

Youth justice UK

Why is youth justice a human rights issue?

The trial and sentencing of children and young people for criminal offences engages a number of fundamental rights under the European Convention on Human Rights (ECHR).

The rights most obviously engaged are Article 2 (**right to life**), Article 3 (**prohibition of torture and inhuman or degrading treatment or punishment**), Article 5 (**liberty**), Article 6 (**fair trial**) and Article 8 (**private and family life**).

Which human rights instruments are relevant?

As well as the Human Rights Act 1998 and the ECHR, there are several international **instruments** that deal specifically with the rights of children subject to criminal proceedings.

1. **The UN Convention on the Rights of the Child (CRC)**, to which the UK is party, states at Article 3(1) that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Other relevant international instruments include:

- **2. the UN Standard Minimum Rules for the Administration of Juvenile Justice** (The Beijing Rules),
- **3. the UN Rules for the Protection of Juveniles Deprived of their Liberty**,
- **4. the UN Guidelines for the Prevention of Juvenile Delinquency** (The Riyadh Guidelines).

What are the controversial aspects of the system in England and Wales?

The youth justice system in England and Wales is open to criticism on three main grounds:

- **the low age of criminal responsibility,**
- **the application of laws and procedures to children that do not properly take into account their age and maturity,**
- **custodial sentencing** – its overuse, and the conditions of **custody** for children and young people.

What is the age of criminal responsibility?

The age of criminal responsibility is the age at which a child or young person can be charged and prosecuted for a criminal offence. **In England and Wales the age is 10**. This is very low by European standards: in **Italy, for example, the age is 15**, while in **Germany it is 14**, in the **Czech Republic is 15**.

The Crime and Disorder Act 1998 further encouraged prosecution by limiting the amount of times police could administer cautions to children and young people. It also widened the circumstances in which children could be sent to custody, by creating the detention and training order (DTO). These changes made it easier for children to find themselves in court or custody at a younger age.

Detention Training Order (DTO) combines detention with training and will be used for young people who commit a serious offence or commit a number of offences. Half of the sentence will be spent in custody and the other half will be supervised by the Youth Offending Team (YOT) out in the community.

What special provision does the system make for child defendants?

For many crimes, children and young people are tried in the **youth court**, which is staffed by magistrates or a district judge and which **hears cases in private in order to protect the privacy of the child**. The **UN Convention on the Rights of the Child** provides at Article 40(2)(b)(vii) that **States Parties shall ensure that every child alleged as or accused of having infringed the penal law' shall have the guarantee to have his or her privacy fully respected at all stages of the proceedings'.**

However, over recent years, children have been made subject to Crown Court trial in an increasing range of cases. Crown Court proceedings are not designed for children. JUSTICE's concerns centre on a child's ability to participate effectively in a trial in the Crown. **The European Court of Human Rights have resulted in some modifications to practice and procedure.** However, some argue that an alternative process is required.

Where are children in custody detained?

Children and young people sentenced to custody in England and Wales can currently be sent to **three types of establishment:**

- **Young Offenders Institutions (YOIs)** – these accommodate the vast majority of child prisoners, from age 15, as well as young adults. They are **Prison Service establishments**, although some are 'contracted out' and run by private companies.
- **Secure Training Centres (STCs)** – these are run by **private companies**. **Concerns about the treatment of children in custody**, including in STCs, were raised in the **Report of the Carlile Inquiry**, published by the Howard League for Penal Reform in 2006. The inquiry was set up following the death of 15-year old Gareth Myatt in an STC in 2004.

- **Local authority secure children's homes (LASCHs)** – these tend to be used for younger children and those assessed as particularly vulnerable. As well as children convicted of criminal offences, they also accommodate **looked after children** (those in care) who need secure accommodation (for example, because they run away from other children's homes repeatedly).

When a child is sentenced to custody, the court does not decide what kind of establishment they will go to. The Youth Justice Board for England and Wales (YJB), a government body, decides what types of custodial place to purchase and where to place the majority of children sentenced into custody.

What types of problems are there with youth custody at present?

Far too many children are being **sentenced to custody**, the numbers rising by almost 60 per cent between the early 1990s and 2004. While custody for children remains officially a 'last resort'.

Within the custodial population, too many children are being sent to YOIs, where the regime is not suitable for more **vulnerable children**. This was highlighted by the case of 16 year old Joseph Scholes, who committed suicide in 2002 after being placed in a YOI despite having a history of **self harm**.

There are also concerns about the use of practices such as **strip-searching, segregation and restraint/'pain compliance' techniques** against children in custody, as were raised in the Report of the Carlile Inquiry.

Like the rest of the prison estate, **accommodation for children in custody is becoming overcrowded**. Overcrowding can worsen conditions in custody, putting pressure on staff and meaning that **access to purposeful activities such as education and sport becomes limited**. **In YOIs, 15-17 year olds only have an average of 8 hours of education per week.**

29 children and young people under the age of 18 have died in custody since 1990.

VIDEO:

<https://www.youtube.com/watch?v=E1SSzDAXKJQ>

<https://www.youtube.com/watch?v=oEUzUDiBDWQ>