Police, Crime, Sentencing and Courts Bill
Alliance for Youth Justice – Committee Stage Briefing

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. Please note the contents of this briefing do not necessarily reflect the views of all AYJ member organisations.

About the Police, Crime, Sentencing and Courts Bill

The Police, Crime, Sentencing and Courts (PCSC) Bill**,** currently at Committee Stage in the House of Commons, 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. Much of the public and parliamentary attention on the Bill so far has been focussed on elements aimed at curtailing non-violent protests as well as highlighting the lack of focus on Violence Against Women and Girls. While the AYJ shares concerns on these issues raised by others, we are concerned that the Bill contains many other potentially damaging, punitive provisions that have so far faced very little scrutiny. The majority of the proposals are out of line with AYJ's principles for youth justice policy,[1] and are set to undermine achievement of some of the government's own key policy objectives. Moreover, many of the proposals have been introduced without any consultation and are not grounded in evidence about how to effectively address offending behaviour, risking further undermining trust in the criminal justice system. The government's own Impact Assessment admits there is **"limited evidence that the combined set of measures will deter offenders long term or reduce overall crime"**[2]

Despite the *A Smarter Approach to Sentencing* White Paper[3] which preceded this legislation claiming to understand and seek to address the root causes of children coming into contact with the law, and highlighting the primacy of welfare needs of children, the legislation being introduced rolls out punitive measures the government admits will be ineffective in achieving their own objectives.

The AYJ has worked with Parliamentarians, our members, and wider coalitions of organisations to examine the proposals and produce recommendations to improve the Bill, set out in this document. This includes identifying where new provisions should be added to the Bill to address missed opportunities for a 'smarter approach to sentencing'; where provisions stand to reverse recent progress in youth justice, exacerbate inequalities and damage access to justice and must therefore be removed; and where existing proposals should be amended in order to maximise their positive potential or to address unintended negative consequences.

Summary of proposed amendments

Missed opportunities: New clauses to add to the Bill

The White Paper preceding the Bill promised a "smarter approach to sentencing", but in reality, the Bill perpetuates ineffective sentencing options for children and represents a raft of missed opportunities to reconsider how children in contact with the law can best be supported. New provisions should be introduced to the Bill including:

Raise the age of criminal responsibility

- The age of criminal responsibility in England and Wales is out of line with the rest of Europe and contrary to international human rights standards.
- As a minimum, introduce provisions to increase the age of criminal responsibility from 10 to 14.

Ensure custody as a last resort and enshrine welfare-based approaches to sentencing children

- This is an opportunity to enshrine in legislation that sentencing must consider children's rights, welfare, underlying causes of offending, and that custody must be a last resort.
- Introduce legislative provisions set out in AYJ's report *Ensuring custody is the last resort for children*
- Apply provisions set out in clause 131 (3) (c), (4) (d), (5) (c), 6 (d) - regarding conditions for custodial remand - to custodial sentencing legislation.
- Support **Amendment NC16**

Require courts to record their reasons for sentencing decisions

- Improve accountability and scrutiny of disproportionate sentencing by introducing provisions requiring courts to give case and child specific reasons for their sentencing decisions, and for the centralised collation, monitoring and publication of information including the court justification, ethnicity, age, gender, and offence.

Ensure all those who allegedly commit offences as children are treated as children

- Children who allegedly commit offences as children but do not have their cases heard until after their 18th birthday are currently treated and sentenced as adults. Provisions should be introduced to address this injustice.
- Introduce provisions to amend criminal records relevant dates, extend anonymity provisions, apply statutory time limits to children's cases, and place Sentencing Guidelines on statutory footing.

Improve the legal framework around child criminal exploitation

- Child Criminal Exploitation is a growing and significant issue which the Bill fails to address. Support children impacted by criminal exploitation by introducing a statutory definition and making it a specific offence.
- Support **Amendment NC17**

Improve the link between serious violence prevention and housing duties

- Support **Amendments NC28 and NC29**

Unevidenced and unacceptably punitive: Clauses that must be removed from the Bill

The AYJ is particularly concerned about measures in the Bill which will increase the criminalisation and incarceration of children, and exacerbate racial inequalities. These provisions must be removed, including:

Legislation must not be introduced without appropriate consultation

- Proposals that have not been consulted on must not become law before proper engagement with children who will be affected, those who support them, and the evidence base, has taken place.

Stop increasing the length and likelihood of custody for children

- There is no evidence that harsher custodial sentences contribute towards the rehabilitation of children while there is abundant evidence that imprisonment is extremely harmful and disrupts long-term development. Sentencing a child to custody must be a last resort and for the shortest period of time possible.
- **Remove clauses 100 (2) and (5), 103, 104, 105, 106** which increase the likelihood of a custodial sentence and the length of time children spend in custody

Introducing legislation that the government knows will increase racial and ethnic disparity is unacceptable

- Clauses that will exacerbate racial and ethnic disparities must be removed, particularly all those that the government's Impact Assessment admits will do so.
- **Remove clauses 2, 100 (2) and (5), 103, 104, 105, 106, and Part 4**

Stop moving towards treating older children like adults

- There is a concerning trend in the government narrative towards harsher treatment of older children in contact with the law, now being realised in this legislation. Punitive provisions bringing sentencing for older children closer in line with adults, rather than taking a more nuanced approach to young adults, is going in the wrong direction.
- **Remove clause 103**

Reforms to Detention and Training Orders are predicted to increase the number of children in custody and should therefore not be introduced

- The government should not be introducing provisions that will significantly increase the number of children in custody, especially considering there are no clear benefits to the reform.
- **The provisions should not be introduced.**

The expansion of live links in court cannot be permanently embedded without evaluation of impact

- Available evidence on the use of live audio and video links in court raises concerns they hamper the effective participation of children in their court proceedings and negatively impact justice outcomes. The government must not permanently embed measures introduced due to COVID-19 without the necessary evaluation of their impact.
- **Introduce a statutory presumption against the use of live links with children**
- **Remove clauses 53, 166-169**.

Criminalising children for taking part in non-violent protest is against their rights

- Children must not be criminalised for exercising their right to protest. The public order provisions in the Bill threaten civil liberties and create harsher sentencing for children who "ought to have known" restrictions were in place.
- **Remove clauses 54-60**

Room for improvement: Provisions in the Bill that should be amended

There are some provisions in the Bill which are welcome but if amended could be significantly strengthened. Other provisions need careful consideration and amendment to ensure there are no harmful unintended consequences for children. In particular:

Reforms to the threshold for remanding a child to custody are welcome but should go further.

- We are glad to see some of our recommendations for a higher threshold for custodial remand of children adopted by the government, but to achieve their stated aim of custodial remand as a last resort, the proposals must go further.
- Remove or tighten the History Conditions, strengthen the Offence and Necessity Condition, introduce centralised monitoring of the decision making process.
- Bring police remand criteria in line with the new court remand criteria.
- Support **Amendment NC3**

Reforms to childhood criminal records are positive but further action is crucial

- We warmly welcome the reforms to criminal records contained in the Bill, but they must go much further for children.
- 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, rather than the date of conviction
- Remove children from the exclusion from rehabilitation periods for certain offences where a custodial sentence of over four years is given.

If introduced as currently set out, the Serious Violence Duty will have serious unintended consequences for children

- If a Serious Violence Duty is to be introduced it must be significantly amended. Currently its misplaced focus and police-led approach creates a Duty that treats violence separately to wider issues impacting children's safety, and risks leading to a punitive, surveillance-based response to children involved in violence.
- Explicitly set out safeguarding and welfare duties that authorities must comply with, and that the primary focus for children must be a non-criminalising approach
- Refine information sharing requirements, including so that information can only be shared if it is in the best interests of the child and complies with welfare duties

More information is needed on the expected impact of provisions around Community Sentences, and the plans for Secure Schools

- If introduced the expanded electronic monitoring of children on Youth Rehabilitation Orders should be kept under review.
- Amend clause 137 so that children remanded to Secure Children's Homes can access temporary release as well as sentenced children
- We await more information on the development of the Secure School model.

For more information on any of the contents of this briefing, or to arrange a meeting, please contact our Senior Policy Officer Millie Harris, at **millie.harris@ayj.org.uk**

The AYJ has also submitted evidence to the Joint Committee on Human Rights' call for evidence on the human rights impacts of the Bill. It will be available here[4] when published.

Missed opportunities: New clauses to add to the Bill

The White Paper preceding the Bill promised a "smarter approach to sentencing", but in reality, the Bill perpetuates ineffective sentencing options for children and represents a raft of missed opportunities to reconsider how children in contact with the law can best be supported. The government should introduce provisions to the Bill that:

- Raise the age of criminal responsibility
- Ensure custody as a last resort and enshrine welfare and rights-based approaches in children's sentencing legislation
- Require courts to record their reasons for sentencing decisions
- Ensure all those who allegedly commit offences as children are treated as such
- Improve the legal framework around child criminal exploitation
- Improve the link between serious violence prevention and housing duties

Measures in the Bill supposedly constitute a "radical sentencing overhaul to cut crime".[5] But in reality, it misses many opportunities to improve long-term outcomes for children, and the government admits it does not know if the measures will reduce crime.[6] 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 continues to be the starting point, with minor modifications for children.

No Child Rights Impact Assessment has been undertaken to examine the impact on children, and many of the measures have not been driven by any evidence. Children in trouble with the law must be given the chance to move on from past mistakes. Increasing the punitive response to children will only exasperate the prevalent trauma that children have experienced and further marginalise them.[7]

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 that builds on the progress over the last decade to reduce the number of children being criminalised and deprived of the liberty, and guard against a reversal of these welcome developments for children.

For all children in contact with the justice system, there is a fundamental need to adhere to the principles and standards of the UN Convention on the Rights of the Child (UNCRC) and take an approach that is distinct to that of adults, is welfare-focussed, age-appropriate, and considers first and foremost the context and needs of the child rather than the alleged offence.[8] Across all aspects of the youth justice system, careful attention must be paid to the existence of structural discrimination and disadvantage that contributes to disproportionate representation and inequitable treatment of Black, Asian and Minority Ethnic (BAME)[9] children. As well as this, responses must take into consideration that children in contact with the youth justice system are often victims of crime and exploitation themselves, especially in relation to serious violence.

Accordingly, there are a number of additions, set out below, that should be made to the Bill if it is to fulfil its purpose and live up to the name of its White Paper, "A Smarter Approach to Sentencing". We are disappointed for example that reforms around problem solving approaches are reserved for adults, that no innovative approaches such as looking at better aligning youth and family courts are explored, and that no efforts are made to improve the consistency and effectiveness of diversion, for example by introducing a national framework, and moving away from requirements around admission of guilt to more flexibly "accepting responsibility", as recommended by AYJ member the Centre for Justice Innovation.[10]

- **The age of criminal responsibility in England and Wales is completely out of line with the rest of Europe and contrary to international human rights standards. It must be increased to at least 14.**

Set at age 10, only one European country has a minimum age of criminal responsibility (MACR) as low as in England, Wales and Northern Ireland. Outside of the UK, only seven European countries have a MACR lower than 14. 31 countries have their MACR set at 14, and 10 countries have it set higher than 14.

The UN Committee on the Rights of the Child has stated the absolute minimum age considered internationally acceptable is 14 and encourages the adoption of higher minimum ages of 15 or 16.[11] The current law in England and Wales is inconsistent with evidence on child development and it must be amended.[12]

As a minimum, introduce a new clause to the Bill as follows: ***In section 50 of the Children and Young Persons Act 1933 (age of criminal responsibility) for "ten" substitute "14".***

- **This is an opportunity to enshrine in legislation that sentencing must consider children's rights, welfare, underlying causes of offending, and that custody must be a last resort**

There is a growing body of evidence that contact with the criminal justice system is criminogenic.[13] Children in trouble with the law are often extremely vulnerable, and the failure of other, welfare-based services to identify and appropriately and effectively respond to their needs frequently draws them into the youth justice system. They may be victims of crime themselves and their involvement may be associated with exploitation. Legislation around the sentencing of children should reflect this, such that children are not unnecessarily and harmfully drawn into the criminal justice system.

This could include giving courts powers to order welfare investigations. 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. This could be applied to be used in the Youth Court regarding a child alleged to have committed an offence.

Crucially, the principle that custody should only ever be used as a last resort for children is enshrined in domestic law and international human rights conventions, but is not currently applied as such.[14] AYJ worked with an expert group of our members to develop a legislative proposal for what custody as a last resort would look like in legislation, which we urge Parliamentarians to support as an addition to this Bill.[15] The proposal creates a higher seriousness threshold for offences eligible for a custodial sentence, and sets out that even where an offence is deemed so serious that custody could be justified, there must be a significant risk of harm to the public and the court must be satisfied that there is no alternative mechanism for dealing with that risk with a community-based sentence. It also sets out that the court must give cogent reason why a community-based sentence is not appropriate and must obtain a comprehensive assessment of the child and report from the relevant children's services and Youth Offending Team.

Our proposals also set out conditions for determining the appropriate term where a custodial sentence has been deemed necessary, which we again urge Parliamentarians to support adding to the Bill. These include that the court must pay due consideration to the UNCRC and to Section 11 of the Children Act 2004, including: the best interests of the child and the need to safeguard and promote the welfare of the child must be a primary consideration; the custodial sentence must be for the shortest possible appropriate time, including a clear mechanism for

regular review of the sentence to determine whether custody remains the only available option for the child; and the court must pay careful consideration to the long-term impact of the custodial sentence on the child, including but not limited to education, provisions for looked after children, release provisions, notification requirements, and rehabilitation periods.

Accordingly, we warmly welcome the addition to the custodial remand threshold for children (see below) along the lines of our above proposal - that to remand a child to custody the court must be satisfied that the risks posed by the child cannot be managed safely in the community (Clause 131 (3) (c), (4) (d), (5) (c), 6 (d)). **Custodial sentencing legislation should be amended through this Bill to include the same condition. As follows, the AYJ supports the intention of Alex Cunningham MP's Amendment NC16**,[16] which would amend the threshold for imposing a discretionary custodial sentence under the Sentencing Act 2020. It includes setting out that where a court decides they think an offence is serious enough to justify a custodial sentence, it must state its reasons for being satisfied that the offence is so serious, and, in particular, why a community order with appropriate requirements could not be justified. While we support Amendment NC16 and urge Parliamentarians to approve it, we believe it can and should go further for children, as set out above. For more information see our report *Ensuring Custody is a Last Resort*,[17] and our paper on reducing custodial remand.[18]

- **Improve accountability and scrutiny of disproportionate sentencing by requiring courts to record their reasons for sentencing decisions**

We welcome the introduction to legislation on custodial remand for children (see below), that when a court makes a decision to remand a child to custody, the court must include in its explanation to the child that it has considered the default not to remand to custody, considered the interests and welfare of the child, and that it must give its explanation in writing to the child, legal representative, and relevant Youth Offending Team. **We believe these requirements should be expanded and applied to sentencing decisions involving children.** Along these lines, **we welcome Amendment NC16** above, which would require courts to explain why they believe a custodial sentence is appropriate and a community sentence could not be justified. Courts should be required to explain in writing why they believe no less severe sentence than the one they have given is appropriate, how they have considered the best interests and welfare of the child and the long-term impact of the sentence, and what assessments of the child and reports from children's services and Youth Offending Teams they have considered (for more information on considerations for custodial sentences see above).

Decision-making in the Youth Courts is opaque. Courts must be required to record reasons for decisions to remand or sentence children to custody, in order that they can be centrally collated and analysed. There is also a clear need for more quantitative data on Youth Court cases, in particular so that disproportionate sentencing and remand can be examined, understood, and challenged.[19] As highlighted by the Magistrates Association in its report on its expert roundtable on disproportionality in the youth justice system, it was agreed that *"without the collection of more disaggregated data in youth court, it was difficult to identify the causes of disproportionality, and therefore how to resolve them".*

Therefore, alongside new requirements for courts to justify in writing all decisions regarding children in court, as recommended by AYJ member JUSTICE's working party report *Tackling Racial Injustice: Children and the Youth Justice System.*[20] Provisions should be introduced for centralised collation, monitoring and publication of information including a recording of court justification, ethnicity, age, gender, and offence. This improved recording of data and increased transparency will allow for a better understanding of racial disparity in the youth justice system and will be key to improving trust in courts and the legitimacy of the justice system. [21]

- **Children who allegedly commit offences as children but do not have their cases heard until after their 18th birthday are currently treated and sentenced as adults. Provisions should be introduced to address this injustice.**

The Bill fails to tackle a burning injustice in our youth justice system: the increasing number of children who are alleged to have committed an offence as a child but turn 18 before being prosecuted who are dealt with and sentenced as adults. This is mostly caused by delays to justice, already growing in recent years and greatly exacerbated by COVID-19, and is subject to a postcode lottery, with severe consequences.

Particularly in the context of introducing harsher sentencing for young adults through this Bill, measures should be introduced so that all those who allegedly commit offences before turning 18 are subject to the jurisdiction of the youth court and to youth sentencing provisions. Rob Butler MP introduced a Private Members Bill on the subject earlier this year.[22] He explained the situation:

> *"At the moment, the justice system treats a defendant according to their age on the date they first appear in court and enter a plea. The consequence of this is that if someone commits an offence aged 15, 16 or 17, but do not get to court until after their 18th birthday, they are treated as an adult. That immediately affects both the type of court that deals with them and the range of sentences available. But the repercussions do not stop there, because there can be an impact on the chance of rehabilitation and the likelihood of getting a job, with the prospect of forever having to declare a mistake from the past. It is no exaggeration to say that the consequences can last a lifetime, because in our justice system there is a cliff edge when people reach their 18th birthday, and it is a very steep cliff."*[23]

The youth justice system rightly aims to recognise the maturity and needs of children who are accused of committing crimes and respond appropriately. Addressing this injustice for those who turn 18 while awaiting their day in court would allow for fairer, more equitable and age-appropriate justice. It is a common sense legislative change that is called for by the UN Committee on the Rights of the Child and has strong backing across parliament and the youth justice sector.

Alongside the AYJ, those who have publicly supported the change include the Youth Justice Board, Justice Select Committee, Children's Commissioner for England, the Association of YOT Managers, Magistrates Association, Just for Kids Law, Transition to Adulthood, and the National Association for Youth Justice.[24] When Rob Butler MP introduced his Bill on the matter to Parliament it was sponsored by Sir Robert Neill, Maria Eagle, Jeremy Wright, Edward Timpson, Andrew Selous, Crispin Blunt, Dan Jarvis, Sarah Champion, Danny Kruger and Sally-Ann Hart.

There are multiple simple amendments which could be added to the Bill, as recommended by AYJ members including Just for Kids Law, which address some of the main issues that arise for those who turn 18 and would make a big difference to these young people in the short term. These include: amending the relevant date for criminal records (see below); amending Section 45A Youth Justice and Criminal Evidence Act 1999 to allow courts to restrict reporting on those who were under 18 when the offence occurred, rather than only being able to preserve anonymity for those under 18 when proceedings commence, and to enable judges to have discretion to confer a reporting direction on defendants as well as victims; applying the statutory time limit on trying summary only offences to trying offences allegedly committed by children; and strengthening Sentencing Guideline wording on dealing with those who have passed an age threshold and/or placing it on a statutory footing.

- **Child Criminal Exploitation is a growing and significant issue which the Bill fails to address. Support children impacted by criminal exploitation by introducing a statutory definition**

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,[25] particularly impacting children with care experience.[26] This is particularly concerning given the Bill ramps up punitive sentencing for crimes that may be connected to exploitation.

According to the UN Convention on the Rights of the Child, the government must take all appropriate measures to promote the recovery and reintegration of children who are victims of exploitation. Victims of child criminal exploitation (CCE) must be recognised as such, but we know this is often not the case. As set out in a joint briefing coordinated by the Children's Society, which the AYJ has supported alongside other expert AYJ members:[27]

> *"Child criminal exploitation (CCE) takes a variety of forms but ultimately it is the grooming and exploitation of children into criminal activity. Across each form that CCE takes, the current reality is that children who are coerced into criminal activity are often treated as criminals by statutory agencies rather than as victims of exploitation. This is in part because safeguarding partners are working to different understandings of what constitutes criminal exploitation."*

A lack of shared understanding of the issue contributes to the fact that children are often arrested for crimes they were forced to commit while the adults exploiting them are not investigated.[28] As described in the above joint briefing, introducing a statutory definition of child criminal exploitation, a proposal which is supported by HMICFRS,[29] the Centre for Social Justice,[30] Crest,[31] and many organisations working to support children at risk of exploitation,[32] would *"send out a strong message that children who are forced to commit crime are victims rather than criminals".*

The AYJ wholeheartedly supports Amendment NC17, introduced by Sarah Champion MP, which introduces a statutory definition of CCE into the Modern Slavery Act 2015, defined as: "Another person manipulates, deceives, coerces or controls the person to undertake activity which constitutes a criminal offence and the person is under the age of 18."

- **Improve the link between serious violence prevention and housing duties**

There are clear links between accommodation support and housing provision and the risks to children of serious violence and exploitation.[33] The **AYJ supports Amendments NC28 and NC29** tabled by Stella Creasy MP which add those at risk of serious violence to the list of those who have priority need status for accommodation under the Housing Act 1996 if this would reduce the risk of that person becoming a victim of serious violence; and which require the issuance of an updated Homelessness Code of Guidance for local authorities to include specific guidance around housing duties and preventing serious violence.

Unevidenced and unacceptably punitive: Clauses that must be removed from the Bill

The AYJ is particularly concerned about measures in the Bill which will increase the criminalisation and incarceration of children, and exacerbate racial inequalities. These provisions must be removed, including:

- Legislation must not be introduced without appropriate consultation and engagement with the evidence base
- Stop increasing the length and likelihood of custody for children
- Introducing legislation that the government knows will increase racial and ethnic disparity is unacceptable
- Stop moving towards treating older children like adults, rather than taking a more nuanced approach to young adults
- The expansion of live links in court cannot be permanently embedded without evaluation of impact
- Criminalising children for taking part in non-violent protests is against their rights

- **Proposals that have not been consulted on must not become law before proper engagement with children who will be affected, those who support them, and the evidence base, has taken place.**

It is unacceptable that many of the reforms in the Bill have been introduced with no formal consultation or proper stakeholder engagement and are now being rushed through Parliament. Reforms, particularly those which are set to have such a damaging and long-term impact on children and the youth justice system, should never be introduced in this way.[34] In line with Article 12 of the UNCRC, children should be meaningfully consulted on changes that will impact their lives, and a strategic view must be taken to engage with them.

Provisions which we are particularly concerned have been introduced without consultation include, but are not limited to: changes to custody release policies (Clause 105 and 106), changes to mandatory minimum custodial terms (Clause 103) and mandatory custodial sentences (Clause 100(2) and (5)), the removal of tariff reviews for murder (Clause 104), the rollout of live link in court proceedings (Clause 53 and clauses 166-169), and legislating to increasingly criminalise peaceful protest (Part 3).

- **Changes to custody release policies and mandatory minimum terms (Clauses 100 (2) and (5), 103, 104, 105, 106)**
  Sentencing a child to custody must be a last resort and for the shortest period of time possible. Provisions in the Bill which increase the likelihood of a custodial sentence and the length of time children spend in custody must be removed

The following changes to minimum sentences and terms for particular offences are set to increase the length of time children spend in custody and increase the number of children in custody and the number of adults in custody for offences committed in childhood.[35]

Changes to release policies

Clause 106 amends the Criminal Justice Act 2003 moving the custody release point, or 'minimum term', from halfway to two-thirds of the sentence for sentences of 7 years or more under s250 of the Sentencing Code.[36] Clause 105 does the same thing for discretionary life sentences.[37]

Mandatory minimum sentences

Clause 100 (2) and (5) amend mandatory minimum sentences for the offence of threatening with a weapon or bladed article, and for repeat weapon offences, for those aged 16 and over, from: that a court must impose the mandatory custodial sentence unless there are "particular" circumstances that *would "make it unjust to do so in all the circumstances",* to *unless there are "exceptional" circumstances that "justify not doing so".*

Minimum terms

Clause 103 amends the starting points for minimum custodial terms for murder committed as a child. Currently all children face 12 year minimum terms. Under the proposals children convicted under 7 of the 9 new categories will face higher sentences:

- *For 10-to-14-year-olds:* particularly high seriousness: 15 years; less serious: 13 years; all other: 8 years
- *For 15-to-16-year-olds:* particularly high seriousness: 20 years, less serious: 17, all other: 10 years
- *For 17-year-olds:* particularly high seriousness: 27, less serious: 23 years, all other: 14 years

Reviews for minimum terms for murder

Clause 104 restricts possibilities for minimum term reviews for children convicted of murder (sentenced to Detention at Her Majesty's Pleasure, DHMP), to determine possible reductions to their minimum term. Currently applications for a minimum term review can be made at the halfway point, and then every two years. Under the proposals, only people who are under the age of 18 when sentenced to DHMP are eligible for the minimum term review process, and the process is restricted so that a first review can still be applied for at the halfway point, but a second application can only be made if it has been 2 years since the previous application was determined, and they are still under 18. No other reviews may be made. It is particularly concerning only those sentenced while under 18 will be eligible, firstly, given delays to court processes are significant and growing. Secondly, as complex cases involving highly vulnerable children such as those with neurodevelopmental disorders require psychiatric and psychological reports, and are likely to take longer and be delayed, the change will particularly disadvantage those with higher levels of need.

There is no evidence that the threat of harsher custodial sentences deters children from offending. Awareness of sentencing amongst children is low,[38] and even where children are aware of sentencing, 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 struggle with drug and alcohol misuse. Children have "limited capacity to determine the consequences of their decisions and are "both more suggestible and compliant.[39] Changes in adolescent brains alter behaviour, impact on decision making, organisation, self-control, emotional and impulse regulation, and risk-taking behaviours.[40]

Children become involved in crime for numerous and complex reasons,[41] and child criminal exploitation is a significant concern.[42] 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, rather, multiple studies have found that it is the certainty of getting caught rather than the punishment that deters,[43] concluding that "lengthy prison sentences and mandatory minimum sentencing cannot be justified on grounds of deterrence."[44]

The UN Convention on the Rights of the Child states that the imprisonment of a child must be a last resort and for the shortest appropriate period of time. It states that children in trouble with the law must be treated in a way which seeks to promote the "child's reintegration and the

child's assuming a constructive role in society." Increasing the use and length of mandatory minimum custodial terms and reducing opportunities for sentence review removes judicial discretion to consider the most appropriate sentence given the full facts of the case and considering the circumstances of the child. It therefore goes against children's rights. The UN Committee on the Rights of the Child is also clear that the government must abolish life sentences for children,[45] yet the proposals do the reverse, lengthening them. The UK is almost alone among European countries in still handing out life sentences to children.[46]

Increasing custody sentence lengths, 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, will leave children and young people convicted of childhood offences feeling hopeless and unmotivated to engage with education, purposeful activity and rehabilitative support. Hope is key to desistance.[47]

The government acknowledge the changes may worsen conditions in custody, impact mental health, increase the likelihood of family breakdown, and the risk of reoffending.[48]

> *"A later release date and reduced licence period could disrupt offenders' and family relationships and reduce opportunities for rehabilitation in the community. This could lead to higher reoffending rates due to less post-custody rehabilitation activity from the probation service. Increases in the prison population could lead to more crowding in prisons which causes more tension in the prison community and cause additional costs for the prison service" - Government Impact Assessment*[49]

The government admits itself that there is *"limited evidence that the combined set of measures [in the Bill] will deter offenders long term or reduce overall crime."*[50] There is no evidence that harsher custodial sentences contribute towards rehabilitation or promoting positive outcomes for children.[51] Meanwhile, there is abundant evidence that imprisonment is extremely harmful to children and disrupts their healthy long-term development.[52] **Clauses 100 (2) and (5), 103, 104, 105, and 106 must therefore be removed from the Bill.**

If clause 100 (2) and (5) are not removed, they should be amended to reflect evidence on the maturity of 16- and-17-year-olds, such that: in deciding whether there are circumstances to justify not imposing a custodial sentence, special consideration should be made to the chronological, developmental and emotional age of the child, and "whether the child has the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences." This is as set out in Sentencing Guidelines for children,[53] which should be adhered to by courts, but which AYJ members report are less likely to be considered regarding mandatory minimum sentences.

- **Clauses that will exacerbate racial and ethnic disparities must be removed from the Bill**

Many of punitive proposals in the Bill are set to disproportionately impact BAME children.[54] Children from ethnic minorities are overpoliced, more likely to be stopped and searched, arrested, less likely to be diverted,[55] and are therefore disproportionately likely to end up in the criminal justice system. Racial discrimination and bias are also evident in sentencing decisions[56] - Youth Justice Board research published this year found that for the same offences BAME children are more likely to receive community and custodial sentences rather than out of court disposals and are more likely to be remanded to custody. Black children specifically face harsher court sentences: controlling for all variables, Black children are up to 8 percent more likely than White children to be sent to custody.[57] An investigation by the Independent found that 1 in 4 Black teenage boys convicted of homicide received the

maximum jail sentences, while White counterparts were more likely to be convicted of manslaughter.[58] Government research looking at all ages found for drug offences, BAME people were 240% more likely to receive a prison sentence than White people,[59] and that Black people were 53% more likely to be sent to prison for particular offences.[60]
BAME children are therefore more likely to face the harsher sentencing regimes proposed, described in the previous section.[61] Black and minority ethnic children now represent over half of children in prison, compared with only 18% of the child population. During their time in youth custody, minority ethnic children consistently report worse experiences and treatment than White children.

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'.[62] But this aim is far from legitimate – as set out above there is 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.

The AYJ has been working with a coalition of criminal justice organisations to raise awareness about the impacts of the Bill on racial disparity. We sent an Open Letter to the Prime Minister in March, signed by over 70 criminal justice and race equality organisations, including many AYJ members, calling on him to withdraw the clauses his government has stated will increase racial inequality and properly consult on its proposals.[63] We reiterate this call now. **Clauses 100 (2) and (5), 103, 104, 105, and 106 must be removed from the Bill.**

We are also concerned that clause 2, increasing the maximum sentence for an assault on emergency worker offence from 12 months to two years, will further criminalise children and this will have a disproportionate impact on certain children.[64] While we understand the importance of protecting emergency workers, we are concerned about reports of police unfairly using the offence with BAME communities, as well as of the offence arising due to children acting out the frustration they feel of perceived unjust targeting by police. As set out in a joint briefing by a coalition of criminal justice organisations the AYJ has been working with:

> *"During a stop and search, the way in which a search is conducted by the police can impact on the outcome.[65] For example, if police officers are unable to find the item that raised their suspicions, they can sometimes engage in what is known as 'fishing' where they pursue the individual for an alternative offence. As this can be perceived by the person being searched as unfair, in some cases this treatment can escalate resulting in a charge against the individual, usually 'assault on an officer'. In Black, Asian and Minority Ethnic communities, experiences of heavy-handed policing and 'fishing' are quite common, and they can be used by the police as a technique to deter individuals from making a complaint about their experience."*[66]

We have also heard reports that girls may be charged with assault on emergency worker offences where they have reacted violently to being restrained by frontline workers, or other interactions that have triggered a past trauma. **Until these concerns have been addressed it is inappropriate to double the maximum sentence, and as such clause 2 should be amended so that the increased sentencing does not apply to children.**

Tackling Racial Injustice: Children and the Youth Justice System[67] was published in February 2021 by a working party convened by JUSTICE, with significant contributions from the AYJ

and many of our members. Work was undertaken over 18 months to address deep concerns over racial disparity in the youth justice system, and the final report makes 45 positive, practical recommendations for change. Rather than pursuing ineffective, harmful sentencing options that will do nothing to reduce crime and will exacerbate inequalities, we urge Parliament to look to this report for positive solutions for working towards a more equitable youth justice system.

We are also very concerned about the impact that Part 4, clauses 61-63 of the Bill, regarding 'unauthorised encampments' and the criminalisation of trespass will have on ethnic inequality in the youth justice system. Gypsy, Roma and Traveller children and adults are disproportionately represented in the criminal justice system: 15% of children in Secure Training Centres and 8% of children in Young Offender Institutions identify themselves as Gypsy, Roma or Traveller (GRT),[68] when just 0.1% of the general population is recorded as Gypsy/Irish Traveller.[69] The repossession of property and criminalisation of GRT adults will be destabilising, and could increase the number of GRT children at risk of homelessness, facing difficulties in accessing education, and coming into contact with the care system. This is particularly concerning given 56% of GRT children in the secure estate report experience of care.[70] The measures will compound existing inequalities and increase the risk of GRT children entering the youth justice system. The majority of the Police Forces and Police and Crime Commissioners that responded to a Home Office consultation on the proposals opposed the criminalisation of trespass, calling instead for increased site provision.[71] **Part 4 of the Bill should be removed.**

For more information regarding concerns that measures in the Bill will entrench racial and ethnic inequalities, see the joint briefing[72] by a coalition of organisations including the AYJ, EQUAL, Criminal Justice Alliance, Clinks, Agenda, Transition to Adulthood Alliance, Prison Reform Trust, Zahid Mubarek Trust, Maslaha, Do It Justice Ltd, Revolving Doors Agency, Leaders Unlocked, Switchback and Women in Prison.

- **There is a concerning trend in the government narrative towards harsher treatment of older children in contact with the law, now being realised in this legislation. Punitive provisions bringing sentencing for older children closer in line with adults must be removed.**

As we explored elsewhere in this briefing, and as stipulated by the UN Convention on the Rights of the Child,[73] the sentencing framework for children must be distinct to that of adults. The principal aim of youth justice according to domestic legislation must be to prevent offending, and the welfare of the child must be taken into consideration.[74] The UN Committee on the Rights of the Child also states that, "in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties", State Parties should allow the application of the youth justice system to young people aged 18 and over.

Clause 103 inappropriately brings older children's sentencing closer in line with adults: it amends the starting point for tariffs for older children to be set at 90 per cent (for 17-year-olds) and 66 per cent (for 15-16-year-olds) of the starting point for adults. The government is right to acknowledge maturity as an important factor in sentencing – which is the rationale presented in the White Paper for creating this new tiered system based on age. However, all evidence on development points to the need for a more nuanced approach to sentencing for those aged 18-25, to bring it closer in line with sentencing for children, not the other way around. Treating older children like adults and subjecting them to long custodial sentences at such a young age is extremely damaging to the hope and motivation children have for change. **Clause 103 must be removed.**

Clause 103 is just one example of a harmful attitude to treating older children as adults. Others include treating those who allegedly commit offences as children and turn 18 before having their case heard as adults – which this Bill fails to address; and imposing mandatory minimum custodial sentences on 16- and 17-year-olds – which this Bill ramps up. Clause 36 of this Bill, around the extraction of information from electronic devices, even defines "adult" as "a person aged 16 or over" and "child" as "a person aged under 16". This is entirely out of line with domestic legislation, which consistently defines a child as anyone aged under 18,[75] and the UNCRC.

- **Detention and Training Orders (Clauses 132-134)**
  Reforms to Detention and Training Orders are predicted to significantly increase the number of children in custody and should therefore not be introduced

Clauses 132-34 make changes to Detention and Training Orders such that rather than being fixed lengths, they can be any length between 4 and 24 months. We are extremely concerned that the proposals are predicted to increase the steady state number of children in custody by up to 50 children by 2023/24, costing the Youth Custody Service between £38.6m to £61.4m.[76]

The stated rationale behind the reforms is to better account for periods spent on remand or on bail with electronic curfew. However, sentencers are already able to take this time into account and should usually round down when choosing the most appropriate fixed sentence length. The government should not be introducing provisions that will significantly increase the number of children in custody, especially considering there are no clear benefits to the reform. **The provisions should not be introduced.**

- **Live Links (Clauses 166-169 and 53)**
  Available evidence on live links raises concerns they hamper the effective participation of children in their court proceedings. The government must not permanently embed measures introduced due to COVID-19 without the necessary evaluation of their impact, and safeguards in place for children

The use of live links in criminal proceedings was out of necessity expanded due to COVID-19. This massive expansion under the Coronavirus Act 2020 is now being permanently set in legislation through clauses 166-169 with seemingly no regard for the impact on children and evidence on effective participation.

Our research on the use of video links with child defendants indicated children already struggle to understand what is happening in court, not least because many have communication difficulties, and video link makes this worse.[77] It indicated children are less likely to understand what is happening, can't consult their lawyer properly nor communicate well with the judge. Most concerningly, 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,[78] which have raised concerns that live links negatively impact effective participation, therefore damaging access to justice. For example, research by the Equality and Human Rights Commission found:

> *"Almost all the criminal justice professionals in England and Wales who we interviewed felt that use of video hearings does not enable defendants or accused people to participate effectively, and reduces opportunities to identify if they have a cognitive impairment, mental health condition and / or neuro-diverse condition."*[79]

In May 2021, the Bar Councils of England and Wales, Northern Ireland, and Ireland, and the Scotland's Faculty of Advocates issued a joint statement arguing that remote hearings deliver

a “markedly inferior experience”, with “multiple and multi-faceted disadvantages”, presenting “very considerable challenges” to advocacy, and therefore the default for hearings other than short or uncontroversial procedural business should be in-person hearings.[80]

The only currently available government research on virtual criminal courts found it led to more people pleading guilty and more receiving custodial sentences.[81] The Public Accounts Committee, Justice Select Committee, Constitution Committee and Joint Committee on Human Rights have all rightly raised concerns that not enough is known about the impact of remote justice on court users or justice outcomes.[82] The Lord Chief Justice has issued assurances that information is being gathered so that “careful decisions” can be made about when live links are suitable,[83] and the government has confirmed HMCTS is conducting an evaluation to inform their longer-term use, but this report was due in spring and has not been published, while measures to permanently expand the use of live links are already progressing through Parliament.[84] This is not careful consideration.

The effective participation of children in their court proceedings is an important component of the right to a fair trial,[85] and it is crucial that disabilities can be identified so reasonable adjustments can be made, as according to the Equality Act 2010. Given that children’s effective participation is already at risk in face-to-face court hearings, due to their young age, developmental immaturity and the prevalence of vulnerabilities,[86] and given the only available evidence on virtual justice raises critical concerns, it is simply not appropriate for legislation to be introduced promoting the use of live link in children’s cases.

The provisions on live links in the Bill pay no attention to the needs of children in the youth justice system. Until evidence is published which indicates otherwise, video links should be used only in exceptional cases for children, where it is in their best interests, and with appropriate adjustments.[87] As set out by AYJ member Just for Kids Law:

> *“The importance of building rapport and trust with a child, recognising non-verbal cues and identifying communication, social or learning difficulties are all impeded by the use of video link. The default position should be that children should never appear via video link for non-administrative hearings.”*[88]

Clause 53 focusses on enabling video remand hearings for those detained post-charge by police. It provides Prisoner Escort and Custody Service (“PECS”) officers with the power to have custody over those held in police stations for the purpose of overseeing live link hearings. It is entirely inappropriate for children to have their remand hearing overseen by PECS staff.

For more information on live links and video remand hearings see AYJ member Transform Justice’s Bill briefing.[89] **We are calling for amendments to the Bill as follows:**

- Introduce a statutory presumption against the use of live links with children
- No extension of video and audio links should be enacted until a full evaluation is completed and published – remove clauses 166-169
- No introduction of PECS officers overseeing video remand hearings – remove clause 53, and if not removed, amend it to ensure it cannot apply to children
- All defendants who might appear on a video or audio link should be subject to a full health and mental health screening

- **Public Order (Clauses 54-60)**
  Children must not be criminalised for exercising their right to protest. The public order provisions in the Bill threaten civil liberties and must be removed.

Clauses 54 and 55 amend provisions in the Public Order Act on public processions and assemblies, significantly expanding when conditions can be imposed on protests by police, and what those conditions can be. Clause 56 broadens the situations in which someone can be charged with breaching conditions imposed on protests and increases the sentence for doing so. Rather than a protester needing to "knowingly" fail to comply with conditions as is currently the case, the new offence would be committed if they fail to comply with conditions, they "ought to have known" were in place. The maximum sentence for a protest organiser or someone who incites a protester to fail to comply with conditions is increased from 3 months to 51 weeks, and for any other protester the fine they are liable to increases. As well as this, Clause 59 creates a new statutory definition of public nuisance, replacing the common law offence, but now subject to a maximum custodial sentence of ten years.

While the serious threat this part of the Bill represents to civil liberties and democratic rights is in itself a concern,[90] we are particularly worried the measures will criminalise children and subject them to harsher sentences. We are disappointed that despite facing significant opposition, the government's official response has been that it will not be removing these measures from the Bill.[91] The government claims the measures do not threaten Article 10 and Article 11 of the European Convention on Human Rights (ECHR), which protect our rights to freedom of expression and freedom of peaceful assembly. However, the ECHR is clear that "peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence,"[92] which these provisions not only do, but they also *increase* the maximum custodial sentence available, and widen the threat of imposition of custody even for *inadvertently* breaching conditions.[93]

Article 12 of the UNCRC establishes the right of children to freely express their views, in all matters affecting them. The participation of children in civil society on issues that have significant impacts on their lives and their future should be actively encouraged. Children must not be criminalised for exercising their right to protest on these issues. Particularly considering that the provisions are incredibly broad and are open to interpretation and misuse by police, we are concerned given what we know about the over-policing of BAME children and disproportionately punitive criminal justice responses, that the impact of the curtailment of protest rights will disproportionately impact BAME children. **Part 3, clauses 54-60 must be removed from the Bill. Failing that, the offence of breaching conditions imposed on protests must be amended to exclude children.**

Room for improvement: Provisions in the Bill that should be amended

There are some provisions in the Bill which are welcome but if amended could be significantly strengthened. Other provisions need careful consideration and amendment to ensure there are no harmful unintended consequences for children. In particular:

- We warmly welcome reforms aimed at reducing custodial remand for children. We have set out how they can go further to achieve the government's aim
- We have long been calling for reform of the childhood criminal record system and warmly welcome steps the government is taking, but further work is crucial
- If introduced as currently set out, the Serious Violence Duty will have serious unintended consequences for children
- The expansion of electronic monitoring of children on Youth Rehabilitation Orders is concerning and the impact on children, breaches, and custody numbers should be kept under review
- Provisions for temporary release from Secure Children's Homes should be amended so remanded children can access temporary release
- We await more information on the development of Secure Schools.

- ### Remand of children to custody (Clause 131)
  ### Reforms to the threshold for remanding a child to custody are welcome but should go further

We warmly welcome the government taking steps to reform the legislative threshold for remanding a child to custody.[94] 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 have been engaging with senior officials in the Ministry of Justice on developing their proposals to ensure custodial remand is a last resort for children, having produced a paper with expert members setting out our proposal for a reformed Section 98 and 99 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).[95] We are glad to see some of our recommendations adopted by the government, in particular the introduction to the LASPO 'Necessity Condition' 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; as well as the legislation now explicitly setting out that the court must consider the interests and welfare of the child.

Tightening of the 'History Conditions' in LASPO, so that previous instances of breach or offending while on bail must be significant, relevant, and recent to justify remanding a child to custody is welcome but does not go far enough. The issues addressed in the History Conditions are more suitably considerations for the court regarding whether the Necessity Condition is met: whether the child poses a risk and whether that risk is manageable in the community. **The History Conditions should be removed. If they are not removed, 'recent' should be restricted to within the last six weeks**. If we are to take a child-centred approach, we must consider how children experience time, and recognise the well-established principle that children change and develop in a shorter time than adults.[96]

We are disappointed that the broad 'Offence Condition' - that the child is charged with (a) a violent or sexual offence OR (b) an offence punishable in the case of an adult with

imprisonment of 14 years or more, remains 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 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. We propose streamlining and narrowing the Condition by removing (a), which is so broad as to undermine the threshold set by (b), as well as updating (b) to be offences for which a life sentence is available as a sentencing option - ensuring that only children deemed by current legislation to be "dangerous" and to have committed "serious", "grave" crimes are remanded to custody.[97]

As highlighted above we warmly welcome the addition to the 'Necessity Condition' of the need to consider manageability of risk in the community. The 'Necessity Condition' should however be further strengthened as 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 would like to see this go further**, such that the court must explicitly set out how each of the LASPO Conditions are met, including justification for their assessment that there is a high likelihood that the child would receive a custodial sentence, and why remand to custody is the only way of protecting the public: what the risks of serious harm presented by the child are, why the risks cannot be mitigated by remand to local authority accommodation, what bail package was offered and why this was not sufficient to prevent a remand. We warmly welcome provisions that the court must give its explanation of its decision in writing to the child, legal representative, and relevant Youth Offending Team. As discussed previously, in order to improve scrutiny and accountability of remand decisions, particularly to address concerning and increasing disproportionality, **provisions should be introduced for centralised monitoring of this decision making process**, including alongside the courts justification a recording of ethnicity, age, and offence.

Research by AYJ member Transform Justice indicates that police remand is a driver of custodial remand, in part because children held in police custody must be presented to court the very next day the court is sitting, meaning Youth Offending Teams can struggle to develop a satisfactory bail package in time. We therefore support Transform Justice's suggestion that **provisions should be introduced to the Bill that bring police remand criteria in line with the new court remand criteria.**[98]

We strongly agree with AYJ member the Howard League for Penal Reform that it is entirely unacceptable for a child to be refused bail for their own welfare, as is currently the case under the Bail Act 1976.[99] We therefore warmly welcome and **urge Parliamentarians to support Amendment NC3**, which would repeal the power of criminal courts to remand a child to custody for their own welfare pending trial or sentence.

- **Criminal records (Clause 163)**
  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 significantly improve rehabilitation periods under the Rehabilitation of Offenders Act 1974. We have long been calling for these reforms and have been engaging with Parliamentarians and senior civil service to build the case for change. The current system allows widespread,

lengthy disclosure of childhood records, which our research has found is far more punitive than comparable jurisdictions and acts as a barrier to employment, education and housing and therefore works against rehabilitation.[100] It anchors children to their past, preventing them from moving on from childhood mistakes. While we welcome the steps that are being taken, the proposals can and should go much further for children.[101]

Tweaks to the current system will not go far enough: a wide-ranging review of the system is urgently needed. Scotland has recently significantly reformed its childhood criminal record regime to one which creates clear distinctions between the treatment of childhood and adult records, and provides useful examples of how changes could be far more ambitious in creating a distinct regime that reflects the nature of childhood offending.[102]

We particularly want to see provisions added to this Bill which 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, rather than the date of conviction. 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. That the current rule is based on date of conviction is unjust, somewhat arbitrarily (two children who committed the same offence on the same day could, if one has their case heard earlier than the other for any number of reasons, face significantly different, potentially lifelong, impacts), and is arguably incompatible with Article 14, taken together with Article 8, of the European Convention on Human Rights. It is particularly crucial given the increasing number impacted by court backlogs (see above). The recommended, straightforward amendment to the Rehabilitation of Offenders Act is set out in our paper on criminal record reform, alongside many examples of legal precedent for the relevant date for criminal justice consequences being that of commission of offence, not conviction.[103]

While we welcome the proposed introduction of rehabilitation periods for custodial sentences of four or more 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. It is inappropriate that any child in effect receive a whole life sentence for childhood behaviour. **The exclusion from rehabilitation periods for certain offences should not apply for children.**

Alex Cunningham MP has tabled Amendment 9 which would change the offences which are excluded from rehabilitation periods, from those where a custodial sentence of four or more years is imposed *for an offence specified in Schedule 18 to the Sentencing Code (serious violent, sexual and terrorism offences)*, to: *for a serious violent, sexual or terrorism offence specified in regulations made by the Secretary of State by statutory instrument.* The offences subject to lifelong disclosure would therefore be set by regulations rather than in primary legislation. While we are calling for children to be removed from the exclusion altogether, if they are not removed, we would support this amendment in order that the excluded offences set out in regulations may be more easily reviewed and amended at a later date.

- **Serious Violence Duty (Clauses 7-21)**
  If a Serious Violence Duty is to be introduced it must be focussed on safeguarding and have children's welfare as its primary concern, without this it will have unintentional punitive consequences for children

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 Duty very much sits in a crime reduction rather than a safety space – the focus is on crime rather than contextual safeguarding and welfare, the

bodies involved are primarily criminal justice organisations rather than safeguarding partnerships and Local Safeguarding Children Boards – which do not feature in the Bill - and children's services more broadly. Unitary authorities are not involved – who have responsibility for child safeguarding in many areas. While we welcome the draft guidance on the Duty, published on 13th May, setting out that specified authorities may choose to use existing partnerships to lead on the work,[104] a shift in focus of the legislation is required, as set out below.

We are particularly concerned that the Duty as it stands gives policing bodies all the power: including taking on a convening function, deciding on the provision of funding, requiring specified authorities to comply with their directions, and reporting back to the Secretary of State on the actions of authorities.

Overall, this misplaced focus creates a Duty that risks artificially treating violence as if it is a separate issue to wider issues impacting children's safety. 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.[105]

We are particularly concerned about the information sharing requirements in clause 15, which are worrying broad, and clause 16, which create a one-way flow of information to the police. The draft guidance on the Duty confirms the information shared between authorities may include data pertaining to individuals, and that the new data sharing powers are designed to allow the sharing of personal data where current mechanisms (e.g. MARAC and MASH arrangements) "would not be sufficient".[106] The current limit on the use of data shared with policing bodies under the Bill, for "purposes connected with preventing or reducing serious violence",[107] is infinitely broad and must be refined.

The information sharing requirements, particularly under this police-led approach, risk creating a dragnet, pulling more children into the youth justice system, further marginalising them. The requirements risks creating a surveillance society where children feel alienated from the authorities around them and where racialised profiling, labelling and targeting impact children's abilities to go about their lives. As set out by AYJ member Khulisa, the Duty risks creating a new discriminatory profiling system like the Gang Matrix.[108] In fact, the draft guidance on the Duty highlights one of the purposes of sharing personal data being to assist with a local gang matrix.

Trusting relationships are a strong protective factor for children at risk of involvement in violence,[109] and this may particularly be the case for those being criminally exploited. This Duty as it stands will undermine relationships children have with adult professionals in their lives, eroding trust by creating a situation in which children feel they have nobody to turn to and confide in, for risk that this information will be disclosed to police and used against them. This is particularly a concern for the statutory involvement of schools in this Duty. There are concerns the Duty will have a similar impact on relationships as the Prevent Duty, "with the potential to undermine engagement with front-line services".[110]

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. What is more, without widespread investment in additional resources this implementation is wholly inappropriate for services already tasked with rising demand and shrinking budgets.

If it is to be introduced, the Serious Violence Duty must be significantly amended as follows. The Duty must have specific regard to children, which it currently makes no mention of and sets out no differentiation in treatment. For children, the lead partners in the Duty should be those authorities with primary responsibility for safeguarding children. In legislation, authorities should be reminded of their safeguarding and welfare duties,[111] and that the best interests of the child should be a primary consideration.[112]

The Duty should more clearly set out positive interventions that should be pursued in place of/prior to any punitive approach, stating in legislation the need to avoid a criminalising approach to children wherever possible, setting out a focus on prevention, early intervention and diversion. The Duty should explicitly state this intention, that strategies should be aimed at identifying and addressing underlying causes of involvement in serious violence.

The Duty must explicitly state that the primary function of any disclosure of information regarding a child is to safeguard the welfare of the child and promote their best interests, and as such any disclosure must comply with welfare duties under the Children Act 1989. The child's welfare should be the paramount consideration in whether information is disclosed.

Decisions should have due regard to the definition of child criminal exploitation. We would also like parliamentarians to consider the merits of making the Duty voluntary rather than statutory for schools, given school's important roles as a place of safety for children.

We are aware that Stella Creasy MP has tabled Amendments 50-62 which add social housing providers to the specified authorities required to participate in the functions of the Duty. We understand that the amendments are intended to be probing amendments to establish the government's intentions for collaboration and discuss the role of housing providers. We welcome this intention, and the overall intention to increase the involvement of housing providers in serious violence prevention (see above). As outlined previously, the AYJ has concerns about the focus of the Duty being weighted too far towards crime reduction and policing, rather than on safety and prevention of harm. Assurances from the government must be forthcoming about the necessary safeguards around data sharing with police and disclosure of information about children and their families being used for enforcement purposes, which in this context must include the sharing of information about tenants by social housing providers should they be included as a specified authority.

For more information regarding concerns about the Duty and questions that need to be addressed at Committee Stage, we refer to AYJ member the Children's Society's work on the Duty.

- **Community sentencing (Clause 135)**
  The expansion of electronic monitoring of children on Youth Rehabilitation Orders gives cause for concern. The impact on children, breaches, and custody numbers should be kept under review

Overall, the reforms to community sentences – expanding Electronic Monitoring, extending Intensive Supervision and Surveillance provisions - 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.[113] This may disproportionately impact some groups of children due to the over-policing 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. Electronic Monitoring is a form of deprivation of liberty and anxious scrutiny should be applied when placing these requirements on children. It is however welcome that YOTs will now be the responsible officer overseeing requirements rather than the electronic monitoring provider. AYJ members have reported difficulties for children in managing their tag;[114] 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. As set out by AYJ member the Association of YOT Managers, "*the assertion within the [White] paper that electronic monitoring of any sort may reduce the impact of child exploitation on a child is misguided and is not reflected in our experiences of child exploitation."*[115] The presence of a tag does not deter an exploiter as only the child is impacted by a breach.

Discretion in responding to breaches is key to ensuring the increased use of Electronic Monitoring does not increasingly criminalise children who may struggle for multiple reasons to keep their tag in working order and fulfil requirements, and awareness of the full circumstances of a child is crucial before imposing unrealistic and potentially dangerous requirements on them. **Statutory guidance should be introduced to this effect.**

Regarding extensions to Intensive Supervision and Surveillance (ISS) provisions and Intensive fostering, we refer to AYJ member the Association of YOT Managers' response to the Bill,[116] which highlights reservations, particularly given a pilot was unsupportive of the extended ISS period.

Although we have reservations about "toughening" up community sentences for children, if the government's stated intention is realised - that tougher community sentences will see reduced numbers of children sent to custody - this would of course be preferable to custody. Without this, the reforms are simply punitive. We are therefore very concerned that the Bill's Impact Assessments cannot confirm any degree to which these 'high-end' community sentences will be used instead of custody.[117] **Provisions should be introduced for a timely review of the impact of electronic monitoring requirements on children.**

- **Temporary Release from Secure Children's Homes (Clause 137) Putting provisions in place for temporary release from SCHs is welcome but children on remand should not be excluded from these arrangements**

According to the Bill's Explanatory Note, clause 137 places existing provisions around making arrangements for the temporary release of children in Secure Children's Homes (SCH) on a statutory footing. Currently, SCHs use inherent powers to make such arrangements. We are supportive of these proposals overall.

Recent research published by the Department for Education comparing children on justice placements and welfare placements in Secure Children's Homes concluded that children on justice and welfare placements are fundamentally the same children.[118] The level of risk posed by individual children was not reported to be related to whether they were on a justice or welfare pathway. The report, which was examining whether there was a need to separate children on justice and welfare placements, concluded that rather than separating them, if anything children would benefit from greater integration. The report highlighted that having different contractual requirements for staff to manage was one possible reason for separating the two forms of placement.[119] As SCH Managers already have powers under the section 25 of the Children Act 1989 to consider and approve temporary release for children on welfare placements, we are therefore glad that these provisions will put SCH Managers in the same position for sentenced children on justice placements.

However, we are concerned that clause 137 only lists sentenced children as those eligible for temporary release and therefore excludes children who are held in SCHs on remand from being able to access temporary release. All children remanded to custody should have access to temporary release, as they do in Secure Training Centres. SCHs should have the same discretion over temporary release for remanded children as they will do for sentenced children and do for those on welfare placements. Introducing new legislation which restricts temporary release in SCHs to sentenced children would be detrimental, particularly to the development of Secure Schools, which we know have ambitious plans for transitions into the community.[120] We are concerned that the Bill's Fact Sheet on this provision says temporary release is "not a relevant factor" for children on remand,[121] particularly given we know many children are being subjected to lengthy custodial remands due to court delays. **Clause 137 should be amended to add remanded children to clause 137 (1).**

- **Secure Schools (Clause 138)**
  We urge the government to publish more information on its plans for Secure Schools and the decommissioning of YOIs and STCs

We are aware of concerns that have been prompted by this section of the Bill around the lack of clarity on the status of Secure Schools, in particular what legislation, regulation and guidance will govern and oversee their activities. It has been confirmed to the AYJ by the Youth Custody Service and Oasis Charitable Trust, that Oasis Restore, the first Secure School pilot, will be registered as a Secure Children's Home and regulated by Ofsted. It has also been confirmed that 12-to-18-year-olds may be placed in Oasis Restore. We urge the Ministry of Justice to publish more information about their plans for Oasis Restore and how the model will operate in practice.

It remains unclear how the introduction of Secure Schools fits into a long term strategy for the Youth Secure Estate, particularly in light of this Bill introducing provisions that will increase the number of children in custody. The government's stated intention is for Secure Schools to replace Young Offender Institutions (YOI) and Secure Training Centres (STC), but they have declined to set out any timetable for doing so.[122] The projected increase in the number of children in custody due to provisions in this Bill means that demand for custodial placements is anticipated to grow. A clear strategy is necessary to ensure that Secure Schools will not meet this projected increase in future demand, without a resultant decommissioning of YOIs and STCs.

We also note with concern that the government has stated that Secure Schools will "initially" not accommodate children on welfare placements (under section 25 of the Children Act 1989).[123] Oasis Charitable Trust has confirmed Oasis Restore will only ever house children on justice placements, but further clarification is needed from the Ministry of Justice (and the Department for Education) about their future plans for the rollout of the Secure School model.

[1] 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:

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

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967787/MOJ_Sentencing_IA_FINAL_2021.pdf
[3] https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing
[4] https://committees.parliament.uk/work/1109/legislative-scrutiny-police-crime-sentencing-and-courts-bill/publications/
[5] https://www.gov.uk/government/news/radical-sentencing-overhaul-to-cut-crime
[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967787/MOJ_Sentencing_IA_FINAL_2021.pdf
[7] https://www.westmidlands-pcc.gov.uk/ground-breaking-report-evidence-shows-too-many-young-people-in-the-criminal-justice-system-suffer-from-violence-poverty-and-abuse-growing-up/
https://journals.sagepub.com/doi/abs/10.1177/1477370807077186
[8] Also relevant are the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Committee on the Rights of the Child General Comment on Children's Rights in Juvenile Justice
[9] We understand that the 'BAME' acronym is not a term embraced by all those it purports to represent. We use it in this briefing as it is a term understood and applied by those to whom our recommendations are directed. Where possible, we have identified the specific groups to which we refer.
[10] https://justiceinnovation.org/publications/disparities-youth-diversion-evidence-review
[11] http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4
[12] https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb3e042cfc978261c9f5d3f/1605623875774/AYJ+Response+-+Criminal+Justice+Policy+Review+2019.pdf

[13] https://journals.sagepub.com/doi/abs/10.1177/1477370807077186
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[14] https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb397c29c9013373f64138d/1605605317603/Ensuring+custody+is+the+last+resort.pdf
[15] https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb397c29c9013373f64138d/1605605317603/Ensuring+custody+is+the+last+resort.pdf
[16] Lists of amendments are available here: https://bills.parliament.uk/bills/2839/publications
[17] https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb397c29c9013373f64138d/1605605317603/Ensuring+custody+is+the+last+resort.pdf
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[19] https://www.magistrates-association.org.uk/Portals/0/Disproportionality%20in%20the%20youth%20justice%20system_MA%20report_August%202019.pdf
[20] https://justice.org.uk/wp-content/uploads/flipbook/46/book.html
[21] https://justice.org.uk/wp-content/uploads/flipbook/46/book.html
[22] https://bills.parliament.uk/bills/2831
[23] https://hansard.parliament.uk/commons/2021-02-23/debates/E44E4233-AED4-46D8-AD7C-D4F169099CF4/YouthCourtsAndSentencing
[24] https://hansard.parliament.uk/commons/2021-02-23/debates/E44E4233-AED4-46D8-AD7C-D4F169099CF4/YouthCourtsAndSentencing
[25] https://www.childrenssociety.org.uk/sites/default/files/2021-03/Disrupting-Child-Exploitation-Proposal.pdf
[26] https://www.nyas.net/record-numbers-of-children-going-missing-from-care-because-councils-are-not-listening/
[27] https://www.childrenssociety.org.uk/sites/default/files/2021-04/child-criminal-exploitation-definition-briefing.pdf
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[29] https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/both-sides-of-the-coin-police-nca-response-vulnerable-people-county-lines-drug-offending.pdf
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[35] 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
[36] These offences: https://www.legislation.gov.uk/ukpga/2020/17/section/249/enacted
[37] Also for 18-to-21-year olds, minimum custodial terms are moved to two-thirds for sentences of 7 years or more under s96 PCC(S)A 2000 or s262 Sentencing Code, for an offence in Part 1 or 2 of Schedule 15 for which a life sentence may be imposed; and for sentences between 4-7 years under s262 Sentencing Code for certain serious Schedule 15 offences. This has the potential to impact children who turn 18 between allegedly committing an offence and having their case heard.
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https://journals.sagepub.com/doi/pdf/10.1177/1748895806060664

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[50]
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967787/MOJ_Sentencing_IA_FINAL_2021.pdf
[51] 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
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https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb397c29c9013373f64138d/1605605317603/Ensuring+custody+is+the+last+resort.pdf
[53] https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/
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[55]https://justiceinnovation.org/sites/default/files/media/document/2021/disproportionality_diversion_lit_review.pdf
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[60] https://www.gov.uk/government/statistics/associations-between-ethnic-background-and-being-sentenced-to-prison-in-the-crown-court-in-england-and-wales-in-2015
[61] https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/youth-measures-in-the-police-crime-sentencing-courts-bill-equalities-impact-assessment
[62]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
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[64] https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/assault-on-emergency-workers-in-the-police-crime-sentencing-courts-bill-equalities-impact-assessment
[65] See examples of such treatment in Criminal Justice Alliance (2017) No respect: Young BAME men, the police and stop and search
[66] Available here from 20/05/21: https://www.ayj.org.uk/news-content/coalition-briefing-on-pcsc-bill-entrenching-racial-disparities
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[72] Available here from 20/05/21: https://www.ayj.org.uk/news-content/coalition-briefing-on-pcsc-bill-entrenching-racial-disparities

[73] UN Committee on the Rights of the Child General comment on children's rights in child justice http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4

[74] https://www.legislation.gov.uk/ukpga/1998/37/section/37 https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/44

[75] https://www.legislation.gov.uk/ukpga/1989/41/contents/enacted

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[91] https://petition.parliament.uk/petitions/579012

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https://static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/5fb7ac42559ae42d50c307ed/1605872708360/AYJ+Submission+in+Response+to+Sentencing+White+Paper+Childhood+Criminal+Records.pdf
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[111]

- Local authorities in England and Wales have a statutory duty to safeguard and promote the welfare of children, to make arrangements to improve the well-being of children, and to identify and support children with special educational needs or a disability (see for example Section 17, Children Act 1989; Part 2, Children Act 2004; and Part 3, Children and Families Act 2014).
- Local authorities have a statutory duty to prevent children suffering harm, neglect and abuse, set out in Schedule 2 of the Children Act 1989. In particular, for looked after children, paragraph 7 of Schedule 2 sets out the responsibility Local authorities have to take reasonable steps to prevent children entering the criminal justice system and care system, and to avoid the need for children to be placed in secure accommodation.
- Under section 47 of the Children Act 1989, where a local authority has reasonable cause to suspect that a child (who lives or is found in their area) is suffering or is likely to suffer significant harm, it has a duty to make such enquiries as it considers necessary to decide whether to take any action to safeguard or promote the child's welfare.
- Section 44 of the Children and Young Persons Act 1933 sets out the duty of a court to have regard to the welfare of the child, and to take steps to remove any child from undesirable surroundings.

[112] UN Convention on the Rights of the Child
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