

# **CUSTODIAL ARRANGEMENTS FOR CHILDREN IN NORTHERN IRELAND**

## **Advice to the Department of Justice**

### **Introduction**

NICCY would like to thank the Department of Justice ('the Department') for the opportunity to contribute its views on this issue during this pre-consultation phase. We have outlined below a number of brief responses to the issues identified by the Department in its letter to the Commissioner. In addressing the issues, reference had been made to relevant sections of the Youth Justice Review Implementation Plan (YJRIP), the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights instruments as well as a range of relevant research and inspection publications.

### **Characteristics and Parameters of a new Custody Order**

In drafting the specific characteristics and parameters of a new custody order, NICCY considers that service providers or those engaged in working directly with children and young people involved in the youth justice system may be best placed to advise the Department. For example, guidance in relation to a minimum threshold for a custodial sentence and the maximum duration of same will likely depend upon the circumstances of each individual case, the aggravating and mitigating features and the criminal record of the defendant. Therefore, advice should be sought from the Judiciary in this regard as they hold the responsibility for determining custodial sentences. However, NICCY has always stressed that children and young people should be diverted as far as possible from custody, as research has shown that community sanctions lead to a much more positive outcome.

In drafting proposals for the particular characteristics and parameters, NICCY would refer the Department to the UNCRC and other international instruments.

Of particular relevance is Article 37(b) of the UNCRC which states that 'the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used

only as a measure of last resort and for the shortest appropriate period of time.’ This is supported by the Riyadh Guidelines<sup>1</sup>, the Beijing Rules<sup>2</sup> and the Havana Rules<sup>3</sup>.

Article 6 of the UNCRC requires states parties to ensure to the maximum extent possible the survival and development of the child. Research has shown that the use of custody has very negative consequences for the child’s development and seriously hampers his/her reintegration in society. Once again, this demonstrates that the use of custody should be used only as a measure of last resort and for the shortest possible period of time. This is further discussed below.

NICCY would also direct the Department to Article 3 of the UNCRC which states that in all actions concerning children, the best interests of the child shall be a primary consideration. This is supported by General Comment No.10<sup>4</sup> which states that ‘all decisions taken within the context of the administration of juvenile justice’ must be taken in the best interests of the child. Furthermore, the Beijing Rules state that ‘the well-being of the juvenile shall be the guiding factor in the consideration of her or his case’<sup>5</sup> while the Havana Rules reiterate that a youth justice system ‘should uphold the rights and safety and promote the physical and mental well-being of juveniles.’<sup>6</sup>

NICCY would advise that in the context of youth justice, the traditional objectives of justice, such as retribution, must give way to rehabilitation and restorative justice objectives - hence the need for diversionary measures.

In considering alternatives to custodial sentences, NICCY would direct the Department to Article 40 of the UNCRC which provides that ‘a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.’

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<sup>1</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990, Article 46

<sup>2</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) 1985, Rule 17.1

<sup>3</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”) 1990, Rules 1 and 2

<sup>4</sup> UN Committee on the Rights of the Child, general Comment No. 10 (2007) Children’s rights in juvenile justice

<sup>5</sup> Rule 17.1(d)

<sup>6</sup> Rule 1

## Transitional Arrangements

A key principle which NICCY believes should inform the development of all transitional arrangements is that each young person's case be considered individually, in order that their unique circumstances and needs can be evaluated, and ongoing support and services appropriately tailored. The YJR Implementation Plan states that, 'the approach taken to young people will vary according to their status and nature of their custodial order' and notes that all young people are reviewed at a case review and a discussion regarding their placement at 18 years is mandatory. In supporting the fundamental principle of using custody as a last resort, NICCY would advocate, that wherever possible, consideration should be given to a young person who reaches the age of 18 while in custody, completing their sentence outside custody. Many young people detained in Woodlands are particularly vulnerable and have experienced multiple disadvantages. As an inspection of the Juvenile Justice Centre by the Criminal Justice Inspectorate (CJINI) records, 'research has consistently found that young people placed in custody are likely to have complex needs...are particularly vulnerable and may have mental health problems'.<sup>7</sup> Therefore it is particularly important to consider the impact of custody and release on their rights to health, wellbeing, safety and education or training, to ensure that the best interests of each young person are effectively protected.

Recognising that in some cases, it will be necessary for a young person to complete their custodial sentence beyond the age of 18 years, NICCY would strongly suggest that a range of issues taken into consideration. Clearly the transition from youth to adult justice is a critical time for young people who are in the justice system and must be managed carefully by justice professionals to ensure that the welfare of the young person is paramount. Aside from the transition in the justice system, this can be a significant transition point in many young people's lives, as they transfer from school to training or full-time work or if required, move from Child and Adolescent Mental Health Services (CAMHS) to adult mental health services. For young people who are care experienced, care orders will ordinarily expire at 18 and therefore they may be subject to increased risk as previously available support is withdrawn.

Transition to the adult justice system significantly increases the safeguarding risks to young people, therefore it is vital that these are identified as early as possible and relevant information regarding each young person shared between agencies efficiently, accurately and promptly.

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<sup>7</sup> CJINI, 2008, Inspection of Woodlands Juvenile Justice Centre, May 2008, Belfast: CJINI

In approaching the transition process, a range of key considerations should be addressed. These include the following:

- *Transfer of Information:* Ensure the effective and timely transfer of information between youth and adult justice systems, pertaining to each young person, to facilitate informed assessments, ensure specific risks are identified and appropriate provisions put in place to address their particular individual needs.
- *Effective inter-agency relationships:* Promote and support positive partnerships, where there is an accurate understanding of different roles and responsibilities and where potential weaknesses can be quickly identified and addressed.
- *Recognition of different institutional culture:* Transferring from Woodlands JJC, young people are likely to experience a significantly different culture in Hydebank Wood. Also on entering Hydebank Wood, as young adults, they will be expected to assume more responsibility in managing their daily routine. It is important they are prepared for and supported as far as possible, to deal with these changes.
- *Provision of Services:* Services provided for children and young people in the youth justice system aim to work holistically considering a range of needs, whereas adult services are more likely to focus on presenting behaviours, for example, mental health needs or drug addiction. This approach potentially may increase the risks to young adults and therefore underlines the importance of an effective exchange of information between the youth and adult systems. It is also vital that on transfer, there is effective continuity in the provision of health and wellbeing services required by individual young adults.
- *Engagement in Education and Training:* With different arrangements for education and training services in Hydebank Wood and a greater focus on vocational training, it is important that young people are encouraged and supported to participate. Where young people have demonstrated a particular interest or aptitude in a particular subject or area of learning, this should be encouraged and supported on transfer.
- *Importance of sustaining positive relationships:* NICCY's recent report into the role of significant adults in the lives of young people in contact with the criminal justice system, underlines the positive impact which trusted and respected adults can have, in providing mentoring, guidance and support<sup>8</sup>. Young people highlighted how one-to-one support was crucial in helping them to deal with issues such as personal and emotional development, education or training and diversion from the criminal

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<sup>8</sup> Martynowicz, A., Moore, L. and Wahidin, A. (2012). *"She's a Legend": The role of Significant Adults in the Lives of Children and Young People in Contact with the Criminal Justice System* Belfast: NICCY.

justice system. Where young people have developed positive relationships with ‘significant adults’ – family or non-family members, every effort should be made, with the support of justice professionals, to ensure these are encouraged and sustained.

### **Exceptional Circumstances**

NICCY contends that no young person under 18 years should be detained in Hydebank Wood under any circumstances. This has been NICCY’s longstanding position on this issue. Reports by CJINI, the Independent Monitoring Board, and the Prison Review Team all strongly recommended the removal of children and young people under 18 years from Hydebank Wood.<sup>9</sup>

Given the clear and unambiguous recommendations and conclusions of previous inspections and reviews and the view of NICCY and other key stakeholder bodies, NICCY would be interested to learn the origins of the Department’s question regarding the appropriateness of Woodlands for the custody of every child. For example, what kind of specific offences does Department believe would present ‘exceptional circumstances?’ Does the Department intend on issuing statutory guidance regarding the definition of ‘exceptional circumstances’ and the process through which approval is granted for the transfer of young people to Hydebank Wood? Will the Department consult upon same? Also have operational concerns been raised by management and staff in Woodlands, in terms of being able to accommodate young people who have committed particular offences?

NICCY believes there is a need to clearly establish that no young person is held in custody in any location other than Woodlands. Clearly whatever additional resources/supports are required to accommodate all young people in Woodlands should be provided with immediate effect.

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<sup>9</sup> Report on an unannounced short follow-up inspection of Hydebank Wood Young Offenders Centre, October 2011 <http://www.cjini.org/getattachment/bed0d54a-b267-4925-9555-4394af77c3b3/Hydebank-Wood-Young-Offenders-Centre.aspx>; Independent Monitoring Board, Annual Report 2011 2012, HMP & YOC Hydebank Wood <http://www.imb-ni.org.uk/publications/IMB%20HYDEBANK%20WOOD%20ANNUAL%20REPORT%202011-12.PDF>) and (Review of the Northern Ireland Prison Service, Final Report (October 2011) <http://www.prisonreviewni.gov.uk/final-prison-review-oct11.pdf>)

## Custody as a measure of last resort

NICCY strongly believes that the custody of any child or young person should be a measure of absolute last resort and instead, that alternative responses should be made and greater resources directed towards early intervention and diversionary measures. The Commissioner has consistently stated this opinion in her advice to government on youth justice matters. Where a decision is made to detain a young person, this should be only be made when it is regarded as the only remaining option and should be for the shortest period possible, as obligated by the UNCRC (Article 37(b)), and other international treaties, including the 'Beijing Rules' which state that '*the institutionalisation of juveniles should only be resorted to after consideration of alternative disposition measures.*'<sup>10</sup> The European Network of Ombudspersons for Children has also stated that 'The only legitimate reason for detaining children, before or after trial, must be that they pose a serious and immediate risk to others'.<sup>11</sup> Even in such cases, it is recommended that use of custody should be constantly reviewed and alternatives considered.

Along with many other agencies and organisations working with or behalf of children and young people, NICCY has highlighted serious concerns about the vulnerable nature of many children and young people who are in the youth justice system and the detrimental impact which detention can have on them. Inspection reports and research reports record the high proportion of young people who are care experienced, on the child protection register, have special educational needs or experience mental health difficulties.<sup>12</sup> Research has documented the negative impact of custody also suggesting that custody as a punitive sanction, may be relatively ineffective in tackling offending.<sup>13</sup> For example, Goldson (2010) suggests that 'Custodial sentences comprise the least effective and most damaging forms of intervention'.<sup>14</sup> Furthermore, young people themselves have questioned the effectiveness of custody in encouraging desistance from further offending.<sup>15</sup>

<sup>10</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules').

Adopted by UN General Assembly 1985.

<sup>11</sup> [http://www.crin.org/docs/Juvenile\\_Justice\\_final\\_statement.doc](http://www.crin.org/docs/Juvenile_Justice_final_statement.doc)

<sup>12</sup> Criminal Justice Inspection NI (2012) *Early Youth Interventions: An inspection of the contribution the criminal justice agencies in Northern Ireland make to preventing children and young people from entering the criminal justice system* Belfast: CJINI. Martynowicz, A., Moore, L. and Wahidin, A. (2012). "*She's a Legend: The role of Significant Adults in the Lives of Children and Young People in Contact with the Criminal Justice System* Belfast: NICCY.

<sup>13</sup> U Kilkelly, L Moore and U Convery, *In Our Care: Promoting the rights of children in custody* (Belfast: NIHRC 2002); U Convery and L Moore, *Still in Our Care: Protecting children's rights in custody in Northern Ireland* (Belfast: NIHRC 2006). Goldson, B. and Muncie, J. (2006) *Youth Crime and Justice* London, Sage.

<sup>14</sup> Goldson, B. (2010) 'Research-informed youth justice?' In: W. Taylor, R. Earle and R. Hester ed(s). *Youth Justice Handbook: Theory, policy and practice*. Cullompton, Willan.

<sup>15</sup> [http://includeyouth.org/i/Include\\_Youth\\_Submission\\_to\\_the\\_Youth\\_Justice\\_Review\\_Team\\_FINAL\\_19\\_Apr1\\_2011.pdf](http://includeyouth.org/i/Include_Youth_Submission_to_the_Youth_Justice_Review_Team_FINAL_19_Apr1_2011.pdf)

## Early Intervention

The UN Committee on the Rights of the Child has underlined the importance of all youth justice policies containing measures which seek to prevent young people coming into contact with the youth justice system. In considering how the potential for children and young people to experience custody might be minimised, youth justice provisions should focus on reducing the potential of young people to enter the formal criminal justice system in the first place. Significant emphasis should therefore be placed on appropriate and early intervention strategies, which have a child-focused approach, seek to promote children and young people's welfare and wellbeing, and address multiple dimensions of their lives, including family, education, social needs and health.

A number of international human rights instruments also underline the importance of early intervention. The Riyadh Guidelines state that, the 'well being' of children should be the focus of any intervention<sup>16</sup> and interventions should avoid stigmatising or criminalising children'. These also outline 'the need for and importance of progressive delinquency prevention policies' and they detail a series of fundamental principles which should underpin the design and delivery of early intervention strategies.

A series of key principles should inform the development of early intervention strategies in order to maximise their appropriateness and effectiveness. These include;

- Ensuring that measures are well planned, resourced and delivered;
- Instigating a joined-up, systemic approach across all participating agencies;
- Facilitating the effective sharing of information;
- Timing interventions for children and young people appropriately;
- Providing accountability to all stakeholders, including children and young people;
- Where family support is not available, ensuring that strong relationships between young people and respected and trusted adults are taken into account and encouraged;
- Seeking to ensure, as far as possible, consistency in the staff working with CYP, and;
- Having a clear emphasis on the reduction of risk but also aiming to increase protective factors and resilience.

A commitment to early intervention measures has been identified as a key theme of the YJR Implementation Plan, and the Delivering Social Change framework has also identified

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<sup>16</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines. Adopted by the UN General Assembly, 1990. Principle 4

early intervention as a key priority. Effective planning, delivery and resourcing of arrangements should therefore be taken forward, in order to ensure that effective *'joined up'* services and support reach and improve the circumstances of vulnerable children and their families. Ultimately, the effective delivery of these should reduce the numbers of CYP being detained in the youth justice system.

### **Diversionsary measures**

NICCY is wholly supportive of appropriate, well-resourced diversionsary measures which successfully re-direct children and young people away from the youth justice system. Again, international human rights conventions and instruments strongly advocate the use of diversion and international research illustrates evidence of improved outcomes for young people who are successfully diverted away from the formal criminal justice system. The 'Beijing Rules' state that diversion should be used, and that the 'practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence)<sup>17</sup>.

Diversion is listed as a key theme underpinning the Youth Justice Review Implementation Plan and is accompanied by a series of actions which seek to support a reduction in the number of children and young people entering the formal criminal justice system. It is important that key stakeholder groups continue to be advised of progress regarding these actions and updated on their impact and outcomes. Again, if children and young people are to be effectively diverted away from the criminal justice system and potentially from a custodial sentence, it is crucial that appropriate 'diversionary' actions are implemented effectively and promptly. NICCY would recommend that a range of key principles should underpin diversionary approaches. These should include ensuring that;

- Measures are proportionate;
- There is clarity regarding the aims and objectives and what will be required from the child or young person involved;
- Any targets or goals identified are achievable, and;
- Care is taken to ensure that the child or young person understands what s/he has signed up to.

### **Bail and Remand**

In addressing the issue of custody, it is imperative that the Department and other relevant agencies introduce appropriate provisions which carry through the recommendations in the Youth Justice Review report concerning bail and remand. These strongly advise the

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<sup>17</sup> Beijing Rules (1985) No.11, Diversion.

application of ‘relevant, proportionate and realistic bail conditions, but *only where necessary*’. NICCY, along with other organisations, has previously raised concerns about the appropriateness of the use of Woodlands as a place of safety under PACE and the lack of a range of alternative, suitable accommodation for young people which is readily accessible. The YJR Implementation Plan details actions in relation to Recommendations 8 and 9, which the Department (in collaboration with other agencies), are seeking to implement. These include introducing bail services at an earlier stage, the commencement of the Bail Information and Support Scheme, and the launch of a consultation on the Law Commission’s report on bail in criminal proceedings. While this progress is to be welcomed, it is recognised that the provision of alternative accommodation to young people on bail is a complex issue, requiring a number of government departments to prioritise the issue and to collaborate effectively in order to provide suitable and supported accommodation.