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Juvenile Detention and Justice



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EXTERNAL PRISON OVERSIGHT AND
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The Expert Network on External Prison Oversight and Human Rights is committed to bringing together various agencies responsible for external prison oversight to share information and exchange best practices and lessons learned.

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Welcome Message from the Chair



Dear Members,

Though juvenile detention is not under the mandate of my ombuds office in Canada, in 2017 my Office partnered with the now defunct Ontario Youth Advocate Office to investigate how younger adults (18 to 21) were treated in federal custody. As a result of this collaboration, we published a joint report titled, [Missed Opportunities: The Experiences of Young Adults Incarcerated in Federal Penitentiaries](#). Among other things, we found that many of those interviewed had served a previous sentence in a youth facility and seemed largely unprepared for life in adult penitentiaries. In our final analysis, we argued that during their period of detention, correctional staff should not miss the opportunity to connect with the young people under their care and custody.

“Many of these young individuals will spend a considerable part of their formative development in a prison environment. Positive adult role models and mentors are key to helping young adults develop bonds and relationships to facilitate the transition from prison to the community.”

Unfortunately, as the articles in this newsletter will demonstrate, the incarceration and mistreatment of youth in-custody is still prevalent across international jurisdictions that claim to uphold and adhere to human rights standards. I would like to thank the following authors for their excellent contributions to this issue:

- **Andreea Lachs***z*, *PhD student, University of Technology, Sydney.*
- **Eamon Ryan**, *Inspector of Custodial Services, Western Australia.*
- **Christine Wyatt**, *Office of the Inspector of Custodial Services, Western Australia.*
- **Ryan Quinn**, *Office of the Inspector of Custodial Services, Western Australia.*
- **Wendy Sinclair-Gieben**, *HM Chief Inspector of Prisons, Scotland.*
- **The John Howard Association of Illinois**, *USA.*
- **Simon Rolston**, *Professor and writer, Canada.*
- **Angus Jones**, *HM Inspectorate of Prisons, England and Wales.*

WELCOME

I must take a moment here to share some sad news. On May 26, 2023, Dr. Francisco Mugnolo (Penitentiary Prosecutor of Argentina) passed away at the age of 81. It is with a heavy heart that I extend my sincerest condolences to our friends at Procuración Penitenciaria de la Nación.

Dr. Mugnolo's remarkable dedication and unwavering commitment to protecting the rights of persons deprived of liberty was an inspiration to us all. He has undoubtedly left an indelible mark on the field. He also played a significant role in establishing and nurturing collaborative efforts internationally, such as the International Cooperation Agreement signed by our two offices in October 2019. It was truly an honour to have met Francisco, and I will forever cherish the memory of our time together.



As we mourn the loss of a remarkable individual, it is important to recognize that Dr. Mugnolo's legacy will continue to live on through the important work we undertake. We honor his memory by redoubling our commitment to the cause he held dear.

With Gratitude,

Ivan Zinger (J.D., Ph.D.), Correctional Investigator of Canada.

An Invitation to Imagine a World without Youth Prisons



Andreea Lachs, PhD student, University of Technology Sydney.

I acknowledge the traditional custodians of the land on which I wrote this piece, the Darramuragal/Darug people, and their continuing connection to Country and Culture. I pay my respects to their Elders past and present.

A warning to readers that this article includes descriptions of violence against children. Aboriginal and/or Torres Strait Islander people are warned that the name of a deceased Aboriginal person is used.

A Note on Language

Readers may query the choice to refer to youth detention facilities as youth prisons. Some might consider it purposefully inflammatory. But while regimes may differ, and there may be some distinctions in the infrastructure, there is often not the sort of meaningful difference between a youth detention facility and an adult prison to warrant a distinction in nomenclature. Granted, there are exceptions where there are significant differences, to which I refer below. However, overwhelmingly, youth detention facilities are places where security in the form of guards, concrete, steel and razor wire reigns supreme. Language matters, and incarcerated children deserve us, as we bear witness, to be truthful when talking about them and their experiences, and to accurately represent them.

A System Perpetually in “Crisis”

For the entirety of my career, the Australian youth prison system has been in “crisis”. This has been complemented by a confected crisis that has been driven by the focus of (some) media outlets on stories of so-called “youth crime waves” (although the [evidence does not support such hyperbolic assertions](#)). On the other hand, media coverage has played a critical role in exposing abuses in youth prisons. Government responses frequently lead to expensive inquiries and royal commissions during which children (or

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adults who were incarcerated when they were children) share their painful testimonials, and extensive findings and expert recommendations are produced. Many of these ultimately gather dust. The crisis that gets less attention, or at least takes up less space in community discourse, is the criminalisation of children; especially racialised children. For example, in [2020-2021](#), 337 of 640 incarcerated children in Australia were Aboriginal and/or Torres Strait Islander. In the Northern Territory this number was 31 of 32.

The demonisation of children

While there are some nuanced and powerful representations of children's experiences and strengths, like the documentary, [In My Blood It Runs](#), the demonisation of children in the mainstream media and social media has been persistent. Commentary in the [UN Standard Minimum Rules for the Administration of Juvenile Justice](#) (the *Beijing Rules*) emphasises that “[y]oung persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as ‘delinquent’ or ‘criminal’.” As a protective mechanism, both the Beijing Rules and the [UN Convention on the Rights of the Child](#) provide children in contact with the criminal legal system the right to privacy.

The impact of demonising children by the media and on social media should not be underestimated. For example, in recent months, following accusations on social media, [“Queensland’s police commissioner has warned there could be fatal consequences if vigilantes continue to take the law into their own hands in response to youth crime.”](#) In 2018, [County Court Chief Judge Kidd](#) took the unusual step, for a judicial officer, to make public comment on media coverage in Victoria:

“If you are an African offender, and certainly if you're an African youth of South Sudanese background from the western suburbs of Melbourne, rest assured your case will be reported upon. The media choose to report upon those cases. That creates an impression that we, that our work, a very significant proportion of our work is taken up with African youths from the western suburbs of Melbourne. That's a false impression.”

Othering children

Othering children, especially racialised children, can impact public perception, our ability to empathise, and, ultimately, it shrinks our collective imagination on how to best

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support children who engage in harmful behaviours. It limits our capacity to address the root causes of offending behaviour. In its [general comment No. 24 \(2019\) on children's rights in the child justice system](#) (the General Comment), the UN Committee on the Rights of the Child states that “negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches.” The General Comment highlights how stigmatisation “is likely to have a negative impact on access to education, work, housing or safety. This impedes the child’s reintegration and assumption of a constructive role in society.”

Children’s vs victim’s rights – A false dichotomy

While frequently cited as a reason against moving away from using youth prisons, the argument of children’s rights versus victims’ rights is a false dichotomy. Many incarcerated children have histories of trauma and contact with the child protection system. The [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#) heard evidence that “a significant proportion of children and young people with disability in youth detention have endured a range of adverse experiences in childhood that result in trauma. The youth detention system is ill-equipped to respond.” Testimonies “highlighted the relationship between criminalisation and factors such as homelessness, socio-economic disadvantage and trauma resulting from sexual assault or domestic and family violence.” The [Australian Institute of Health and Welfare](#) released data in December 2022 that showed that “[j]ust over 1 in 4 (24%) young people in detention had been in out-of-home care” and “of those in detention who had been in out-of-home care, 47% had 5 or more placements.”

The many attempts to reform the youth justice system

In Australia, over three decades ago, the [Royal Commission into Aboriginal Deaths in Custody](#) was established after [John Pat](#), a 16 year old Yindjibarndi boy, died in a police station from a head injury sustained during a fight between off-duty police officers (who had attended a union meeting and had been drinking) and a group of Aboriginal people. There have been myriad attempts to reform the youth and criminal legal systems since then. In the last few years, there has been the [Royal Commission into the Detention and Protection of Children in the Northern Territory](#), following the [Four Corners exposé](#), and the [Independent Review of Ashley Youth Detention Centre in Tasmania](#). There has been [litigation in Victoria regarding the detention of children in Barwon adult prison](#), litigation

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in Western Australia regarding the excessive use of lockdown of children at Banksia Hill (with [lockdowns continuing despite a Supreme Court finding that the use of lockdowns unlawful](#)), [multiple class actions in relation to Banksia Hill](#) in Western Australia, a class action in relation to [Ashley](#) and one in relation to the Northern Territory's [Don Dale](#). There have been multiple investigations into the use of [seclusion](#) and [solitary confinement](#) in youth prisons, [inquiries into the over-representation of Aboriginal and Torres Strait Islander children](#) in the criminal legal system, [addressing the overrepresentation of Aboriginal people](#), and inquiries into the [criminal legal system more generally](#). Of course, there is [Australia's first Truth Commission, Yoo-rrook](#), which is interrogating the criminal legal system in Victoria.

Last year, the UN Committee Against Torture stated, in its [Concluding Observations](#) on Australia, that it was seriously concerned by “[r]eports that children in detention are frequently subjected to verbal abuse and racist remarks and restrained in ways that are potentially dangerous...[and] [t]he practice of keeping children in solitary confinement, in particular at... Banksia Hill... Don Dale... and... Ashley... which contravenes the Convention and the Nelson Mandela Rules.”

And yet, despite the efforts of all of these corrective mechanisms, allegations keep coming to light, including an exposé last year on [Banksia Hill](#), with incarcerated children on the roof at Banksia Hill this year [being labelled terrorists by the adults charged with their care](#) and arrested by [armed police](#). These incidents at Banksia Hill should be appraised in the context of a [Supreme Court Judge](#) describing how one child’s “experience of detention at Banksia Hill has been one of prolonged systematic dehumanisation and deprivation, it has had no rehabilitative element or effect.” [Another report, published in June](#) 2023, stated:

“...following our last full inspection of Banksia Hill in 2020, the experience for young people in custody in Western Australia deteriorated significantly to the point of crisis. By late 2021, we were concerned enough to take the unusual step of conducting an unscheduled inspection... Through ongoing monitoring, we observed some welcome improvements... However, from October 2022 through to the time of the inspection, the centre again de-stabilised and we now consider the situation to be critical.”

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Who are the Children in Youth Prisons?

The [UN Global Study on Children Deprived of Liberty](#) found:

“Children with disabilities are significantly overrepresented in detention in the context of administration of justice and institutions. It is estimated that one out of three children in institutions is a child with disabilities.”

Children with disabilities are certainly overrepresented in youth prisons in Australia. For example, [research in Western Australia’s Banksia Hill](#) found that 89% of incarcerated children “had at least one form of severe neurodevelopmental impairment, while 36% were found to have Fetal Alcohol Spectrum Disorder” (FASD). The [report described FASD](#) as follows:

“Fetal alcohol spectrum disorder (FASD) is characterised by severe, pervasive neurodevelopmental impairment due to prenatal alcohol exposure. Impairment in executive function, memory, language, learning and attention in young people with FASD can result in a range of difficulties *including understanding cause and effect, learning from past experiences and decision making. These impairments can, in turn, lead and contribute to problems at school and with employment, mental health, social exclusion, substance misuse and early and repeated engagement with the law.*” (emphasis added)

A [report commissioned by Speech Pathology Australia](#) states that:

“...in comparison to the general population, difficulties with receptive and expressive language skills have been identified at higher rates in young people in custody... Clinically these may manifest in difficulties with listening and attention, vocabulary and grammar, higher-level abstract language, identification and labelling of emotions, telling and retelling of stories and events and social communication and interaction... People with [speech, language and communication needs] will be disadvantaged at multiple points in their interactions with the justice system... As Speech Pathology Australia has previously noted, ‘failure to recognise the high levels of communication problems in individuals within the justice system may contribute to increased costs associated with recidivism’. The earlier intervention occurs, the greater the benefits to the individual and society are likely to be.”

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Of course, as noted above, Aboriginal and/or Torres Strait Islander children are grossly overrepresented in youth prisons. In the years I worked at the North Australian Aboriginal Justice Agency (NAAJA), delivering legal education on their rights to incarcerated children in the Northern Territory's Don Dale, I not once came across a non-Indigenous child. And while it is crucial to consider socio-economic, health and other factors, it is not possible to discuss overincarceration of racialised children without discussing systemic racism.

According to Professor Thalia Anthony, [systemic racism](#) is:

“[w]hen laws, policies and practices across agencies work together to produce a discriminatory outcome for racial or cultural groups. While the laws, policies and practices may appear to be neutral, they result in uneven or unfair outcomes. Systemic racism is different to individual or interpersonal racism, which takes place when individuals hold racist views and treat people differently based on those views, for example, hate speech or racial abuse. Laws, policies and practices can contribute to systemic racism, even if this is not acknowledged or recognised by the authorities that develop and implement them.”

The [Royal Commission into Aboriginal Deaths in Custody's findings](#) are [still relevant today](#):

“When Aboriginal people say they lived with racism every day they are not meaning to say that all day every day they met non-Aboriginal people who insulted them and called them names (some of the time, of course, they did), but that every day the system of inequality put them down. They are talking about the laws, the systems that were put in place pursuant to the laws which operate every day whether the people who operate the system are well meaning and helpful or personally racist.”

But Can't We Just Reform the Youth Detention System?

Perhaps the answer to that question can be found in the following comment from the [UN Global Study on Children Deprived of Liberty](#):

“Placing children in institutions and other facilities where they are, or may be, deprived of liberty is difficult to reconcile with the guiding principles of the Convention on the Rights of the Child... Deprivation of liberty means deprivation of rights, agency, visibility, opportunities and love. Depriving children of liberty is depriving them of their childhood... The findings show how children deprived of

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their liberty experience fear, isolation, trauma and harm in addition to discrimination, stigma and disempowerment... The research, informed by over 7,000 scientific articles, reveals that the particular circumstances of detention are directly harmful to the mental and physical health of children across all situations of deprivation of liberty.”

In fact, the [UN Special Rapporteur on Torture](#) has concluded that “avoiding depriving a person of [their] liberty is one of the most effective safeguards against torture and ill-treatment”, and the [UN Committee on the Rights of the Child](#) has already flagged the minimum age for detention as 16 years old. Given that the Committee justified this conclusion with reference to the fact that “developmental and neuroscience evidence indicates that adolescent brains continue to mature *even beyond the teenage years*, affecting certain kinds of decision-making” (emphasis added), it would make logical sense to increase the minimum age of detention to 18 years old. While it should not be the deciding factor in whether to continue to use youth prisons, the [costs of running youth prisons](#) in Australia alone was \$723 million in 2020-2021 (up from \$481 million in 2014-2015).

While we certainly can reform youth prisons, perhaps we should first ask, should this be our medium to long-term objective? Should we continue advocating for improving a system that is inherently harmful for children, or should we take a step back and reassess whether depriving children of their liberty when they engage in harmful behaviours is an appropriate response at all?

Of course, we have a responsibility to improve conditions and treatment of incarcerated children for as long as youth prisons and youth detention exist. Children’s human rights must be protected, always keeping in mind that [international human rights instruments](#) provide for the *minimum* standards. In the interim, there are certainly examples of better practice that can be considered, like the detention centres run by the [NGO Diagrama in Spain](#), which I was able to visit a few years ago. However, care must be taken that reforms to youth detention systems do not lead to building new youth prisons, as we have seen in [Victoria](#).

At the facilities run by Diagrama, the staff were not overwhelmingly security guards, but instead had relevant qualifications and expertise in working with children, including social workers, educators and psychologists, who built genuine relationships with the children. The focus was on building community and connection rather than security and

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restraints, and I witnessed genuine warmth, respect and affection between staff and children. The day was filled with meaningful activities, such as school, vocational training, physical activities and mindfulness exercises, and refurbishing and decorating the detention facility. The detention facilities were home-like, rather than cells, with colourful, beautiful, peaceful surroundings.

In 2018, Diagrama reported having 1,498 young people in their care across 21 centres, of whom 55.83% were in custody for offences of violence against people or robbery. The average record of physical restraints per year was 7.43 per centre, and the last riot was in 2001. Diagrama-run centres are cheaper than government run ones, and have lower rates of recidivism (a 2015 report by Dr. Antonio Velandrino Nicolás found that 71.8% of young people did not reoffend after being held in Diagrama-run centres vs 49.7% for government-run centres).

When we asked children what the best thing about the centre was, they responded that it was learning how to better resolve conflict, learning about values and principles and getting healthy. Children were able to go out into the community to work and stay with their families. Crucially, they were provided opportunities to try, to fail, and to succeed.

A Way Forward Should Not Include Preventative Detention of Children

Raising the age of criminal responsibility is a distinct issue to ending the use of youth prisons in the criminal legal system. However, [governments replacing existing systems with preventative detention \(detaining children who are at risk of harming themselves or others\)](#) as an alternative strategy, with the view to address community fears of children engaging in harmful behaviours with impunity, is certainly a risk to both reforms.

In building systems of care and support for children, the [Convention on the Rights of the Child](#) makes clear that the best interests of the child must be a primary consideration. As the debate about raising the age of criminal responsibility continues in Australia, some have proposed an alternative whereby children at risk of harming themselves or others are subjected to preventative detention. However, we should heed the guidance from the General Comment offered by the [UN Committee on the Rights of the Child](#) in relation to early interventions directed at those below the minimum age of criminal responsibility. While it envisages instances where children might be placed in out-of-home-care in

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exceptional circumstances, including residential care (although the preference is a family setting), it does not endorse the deprivation of liberty.

Article 9(1) of the [UN International Covenant on Civil and Political Rights](#) states that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The Human Rights Committee, in its [General comment No. 35 on Article 9 \(Liberty and security of person\)](#) has cautioned that administrative detention “not in contemplation of prosecution on a criminal charge” poses “severe risks of arbitrary deprivation of liberty”, that should only be used in “the most exceptional circumstances”. Guidance on what might amount to arbitrary detention can also be found in the mandate of the [UN Working Group on Arbitrary Detention](#):

“[t]he notion of ‘arbitrary’ includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary. ‘Arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of *inappropriateness, injustice, lack of predictability and due process of law*” (emphasis added).

It is arguable that replacing a lower age of criminal responsibility and/or the use of youth prisons with preventative detention, even if regulated by legislation, could breach the human rights of children by failing to adhere to the requirement that the best interests of the child be a primary consideration and potentially amounting to arbitrary detention. Instead, alternative responses should be considered.

What are the Alternatives?

There are alternatives to youth prisons, most importantly in the *prevention* space and also in responding to harmful behaviours, *after* the fact. Youth prison addresses neither the root causes of offending nor the criminalisation of children. All that can be said is that children are punished and they are kept “off the streets” for a period of time, which, at best, *might* bring some measure of comfort to the victim of the harmful behaviour, but at the expense of both the child’s wellbeing and community safety. The harm of incarceration to children is, no doubt, a criminogenic factor. In fact, so is the criminal legal system as a whole (although this paper focuses on incarceration). The Australian Council of Attorneys-General’s working group on the Age of Criminal Responsibility [Final Report](#)

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acknowledges the breadth of research showing that “the justice system is criminogenic, and that the younger a child is when first engaging with the youth justice system, the more likely it is that they will go on to reoffend and become entrenched in the system.”

Addressing root causes would include:

- addressing [systemic racism within law enforcement](#) and the failures of the child protection system (given the [overrepresentation of children who are in care, who are also in contact the criminal legal system](#));
- [ensuring stable housing for families](#);
- [adequate welfare payments](#);
- [equitable access to education](#); and
- accessible healthcare, including assessments for disability and the provision of appropriate supports, addressing trauma and substance use (moving toward [harm reduction models](#)), and [culturally appropriate healthcare free from racism](#).

Of course, a [strengths-based approach](#) would also be key, as is strengthening protective factors like [connection to culture](#).

Furthermore, alternative responses already exist or could be developed or tailored for different contexts, including for the more serious harms often cited by those who oppose raising the age of criminal responsibility or relegating youth prisons to a thing of the past. As an alternative, [restorative processes](#), which rather than retribution, “[focus] primarily on repairing the damage caused by the wrongful action and restoring, insofar as possible, the well-being of all those involved”, should be considered. The benefits of restorative justice processes have been described by the [UN Office on Drugs and Crime Handbook on Restorative Justice Programmes](#) as follows:

“...the formal justice process is not designed to allow victims to describe the nature and consequences of the crime, let alone to ask questions of the offender. The restorative justice model can support a process where the victims’ views and interests count, where they can participate and be treated fairly and respectfully and receive restoration and redress. By participating in the decision-making, victims have a say in determining what would be an acceptable outcome for the process and are able to take steps toward closure.”

That is not to say that there are no risks associated with a restorative justice process, particularly for [serious matters that involve inter-personal violence](#), but there

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does exist guidance for developing an appropriate mechanism. The [UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters](#) state: “[r]estorative processes should be used only with the free and voluntary consent of the parties,” that all parties “should be fully informed of their rights, the nature of the process and the possible consequences of their decision,” and all parties should have access to legal advice (and parental assistance for children). There [must also be](#) “a rigorous process for assessing suitability”, the person who has caused the harm must accept responsibility, the “facts must be agreed to”, confidentiality must be maintained, and there must be proper consideration of timing, the “motivation for participation in the process,” and existing power imbalances.

The [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#) states that “[i]nformal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or [I]ndigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.” Crucially, participating communities must be involved in the development of restorative justice processes. The [Victorian Aboriginal Legal Service](#), in its submission to the Victorian Law Reform Commission project on improving the response of the justice system to sexual offences, supported the Aboriginal Justice Caucus’ recommendation that “design, development and implementation of these justice responses will take time, and must be community led. Responses must be aligned with Aboriginal Community values, victim-centred and responsive to the community in which it is developed.” The risk of restorative justice processes being shaped by Western, homogenised views of Indigenous peoples and Indigenous justice processes (such as the one described directly below) can only be mitigated through Indigenous communities being supported to tailor and implement their own programs.

While working at the North Australian Aboriginal Justice Agency (NAAJA), I had the privilege of being invited to witness the use of [Warlpiri Ngalkinpa \(principles of Warlpiri conflict resolution\)](#) by Kurdiji Elders in Lajamanu, a remote Aboriginal community in the Northern Territory:

“A conflict between two groups of male youths one evening, ostensibly over basketball, escalated over the following days involving more and more family members from each side of the conflict and threatening to evolve into a serious community-wide dispute. Those involved were aged between 10 and 18... police were asked to maintain an active presence [at the mediation], to show that both

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Warlpiri and kardiya [non-Aboriginal] authority were overseeing the process. The police agreed with this course of action... From our discussions with community members after its conclusion, it was clear they regarded the mediation as successful and had ‘finished the trouble.’ If people were removed, for instance by arrest, before this mediation process could take place there was a high risk that the conflict could have continued unresolved for a much longer period of time and would likely have escalated. From the authors’ knowledge no one was charged as a result of this incident.”

Another example of a restorative justice approach can be found in the Peer Panel pilot project at NAAJA. This pilot, based on the [Youth Courts in the US](#) and [Jared Sharp’s Churchill Fellowship](#), aimed to provide an alternative to existing responses (expulsion or involvement of police) to problematic conduct at school, which may constitute low level offending. Its additional objectives were to foster long term behavioural changes in participants by developing an understanding of how their behaviour impacts on others, to repair the harm caused (in line with restorative justice principles), and to empower youth and to promote youth leadership. In the US, the [Youth Courts](#) “hear a range of low-level crimes; many handle cases that would otherwise wind up in Family Court or Criminal Court ... us[ing] positive peer pressure to ensure that young people who have committed minor offenses pay back the community and receive the help they need to avoid further involvement in the justice system.” The Peer Panel pilot was the first of its kind in Australia. We secured the participation of a couple of schools and formed a Steering Committee, whose members included Northern Territory Police and Department of Correctional Services (Youth Justice).

Let’s Have the Conversation

Our understanding of what constitutes justice has continually evolved as we come to terms with the [legacy of colonisation](#), as we learn from each other’s cultures and legal systems, as we reject previously accepted, abhorrent practices like the [death penalty](#). History is littered with examples of changes in the criminal legal system (e.g. transportation of convicts to Australia, [separating children from adults in prisons](#), [recognising the harms of solitary confinement when it was once considered beneficial](#)). The development of effective, evidence-based, anti-racist, best interests of the child, community-centred approaches to harmful behaviours of children should at least *consider* an end to the use of youth prisons.

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Perhaps you are not (yet) compelled by the argument that we should end our reliance on youth prisons as a response to children's harmful behaviour, but let's at least put the option on the table. Let's have a good faith discussion, a robust debate grounded in evidence rather than fear. Let's not be resigned to a stagnant justice system. We are, after all, only limited by our imaginations and our children deserve a society that aims for the sky.

I will leave you with the words of Dujan, a 12-year-old Arrernte/Garrwa child from central Australia, the star of *In My Blood It Runs*, and the [youngest person to ever address the UN Human Rights Council](#):

“Adults never listen to kids like me. But we have important things to say... The film shows that I felt like a failure at school. I was always worried about being taken away from my family. I was nearly locked up in jail. I was lucky because my family, they know I am smart. They love me. They found a way to keep me safe. There are some things I want to see changed: I want my school to be run by Aboriginal people. I want adults to stop crueling 10 year old kids in jail. I want my future to be out on land with strong culture and language.

My film is for all Aboriginal kids. It is about our dreams, our hopes and our rights.

I hope you can make things better for us.”

Youth Detention in Western Australia: A System in Crisis



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The Office of the Inspector of Custodial Services in an independent statutory agency responsible for monitoring and providing oversight over custodial facilities in Western Australia.

Youth justice has been the subject of public scrutiny in Australia over the past few years and Western Australia is no exception. Common themes and issues have prevailed – population growth; complex needs of young people in detention; issues around staff recruitment, retention and training; and complexities around the suitability of infrastructure and facilities.

In Western Australia, Banksia Hill Detention Centre (Banksia Hill) is a maximum-security facility on Whadjuk Noongar land in Perth that holds sentenced and unsentenced young people from all regions of Western Australia. Unsentenced young people there can range from 10 to 17 years of age. Currently any young person sentenced before they turn 18 can be held there until they are released, but the Government is seeking to make changes to this.

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Following the closure of the Rangeview Remand Centre in 2012, Banksia Hill is the only purpose-built youth detention centre in Western Australia.

As the independent oversight agency for adult and youth custody in Western Australia, we have closely monitored Banksia Hill over many years. We have reported on the centre more than any other facility – publishing 12 reports since 2005 (with another scheduled for publication in June 2023). Over many years youth detention in Western Australia has been through periods of settled routine and stability only to revert to crisis and dysfunction. We are currently experiencing the latter to an extent never previously seen.

A Crisis in Youth Detention

Since mid-2021, we have observed Banksia Hill continue to cycle through various crises. Extended lockdowns in cells have resulted in young people feeling stressed, agitated and frustrated. This increases the ‘temperature’ of the facility, which results in more critical incidents such as: self-harm, suicide attempts, infrastructure damage, staff assaults and use of force. This leads to staff being physically or mentally injured, driving up workers’ compensation claims and staff taking personal leave. Eventually, many staff seek opportunities elsewhere and the recruitment of new officers has struggled to keep up with attrition rates. This leads to more staffing shortages, more lockdowns and more critical incidents. The cycle repeats.

Unscheduled Inspection in 2021

In December 2021, we held such concerns about the welfare of young people that our office undertook an [unscheduled inspection of the Intensive Support Unit \(ISU\) at Banksia Hill Detention Centre](#).

At the time, the ISU performed various roles. It was used to provide intensive supervision and discipline to some of the more challenging young people who had displayed continued disruptive behaviour. It was also used to provide ongoing monitoring and observation of young people at-risk of self-harm, because Banksia Hill did not have a crisis care unit. This combination, requiring staff to provide both a disciplinary and therapeutic environment, created dysfunction and a space that was ultimately not fit for purpose. Time has also shown that the environment created was not a safe workplace for staff or a safe environment to hold vulnerable young people.

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We focused much of our attention on how much time detainees were receiving out of cell and whether the established minimums were being met. In Western Australia, the *Young Offenders Act 1994* (the Act) and the *Young Offenders Regulations 1995* set out when a young person can be placed into separate confinement. This can either be as a consequence for a detention centre offence, or for the ‘good government, good order or security’ of the centre. Under both scenarios, there are strict parameters for their application, including minimum time out of cell. However, we found that these confinement orders were not being relied upon.

Instead, the Department of Justice in Western Australia (the Department) had introduced an internal policy allowing for detainees to be ‘segregated’ due to their behaviour. This allowed detainees to be held in confinement conditions for an unspecified time until their behaviour had improved. The effect of the policy was that it circumvented the provisions of the Act. This policy has since been rescinded and replaced, and later the subject of successful legal challenge in the courts.

To assist our analysis, we examined the out of cell hours for four young males who had been held in the ISU in the months before our inspection. We found there had been a steady deterioration in average out of cell hours throughout 2021. This peaked in November, when there were several days the four young people did not receive the minimum two hours out of cell required under international human rights agreements. We had no reason to believe the data in these case studies was not indicative of the treatment of many other young people.

We also found that threats of self-harm and actual incidents of self-harm had risen considerably. There was also an alarming spike in attempted suicides – and 83 per cent of these occurred in the ISU. In our conversations with some of the young people, we identified that a ‘suicide squad’ pact had been formed, driven in response to the ongoing isolation and confinement. Analysis of data found a clear correlation between self-harm and the days with minimal time out of cell.

We concluded that the human rights of the four detainees had been breached and, in December 2021, the Inspector issued the Department with a show cause notice¹ under Section 33A of the *Inspector of Custodial Services Act 2003* (WA).

¹ Show cause notices are issued by the Inspector when they suspect on reasonable grounds that there is, or has been, a serious risk to the security, control, safety, care or welfare of a person in custody, or that a person in custody has been subjected to cruel, inhuman or degrading treatment.

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In response to the publication of our report, the [Government of Western Australia announced \\$25 million in funding for Banksia Hill](#) including the construction of a dedicated Crisis Care Unit. The Department supported our two recommendations to re-introduce explicit minimum out of cell time in departmental policy, and to embed an additional welfare-focused non-custodial workforce alongside Youth Custodial Officers.

The Opening of Unit 18 at Casuarina Prison

By July 2022, Banksia Hill had continued to deteriorate further. Critical incidents continued and the function of the facility was being hampered by disruption and staffing shortages. Young people caused significant damage to cells, particularly in the ISU. [The Department reported](#) that up to 100 cells across the site were ‘seriously impacted’ and 30 cells were deemed unfit for use.

To disrupt this spiral of decline, the Department declared a temporary second youth detention centre at Unit 18 within the adult male maximum-security Casuarina Prison. [The Department argued](#) that a small group of young people at Banksia Hill were primarily responsible for the disruptions at that facility, which then impacted on all young people and staff. Moving these young people to a standalone facility would allow for more intensive supervision and support, and less disruption to the remaining young people at Banksia Hill.

Through ongoing monitoring, we observed some welcome improvements after the opening of Unit 18. The unit was able to offer a consistent structure and regime, more intensive support services and engagement with non-custodial staff, and some privileges not available to those at Banksia Hill. It operated independently from the adult prison.

However, some young people continued to participate in disruptive behaviour. In the first two months some young people destroyed their cells by removing fixtures, exposing wiring and lighting fires. Outside of the cells there were several riotous incidents, including one incident where the damage to infrastructure cost an estimated \$250,000.

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Youth in Crisis

One young person has been involved in 108 critical incidents across the 49 times he had been placed in custody. He suffers from an intellectual disability and is under the care of the Department of Communities. He has a prolific self-harm history and has repeatedly been monitored since his first time in custody as a 10-year-old.

Lockdowns Found to be Unlawful

In August 2022, the [Supreme Court of Western Australia](#) found ongoing 'rolling' lockdowns at Banksia Hill were unlawful. Legal action was brought forward by the [Aboriginal Legal Services of Western Australia](#) on behalf of one young man who spent long hours locked in his cell, including 70 of 72 hours across a three-day period in February 2022.

Justice Tottle found that confining young people to their cells for long hours significantly reduced their liberty and amenity, which could only be characterised as an extraordinary measure that should only be implemented in rare or exceptional circumstances.

The Department had argued that the lockdowns had coincided with days Banksia Hill was experiencing severe staffing shortages and was required to maintain the 'good government, good order and security' of the facility. Following Justice Tottle's determination, the Department spent considerable time and resources trying to improve systems and processes to ensure lockdowns were legally compliant.

Unfortunately, staffing shortages persisted and the lockdowns continued. Site-wide confinement orders were in place during our scheduled inspection of Banksia Hill and Unit 18 in February 2023. This meant most young people had as little as 1 – 2 hours out of cell per day. This significantly impacted our ability to carry out our usual inspection duties.

Ongoing Instability

Critical incidents continue to occur at both Banksia Hill and Unit 18. Between 2020 and 2022, there were 943 critical incidents recorded across the two facilities, including

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attempted suicides, serious self-harm events, assaults on staff, property damage, and riotous behaviour. Twenty-five young people were involved in two-thirds of these events.

Self-harm rates have also remained high since the initial rise in late 2021. During our pre-inspection surveys, nine young people commented that the lockdowns were leading to thoughts of self-harm and suicide, and feelings of depression, sadness and loneliness.

The staffing cohort at Banksia Hill also reported feeling burnt out, demoralised and unsafe. They are not immune from feeling the impact of the volatility of the centre and the increased media and public scrutiny. Much experience and leadership had been lost to extended workers' compensation leave, resignations and retirements. This had contributed to staffing shortages, which at times resulted in probationary staff acting in unit management roles with little experience.

The Need for Major Reform

Major reform is needed to help break the cycle our youth detention system is currently in.

The case for a second purpose-built youth detention facility in Western Australia

Banksia Hill as the 'one-stop shop' for all young people in custody in Western Australia has failed. The cycle of decline experienced at Banksia Hill – as outlined in this article – is exacerbated by the lack of alternative placement options. When critical incidents unfold and lockdowns occur, they unfairly impact all young people and staff in the centre.

In [2013](#), [2017](#) and in our [2023](#) inspection report we made recommendations to the Department to explore the use of additional youth detention facilities in Western Australia. This would help better manage the specific needs of the various cohorts of young people in custody. For instance, smaller cohort-specific facilities may be useful for separating remand and sentenced; male and female; younger and older; and those from regional versus metropolitan locations.

And, as we have seen the Department attempt with Unit 18, a small separate facility may be useful for providing intensive engagement and therapeutic supports for young people with complex behavioural needs.

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We feel there are strong arguments for at least a second purpose-built youth detention facility in Western Australia.

Implementing trauma-informed model of care

We have also consistently reinforced the need for Banksia Hill to be operated under a trauma-informed therapeutic model of care.

The reason for this is clear when considering the young people placed there. Many enter custody with mental health issues, have experienced family neglect or abuse, and are impacted by intergenerational trauma. On average, more than 70 per cent of those in custody identify as First Nations. Many of them are placed in custody off Country and away from family and culture. And, a [2018 study](#) at Banksia Hill found almost 90 per cent of young people had some form of neurodevelopmental impairment and more than a third had Fetal Alcohol Spectrum Disorder.

Following our inspection of the ISU, the Department progressed work on a new operating philosophy and model of care based on best practice and trauma-informed principles.

At the time, we commented that this would be the most important reform underway and, if successful, would likely have a lasting impact and effect change.

Reimagining the staffing model

To support a trauma-informed model of care we argue there needs to be a reimagining of the staffing model. Currently, Banksia Hill operates on a 1:8 staff-to-young people ratio. Staff have argued that this is unsafe and have campaigned for two staff per wing. However, we feel the ratio should not be conceived primarily as a matter of safety.

There are clear welfare and rehabilitative benefits to providing two staff per wing. By providing an adequately resourced continuous level of care, staff can build stronger relationships and provide more effective support. They can better understand the individual circumstances of each young person in their care and help them work through challenges and opportunities.

Replacing the existing 12-hour shift system with a mixed-shift system would also assist in improving continuity of care. The current 12-hour shift means staff only work 10 days in a 21-day period. Shorter shifts would result in staff working more days, offering increased contact with young people.

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An increased non-custodial welfare-based workforce would help re-balance welfare needs with security considerations. The emphasis placed on welfare staff in alternative models, such as [Spain's Fundación Diagrama](#), demonstrate the potential for a reimagined workforce.

The Situation has Deteriorated even Further

Since our initial drafting of this article the situation at Banksia Hill deteriorated even further. On the evening of 9 May 2023, a major disturbance took place involving 47 young people and spread over eight hours. The situation was only brought under control following the intervention of the Special Operations Group (the prison service riot response unit). During the riot extensive damage was caused to Banksia Hill and early assessment puts the damage bill in the tens of millions of dollars. Fortunately, no one was seriously injured but the riot has had a significant impact on the centre and has set back progress by months if not a year or more.

Conclusion

There is no doubt that significant change and reform to youth detention is required in Western Australia. Since the initial \$25 million funding package, the Government has committed further funds – totaling almost \$100 million – to improve infrastructure, welfare supports and increase staffing resources. Most importantly, a new operating philosophy and service model has been developed and initial works had commenced on its implementation.

But all of this progress has been set back significantly by the riot that occurred in May. Banksia Hill now faces a further period of significant upheaval. Recovery from the riot, including some significant infrastructure repairs, will take weeks in some areas and months in many more. Both the staff and young people will continue to suffer, and will no doubt be under additional stress and frustration. Services that are so desperately needed will be disrupted once again.

There is no easy or immediate solution. While the uncertainty that has surrounded Banksia Hill for many years looks certain to continue for the foreseeable future, we encourage the Department to remain future focused and take the necessary steps to ensure – as a minimum – the basic rights of the young people in custody are upheld.

Removal of Under-18s from Prison in Scotland



Wendy Sinclair-Gieben

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I would like to thank Dr. Liz Ravalde, senior researcher from HMIPS for her work on this article.

The approach to youth justice in general in Scotland builds on the key principles and ethos of the highly influential [Kilbrandon Report](#), published in 1964. Concerned with legal provisions and systems to treat “children in trouble”, it concluded that there was little distinction between those who commit offences and those in need of care and protection, and advocated a welfare-based approach. The focus on early intervention and a welfare-centred approach to children and young people saw the development of the Whole System Approach, Scotland’s framework for young people under the age of 18 (children) involved in offending behaviour, and the accompanying principles of Getting it Right for Every Child that aim to offer the right help at the right time.

Its visionary recommendations led to the establishment of the Children’s Hearing System, a distinct system with the responsibility of making decisions in the best interests of the child. Through this system, for all but the most serious offences, children and young people who commit offences and those in need of care and protection are dealt with in the same forum, in the same way. Subsequently, the number of under 18s in prison custody has dropped significantly.

Over 50 years later, research has established a strong association between young people who have experienced some form of Adverse Childhood Experiences and those engaging in harmful or risk-taking behaviours, bringing them into contact with the criminal justice system. The [Edinburgh Study](#) evidenced that contact with the criminal justice system is often detrimental to young people’s wellbeing and development.

The recognition of the impact of prolonged exposure to stress and trauma in childhood resonates with the central premise that many young people who present a high risk of offending are often highly vulnerable, with complex needs.

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Currently in Scotland, children (those under 18) in conflict with the law can (depending on the court process) be incarcerated in either a Young Offender's Institution (YOI) or a secure care centre. During COVID-19, necessary restrictions were imposed on the community to limit virus transmission. Within prison, those restrictions were notably harsh but effective in reducing the number of anticipated deaths. However, young people under the age of 18 in prison suffered the same extreme restrictions as adults, in contrast to those held in a secure care centres that operate a therapeutic environment.

This article explores the legal, moral and political arguments for permanently removing children from the prison estate into the more therapeutic environment of secure care. Recognition must be given that this is supported by the current administration programme for government (see, [A Fairer, Greener Scotland, 2021-22](#)).

Imperatives for Removing Under-18s from the Prison Estate

Legal imperatives

Children in custody in Scotland are amongst the most vulnerable in our society. However, as children who are in conflict with the law, they are routinely neither recognised nor treated as 'children in need' of care and protection, under Scots law.

The way in which children are prosecuted and imprisoned in Scotland consistently breaches international human rights law and standards, including [The United Nations Convention on the Rights of the Child](#) (UNCRC) and is often not in line with the [European Convention on Human Rights](#) (ECHR). UNCRC and ECHR rights are enhanced by additional safeguards from international legal instruments and policy.² It is, therefore, imperative that children are removed from the prison system in order to meet Scotland's obligation to respect and uphold their human rights.

For those children and young people in conflict with the law, their rights to liberty and security of person (Article 5); protection from inhuman, degrading treatment or punishment (Article 3); privacy and family life (Article 8); and fair trial and due process

² Including, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) and the Standard Minimum Rules for the Treatment of Prisoners.

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(Article 6) must all be respected in line with the international standards of child-friendly juvenile justice (see [Guidelines of the Committee of Ministers of the Council of Europe](#)).

Article 5 of the ECHR, is mirrored in Article 37(b) of the UNCRC (and explained by the Committee on the Rights of the Child in its [general comments Number 10, and Number 24](#)). The deprivation of a child's liberty should be a last resort measure, to be used only for the shortest period of time. Similarly, the [Havana Rules](#) require that the deprivation of liberty be limited to 'exceptional' cases. Both the [Beijing Rules](#) and the [Riyadh Guidelines](#) emphasize this principle.

In addition, the best interests of the child must be a primary consideration in every decision on initiating or continuing the deprivation of liberty. Scots law does not currently require a court, in remanding or sentencing a 16 or 17 year old to custody, to have as a primary consideration the 'best interests' of the child, in fulfilling their rights to liberty under Articles 3(1) and 37 of the UNCRC.

When the Scottish Parliament unanimously passed the UNCRC Bill in March 2021, it heralded Scotland's commitment to ensure all children's human rights are respected, protected and fulfilled in law, policy and practice. This includes those children who are most at risk, deprived of their rights to liberty and fundamental freedoms in the criminal justice system. Implementing the UNCRC and fulfilling Scotland's human rights obligations to these children is not optional.

The right of children not to be deprived of their liberty

There are widespread, global concerns about the detention of children,³ including from the UN Special Rapporteur on Torture who stated that even "very short periods of detention can undermine the child's psychological and physical wellbeing and compromise cognitive development".⁴ The deprivation of children's liberty is also recognised as a form of structural violence in violation of Goal 16.2 of the Sustainable Development Goals,⁵ and described by the UN expert for the [Global Study of Children Deprived of their Liberty](#), Professor Manfred Nowac, as a 'deprivation of childhood.'

³ Hammarberg, T. (2008). *A Juvenile Justice Approach Built on Human Rights Principles*. Youth Justice (8). Page 196.

⁴ Mendez, J.E. (2015). [Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#). Geneva: UNHRC.

⁵ UN General Assembly Resolution 70/1: "Transforming our world: the 2030 Agenda for Sustainable Development." UN Doc A/RES/70/1 (21 October 2015).

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UNCRC Article 37 requires that children must not be deprived of their liberty unless they pose a serious and imminent risk of harm to themselves or others. However, in Scotland children are [known to be incarcerated in YOIs](#), either on remand or after sentencing, where “serious and imminent risk” is not present. For example, [research](#) shows that in some cases, sheriffs remand children for low-level offences, lack of suitable accommodation, or minor breaches of bail, rather than because of serious risks posed by (or to) the child. This both breaches the UNCRC and does not constitute a proportionate and necessary limitation on the child’s right to freedom under [ECHR Article 5](#). The ECHR [has made the particular point](#) that pre-trial detention of children should only be used in the most exceptional cases, stating that, “...a very important factor... is the defendant’s age: thus pre-trial detention of minors should be used only as a measure of last resort and for the shortest possible period.”

[The UN Committee on the Rights of the Child, in its Concluding Observations to the UK](#), criticised the use of penal institutions for children, calling on the UK and devolved governments to:

“[e]nsure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18...[and]...establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children...that child detainees are separated from adults in all detention settings.”

The right of children to be treated as children and in an age-appropriate manner

UNCRC Article 1 states that all humans under the age of 18 must be treated as children, and Articles 37 and 40 require that they must be treated in an age-appropriate manner. However, in Scotland large numbers (2,220 in 2017-18) of children as young as 12 are [prosecuted, tried, remanded and imprisoned](#) through the adult court system. This denies them their right be treated in an age-appropriate manner, and to access the particular rights afforded to all children, regardless of their offences or alleged offences, under the UNCRC.

Contrary to Article 1, under [The Criminal Justice \(Scotland\) Act 1995](#), as amended by the [Children’s Hearings \(Scotland\) Act 2011](#), Scotland continues to define certain 16 and 17 year olds as adults, rather than children. [For example](#), 16 and 17 year olds who are not currently subject to compulsory supervision orders through the children’s hearings

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system (CHS), or in an open case to the Scottish Children’s Reporter Administration, are not defined as children in this legislation. Further, [legislation currently prohibits](#) them from being referred to the CHS rather than the adult courts. Thus, although the Children and Young People (Scotland) Act 2014 has gone some way to defining a child as any individual under the age of 18, [this has not been applied](#) to all settings. The UK has been specifically [criticised](#) regarding the treatment of children in adult systems, and contemporary research⁶ suggests that much greater consideration of childhood and adolescent maturation and developmental factors is necessary to ensure rights compliance in the criminal justice system.

Additional rights under the UNCRC complement existing Scots law provisions for children in the care and protection system. For example, the right to education under Articles 28 and 29, ‘directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential’; the highest attainable standard of health under Article 24; and the right to services for recovery and social integration under Article 39. However, children who are prosecuted in the adult criminal justice system are not afforded rights as ‘children’ to be treated in a manner consistent with their sense of dignity and worth, in a ‘child-friendly’ justice system, and to promote children ‘assuming a constructive role in society’ under Article 40.

The primacy of the child’s best interests

UNCRC Article 3 states that in all actions by the state concerning children, “the best interests of the child shall be a primary consideration”. [The Committee of Ministers to Member States on the European Rules for Juvenile Offenders](#) adds detail to this, recommending that:

“The imposition and implementation of sanctions or measure shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take into account their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation)...”

It [is well known](#) that a large proportion of children who find themselves in custody tend to be from poor, complex and vulnerable backgrounds, have educational challenges, have suffered from traumatic events, neglect or abuse, and are care-experienced. Secure

⁶ O’Rourke, S., et al. (2020). [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts](#). University of Edinburgh.

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care accommodation has greater staff-to-child ratios, operates as a child-care rather than a punishment setting, and has more child-centred designs and environments, with therapeutic support central to the care they provide. Children in secure care also tend to be able to maintain better family contact, as well as better educational opportunities and preparation for release. The development of the new human rights based [pathway and standards](#) reflects an ongoing commitment of all secure services to ‘drive forward the transformational change to improve the experiences and outcomes for children who are experiencing extreme vulnerabilities’.

Arrangements for ensuring staff have the training and support they need appear favourable in secure care. Staff working in secure services are registered with the Scottish Social Services Council, or General Teaching Council for Scotland, which means they have completed a relevant qualification and must provide evidence of ongoing learning and development to maintain their registration. Services are inspected every year by a scrutiny body (the Care Inspectorate) with reference to [codes of practice](#) and person-centred [national standards](#). This reflects an overall position where, at a minimum, professional supervision and other support is in place in all services and staff have good access to extensive training.

On the other hand, YOIs are primarily punitive institutions, with a lack of capacity, professional training and support for staff to provide the type of care that the children need. In the most [recent HMIPS ⁷ inspection report](#) for Her Majesty’s Prison (HMP) YOI Polmont, where under-18s accommodated in the prison estate are held, HMIPS noted that the setting is inappropriate for children, with staffing and architectural structure more appropriate for an adult prison. Concerns have also been raised about the [over-use of strip-searching in YOIs](#), as well as segregation and pain-inducing restraint techniques for children in YOIs. For example, an HMIPS survey of children in [HMP YOI Polmont](#) found that 83% of children in Polmont had been strip-searched, 42% had been isolated for punishment, and 27% had been physically restrained. These mechanisms are not used in secure care.

As the [Centre for Youth and Criminal Justice](#) (CYCJ) have noted:

“Although HMP YOI Polmont will offer these children the best possible care they can, they are not designed to be therapeutic environments, cannot offer the same level of trauma and attachment informed support, nor the high staff to child ratio,

⁷ HM Chief Inspector of Prisons, Scotland.

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necessary to meet the needs of these children and may compound the impact of previous traumatic experiences or retraumatise them”.

Political imperatives - Scottish Government Commitment

The Scottish Government already acknowledges in the [Programme for Government 2021-22](#) that the way imprisonment is used needs to change, given its “often inherently damaging” nature for both adults and children. It has [already committed to legislation](#) to reflect the fact that prison should only be used for those “who pose a risk of serious harm”, stating:

“We’ll also safeguard young people within the youth justice system, supporting a presumption against under 18s in the Criminal Justice System, keeping them out of young offenders’ institutes where possible and appropriate, while ensuring that victims receive the support they need”.

The Scottish Government has also already committed, in [A Rights-Respecting Approach to Justice for Children and Young People: Scotland’s Vision and Priorities](#), to ensuring that as far as possible, “no under-18s are detained in young offenders institutions, including those on remand, with secure care and intensive residential and community-based alternatives being used, where trauma-informed approaches are required for the safety of the child or those around them”. Its [2021-22 action plan](#) also contains a plan to explore electronic monitoring options to reduce the use of remand and/or secure care for under-18s.

Similarly, the Independent Care Review’s “[The Promise](#)” (2020) committed to removing all 16 and 17 year olds from YOIs and the prison estate by 2030 and, instead, if necessary, accommodating them in secure care where they would receive greater support than in a prison environment. [Plan 21-24](#) of The Promise, commits to ending “the disproportionate criminalisation of care experienced children and young people”, ceasing the placement of 16 and 17 year olds in YOIs, and ensuring “sufficient community-based alternatives so that detention is a last resort” by 2024. It also commits to ensuring that children who do not need their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights, [concluding](#) that, “under-18s are children – there should be no 16 or 17 year olds in YOIs. Being placed in prison like settings is deeply inappropriate for children.”

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Reduction of recidivism

Therapeutic environments and interventions, such as those offered in secure care settings, have been shown to reduce reoffending among children and young people in a number of European contexts, particularly where children and young people are assessed by their needs rather than their potential risks. In particular, building strong, therapeutic relationships between staff and children – something secure care units specialise in – are [central to preventing reoffending](#).

[As argued by CYCJ](#), while YOIs will seek to offer the best support possible for children and young people, they are not designed as therapeutic environments. As such, they cannot offer the same level of trauma-informed support that is necessary to promote children's physical and psychological development and recovery from trauma, neglect and exploitation. Nor can YOIs offer the high staff-to-child ratio needed to meet the needs of children in custody, and fulfil their rights to recovery from trauma, under Article 39 of the UNCRC.

Moral imperatives

Alongside the imperatives to remove children from the prison estate based on international human rights law, there are also moral imperatives to remove these children from YOIs as soon as possible. These relate to the way in which Scotland treats some of its most vulnerable and disadvantaged children.

Inequality and the need to support Scotland's most vulnerable children

Children from particularly disadvantaged backgrounds are far more likely to find themselves incarcerated than those with more opportunities. Children in prison [often have complex histories](#), including experiencing: sexual, physical or emotional abuse; physical or emotional neglect; familial/parental substance abuse, domestic violence, mental illness or incarceration; community violence; and other trauma. They also often have [educational difficulties](#), including speech, language and communication issues, and a large proportion are care experienced. Furthermore, in a recent survey of children at [HMP YOI Polmont](#), 85% had suffered a close bereavement, 85% had experience parental separation, 46% had suffered physical abuse, 46% had suffered emotional abuse, 46% had mental health issues in their families, 42% were care experienced, 31% had experienced violence in the home, and 31% had family members who had been incarcerated.

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Children in prison also suffer from poor mental health. The [HMP YOI Polmont survey](#) found that 46% of children had experienced suicidal thoughts, 31% had self-harmed, and 23% had attempted suicide.

It is clear from this evidence that most children in custody have had extremely difficult starts in life, and their complex needs and traumatic backgrounds highlight the need for intensive, therapeutic support rather than the more adult environment of a YOI. As the [Independent Care Review](#) concluded, “young offenders institutions are not appropriate places for children, and only serve to perpetuate the pain that many of them have experienced”.

Barriers and Their Solutions

Legal

There are currently a number of legislative barriers to removing all under-18s from the prison estate and ensuring that future under-18s are not detained in YOIs. Currently, there is a bill making its way through the Scottish Parliament to remove under-18s currently being held in custody, which would bring domestic legislation in line with existing international law.

Financial and practical

Although the Scottish Government is responsible for the costs of a child serving a custodial sentence when detained in secure care, if a child is remanded in secure care awaiting trial or sentencing, the cost falls on the local authority. The financial and practical barriers suggested a need to reorganise the funding model for secure care to ensure that places are always available for Scotland-based children who need them. In addition, reducing the use of remand to only those who pose serious and imminent risk of significant harm to themselves or others would reduce the overall number of children being detained.

Societal/cultural

A number of the barriers to removing under-18s from the prison estate derive from societal perceptions of the nature and role of secure care centres, YOIs, and the children and young people who find themselves in the prison estate. In most cases, these perceptions are not borne out by the available evidence. Communication is key.

[Research](#) published by the UK Department for Education in 2021 found that within secure care in England, the level of risk posed by individual children and young people did

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not appear to be related to whether the child had entered secure care via the “welfare” route (through a social work referral) or the “justice” route (from the criminal justice system). Rather, children tended to have similar backgrounds, challenges and needs, regardless of the route they had come through. As the authors state:

“Respondents noted that children placed [in secure care] on welfare grounds are often just as violent, or more violent [than those placed in [secure care] as a result of criminal proceedings]... some respondents said that the number of welfare children whose behaviour they struggle to manage is higher than the justice children...”

Perception that under-18s who have committed the most serious crimes should be treated as adults

Finally, there is a perception that under-18s who have committed particularly serious crimes deserve to be dealt with as adults and, if found guilty, should serve a prison sentence.

This fails to take account of what we know through developments in neuroscience; namely, that the brain continues to develop until the age of 25. This has been considered recently and contributed to the development of the Scottish Sentencing Council’s Guideline on Sentencing Young People,⁸ which emphasised the importance of, and opportunity for, rehabilitation in young people. It also informs the determination of blame when assessing the seriousness of a crime.

In Conclusion

Given these legal, political, and moral imperatives as well as the growing commitment of key stakeholders; Scotland anticipates fulfilling its human rights obligations for all children and young people under the age of 18 by removing them from prison custody.

⁸ In force from 26 January 2022.

Filling in the Gaps: Expanding Juvenile Justice Oversight in Illinois



The John Howard Association Illinois, United States of America.

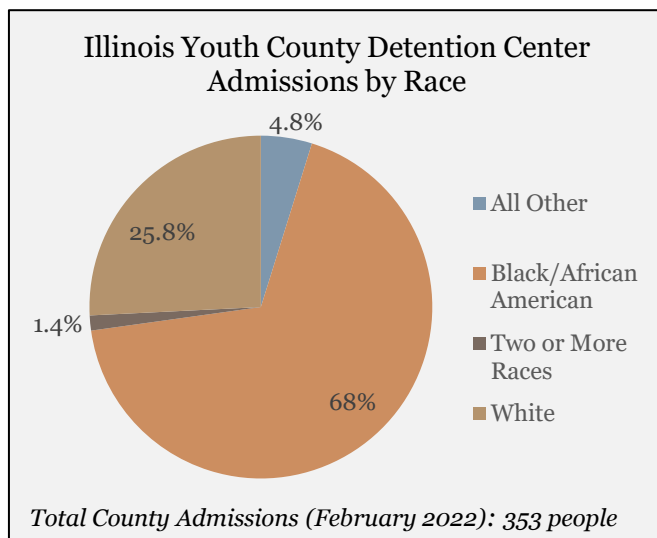
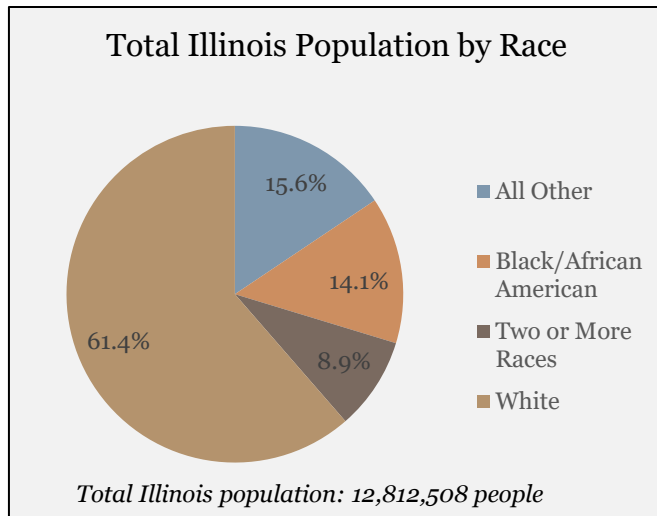
Founded in 1901, the John Howard Association (JHA) is an independent, not for profit, citizen correctional oversight organization in the state of Illinois in the United States. JHA monitors prisons and advances independent oversight of carceral systems to promote humane treatment and increased transparency.

While the State of Illinois has legislated mandated juvenile justice oversight, at any one time the majority of incarcerated youth cannot access it. The [Illinois Office of the Independent Juvenile Ombudsman](#) (OIJO), established in 2015, works to further transparency and accountability in state-run youth prisons by investigating and resolving complaints, advocating on behalf of youth with juvenile justice administrators, and making regular public reports. The office has the authority to meet confidentially with youth, present their grievances to corrections administrators, and review otherwise confidential records. Despite limited funding, the OIJO has proven an invaluable partner in assisting Illinois youth and promoting humanity in the juvenile justice system. However, county-run juvenile detention centers hold more than twice as many young people as state-run youth prisons under the Illinois Department of Juvenile Justice (IDJJ), and do not benefit from oversight by an entity comparable to the OIJO.⁹ The role of county detention centers is to hold some youth pending a juvenile court adjudication, similar to the way that jails hold some adults pending a criminal trial in Illinois. County detention centers are relatively localized, serving one or a few counties, while state youth prisons hold young people from across Illinois. The minimum custodial age is ten for county detention centers and thirteen for IDJJ facilities, while the maximum age for both is twenty-one.

⁹ The most recent public [data on county detention centers](#) is from February 2022, while [IDJJ data](#) is current through February 2023.

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Current oversight of county detention centers is decentralized and not designed to provide support to or access for youth in custody. IDJJ and the Administrative Office of the Illinois Courts (AOIC) share authority to set standards for county detention centers. The standards adopted by [IDJJ](#) primarily regulate the physical condition and security of county detention centers, while the [AOIC standards](#) set requirements related to staffing and to the quality of services and programs provided to youth. These standards were revised in 2021 with input from other stakeholders, including the John Howard Association of Illinois (JHA), to broaden the focus of the standards to include more focus on youth wellbeing. While each agency had long conducted compliance audits, the emphasis had not been on responding to individual youth complaints or providing access to an office outside the facility that will advocate for youth seeking support or assistance.



To address this deficit, JHA worked with legislators and helped draft legislation to expand the jurisdiction of the OIJO over county facilities. The Illinois legislature passed [SB 2197](#) in May 2023, and it will become law when it is signed by the Governor of Illinois. Expanding the jurisdiction of the OIJO would provide the children in county custody access to the same office that offers assistance to and benefits the youth held in state juvenile justice facilities.

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Incarcerated youth are a uniquely vulnerable population. They have been removed from their families and guardians and are in government custody with little ability to access information, assert their rights, or self-advocate. Research shows children are [not fully competent](#) to assist their attorneys in their own defense in criminal trials, putting them in danger of being wrongfully convicted. Youth are also at [disproportionate risk](#) of sexual assault while incarcerated when compared to similarly situated adults. The scholarly consensus about children's heightened vulnerability has shaped law and policy in the United States in recent years.

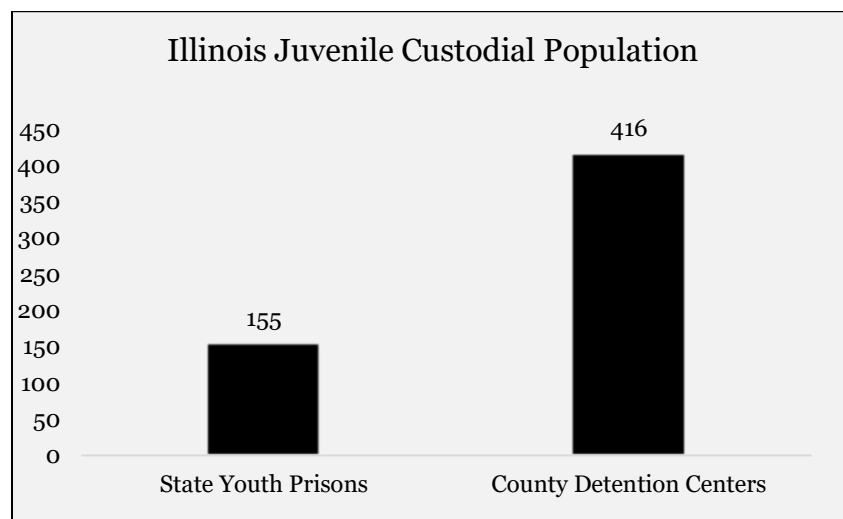
The law recognizes that children need more protection in the criminal legal system than adults do. The Supreme Court of the United States affirmed in [Miller v. Alabama](#) that children are less culpable for criminal behavior than adults, due to children's developmental immaturity. Many federal courts also recognize greater civil rights for children in detention than for similarly situated adults. Additionally, the vulnerability of children to coerced or false confessions led to Illinois [prohibiting](#) lying to youth during police interrogations. These are important and long sought-after developments that reinforce the need to protect children.

Many Illinois youth in custody have additional factors that make them particularly vulnerable to mistreatment. Mental illness is pervasive in juvenile justice settings. IDJJ data shows that [over 99%](#) of youth in their custody have at least one diagnosed mental illness. Detention is [inherently harmful](#) to youth with mental illnesses, and many are unable to get necessary mental health treatment while in custody. Some detained children are also dually involved with child protective services, including those youth who are wards of the state and are awaiting residential placement after a judge [has ordered them released](#). The fact that these youth have nowhere to live and have no guardian other than the state government are strong indicators that these youth require support and access to trusted, independent adult assistance.

Understanding the need for comprehensive juvenile justice oversight in Illinois, the question was how to provide it to county detention centers. Three factors pointed toward expanding the OIJO's jurisdiction over county facilities, rather than creating a new oversight entity. First, expanding the OIJO allows centralization of oversight in one body which conserves and consolidates administrative resources. Second, the OIJO has demonstrated expertise and capacity to assist incarcerated youth throughout the state. There were about 700 youth held in seven Illinois youth prisons when the OIJO began its work [in 2015](#). By early 2023, IDJJ averaged fewer than 175 youth incarcerated in five youth

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prisons. The OIJO has proven capable of adapting to serving changing populations. Finally, the OIJO is a fully independent office, which is crucial for effective oversight. For county detention centers in Illinois, the chief judge of the local state judicial circuit controls staffing at each county detention center, while county boards of commissioners and AOIC jointly provide funding. As mentioned above, IDJJ and AOIC each set regulatory standards. The OIJO is a state-level executive branch agency, which allows the office to be independent of the county detention centers and state-run youth institutions over which it provides oversight. The position of the OIJO within Illinois government is critical to its independence and therefore credibility and effectiveness.



Previous moderate improvements to Illinois county detention standards, oversight, and public reporting, as pushed for by JHA and other advocates, continue to expose issues that must be more effectively addressed to better serve Illinois youth. Reporting by IDJJ, county-level entities, and advocacy groups in 2022 and 2023 provided newly detailed information on conditions in county detention centers, providing more system transparency, which allowed stakeholders to identify and concentrate efforts on urgently needed reforms. Pervasive use of isolation was documented in Illinois county detention centers throughout the year, including use of confinement in violation of state regulations at [11 of 16 county detention facilities](#). Experts agree that isolation puts youth at increased risk of [psychological harm](#), including depression, hallucinations, and self-harm.

More detailed reports on Illinois' largest county detention center, the Cook County Juvenile Temporary Detention Center (JTDC) in Chicago, specifically called for external oversight. The JTDC has experienced more outside intervention than other Illinois county

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juvenile detention centers and provides a case study in how problems can persist at these facilities over time. A long history of issues at the facility led to litigation and [corrective action](#) that took place over decades, including [court-appointed monitoring](#) that ended in 2015. Unfortunately, consistent reports of excessive isolation at the JTDC began to emerge again [in 2018](#). In 2019 and 2020, the Cook County [JTDC Advisory Board](#) condemned the use of isolation and the fact that important data was not publicly reported. An extensive [May 2022 report](#) concerning mistreatment of youth at the JTDC was released by a separate committee providing input on JTDC policies, advising that an external entity oversee the JTDC's reform efforts. Also, in May 2023, an external advocate group and monitor [Equip for Equality](#) called for enhancing and streamlining oversight. The fact that three recent independent reviews into this facility recommended increased transparency in order to identify and address issues earlier and more effectively is strong evidence of both the need for independent oversight in county detention centers and the growing recognition of the role of oversight in system accountability and keeping youth safe.

Encouragingly, momentum around expanding juvenile justice oversight in Illinois can be found in the May 2023 passage of SB 2197, which received large majorities in both chambers of the Illinois General Assembly. The OIJO's work will contribute to greater humanity, transparency, and accountability in county juvenile detention centers. Positive results from increased oversight may also pave the way for further needed reforms to Illinois' entire juvenile justice system as well as aid in building increased oversight for adult systems of detention and incarceration in this jurisdiction.

Canada's Youth Criminal Justice Act: Lessons in Decarceration



Simon Rolston lives in Vancouver, and writes about criminal justice systems, prison writing, and American literature. His book, *Prison Life Writing: Conversion and the Literary Roots of the U.S. Prison System*, was recently published by Wilfrid Laurier University Press.

“Canadian society should have a youth criminal justice system that ... reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons.”—Preamble, *the Youth Criminal Justice Act*

Like many people, I thought that prison abolition was largely aspirational. To be sure, I’ve always recognized that prisons have a poor record of rehabilitating imprisoned people; they’re criminogenic, and they unfairly target vulnerable communities. For years, I’ve wanted to see carceral institutions closed and the criminal justice system seek alternatives to custody. But I had little hope that such a goal could actually be achieved—until I learned about the [Youth Criminal Justice Act](#) (YCJA) and its revolutionary impact on Canada’s youth criminal justice system.

Since the passage of the YCJA in 2003, the youth custody system¹⁰ in Canada has been slowly disassembled, demonstrating that, at least for youth custody, widescale decarceration can happen—*is* happening. Youth criminal justice still has significant problems in Canada, particularly for Indigenous youth who remain overrepresented in custody. But youth facilities are being shuttered across Canada with mostly positive results—results that are instructive for other carceral systems around the world, results

¹⁰ Under the YCJA, a youth or “young person” means a person “who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old...” A “child” is defined as a person “who is or, in the absence of evidence to the contrary, appears to be less than twelve years old.”

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that experts in Canada suggest could serve as lessons for adult criminal justice in this country.

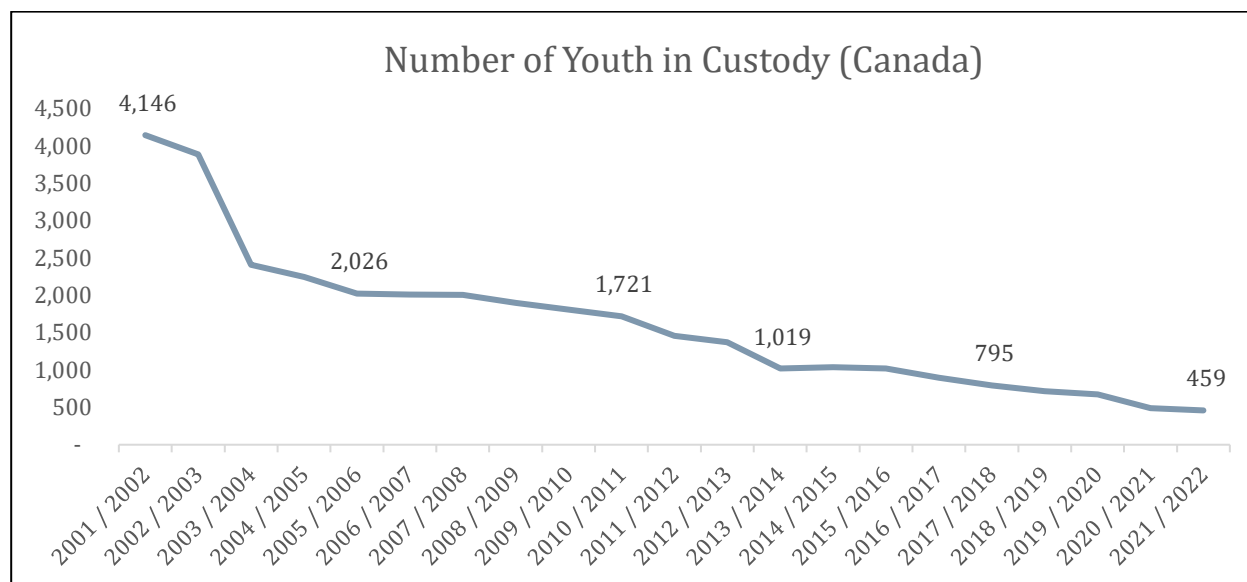
Before the YCJA, Canada's youth justice system was regulated by the *Young Offenders Act* (YOA). Under the YOA, Canada locked up more youth than any other country in the western world. The only place that incarcerated more young people per capita than Canada amongst so-called industrialized nations was the U.S. state of Texas—although the Canadian provinces of Saskatchewan and Manitoba had even higher rates of youth in custody than Texas.

The reasons for the overincarceration of Canada's youth varied, but substantial numbers of young people were in jail for minor offenses, like breaches of curfew. And many social service-related issues were being managed by youth custody. If a young person was unhoused, for example, they could find themselves behind bars. Some police at the time described incarcerating young people not for crimes but for “the good of the youth.” By the end of the nineties and the beginning of the aughts, the Canadian youth criminal justice system was pushed to its limit as courts and youth custody facilities were overloaded.

After considerable political effort, and alongside a national education campaign that explained the problems with the youth justice system and how those problems could be better managed through more effective legislation, the YCJA was passed into law in 2003. The Act now governs Canada's youth criminal justice system, and it applies to any youth between the ages of 12 and 18 accused of committing a crime.

In the twenty years since the passage of the Act, Canada's youth custody facilities have seen dramatic changes. Most notably, the number of young people in custody in Canada decreased by an astounding 89%. In 2002, the year before the *Act* was implemented, 4,146 young people were in custody. By 2022, the number of incarcerated young people had dropped to 459. Did this rapid reduction of youth in custody result in an increase in youth crime?

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Source: Statistics Canada. [Table 35-10-0003-01 – Average counts of young persons in provincial and territorial correctional services.](#)

It didn't. Youth crime declined considerably. According to Statistics Canada, the youth crime rate dropped by 70%, youth crime severity by 60%, violent youth crime by 24%, and youth non-violent crime by 78%.¹¹ Richard Barnhorst, one of four lawyers with the Department of Justice that developed the policy and the specific legislative provisions that became the YCJA, spoke with me about the Act and cautioned that those numbers should not be interpreted to mean that the YCJA caused the decline in youth crime. But, he said, they certainly show that the dramatic changes implemented in the Act did not result in an increase in youth criminal activity.

Barnhorst explained to me that judicial restraint—in fact, restraint at all levels of the youth criminal justice system—was central to the Act's success. In particular, the YCJA required that police first consider what the Act calls "extrajudicial measures," methods of holding youth accountable outside of the criminal justice process, before charging them and sending them through the court system. Under the YOA, diversion was an option, but it was underused, partly because it wasn't clearly stipulated in the law that diversion should take precedence over criminal charges. With the YCJA, extrajudicial measures had to be considered first, which reduced the flow of minor cases through the courts and had the

¹¹ See section on *Police-reported youth crime* in Moreau, G. (2022). [Police-reported crime statistics in Canada, 2021](#). Statistics Canada: Canadian Centre for Justice and Community Safety Statistics.

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benefit of freeing up time and resources for more serious cases. Interestingly, this didn't result in an increase in convictions. According to Barnhorst's research, even with smaller caseloads, guilty cases that resulted in custody dropped to under half the percentage of what they were under the YOA.

Legal scholars have suggested that some of the incredible successes that the YCJA yielded in youth criminal justice could be reproduced in the adult system by making similar amendments to the Canadian Criminal Code. Restraint in charging, use of the courts, pretrial detention, and sentencing might all work in the adult system and achieve similar results. An upcoming special issue of *Criminal Law Quarterly*, which features a new article by Barnhorst, suggests that the YCJA's successes provide exciting lessons for restructuring the adult criminal justice system.

But Canadians have recently seen an uptick in highly visible crimes, which has incentivized Canadian political leaders to seek "tough-on-crime" legislation even though the rate of crime, including serious crime, remains at historic lows. Although the YCJA provides a possible roadmap toward decarceration in the adult prison system, following that road requires setting aside emotional responses to shocking but uncommon crimes and instead making decisions about the criminal justice system based on evidence. Historically, that's been difficult to do.

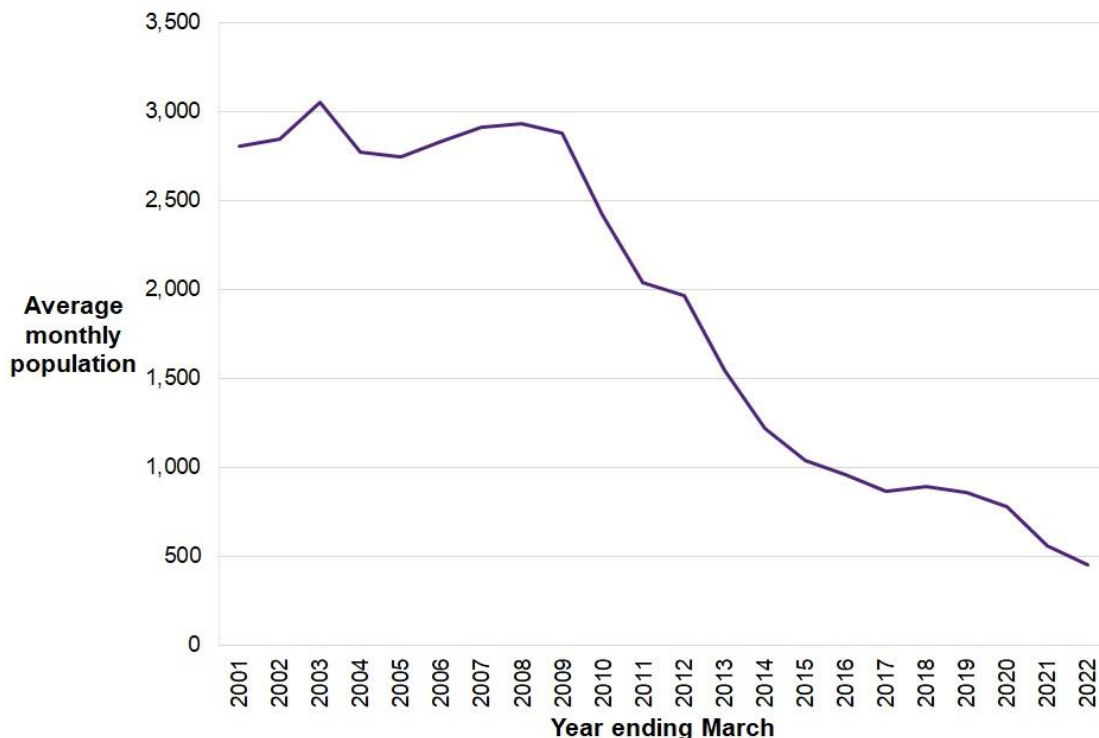
Out of Sight, Out of Mind: Separation, Segregation and Solitary Confinement of Children in England and Wales



Angus Jones
Team Leader, Children and Young Adults
HM Inspectorate of Prisons.

Over the previous decade there has been much to celebrate in the youth justice system in England and Wales. The number of new entrants coming into contact with the justice system has fallen by 78%, similarly the population of children held in custody has fallen 77% to historical lows (Youth Justice Board for England and Wales, 2021 to 2022).

Table: Average monthly youth custody population, youth secure estate in England and Wales, years ending March 2001 to 2022



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When I started working in the justice system in September 2006 there were 3,052 children in our prisons; by March 2023 that figure was just 452 (Youth Custody Service , 2023). However, this significant step forward masks many challenges that remain. Diversion schemes have been more successful for white children than those from Black, Asian, mixed or other ethnic minority backgrounds who now make up more than half of the population. In addition, the average sentence length and the proportion of children held on remand had also increased.

Crucially the opportunity to take advantage of this fall in population to redesign the justice system and reduce the reliance on larger Young Offender Institutions (YOIs) to hold children has been squandered. These establishments, similar in nature to our adult prisons, still hold around 80% of all children in custody, a similar proportion to ten years ago.



A Young Offenders Institute (YOI) - HMYOI Cookham Wood

The most disturbing development though is how behaviour management schemes are proving ineffective in dealing with conflict between children, much of which is gang or group related. In the absence of meaningful incentives for children who behave well and inconsistent and ineffective sanctions for perpetrators of bullying and violence, there is an overreliance on keeping children apart from each other to reduce the rate of violence. While it may seem sensible to prevent two children who keep fighting from mixing, this has substantial side effects in YOIs managing multiple conflicts.

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In one YOI we inspected recently, out of a population of 77 children all but eight were subject to these 'keep apart' arrangements and staff were attempting to manage a complex web of 583 individual conflicts. The impact of this was that most of the positive activities at the institution ground to a halt. Children were allocated to education classes based on who they could safely mix with rather than their abilities or needs; group based offending behaviour work was impossible to deliver; and healthcare staff struggled to get access to children. The average child at this establishment spent less than four hours out of their cell each day.

While this reliance on keeping children apart from one another has prevented the delivery of positive interventions and led to children being locked in their cells for most of the day, it has not led to sustained reductions in violence. The rate of violence against both children and staff remains near historic highs, often leading to children being completely separated from their peers to ensure the good order of the YOI.

There are a variety of words used to describe situations where children are unable to mix with their peers or attend activities in the normal way. For the sake of clarity, I have used the term 'separation' to cover all of these throughout this article and in all of our inspection reports. This covers segregation, isolation, seclusion and self-isolation. Children are subject to separation most often for four main reasons:

- They are a threat to staff or other children.
- They have been assessed as under threat from other children.
- They are too scared to come out of their cell and so self-isolate.
- A combination of other sanctions that together prevents all mixing with other children.



**Separated child's cell -
HMYOI Wetherby**

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For clarity, I understand that there are occasions when it is in a child's best interests to be separated from others either because they pose a risk to their peers or need protecting from them. In these cases, I expect managers to ensure that separated children are in a unit where they can gain access to the same daily activity, including education, as the children they are separated from. I also expect staff to work with children to address the reasons for their separation and plan for their return to a normal routine as soon as possible.

In 2020 we published a thematic inspection into the use of separation in YOIs which uncovered a dysfunctional system inflicting significant harm on [children](#) (HM Inspectorate of Prisons, 2020). Around 10% of children in YOIs were separated from their peers, many of the required safeguards were not consistently implemented, and where they were they had not had any meaningful impact on the time that separated children spent out of their cells or the amount of education provided to them.

While national policies prohibit the use of separation as a form of punishment and do not allow solitary confinement, our review found that separation was used as a punishment both *implicitly* in the case of many children formally separated and *explicitly* for children given a combination of sanctions in response to poor behaviour. We also found that most separated children experienced a regime that amounts to the widely accepted definition of solitary confinement (The Mandela Rules define solitary confinement as confinement of prisoners for 22-hours or more a day without meaningful human contact, and rule 45 prohibits its use in cases involving children).

The experience of children separated on normal residential units (rather than dedicated separation or segregation units) – two-thirds of separated children at the time of the inspection – was particularly grim. Mainstream residential units were simply unable to provide children with their basic entitlements of a daily shower, telephone call and exercise. We met several children living on these units who received only 15 minutes out of their cell each day during the weekend.

Our key finding was that oversight arrangements and the model of delivery of separation failed to improve the day-to-day life of separated children across the estate. Daily visits to separated children by managers, chaplains and nurses, and weekly visits by governors, did not always take place. Reviews of separation did not focus on providing a credible plan to improve the regime for each child. Designated units for separated children

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were not organised well enough to provide them with an acceptable routine, including education and meaningful interaction with staff and peers.

The system of daily and weekly visits by managers, nurses and chaplains created an illusion of meaningful interaction and oversight, but in reality these checks were cursory and often did not happen at all. More importantly, despite significant investment of time and resources, the reviews, checks and safeguards almost always failed to prevent children from receiving a harmful regime.



**Exercise yard at HMYOI
Cookham Wood**



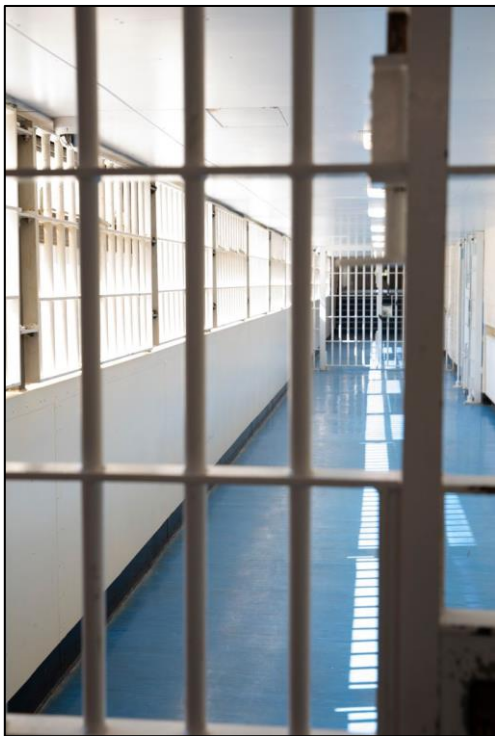
**Exercise yard for separated children
at HMYOI Werrington**

A basic requirement of prison leadership is to understand what is being delivered on the ground, and to support staff in improving outcomes for children. This was undermined by a lack of accurate information locally and nationally. No accurate data were collated on how many children were separated, where they were separated, for how long, and how long they spent in their cell. This made it impossible for national leaders to monitor trends and act to improve practice. The lack of data also meant it was not possible to monitor disproportionality.

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Put bluntly, we found that the system of separation, with its roots in the processes designed to punish adults, was unsuited to meeting the needs of children.

While these were concerning findings, I was optimistic about the response from government. The youth justice minister at the time, Wendy Morton said: “It is difficult to read this report and not conclude that we are failing some of the children in our care – that is completely unacceptable and I am determined it will not continue.” She said separation could be “necessary” but “there is absolutely no excuse for some of the practices highlighted in this report, and I have asked my officials to urgently set out the steps we need to take to stop them happening”.



HMYOI Cookham Wood

It’s been more than three years since, and my optimism has faded. The Covid-19 pandemic and the response, which included reducing the amount of out-of-cell time that children received, swept away the green shoots of improvement. Further, our most recent inspections show the same concerning practice re-emerging.

At our recent inspection of a YOI in the south of England in April [2023](#) (HM Inspectorate of Prisons , 2023), we found that over a quarter of children were living in separated conditions. There was no designated separation unit and these children were separated across the mainstream residential units. The very high levels of separation had overwhelmed the resources available to provide basic entitlements for these children, including education, exercise and visits.

These children received an inadequate regime that amounted to solitary confinement for many. The most consistent element of a child’s day was a 30-minute period of exercise, but on many occasions even this was not delivered and children could spend days without leaving their cell.

One child had been separated for nearly six weeks. The evidence we saw suggested that he only had open-air time for one-third of the days that he was separated. Records indicated that this very limited time out of cell was sometimes cancelled because of the

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child's behaviour or because the establishment did not have the resources to facilitate it. This child only left his cell on nine other occasions (e.g., court or video visits).

Most separated children did not receive any education. In March 2023, for example, 37 children had been separated for a total of 453 days and yet the education provider had only delivered a total of 21 hours of education, a figure that equated to an average of less than three minutes per child each day.

I do not underestimate the challenges faced by those caring for children in custody and how difficult making improvements can be. However, it should be possible in a system that spends £198million (\$247million) each year (HM Prison and Probation Service, 2021/22) looking after 450 children to ensure that every one of them is protected from the well-known harms caused by prolonged isolation. A child who is locked in their cell for more than 22-hours a day with no meaningful human interaction should be treated as an emergency, something that should never happen. Over three years after identifying this problem, the normalisation of solitary confinement for children and the lack of urgency to address the issue is a sad indictment on the priorities of the justice system in England and Wales.

Resources



The International Corrections and Prisons Association’s Annual Conference will be hosted by the Belgian Prison Service this year, and will take place in Antwerp, Belgium from October 22-27 at the Hilton Old Town. The theme of the conference is “**Human Corrections: What more can we do**”.

For more information and to register, [CLICK HERE](#)

(Early registration ends on August 31st)



The Centre for Crime and Justice Studies published its 265 issue of the *Prison Service Journal* in March 2023. This issue covered the topic of prison scrutiny. From the website:

“Given the traditional opacity of prisons, perennial questions persist about whose point of view should be privileged, what tools should be used, and who gets to judge what entry point is best.”

Click the link below to access the journal.

[Prison Service Journal 265](#)

RESOURCES



The **Correctional Association of New York (CANY)** has released a report presenting key findings from 18 months of independent prison oversight activities. It also highlights their new strategic plan and provides evidence of their impact. Click on the link below to read the full report.

[A New Look at CANY: Oversight, Transparency, Discourse and Accountability](#)

