



Police, Crime, Sentencing and Courts Bill Alliance for Youth Justice Briefing 12th March 2021

About the AYJ

The [Alliance for Youth Justice \(AYJ\)](#) brings together over 70 non-profit organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Our [members](#) range from large national charities and advocacy organisations, to numerous smaller grassroots and community organisations. We bring together the expertise of our members and provide ways for them to shape decision-making. We work to influence policy, legislation and practice to address issues affecting children caught up in crime.

About the Police, Crime, Sentencing and Courts Bill

The Police, Crime, Sentencing and Courts (PCSC) Bill was introduced to the House of Commons on 9th March 2021 and is due to have its **second reading on 15th and 16th March 2021**. The Bill introduces a whole host of provisions with a range of impacts across the youth justice system, including serious violence prevention, policing, virtual justice in the courts, sentencing, remand, and criminal records.

While there are some elements of the Bill which the AYJ welcomes, the overall impact of the legislation will be detrimental and will exacerbate existing disparities and injustices. The proposals are out of line with our principles for youth justice policy,ⁱ with the overall focus being disappointingly punitive. Moreover, the proposals have been introduced without any consultation, they are not grounded evidence, and risk further undermining trust in the criminal justice system.

Top ten takeaways for youth justice:

1. The measures will increase the number of children in custody

Changes to minimum sentences and terms for particular offences are set to increase the number of children in custodyⁱⁱ and children will be in custody longer on average. These measures include encouraging increased use of mandatory minimum custodial sentences for 16-17-year-olds, changes to custody release policies, and changes to Detention and Training Orders (DTOs). There is no evidence that the threat of harsher custodial sentences deters children from offending,ⁱⁱⁱ no evidence that it contributes towards rehabilitation or promoting positive long-term outcomes,^{iv} but there is abundant evidence that imprisonment is extremely harmful to children and disrupts their healthy long-term development.^v

The government must abolish life sentences for children in order to meet international children's rights standards, yet the proposals do the reverse. Increasing the proportion of sentences that children must spend in custody before they may be supervised in the community, and removing opportunities for tariff review,^{vi} will leave children feeling hopeless and unmotivated to engage with education, purposeful activity and rehabilitative support. The government acknowledge the changes may worsen conditions in custody, impact mental health, increase the likelihood of family breakdown, and the risk of reoffending.^{vii}

Punitive measures in the Bill to increase the length of time children spend in custody must be removed. Safeguards should be put in place to ensure changes to DTOs do not have a negative impact on children.

2. Racial disparities in the youth justice system will be further exacerbated

The proposals are set to disproportionately impact Black, Asian and Minority Ethnic (BAME) children.^{viii} BAME children are overpoliced, more likely to be stopped and searched, arrested, less likely to be diverted,^{ix} and are therefore disproportionately likely to end up in the criminal justice system. Racial discrimination and bias are also evident in sentencing decisions – for the same offences BAME children are more likely to receive community and custodial sentences rather than out of court disposals, and Black children specifically face harsher court sentences.^x BAME children are therefore more likely to face the harsher sentencing regimes proposed.

The government claims addressing racial disparity in the justice system is a priority, however the measures proposed in the Bill not only neglect to take meaningful action but moreover come with an explicit acknowledgement that they will exacerbate the existing problems. The legislation entirely fails to engage with recommendations from the Lammy Review, which highlighted racial disparity in youth justice as its ‘biggest concern’. The government believes the disproportionate impact of the reforms on BAME children is justifiable as a ‘proportionate means of achieving a legitimate aim’.^{xi} But this aim is far from legitimate, with no evidential basis that increasingly punitive sentencing deters crime or reduces reoffending. These measures will not only fail to achieve the government’s stated aim but will further exacerbate existing racial inequalities rather than taking the necessary urgent action to address them.

Clauses that the government knows will exacerbate racial disparities should be removed. Provisions should be introduced requiring courts to justify their sentencing decisions so that disproportionate sentencing can be examined, understood, and challenged. This will be key to improving trust in courts and the legitimacy of the justice system.

3. The Bill signals a concerning trend towards treating older children as adults

Proposals bring older children’s sentencing closer in line with adults.^{xii} The government is right to acknowledge maturity as an important factor in sentencing – but all of the evidence points to the need for a more nuanced approach to sentencing for those aged 18-25 to be closer to sentencing for children, not the other way around. **It is wholly inappropriate for the starting point for tariffs for older children to be set at 90 per cent (17-year-olds) and 66 per cent (15-16-year-olds) of the starting point for adults.**

The Bill fails to tackle a burning injustice in youth justice: the increasing number of children who are alleged to have committed an offence as a child but turn 18 before being prosecuted – often caused by delays to justice, greatly exacerbated by COVID-19 - who are dealt with and sentenced as adults. This is a simple, common sense legislative change that has broad support and would allow for fairer, more equitable and age-appropriate justice.^{xiii} Particularly in the context of introducing harsher sentencing for young adults, **the government must introduce provisions so those who allegedly commit offences before turning 18 are treated as children and avoid ‘cliff-edge’ sentencing.**

4. The Bill fails to introduce measures to effectively address child criminal exploitation and violence

The Bill introduces no new provisions on appropriately dealing with victims of child criminal exploitation who commit crime as a result of exploitation, a significant and growing concern. Nor does it introduce provisions for dealing with adults who exploit children, who sentencers struggle to prosecute.^{xiv} As recommended by AYJ member the Children’s Society, **the government should introduce a single statutory definition of child criminal exploitation into this legislation, as well as a new offence of ‘coercive and controlling behaviour in relation to a child for exploitation purposes’.**^{xv}

We welcome that Serious Violence Reduction Orders (SVROs) are set not to be applied to children, but are concerned that this remains ‘under review’, and that the orders placed on adults will displace rather than reduce knife and other weapon offences and widening the net of criminal exploitation.^{xvi}

We welcome the intention of the Serious Violence Duty, to encourage organisations to share information, data and intelligence, and work in concert rather than isolation to identify children at risk as early as possible. However, the focus in the Bill is primarily on the involvement of criminal justice organisations rather than safeguarding and children’s services, and we are concerned that local policing bodies appear to be the intended leads. A broader strategy is needed which equips the safeguarding system, statutory and voluntary services to protect children from harm outside the home, with resources and guidance to do so. This should embed a response that takes account of the context in which children are at risk and is trauma-informed. A duty for serious violence, which presents these issues as distinct from wider safeguarding duties, could lead to a more punitive approach to these children.^{xvii}

The potential consequences of this new duty have not been fully considered, both for the organisations involved and children affected, including how the duty will fit within other policies such as Knife Crime Prevention Orders; and the impact on racial disparity. Rather than promoting early intervention and diversion, the duty could have the unintended consequence of creating a dragnet, pulling more children into the justice system, further marginalising them. What is more, without widespread investment in additional resources this implementation is wholly inappropriate for services already tasked with rising demand and shrinking budgets.

5. The punitive focus of the Bill risks dragging more children further into the youth justice system

We are concerned, for example, by moves to criminalise protest actions, which children and young people take part in, and **should not be criminalised for exercising their right to protest** on issues that have significant impacts on their lives and their future.

We are concerned about how ‘tougher’ sentencing for assault on emergency worker offences will further criminalise children when we hear, for example, that BAME children may be charged with this offence due to frustration resulting from facing discrimination, and girls may be charged with such offences from responses to restraint or other interactions that trigger past trauma.

Reforms to community sentences focus on increasing surveillance and restrictions, rather than on better responding to children’s needs and addressing root causes of offending behaviour. Increasingly restrictive community sentences, as well as other new orders such as Knife Crime Prevention Orders set to be introduced, will likely lead to more children being further criminalised through breaches. This impact is likely to be disproportionate due to the overpolicing of certain communities, and if there is discrimination in enforcement and decisions around breach proceedings.

The expansion of Electronic Monitoring (EM) of children is concerning. Members report difficulties for children in managing their tag; that for children involved in organised crime the fear of their exploiter exceeds their fear of breaching tag requirements; and that tags may effectively trap children in unsafe areas, for example where their exploiter is. The presence of a tag does nothing to deter an exploiter as only the child is impacted by a breach. Discretion in responding to breaches is key to ensuring their increased use does not increasingly criminalise children who may struggle for multiple reasons to fulfil requirements, and awareness of the full circumstances of a child is crucial before imposing unrealistic and potentially dangerous requirements on them.

6. Reforms to reduce custodial remand are welcome but should go further

We warmly welcome the government taking steps to reform the legislative threshold for remanding a child to custody.^{xviii} We have long been concerned about the use of custodial remands for children, and are particularly concerned given current court backlogs, conditions in custody, racial disproportionality in remand, and the record high proportion of children in custody who have not yet been tried at court.

We are glad to see some of our recommendations adopted by the government,^{xix} in particular that for a remand to custody to be deemed necessary, the court must consider the risks posed by the child cannot be managed safely in the community; and emphasis that the court must consider the interests and welfare of the child.

Tightening of the 'History Conditions' in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) is welcome but does not go far enough. **The History Conditions should be removed** - the issues covered could instead be considerations for the Necessity Condition. **If they are not removed, 'recent' should be restricted to within the last six weeks.**

We are disappointed that the Offence Conditions, which are too broad, remain unchanged. For remand to custody to be a genuine last resort as the government wishes, decisions must be based on risk of serious harm. **The Offence Conditions must therefore be strengthened such that remand to custody is only available if a child is alleged to have committed a serious offence**, such that they may present a danger to the public.^{xx}

The Necessity Condition should likewise be further strengthened - the latter part of the condition (to prevent the commission of an imprisonable offence) sets such a low threshold for meeting the Condition as to render the first threshold (to protect the public from death or serious personal injury) somewhat redundant. **This latter part of the Necessity Condition should be removed, or tightened.**

We welcome that the court will now be required to include in its explanation of its decision to the child that it has considered the interests and welfare of the child and its duty to remand to local authority accommodation unless the section 98 and 99 LASPO conditions have been met. We warmly welcome provisions that the court must give its explanation in writing to the child, legal representative, and relevant YOT. **Provisions should be introduced for centralised monitoring of this decision making process, including alongside the courts justification a recording of ethnicity, age, and offence.**

7. Reforms to childhood criminal records are positive but further action remains crucial

We warmly welcome the reforms to childhood criminal records contained in the Bill, which we have long been calling for. However, the proposals can and should [go much further for children](#).^{xxi} Tweaks to the current system will not go far enough: a wide-ranging review of the system is urgently needed.

In particular, **the government should urgently amend the 'relevant date' for rehabilitation periods of children who turn 18 between committing an offence and conviction, so the corresponding date is when the offence was committed.** This is a simple, quick change in legislation that would have a profound impact on these young people who face twice as long rehabilitation periods and do not benefit from recent reforms to youth caution disclosure. It is particularly crucial given the increasing number impacted by court backlogs.

While we welcome the proposed introduction of rehabilitation periods for custodial sentences of over four years, the exclusion of sexual, violent and terrorism offences means that for children the change will make little to no difference, with these convictions remaining unspent for the rest of their lives. **The exclusion should not apply for children. It is wholly inappropriate that any child in effect receive a whole life sentence for childhood behaviour.**

8. No regard has been given to children in the rollout of virtual justice

The use of live links in criminal proceedings has out of necessity been expanded due to COVID-19. This massive expansion is now being permanently set in legislation with seemingly no regard for the impact on children and evidence on effective participation.

[Our research](#) indicated children already struggle to understand what is happening in court, not least because many have communication difficulties, and video link makes this worse.^{xxii} It indicated children are less likely to understand what is happening, can't consult their lawyer properly nor communicate well with the judge. Most concerning, it indicated children on video link are less likely to appreciate the seriousness of the situation or present themselves well, and may prejudice their outcomes. These findings are echoed by multiple other reports,^{xxiii} which have raised concerns that live links negatively impact effective participation, therefore damaging access to justice.

Video links should be used only in exceptional cases for children, with appropriate adjustments. The provisions on live links in the Bill pay no attention to the needs of children in the youth justice system.

9. No consultation has taken place on these significant proposals

It is unacceptable that many of the reforms have been introduced with no formal consultation. Legislation, particularly that which is set to have such a damaging and long-term impact on children and the youth justice system, should never be introduced in this way. **The proposals must not become law before proper engagement with children who will be affected, those who support them, and the evidence base, has taken place.**

10. Rather than being 'a radical new approach to sentencing' the Bill represents a raft of missed opportunities for youth justice reform

Children in trouble with the law must be given the chance to move on from past mistakes. **This Bill was an opportunity to think again about what effective responses and sentencing for children should look like.** But instead of reforming sentencing to take a distinct and child-centred approach, the adult regime is the starting point with minor modifications for children.

No Child Rights Impact Assessment has been undertaken to examine the likely impact on children and the measures have not been driven by evidence. Increasing the punitive response will exasperate the prevalent trauma that children have experienced and further marginalise them.

The Bill supposedly proposes a radical new approach to sentencing. But in reality, it misses many opportunities to really make a difference to children. The Bill fails to address injustices in the youth justice system; increase the minimum age of criminal responsibility from 10 to at least 14 to be in line with international standards; to enshrine children's rights into domestic

sentencing legislation; to embed principles in legislation that sentencing must consider welfare, underlying causes, and that custody is a last resort and should be for shortest possible time; to give courts powers to order welfare investigations;^{xxiv} and to require courts to record their justifications for sentencing decisions.

The Bill makes no concerted effort to improve the consistency and effectiveness of diversion, for example by introducing a national framework, and reviewing requirements around admission of guilt. Problem solving approaches are reserved for adults - no innovative approaches, for example looking at better aligning youth and family courts, are piloted for children.

With the recruitment of 20,000 police officers comes the worrying expectation that the number of children in the criminal justice system is set to increase. More needs to be done in this Bill to embed a response to children that ensures progress over the last decade to reduce the number of children being criminalised and deprived of the liberty is not tragically reversed.

For more information on any of the proposals relating to youth justice, or to arrange a meeting, please contact our Senior Policy Officer Millie Harris, millie.harris@ayj.org.uk

Please note the contents of this briefing to not necessarily reflect the views of all our member organisations.

ⁱ Six principles for youth justice policy underpin the AYJ's ways of working. We use these as a framework for assessing new proposals, examining to what extent they:

1. **Understand and seek to address the underlying causes** of children coming to the attention of the criminal justice system
2. Create a distinct system for children that **upholds children's rights and promotes wellbeing**
3. Recognise and **challenge all forms of discrimination and disadvantage** affecting children in the youth justice system
4. Create systems, services and support that focus on **child-centred approaches and positive long-term outcomes**
5. Promote diversion from the formal criminal justice system, **reduce the criminalisation of children** and ensure **custody is a last resort**
6. **Listen to the voices of children**, young people and the organisations supporting them to shape decision-making

- ii Clause 100 amends legislation on minimum sentences for the threatening with a weapon or bladed article offence, and for repeat weapon offences, for 16-17-year-olds; Clause 103 amends starting points for murder committed when under 18; Clause 105 amends calculation for discretionary life sentence minimum terms from halfway to two thirds of the sentence; Clause 106 moves the custody release point from halfway to two-thirds for sentences of 7 years or more under s250 of the Sentencing Code. Government impact assessments expect increases in custody:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967780/MOJ_Sentencing_IA_-_DTO_002_.pdf;
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967793/MOJ_Sentencing_IA_-_Changes_to_Release_policy_for_Serious_Offenders.pdf
- iii Awareness of sentencing amongst children is low (Bevan, M. (2016) *Investigating young people's awareness and understanding of the criminal justice system: An exploratory study* Howard League for Penal Reform), and there are many children in trouble with the law who we would not expect to make 'rational choices' in the economic sense, that is, acting in their own best interest (Many children involved in the justice system have mental health and learning difficulties, or problems with drug and alcohol abuse. Children have "limited capacity to determine the consequences of their decisions, and are "both more suggestible and compliant (Farmer E, Gudjonsson G H, cited in Centre for Social Justice (2012) *Rules of Engagement Changing the heart of youth justice*). Changes in adolescent brains alter behaviour, impact on decision making, organisation, self-control, emotional and impulse regulation, and risk-taking behaviours (Blakemore, S. J & Choudhury, S (2006). *Development of the adolescent brain: Implications for executive function and social cognition* Journal of Child Psychology and Psychiatry, 47:3, 296-312). Children carry knives for numerous and complex reasons often including the perception it is necessary for self-protection, and punitive measures are therefore unlikely to act as a deterrent even if the child is aware of the punishment and able to act rationally. Studies find no evidence that sentence severity or the threat of custody acts as a deterrent to crime. Multiple studies have found that it is the certainty of getting caught rather than the punishment that deters (von Hirsch, A., Bottoms, A E., Burney, E., and Wikstrom P-O. (1999) *Criminal deterrence and sentence severity: an analysis of recent research*), concluding that "lengthy prison sentences and mandatory minimum sentencing cannot be justified on grounds of deterrence." (Nagin, D (2013) *Deterrence in the Twenty-first Century: A Review of the Evidence* Pittsburgh: Carnegie Mellon University).
- iv See for example the government's own guidance on desistance: HMPPS (2019) "Desistance: An evidence based summary explaining what desistance is, and how to help someone desist from crime."
<https://www.gov.uk/guidance/desistance>
<https://static1.squarespace.com/static/5f75bfbfb67fc5ab41154d6/t/5fb397c29c9013373f64138d/1605605317603/Ensuring+custody+is+the+last+resort.pdf>
- vi Clause 104: Applications to the Secretary of State for a DHMP minimum term review can be made at the halfway point, and then can only be made again if: it's been 2 years since the previous application was determined, and they are still under 18. No other reviews may be made.
- vii https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967793/MOJ_Sentencing_IA_-_Changes_to_Release_policy_for_Serious_Offenders.pdf;
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918191/overarching-impact-analysis.pdf
- viii <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-overarching-documents/overarching-equality-statement-sentencing-release-probation-and-youth-justice-measures>
- ix https://justiceinnovation.org/sites/default/files/media/document/2021/disproportionality_diversion_lit_review.pdf
- x https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf; ;
<https://www.independent.co.uk/news/uk/home-news/black-boys-discrimination-teenagers-children-white-racial-bias-prison-a8466606.html>; <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sex-and-ethnicity-analysis-final-1.pdf>
- xi <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-overarching-documents/overarching-equality-statement-sentencing-release-probation-and-youth-justice-measures>
- xii Clause 103
- xiii <https://www.ayj.org.uk/news-content/ayj-backs-call-on-turning-18>
- xiv <https://www.childrenssociety.org.uk/sites/default/files/2021-03/Disrupting-Child-Exploitation-Proposal.pdf>
- xv <https://www.childrenssociety.org.uk/sites/default/files/2021-03/Disrupting-Child-Exploitation-Proposal.pdf>
- xvi <https://www.ayj.org.uk/news-content/ayj-response-consultation-on-serious-violence-reduction-orders-svros>
- xvii <https://www.ayj.org.uk/news-content/ayj-response-home-office-consultation-on-new-legal-duty-to-support-a-multi-agency-approach-to-preventing-and-tackling-serious-violence>
- xviii Primarily sections 98 and 99 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- xix <https://www.ayj.org.uk/news-content/ayj-response-sentencing-white-paper-reducing-the-number-of-children-remanded-to-custody>
- xx For more information see our response: <https://www.ayj.org.uk/news-content/ayj-response-sentencing-white-paper-reducing-the-number-of-children-remanded-to-custody>
- xxix <https://www.ayj.org.uk/news-content/ayj-submission-in-response-to-the-sentencing-white-paper-reform-of-childhood-criminal-records>
- xxii <https://www.ayj.org.uk/news-content/they-just-dont-understand-whats-happened-or-why-an-ayj-report-on-child-defendants-and-video-links>
- xxiii <https://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>;
<https://committees.parliament.uk/publications/2188/documents/20351/default/>; <http://spccweb.thco.co.uk/our-priorities/access-to-justice/video-enabled-justice-vej/video-enabled-justice-programme-university-of-surrey-independent-evaluation/>;
https://www.equalityhumanrights.com/sites/default/files/ehrc_inclusive_justice_a_system_designed_for_all_june_2020.pdf
- xxiv For example, Section 37 of the Children Act 1989 gives the court the power to order an investigation by a local authority into the welfare of a child if it appears that a supervision order or a care order may be appropriate. The investigation results in a 'section 37' report.