Written evidence from the Youth Justice Board for England and Wales (PCS0402)

Vision

Working to ensure a youth justice system that sees children as children, treats them fairly and helps them to build on their strengths so they can make a constructive contribution to society. This will prevent offending and create safer communities with fewer victims.

Our role

The Youth Justice Board for England and Wales (YJB) was established by the Crime and Disorder Act 1998 (section 41) to fulfil a number of statutory functions including:

- Advising the Secretary of State on the operation of, and standards for, the youth justice system;
- Monitoring the operation and performance of the youth justice system;
- Identifying and promoting good practice;
- Commissioning research and publishing information

Whilst the YJB is responsible for overseeing the performance of youth justice services including multi-agency youth offending teams (YOTs), the YJB does not directly deliver or manage these services.

Child First

The YJB's vision is for a youth justice system that treats children as children. Within this all youth justice services should:

1. Prioritise the best interests of children and recognise their particular needs, capacities, rights and potential. All work is child-focused, developmentally informed, acknowledges structural barriers and meets responsibilities towards children.

2. Promote children's individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.

3. Encourage children's active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.

4. Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system.

The above principles are firmly grounded in the evidence of what works in ensuring good outcomes for children and, in doing so, preventing offending by children. As such a Child First approach is not only beneficial to children but also to public protection.

A useful summary of the evidence base can be found in a recent independent research paper authored by Case and Browning (2021) which sought to interrogate the YJB's Child First principle against the available evidence[1].

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[1] CF research evidence-base report FINAL.pdf

Introduction

We were grateful for the opportunity to appear before the Joint Human Rights Committee on the 30th June and welcomes the opportunity to provide further written information to support the examination of the Police, Crime, Sentencing and Courts Bill.

We is the only official body to have oversight of the whole youth justice system and so is uniquely placed to guide and advise on the provision of youth justice services.

This submission does not seek to provide comment on all sections of the Bill, rather to provide additional evidence and detail to the Part 7 questions the committee put to us in the oral evidence session.

Over-arching comments on the Bill

Equality Impacts of the Bill

Article 2 of the United Nations Convention on the Rights of the Child (UNCRC) and Article 14 of the European Convention on Human Rights (ECHR), in addition to domestic equality legislation protect against discrimination.

Set against this backdrop the YJB is concerned that several of the proposals, particularly in Part 7 of the Bill, are likely to have a disproportionate impact upon children from Black and Mixed Ethnicity backgrounds. These include Clauses 100 (2) and (5), 103 and 104.

The government itself has recognised this impact within their equality assessment, however, they state that they 'believe that the principle of public protection and the overarching aim of the youth justice system to prevent offending by young people justify the changes outlined.'[2] However, no mitigation is provided to ease the disproportionate impact.

We additionally have some concerns about the potential impact of clauses earlier in the Bill to cause increased disproportionality within the youth justice system. Notably, Clauses 61-63 relating to "unauthorised encampments" risk drawing greater numbers of Gipsy, Romany and Traveller children into the justice system.

Children as Children

We are aware that a specific Children's Rights Impact Assessment has not been published in relation to the Bill. Our view is that an assessment of this kind would have been helpful in focusing minds upon the unique position that children hold in society and to frame relevant clauses from this perspective. It is otherwise understandably easy for children to become 'lost' in a Bill that is otherwise dominated by adults.

We were, however, pleased to hear the Government's response to a parliamentary question on this matter in February this year. This response reaffirmed the Government's commitment to protecting and promoting children's rights, and the Government's commitment to give due consideration to the United Nations Convention on the Rights of the Child (UNCRC) in the making of policy and legislation.

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[2] Overarching equality statement: sentencing, release, probation and youth justice measures - GOV.UK (www.gov.uk)

In line with our Child First principle, we would advocate all relevant clauses in the Police, Crime, Sentencing and Courts Bill to recognise all those who are under 18 as children, with distinct vulnerabilities and legal protections set out in law. This applies to whether a child is 10 or if they are 17 or anywhere in between. We must recognise children's needs are different from adults and that they are still developing neurologically; indeed, this development continues beyond the age of 18 into early adulthood.

We consider this aligns with Article 1 of the UN Convention on the Rights of the Child (UNCRC) which defines a child as any human being below the age of 18 years. We recognise that whilst the UNCRC defines all persons under 18 as children, it does not explicitly set out that all children must be treated equally regardless of age, however neither does it explicitly provide for differential treatment based on age. Given children's unique legal status we do not believe that there should be a distinction between younger and older children in a way that treats older children as 'closer' to adults. Research tells us that black boys, in particular, are often subject to 'adultification bias' and being seen as older, less innocent and more responsible for their actions.[3]

The evidence base tells us contact with the youth justice system, and formal intervention coming too early, can lead to children being drawn deeper into the system further down the line. This may be due to the child developing an identity associated with criminal activity and the limitations placed upon children as a result of a criminal record. There will also remain trauma and unresolved issues, both emotional and practical, that increase the likelihood of further offending. Consequently, we advocate children wherever appropriate being diverted from the youth justice system; not only for their benefit but for longer term public protection. Early help services are vital in providing children with the support that they require to lead positive constructive lives outside of the youth and adult justice systems. Our concern is that some elements of the Bill risk drawing additional children into the youth justice system and as such inadvertently creating longer term risk of re-offending and potentially public protection concerns.

However, prevention from offending requires a whole system approach. The Ministry of Justice face a real challenge in this; the challenge to identify a criminal justice response where this is not necessarily the answer to the problems we are seeking to solve. It is important to note the different purpose of the adult and youth justice system. The adult system includes an element of retribution and punishment. In contrast, the youth justice system works in the best interest of the child and preventing further offending. Our view based upon the available evidence points to the importance of safeguarding children and providing them with the foundations to grow and develop into responsible adults; no matter who they are or from where in society they may come. This responsibility sits elsewhere across government, with society and with us all more broadly.

Comments on Part 7

Part 7: Sentencing and Release

Clause 103: Change the minimum term starting points for murder committed as a child (currently 12 years). More serious offences, and those committed when the child

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[3] An Analysis of the Experiences of Black Boys and Black Girls in Predominantly White Schools – AFRI 0090 S01: An Introduction to Africana Studies (brown.edu)

is closer to the age of 18, will have higher tariffs, while younger children will have lower tariffs. (Full list of tariffs on page 91).

The YJB understands the rationale for introducing a tapering approach in recognising differences in cognitive maturity and in part agrees. However, where we differ is the age at which tapering should begin. Our view is that tapering should begin at age 18 to recognise the continuing development of individuals past this age to 25 or beyond, whilst preserving the unique status of children.

Recent policy changes in other areas recognise this continuation of development, maturation and continuing vulnerability beyond the age of 18. Such as extensions to entitlements for care leavers and children with special educational needs up to the age of 25. Indeed, the Government recently committed to raise the age at which you may legally marry to 18 in recognition of the vulnerability of 16- and 17-year olds who can currently marry if parental consent is given.

The proposed minimum tariffs are longer than 12 years (the current length) in nearly all circumstances, and in both age ranges, and in some cases are significantly higher. Whilst there are low numbers of children committing the most serious offences these are largely committed by 15-17-year olds (2019/20)[4]. We recognise that these are only starting points which judges can diverge from however they consider appropriate, so it is not possible to make a certain prediction about what sentence lengths judges will actually be handing down. However, we would not want to see the majority of these children receiving significantly longer sentences under this proposal for, in our view, questionable gain.

It is also worth emphasising that proportionally to their life any sentence imposed will be experienced more onerously by a child than by as an adult. 10 years for a child of 15 constitutes two thirds of their life but significantly less proportionally for an adult. This will impact upon an individual's experience and on them psychologically.

Clause 104: Reduce the number of opportunities for individuals who committed murder as a child to have their minimum term reviewed after they turn 18.

To place the issue that this clause is seeking to address in context; very small numbers of children are sentenced for murder. In turn the opportunities for review of the sentence are also few.

However, for the small numbers where review is available our view is that to remove this option risks limiting a child's/young adult's motivation to maintain positive change and a source of hope and in doing so risk disenfranchising them from society and increasing the risk of re-offending when finally released.

The sentence of detention at Her Majesty's pleasure reflects the lesser culpability of children who commit murder and their greater capacity for change. The clause amends the right to review based on age at sentencing, rather than age when the offence was committed. We believe this should be based on the age the offence was committed. We consider that children, in all cases, should be sentenced based on the age at which they committed the offence and not at the age they are when sentenced and the right to review should be in line with this. This is even more pertinent given Crown Court backlogs due to the pandemic.

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[4] youth-justice-statistics-2019-2020.pdf (publishing.service.gov.uk)

We are minded of the case of R v Smith where Lord Bingham stated in his judgment: "The requirement to impose a sentence of HMP detention is based not on the age of the offender when sentenced but on the age of the offender when the murder was committed, and it reflects the humane principle that an offender deemed by statute to be not fully mature when committing his crime should not be punished as if he were. As he grows into maturity a more reliable judgment may be made, perhaps of what punishment he deserves and certainly of what period of detention will best promote his rehabilitation".[5]

Clause 105: Change how discretionary life sentence minimum terms are calculated meaning that those serving a discretionary life sentence will not be eligible for Parole Board consideration earlier than those serving an equivalent Extended Determinate Sentence (EDS) (as is currently the case).

This proposal will only affect a small number of children and young people as only a very small number of discretionary life sentences are handed down to children (7 between 2015 and 2019). However, as with the previous proposal, it is not clear to us how a blanket increase in the length of time before release directly supports rehabilitation and resettlement. If parity is to be sought between sentences, we would advocate doing so by amending how Extended Determinate Sentences are released to allow for release in line with existing provision for discretionary life sentences.

Clause 106: Move the automatic release point to two-thirds (from halfway) only for those who receive a standard determinate sentence of 7 years or more for the most serious violent offences relating to homicide and for all serious sexual offences (with a maximum penalty of life) to ensure that 'time spent in custody reflects the seriousness of the offence committed'.

The YJB questions the evidence base and rationale underpinning this clause. As noted earlier, longer time in custody can be counter-productive and does not automatically result in improved outcomes and public protection.

The primary aim of the youth justice system is "to prevent offending by children and young persons" (sec 37(1) Crime and Disorder Act 1998). If we are to achieve this aim, particularly for those who may have committed more serious offences and have been sentenced to custody, we need to ensure constructive resettlement[6] rather than focus upon the length of time that the child spends in custody. Successful rehabilitation will depend on the level of support made available to the child during the part of their sentence spent in custody, and the focus of this. Meanwhile, increasing the length of time a child spend in custody may instead serve to remove a sense of hope and cement a pro-criminal sense of identity. These factors are likely to contribute to increased likelihood of re-offending upon release. We again need to remember that perceptions of time differ depending upon age. Seven years, for instance, is proportionally considerably longer for a child compared to their lifetime than to an adult.

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[5] House of Lords - Regina v. Secretary of State for the Home Department (Appellant) ex parte Smith (FC) (Respondent) and one other action (parliament.uk)

[6] How to Make Resettlement Constructive - YJB Document (September 2018) - Youth Justice Resource Hub (yjresourcehub.uk)

It is not clear to us how a blanket increase in the length of time before automatic release directly supports rehabilitation and resettlement. Extending the release point reduces the amount of time on licence with support and supervision in the community. This is particularly important considering the primary aim of the youth justice system is to prevent offending and re-offending by children.

Responses by question

1. **(Hazel Williamson) In your evidence to the public bill committee, you described how over the last 20 years youth offending teams are now dealing with "an increasingly complex group of children and young people, who have often experienced exploitation, in particular criminal exploitation, and significant trauma." Could you expand on this, and why do you think you are dealing with increasingly complex individuals?**

The YJB agree that children with complex welfare needs have always featured within the youth justice cohort. However, as a sector we have increasingly been successful in diverting children with lesser needs away from the youth justice system, and consequently the remaining children necessarily tend to be those with the most complex welfare needs.

Perhaps a pertinent question, on this basis is whether a criminal justice response can ever suffice in addressing these children's needs and in turn the potential risks that they may consequently present? Evidence points to the need to engage social care, health and education services in order to prevent offending. Indeed, it is often failures in the delivery of these necessary services that, in the first place, contribute to opportunities for offending behaviour by children. The MoJ and YJB publication Assessing the needs of sentenced children in the Youth Justice System 2019/20 report[7] highlights the complexity of need of children who have been sentenced. For example, over half of children were assessed to currently be, or have previously been, classified as a child in need; 72% of children had a mental health concern; and 71% of children had additional needs around speech, language and communication. Even more starkly 90% of children were assessed to have safety and wellbeing concerns.

Prevention of offending therefore requires a whole system approach rather than simply a justice response. To prevent offending, we need to look at the context in which it takes place.

2. **(Claudia Sturt) The Youth Justice Board stated their support for the changes to remand for children in the public bill committee, do you react in the same way to the changes to sentencing of child offenders in Part 7?**

As in the section above on our response to specific clauses in Part 7 of the Bill, we would question the evidence base to support the likely effectiveness of these changes. We welcome the current trends towards lower numbers of children within the secure estate and would like to see a continuation of this trend. Consequently, we support any measure to drive this trend, for example, the changes to remand. Several clauses in Part

[7] experimental-statistics-assessing-needs-sentenced-children-youth-justice-system-2019-20.pdf (publishing.service.gov.uk)

7 of the Bill, however, have the potential to increase numbers of children in the secure estate, which we consider disappointing.

The Committee are aware of the YJB's vision for a Child First youth justice system. This vision is evidence based and does not support the benefit of longer custodial sentences to preventing offending. Instead, the evidence points to a strengths-based approach, supporting the child in building a positive vision of what their future might look like, and offering them the opportunities to achieve this vision.

In accordance with UNCRC and its range of complementary children's rights instruments, the principle of best interests is applicable at every decision-making point across the youth justice system, from the child's first contact with the police through to post-court service involvement (Hamilton, 2011)[8]

Finally, we must see the possibility of longer custodial sentences for children within the context of the concerns regarding the safety and well-being of children within the existing secure estate. Whilst we absolutely recognise the good work of HMPPS Youth Custody Service to address these issues, holding children in an environment where they may feel unsafe is not conducive to rehabilitation.

3. **The UN Convention on the Rights of the Child states that children accused of offending must be "treated in a manner consistent with the promotion of the child's sense of dignity and worth" (Article 40) and that detention must be "used only as a measure of last resort and for the shortest appropriate period of time" (Article 37(b)) – do you think the changes to sentencing within the Bill meet these requirements?**

We consider that it is difficult to interpret the changes in sentencing proposed in Part 7 of the Bill being consistent with these articles. There is concern from both us, and the broader sector, that changes will mean that some children will spend longer periods in custody. There is, in our view, a lack of evidence to support this as being effective in preventing offending to adequately justify these measures.

Sentencing children to longer periods in custody in environments where they may feel unsafe is difficult to reconcile with promoting their dignity or worth as specified under Article 40 nor Article 37(b).

The Bill additionally creates a distinction between younger and older children. In our view, this is unhelpful and will mean that older children regardless of their characteristics, or circumstances surrounding the offence, will potentially spend longer in custody.

We are not aware of evidence that suggests longer sentences provide improved rehabilitation. Longer sentences, as well as disrupting positive influences and sense of belonging within a community, also serve to cement a 'pro-criminal' identity rather than a 'pro-social' identity. This sense of identity is pivotal to whether a child (or adult) will

[8] Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. New York: Children's Legal Centre and UNICEF.

re-offend upon release or in future years. If we behave in ways which reduce a child's sense of worth, their belief in a constructive future and 'label' them this simply serves to increase the likelihood of offending and, in turn, risks public protection.

Enabling a child to see their worth and sense of belonging works, not only to the child's benefit, but also to the benefit of society. A child with a pro- social identity is more likely to contribute positively to society- not just to not offend, but to offer real benefit. Based on the available evidence we consider that ensuring children's rights are met prevents crime; safeguards the public thereby creating less victims, as well as meeting our duties towards children.

4. **How do the provisions in the Bill that would require a court to impose a minimum sentence for certain offences unless there are "exceptional circumstances" relate to the Sentencing Council Guidelines that state "(W)hile the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused"?**

There is a distinct challenge for sentencers in balancing these provisions with the Sentencing Council Guidelines.

Our view is that it is important to see any offending behaviour in context and, as such, an individualistic approach is vital. Only if we understand the circumstances that led a child (or adult) to offend can we hope to prevent a repeat of such behaviour. Minimum sentences do not lend themselves well to this approach and consequently may, inadvertently, run contrary to the principal aim of the youth justice system- of preventing offending (Crime and Disorder Act (1998)).

There is policy support for our position, for example, guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice directs that responses to children in conflict with the law should always be constructive and tailored to the individual (Council of Europe, 2010)[9]

An example where this may cause an issue might be where a child has been groomed, exploited or coerced into carrying a knife. The child may have been in fear of their or a loved one's life if they did not consent. Unless these factors were considered exceptional, and this will be open to interpretation, we question whether it is right that these aspects to behaviour would not be taken into consideration in sentencing. In such an example a minimum secure sentence may serve to reinforce a pro-criminal identity, disenfranchise the child further and inadvertently increase the likelihood of re-offending. Whereas an individualistic approach could support removing the child from the circumstances that enabled their offending.

5. **Many children who commit offences are themselves victims of criminal exploitation - Would requiring courts to deviate from minimum sentences only in exceptional circumstances make it harder for courts to factor this into any**

[9] Child-friendly justice (coe.int)

sentencing decision where the right to liberty under Article 5 ECHR is at stake?

Minimum sentences create real challenges for sentencers in responding to individual cases and preventing offending.

The protection of the rights of all people are provided by the ECHR and the relevant articles of the UNCRC. Regarding children who offend Article 40 of UNCRC directs that justice responses to children must be appropriate to the child's age and well-being, be developmentally informed, in the child's best interests, and proportionate to their circumstances and the offence. We would consider this to mean that all children under the age of 18 are treated as children and, perhaps, steers sentencing away from the application of minimum sentencing.

Minimum sentences do not readily allow for the context of offending to be adequately considered; particularly where inadequate safeguarding of the child has contributed to their offending. They also limit sentencer's discretion even where discretion is appropriate, for instance, where the child may have been exploited by an organised crime group. Where a child is a victim of exploitation there needs to be a mechanism for support to be put in place for that child to move them away from a situation in which they are being exploited. If exploitation were not considered to be an exceptional circumstance, and it is not certainly uncommon, sentencers discretion to take this into account would be reduced.

Significantly the changes also risk reversing the overwhelmingly positive reduction in the number of children and young adults in custody over the last decade (Bateman, 2020)[10]. An evidence review carried out by the College of Policing found that there was no research evidence about the impact of prison sentences on knife crime and warned that prison sentences in general increase reoffending for children. The review concluded that multi-agency approaches which target the root causes of serious violence are most likely to work (College of Policing, 2019)[11].

6. **The Bill would change the starting points for tariffs for children who receive life sentences for murder, introducing more variation between younger and older children and bringing them in much closer alignment to sentences for adults. What do you think of this approach?**
    a. **Is this consistent with the Youth Justice Board's Vision "for a youth justice system that treats children as children"?**

In the UK we legally define children as being anyone under the age of 18. Consequently, we conclude that anyone under the age of 18 years should be treated equally as a child due to their distinct set of rights and vulnerabilities. Children will vary in their level of maturity, which may be independent of chronological age. Some 17-year-old children have lower cognitive abilities than other 14-year olds, for example. In particular, evidence tells us that a higher percentage of children in the youth justice

[10] state-of-youth-justice-2020-final-sep20.pdf (thenayj.org.uk)

[11] https://whatworks.college.police.uk/Research/Documents/REA_violent_reoffending.pdf

system experience special educational needs than in the general population, for instance, in 2019-20 71% of sentenced children were assessed as having speech, language and communication needs[12]. To treat different children differently upon age alone, even if in principle alone, would seem to us to risk detracting from the rights of older children even if they might be more vulnerable than some younger counterparts.

Children retain their unique legal status until they reach the age of 18 and, therefore, measures intended to safeguard children should remain fully in place until this time. As such, there are challenges in seeing the approach as being consistent with our vision[13].

As previously stated, whilst we recognise that the UNCRC defines all persons under 18 as children but does not explicitly set out that all children must be treated equally regardless of age, neither does it account for children not being treated equally. We do not believe regardless that a distinction between younger and older children is helpful.

We recognise the logic to the proposal for tapering of sentence length based upon age, however, would suggest that given legal definitions and what we know about the maturation process that tapering should begin at 18 years, if at any age, given this is the age where a child legally becomes an adult. Evidence tells us that developmental maturity is reached around 25 years and, as such, whilst even 18 is an arbitrary age, it does hold legal significance (Prior et al, 2011)[14]. Recent policy changes in other areas recognise this lack of maturity and continuing vulnerability beyond the age of 18, such as extensions to entitlements for care leavers and children with special educational needs up to the age of 25.

7. Clause 106 would increase the amount of time a child given a determinate sentence for certain serious offences would spend in custody and reduce the amount of their sentence they would spend being monitored in the community- what effect is this likely to have on rehabilitation and reoffending?

a. Does it align with the sentencing council guidance that among the purposes of the youth justice system is to "promote re-integration into society rather than to punish"?

As stated previously, we are unaware of an evidence base to support the benefit of longer custodial sentences to preventing offending. We believe there are likely to be risks associated with increasing the time spent in custody and reducing the amount of time monitored and support in the community. These are likely to adversely impact on positive outcomes and public protection.

We know that resettlement of children following custody is frequently difficult, often any positive features of their lives will have been disrupted by this thereby creating new

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[12] experimental-statistics-assessing-needs-sentenced-children-youth-justice-system-2019-20.pdf (publishing.service.gov.uk)

[13] YJB Strategic Plan 2021 - 2024 (publishing.service.gov.uk)

[14] See for example (PDF) Maturity, young adults and criminal justice: A literature review (researchgate.net) or https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf

challenges for children. If we are to prevent re-offending it is crucial that resettlement is constructive.

In September 2018, the YJB published How to make resettlement constructive which sets out the evidence base for successful resettlement of children post custody. Constructive Resettlement translates the research on resettlement into a common policy and practice framework for all agencies to work with a consistent understanding, language and aim. We define Constructive Resettlement as collaborative work with a child in custody, and following release, that builds upon their strengths and goals to help them shift their identity from pro-offending to pro-social. This approach enables all agencies to adopt the ways and principles of working that are necessary to improve outcomes and ultimately reduce re-offending. Constructive Resettlement is evidence based and predicated on the work of Beyond Youth Custody[15]

In turn it is difficult to view Clause 106 as being aligned with the specified sentencing council guidance. In our view promoting reintegration is unlikely to be achieved through increasing the length of time in custody. Neither will reducing the period during which a child receives support in the community. For example, children without on-going support may struggle to maintain education placements upon release, particularly after a prolonged period in custody. Failure to do so will increase the likelihood of reoffending.

In turn evidence suggests release from custody itself as being a traumatic event for many children[16] and one which they need support in managing.

Should the committee wish to learn more about the evidence base regarding effective and constructive resettlement we would be happy to facilitate this. Professor Neal Hazel, one of our Board Members, has significant expertise in this area.

8. The justification given for reducing the right to review of someone sentenced to Detention at her Majesty's Pleasure is that the process "can be extremely distressing for the families of victims" who are contacted every time a review is initiated – do you think the process at the moment is unreasonably and unnecessarily distressing for the families of victims?

a. Is there anything that could be done other than denying an offender the right to review, an option that only 10% take up, and potentially engaging their right to liberty and security, protected under Article 5 ECHR?

We absolutely recognise the pain that the families of victim's endure through the commission of crimes, not only those crimes which attract a sentence of Detention at Her Majesty's Pleasure. No sentence, no matter how long, can mitigate the pain of losing a loved one, particularly if they are lost to them in violent circumstances.

Our view is that victims' families deserve the greatest support to work through the multitude of complex thoughts and feelings that they will inevitably have. They should be supported with empathy and compassion. In this vein, a more helpful means of managing the distress to the families of victims might be high quality, empathetic

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[15] Beyond Youth Custody - Developing best practice in the resettlement of young people leaving custody

[16] BYC-Custody-to-community-How-young-people-cope-with-release.pdf (beyondyouthcustody.net)

communication which is negotiated and agreed with the bereaved family as to what level and frequency of consultation or information they wish for, and tailoring updates accordingly. If communication is conducted honestly, empathetically and professionally this is likely to be effective in managing potential distress as much as it might in the circumstances. Communication should be clear, purposeful and have set boundaries rather than to be driven by process.

The Howard League[17] notes that minimum term reviews are infrequent but important: they offer a rare source of hope and can powerfully motivate children and young adults to make and maintain positive change. This would be a view we would agree with and in turn note the positive potential for protecting the public. This is important context to bear in mind.

9. Under the changes to Detention at Her Majesty's Pleasure reviews in the Bill, the Secretary of State would retain a role, rejecting applications he considers to be 'frivolous or vexatious' – should the Secretary of State be making this decision rather than the courts?

We recognise the challenges that the Secretary of State, as an elected member, may face in making such decisions. Pressure may arise through media outlets, sections of society, and possibly constituents, which may serve to compromise their independence. Whilst the Secretary of State will, of course, be live to these pressures they remain pressures all the same and may contribute to decision making not entirely in the best interests of the child. These factors are mitigated if the court retains this function.

There might be a greater argument for the Secretary of State to retain this role if as tradition maintains that the person in this post is a qualified legal practitioner. However, less of an argument if not.

10. Do you think the UN Convention on the Rights of the Child should be incorporated into UK law? How would that affect the rights of children caught up in the criminal justice system?

The YJB would welcome the incorporation of the UNCRC into UK law, which would bind the courts when making legal judgements. Presently courts may be persuaded by the UNCRC but are free to make decisions that are incompatible with the UNCRC. Incorporation would, in our view, offer children additional safeguards and protection.

We note the steps that Wales have taken through the Rights of Children and Young Persons (Wales) Measure 2011 which mean ministers have a due regard duty to the UNCRC. However, there are is no due regard duty on public bodies. We are also aware of steps that the Scottish government have taken this year regarding the introduction the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill to directly incorporate the UNCRC into Scots law. However, recognise that it is not possible to incorporate rights reserved to the UK Parliament.

[17] Page 5 2021_05_27_PCSC_Bill_Howard_League_commitee-stage-briefing.pdf (howardleague.org)

Children and young people aged 18 and under, have the right to be safe, to play, to have an education, to be healthy and be happy. We consider that this is to the benefit of, not only children, but broader society. If we meet children's rights in this way, they are more likely to grow into productive adults who contribute constructively to society. Consequently, we will prevent offending by children, which is the principle aim of the youth justice system.

Rights are only helpful if they can be enforced, for example, by incorporating into domestic law. This would send a strong message to children, and all those who work in the best interests of children, about their value and the worth that we attribute to them.

07/07/2021