

All Party Parliamentary Group on Women in the Penal System



Inquiry on girls: From courts to custody

Key points

- There is a lack of awareness among magistrates and other professionals of the specific needs of girls
- Girls are being treated more harshly by magistrates if their behaviour contradicts gender stereotypes
- Girls are being criminalised in courts when no intervention is needed or when they could be diverted to other services
- Magistrates are confusing welfare needs with high risk of reoffending and increasing the severity of the sentence or 'up-tariffing' girls
- Prisons are not appropriate places for girls, and prison units for girls in adult prisons and secure training centres (STCs) for girls should be closed, in line with the recommendations of the Corston report
- There is a lack of awareness among professionals of the differing roles and services provided by children's services and youth offending services
- There is a lack of gender-specific provision for girls once sentenced
- The needs of girls are overlooked due to the small number of girls in the penal system
- Contrary to the United Nations Convention on the Rights of the Child, custody is not invariably being used as a last resort for girls
- Other options such as intensive fostering and multisystemic therapy (MST) are not widely available or widely used.

Introduction

The All Party Parliamentary Group on Women in the Penal System (APPG) was set up in July 2009 and is chaired by Baroness Corston, author of the Corston Report: A review of women with particular vulnerabilities in the penal system (Home Office, 2007). In October 2011, the APPG launched a year-long inquiry on girls. The aims of the inquiry were:

- to investigate the decisions that route girls into or out of the penal system
- to look at provision for and the treatment of girls in the penal system
- to make recommendations for reform across the social and penal systems regarding the treatment of girls.

The APPG received written evidence from voluntary and statutory agencies, local authority children's services, youth offending teams and others who worked with girls. It conducted a series of oral hearings in the House of Lords and witnesses included the Chair of the YJB, the Chair of the Magistrates' Association and the Deputy Children's Commissioner for England. Girls and young women gave evidence, based on their personal experiences of the penal system.

This briefing paper is the second in a series of papers outlining the findings of the inquiry. It focuses on provision for and treatment of girls in the penal system.

Girls needlessly being criminalised

Despite the fall in the number of girls entering the penal system and the reduction in the proportion of proven offences committed by girls (YJB, 2012), girls remain more likely to be criminalised for behaviour that in previous decades would have warranted little attention. Gilly Sharpe (2011) stated that girls were less likely to be diverted from prosecution than their counterparts a generation ago and that the police had less discretion to divert children from the courts than they did with adults.

Over two thirds of the proven offences committed by girls in 2009–10 were non-violent (YJB, 2011a). Evidence submitted by the YJB showed that girls were responsible for a higher proportion of certain offences than others. For examples they accounted for 38 per cent of theft and handling offences but only 6 per cent of burglary offences.

There has been an expansion in the use of pre-court disposals with the introduction of youth conditional cautions, youth restorative disposals and triage. Girls accounted for proportionally more of pre-court disposals (32%) than boys in 2010–11 (YJB, 2012) perhaps due in part to the fact that girls were less likely than boys to have committed serious offences.

Durham Youth Offending Service gave evidence to the inquiry on the use of pre-reprimand disposals (PRD) for children aged 10–17 who had committed their first offence and would otherwise have received a police reprimand.

It stated:

“Young people who enter the criminal justice system for low level offences risk limiting their employment opportunities due to receiving a criminal record. The PRD was developed to improve young people's life chances by ensuring that their needs are met and that they avoid being criminalised”.

The use of PRD in Durham has led to a reduction in the number of girls appearing before the courts. Reoffending rates for girls who received a PRD in 2010 were also lower, 7 per cent compared to 21 per cent for other pre-court measures.

However, the use of pre-court and pre-reprimand disposals may result in a criminal record as details of alleged offences are recorded on the police national computer (PNC) and can be revealed to third parties who request an enhanced criminal records bureau report in certain circumstances. Pre-court disposals can currently only be used for children who have committed a first offence and have admitted guilt.

The APPG would like to see greater use of pre-arrest as opposed to pre-court disposals to resolve issues, such as the use of community oriented policing which has been implemented by Hampshire and Gloucestershire Constabularies. These would avoid the criminalisation of girls for minor misdemeanours and the use of unnecessary and inappropriate interventions for girls. Police should avoid recording children's details and their behaviour on the police national computer wherever possible as it can impact on children's futures.

The youth court

The Code for Crown Prosecutors states:

“Prosecutors must have regard to the principle aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must consider the interests of the youth when deciding whether it is in the public interest to prosecute”.

The APPG is concerned that the best interests of the child are not the primary consideration when deciding whether to prosecute. The public interest is not served if a court disposal increases the risk of reoffending or lessens the chance of rehabilitation.

Changes in the Legal Aid, Sentencing and Punishment of Offenders Act will give the police more discretion regarding the use of cautions for children and should result in fewer children coming before the courts. The best interests of the child should always take precedence over the interests of the justice system to prosecute.

Girls with welfare needs

In England and Wales, the youth courts only deal with children who have been charged with a crime. Youth court magistrates have no powers to invoke care proceedings if they have concerns about a child's welfare. They do not even have the powers to refer the case to the family courts who deal with child welfare matters.

John Fassensfelt, Chair of the Magistrates' Association, expressed concern about this when he gave oral evidence to the inquiry. He cited the case study of a 14 year old girl who had been charged with minor theft and was appearing in the youth court. The girl had a chaotic family background and her mother was drug and alcohol dependent. The youth court magistrate had no power to invoke a care order despite the evidence, and could only pass sentence.

This artificial split in the courts between children who offend and children who have welfare needs means that the youth justice system focuses on the crime and ignores the needs of the child behind the crime. This is not in the best interests of the child or the public, and it will not prevent offending if welfare needs remain unmet.

Girls who end up in the penal system have often led chaotic lives, have experienced poor parenting, neglect or abuse, and are in need of support. It cannot be in the child's best interests to fail to address underlying welfare issues. Penal sanctions are more likely to exacerbate rather than prevent offending and do nothing to tackle the reasons behind a child's behaviour.

Evidence submitted to the inquiry suggested that there was a lack of knowledge among magistrates of the particular issues faced by girls and a lack of clarity about who was responsible for meeting their welfare needs.

The Crime and Disorder Act 1998, which led to the establishment of youth offending teams, stated that the principal aim of the youth justice system was to prevent offending by children and young people. Section 39 of the Crime and Disorder Act states:

"it shall be the duty of the youth offending team or teams to co-ordinate the provision of youth justice services for all those in the authorities area who needs them".

Youth offending teams have a clearly defined remit and were not established to replicate the work of social services. However, YOT workers felt that magistrates often expected the YOT to solve a girl's social problems and lacked a clear understanding of the obligations of the local authority to meet the needs of children under the Children Act 1989.

YOT workers reported they faced difficulties in obtaining local authority support for girls with welfare needs even if they had previously been identified as a child in need and had received support from their local authority children's services department. One YOT worker had resorted to visiting children's services in person with a girl to demand that they reopen her social services file, which had been closed after she was placed under the supervision of the YOT.

Youth court magistrates must receive training on child welfare as well as criminal justice legislation. Local authorities must ensure that girls in need receive the support they are entitled to under the Children Act 1989 and should not delegate all responsibilities to youth offending teams once a girl enters the penal system.

Evidence submitted to the inquiry suggested that girls were sometimes treated more harshly by the courts because they had greater welfare needs. Magistrates make their decisions based on a number of factors, including the pre-sentence report produced by the YOT. All children who come into contact with the penal system are assessed using Asset, a structured assessment tool used by all youth offending teams. Guidance on Asset, issued by the YJB (2006) states:

"The information gathered from Asset can be used to inform court reports so that appropriate intervention programmes can be drawn up".

Following the introduction of the scaled approach in 2010, there are three levels of intervention based upon a child's Asset score: standard, enhanced and intensive. The aim of the Scaled Approach Framework (YJB, 2010), was to focus the attention and resources of youth offending teams on the children who were 'at most risk of offending'. However, concerns have been raised by practitioners and academics of the potential for gender discrimination.

Tim Bateman (2011) found that Asset tended to over-predict risk for girls, leading to the possibility of discriminatory outcomes on the basis of gender.

Evidence submitted by Barnardo's stated:

"The current ASSET form used by youth offending teams (YOTs) to assess the risk of offending for young people in the youth justice system is gender neutral. It asks no questions about the specific risks to girls who offend, or their vulnerabilities. There is currently one question on the ASSET form relating to experience of abuse, but this is a general question and neither the form nor the guidance to YOTs is gender-specific".

The inquiry heard that some girls were receiving a more restrictive sentence or being 'up-tariffed' because they had higher levels of welfare needs and were seen as at higher risk of reoffending. Research conducted by the YJB (2004) found that girls were more likely to receive a restrictive community sentence than boys. YOT workers told the inquiry that magistrates sometimes asked for more intensive requirements for girls as part of the youth rehabilitation order (YRO) in the belief that girls would receive more support.

Case study

A seventeen year old girl had been sentenced for a first offence and had then had breached the terms of the order. The pre-court report prepared by the YOS worker had highlighted the girl's vulnerability. Despite not having committed another offence, the magistrate wanted an intensive supervision and surveillance requirement (ISS) as part of the revised order, the most intensive requirement available for young people on community orders. It was his belief that a more intensive order was necessary due to her vulnerability. The YOS worker argued in court that this was inappropriate and would increase the chances of the girl breaching her order.

The Howard League for Penal Reform (2011) found that children who were subject to ISS found it difficult to comply with the rigorous requirements and felt they were being set up to fail. Girls should not be subject to longer or more onerous requirements purely as a result of having high welfare needs.

Attitudes to girls

Evidence submitted to the inquiry by those who worked with girls in the penal system expressed concern that girls were treated more harshly than boys in court for certain behaviours which did not conform to gender stereotypes, such as fighting or criminal damage.

'Anna', who gave oral evidence to the inquiry, felt that she had been treated more harshly by the judge because she was female. The judge had stated in court that it was unacceptable for a young woman to fight. She was facing the prospect of a custodial sentence.

Magistrates in the youth court must ensure that decisions about sentencing are fair, proportionate and non-discriminatory. There should be external scrutiny of sentencing decisions to ensure that magistrates are not discriminating on the grounds of gender.

YOT provision for girls

Statistics from the YJB (2012) show that girls accounted for 22 per cent of the young people supervised by the YOTs in 2010–11. Evidence submitted to the inquiry frequently referred to the fact that the needs of girls were often overlooked or subsumed by the needs of boys who made up the larger percentage of youth offending teams' caseloads. There was a lack of gender specific provision for girls.

Leeds YOS stated:

"Nationally, specific programmes aimed at girls and their offending are not widely or consistently available. Where these exist they are largely driven by individual practitioner interest rather than located in youth justice policy and research. YOT practitioners can find girls' behaviour challenging which is exacerbated by their more limited experience in working with girls than boys, and the lack of policy or practice guidance about girls' needs and the types of interventions which are effective with them. YOT programmes are largely based on male offending patterns (car or knife crime initiatives, burglary etc)".

Matthews and Smith (2009) were concerned about the high number of girls who failed to attend their appointments and the fact that girls were more likely than boys to be breached for non-compliance with statutory orders. Research published by NCB (2010) found that girls were more likely to be in custody for breach as a primary offence than boys (21% compared to 15%).

The YJB (2009) commissioned research on girls and offending. It found that whilst there was little evidence about what worked with girls in the youth justice system, there was evidence that girls preferred interventions that were stylistically different to those offered to boys. Girls preferred a female only environment that built on one-to-one relationships.

Youth offending teams who submitted evidence to the inquiry found that girls were more likely to have experienced sexual exploitation or abuse, domestic violence or family conflict. Girls' behaviour was often influenced by boys or older men. Girls were less likely than boys to have the support of their family, leaving them isolated or dependant on the support of the local authority, their corporate parent.

Some YOTs had established gender-specific groups to address the different needs of girls.

- Nottingham City YOT developed the Pink project, training programmes for practitioners to set up gender specific groups and design individual interventions for girls. Nottingham City YOT has delivered gender-specific groups for girls on statutory orders.
- Nottinghamshire YOS developed the Pearl project, designed to prevent offending behaviour for girls. The YOS ran groups for girls on statutory orders.
- Leicestershire YOS ran gender specific groups for girls. The programmes were delivered by female members of staff and were designed to tackle issues specific to girls needs including domestic violence, sexual exploitation and sexual health and relationships.

The YJB (2009) has recognised that a different approach to working with girls is necessary in order to address their specific needs and prevent re-offending. It is developing a framework and toolkit for YOT practitioners for working with girls (YJB, 2011c).

However, some practitioners have raised concerns that simply establishing a girls' group will not solve all the problems. Evidence submitted to the inquiry by Pam Vedhara MBE, specialist youth support manager at South Tyneside council stated:

"...people often resort to citing 'girls' groups' as the answer. The provision of single gender group work has great merit as it affords opportunities for in depth discussion about a range of issues including image, behaviours, domestic violence and empowerment. However, offered in isolation, this can simply be a 2 hour slot within a week of overwhelming vulnerability and isolation".

Girls who end up in the penal system may have very different needs from each other depending on their age, maturity, ethnicity, life experiences or behaviour. There is a danger that in order to make girls' groups sustainable, the small number of girls in contact with YOTs could end up being treated the same, despite having very different needs.

Custody for girls

There are in fact very few girls in custody in England and Wales. Statistics from the YJB (2012) show that girls accounted for just five per cent of the young people held in custody in 2010–11. Girls can be held in local authority secure children's homes, privately run secure training centres (STCs) or prisons.

Whilst custody can be damaging to both girls and boys, girls' experiences are different. Girls in custody are more likely to be restrained, more likely to self-harm and more likely than boys to be placed in segregation (YJB, 2012).

The Centre for Mental Health noted:

“Most mixed custodial regimes (e.g. in secure training centres) can still be based on more male orientated need; some searching and control and restraint practices, for example, have been seen to be highly counterproductive for females with high histories of abuse and trauma leading to flashbacks and exacerbating distress”.

The majority of girls in custody have had deeply troubled lives. Her Majesty’s Inspectorate of Prisons and the YJB (2011) found that over half the young women in prison had been in care and a quarter had children of their own. At the oral hearing on secure custody, Sue Berelowitz, Deputy Children’s Commissioner stated that her main concerns regarding girls in penal custody were their mental health and psychological well-being. Evidence from the Centre for Mental Health (2012) stated that girls in custody were significantly more likely than boys to meet the criteria for diagnosis with one of the most common childhood mental illnesses.

There are three prisons which hold girls aged 17: Downview in Surrey, Eastwood Park in Kent and New Hall in West Yorkshire. Currently, a court can only remand boys and girls aged 17 to prison custody, not to secure accommodation. However, legislation for a single remand order for children aged 12–17 in the Legal Aid, Sentencing and Punishment of Offenders Act ends the anomaly of 17 year old girls being treated as adults for remand purposes. Once this legislation comes into force there is no longer be any legal necessity to retain the prison units for girls. They should be closed.

The Howard League for Penal Reform (2012) found that privately managed STCs had a more punitive ethos than local authority secure children’s homes and were staffed by proportionately fewer, less well-trained staff, resulting in an over reliance on physical restraint.

The very few girls who may require a period in a secure environment should be held in local authority secure children’s homes, which have high ratios of well-trained staff and therapeutic interventions to enable children to make positive changes to their lives.

Alternatives to custody

The APPG found that there were options other than custody for girls who had committed serious offences but availability and take-up was limited. Two options which have been rolled out following pilot schemes are multisystemic therapy (MST) and intensive fostering.

MST

Multisystemic Therapy (MST) is an intensive family and community based intervention that targets the multiple causes of serious anti-social behaviour in young people.

MST works with the individual, family and others such as peers, school and community and is aimed at preventing out of home placements including custody.

Therapists are available to families 24 hours a day, seven days a week and are able to work intensively with families due to low caseloads. The length of treatment is typically three to five months.

Intensive fostering

Intensive fostering is a multi-dimensional therapy which is offered as an alternative to children facing the prospect of a custodial sentence. Intensive supervision and support can be given for up to 12 months, during which time children are placed with foster carers and their behaviour is monitored constantly. Intensive fostering aims to encourage pro-social relationships and minimise association with offending peer groups.

Action for Children ran two of the three intensive fostering pilots funded by the YJB. The offences committed by girls given intensive fostering ranged from public order offences to violence and attempted murder. The average number of offences committed by girls was eight.

MST and intensive fostering are not yet universally available. Leeds MST manager Tom Bowerman gave oral evidence to the inquiry and stated that they had worked with around 120 families a year but resources were limited and they were unable to meet the needs of every family who might benefit from it.

When evaluating the intensive fostering pilots, the YJB (2010) found that there were difficulties in finding young people who were eligible to be considered for intensive fostering. Liz Oldfield, manager of the Action for Children Wessex intensive fostering programme, expressed concern that even when girls were eligible, magistrates still considered custody for girls in the mistaken belief they would be safer.

Conclusions

Girls are far less likely than boys to end up in the penal system but when they do, their needs are often ignored or overlooked. A gender neutral youth justice system based on the risk of offending has the potential to discriminate against girls, particularly when welfare needs are confused with risk.

There is a lack of understanding about the different needs of girls who end up in the criminal justice system, little evidence of what works for girls and few programmes designed specifically for girls. Girls are effectively pigeon-holed into a criminal justice system designed for the male majority.

Recommendations for ministers

- The best interests of girls should always be the primary consideration, in line with the United Nations Convention on the Rights of the Child

Recommendations for the YJB

- The YJB should ensure that the youth justice system does not discriminate against children on the basis of gender.
- Prison units for girls should be closed, in line with the recommendations of the Corston report.
- The few girls who require custody should only ever be held in secure children’s homes with highly trained staff and therapeutic interventions to meet their needs.

Recommendations for the courts

- The best interests of the child should be the primary consideration in all court proceedings.
- Every effort should be made to divert girls away from the youth court.
- Children's welfare needs must be addressed by the courts and the focus should be on the child, not on the child's behaviour.
- The Crown Prosecution Service should not prosecute children for minor misdemeanours.
- Custody should only ever be considered as a last resort, in line with the United Nations Convention on the Rights of the Child.
- Youth court magistrates must receive training on children's welfare and should have the powers to refer cases to the family court if a child is identified as vulnerable.

Recommendations for local authorities

- Local authorities must ensure they meet their obligations to children in need under the Children Act 1989.
- Local authorities should ensure that all those working with girls are aware of their different needs and have the resources and training to meet those needs.
- The criminal justice system should not be used to solve social problems.

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