm and need in their wake.

As Juliet Lyon points out in the Foreword to the British Medical Association's Report "Young Lives Behind Bars: The Health and Human Rights of Children and Young People Detained in the Criminal Justice System", if you were trying to damage people, compromise their mental health, or make them into life-long offenders who will go in and out of the prison system, then the way to do it is to imprison them when they are children in bleak and violent institutions, staffed by people with no training in working with children. And to be really certain of these outcomes, you would pick the most vulnerable children - those on child protection registers, those with unmet mental health needs, those with learning disabilities, and those who have truanted, experienced family rupture and suffered bereavement.

How might things be done differently? It is clear that early intervention, drawing on the expertise of multi-disciplinary teams drawn from medicine, psychiatry, social work, law, education and youth justice, is vital. Roughly half of imprisoned children have severe literacy and numeracy problems, so this is just one indicator which can be picked up on very early in a child's school life. Primary schools see, and know, a great deal about a child and about the family circumstances, and they should be at the forefront of a system that flags up extreme vulnerability. Once flagged up, this knowledge needs to be gathered, valued and acted upon, so that children receive support as early as possible. Troubled families need support, and often their needs are complex, but early intervention can go a long way to prevent problems from escalation. Mental healthcare is under-resourced across the board, but it is vital to find resources for child and adolescent mental health, so that problems can be identified early and not left to turn into lifelong conditions. Treatment for addictions in all family members is another area that, if neglected, results in a spiral of social problems widening ever further in effect and consequence.

All of these responses pre-suppose that there is a commitment to the care, welfare and human rights of every child and young person on the part of the state. Punishment is not an adequate or humane response to human vulnerability, but unfortunately it is a response that flows all too easily from successive governments in a number of areas, from immigration to disability.

In Scotland, the punitive impulse toward children is more muted, and in youth justice there is a more overt commitment to health and welfare. It is Scottish government policy to try to keep children under the age of 16 out of prison or a young offender institution at all costs, and children under the age of 16 would be detained in a secure unit. The vulnerability of youngsters of 16 and 17 is recognised, and if they are sent to a young offender institution, they would be held separately from those age 18 and over.

The age of criminal responsibility is currently 8 years in Scotland - even lower than in England and Wales - but this can mean that attention gets drawn to those at risk at a very early age and before behaviour has become entrenched. Children under 18 who are identified as vulnerable and at risk of offending will usually find themselves at a Children's Panel, rather than in court. The Children's Panel is endorsed by a piece of legislation that came into force on 24<sup>th</sup> June 2013, called the Children's Hearings (Scotland) Act 2011. The Panel's objective is early intervention and the provision of protection for vulnerable children and young people ([childrenspanelscotland.org](http://childrenspanelscotland.org), visited 3<sup>rd</sup> July 2019). When a child or young person is referred to the Panel, it is for a variety of reasons which that are indicating that that child needs extra support and guidance. They may be suffering abuse or neglect. They may have truanted persistently or committed a criminal offence. What is crucial is that early intervention responds to the factors that precede offending behaviour, such as parental neglect, familial trauma, drug involvement within the family, truanting and other indicators of extreme vulnerability. Support at an early stage can often head off offending and provide stability and solutions to practical problems.

The Panel will be made up of a range of people across a number of disciplines and backgrounds, including social work, teaching and law. Family members and/or guardians will be involved. But the central voice is the child or young person, and the central objective is to promote the welfare and safety

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of the young person. Around 2,500 specially trained volunteers have been recruited from all walks of life, and it is one of those who will provide the support and mentoring for the young person in the future, providing a stability and persistence of care and attention that may otherwise be absent from that young life. Sometimes the Panel must make very serious decisions, such as putting a child into foster care for respite, or providing additional support over the short or long term for a troubled family.

It is hard to measure outcomes in comparison with England and Wales, because of the range of reasons for coming before a Panel, and because it is hard to know how the young person might have turned out if they had had no intervention via the Panel. But in qualitative research, ([www.scra.gov.uk](http://www.scra.gov.uk), accessed 4<sup>th</sup> July 2019) most of the young people involved felt that their lives had improved since their involvement with the Hearings System. Reasons included improvements in familial relationships, in educational attainment, and/or changes in parental or own . Sometimes they had got help with specific problems. They spoke of their own commitment to change, and regardless of their natural desire to claim all the credit for this, it is not fanciful to assume that some of this must have been triggered by having a committed mentor in their lives.

How different this system is in intent, from that prevailing in England and Wales, and how much more appropriate for vulnerable young people. The aim in Scotland is to intervene and divert from prosecution where possible. There is a commitment to combining justice and welfare for children, and to providing practical help for specific problems. In England and Wales, the ideology is shot through with punitive intent, and the sad thing is that children and young people are so often being punished for the circumstances into which they were born and over which they have no control.

By 2014, child imprisonment in England and Wales had been reduced considerably from its former levels, and whilst this was a triumph for those health and justice professionals involved in that reduction, the system remains one that picks on the most vulnerable members of society and treats them in the most appalling way, driving some to suicide. The fact that child imprisonment has been reduced shows that there is an opportunity to abolish it altogether, and the comparatively small numbers multi-disciplinary, professional approach that has a proper regard for human rights, and which recognises the needs of children. The Children's Panel or something like it should be scrutinised could be adopted throughout England and Wales, and the results monitored and evaluated by rigorous research.

But a piecemeal importation of individual initiatives cannot transform a system. The whole of youth justice needs to be viewed through a different prism, one that emphasises health and care, and a proper respect for human rights. It would take strong leadership, because the political forces that favour a punitive approach are extremely entrenched in our culture. There is a cultural tendency to demonise children and young people, and to foster a fear of them. There is a collective failure to recognise their vulnerability.

Criminal justice has always been permeated in the UK by a wilful desire to ignore the evidence of what works. Politically, crime and punishment are used most cynically: after every tragedy of a lost life in custody, there is the usual hand-wringing and regret, and mantras about learning lessons for the future are invoked. But little changes except the rhetoric: the violence that the state subjects upon children in every day of the year is largely successfully hidden, even though it is in plain sight, and most people are unaware of it unless a tragedy occurs.

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