

YOUTH JUSTICE IN JERSEY: OPTIONS FOR CHANGE

A report commissioned by the Children's Policy Group.

Authors of report:

Jonathan Evans

Brian Heath

Eddie Isles

Peter Raynor

Assisted by:

Brenda Coster

Kevin Haines

Gillian Hutchinson

Helen Miles

Kathy Phillips

Bill Whyte

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1. Introduction

'Arguably all youth justice systems (in developed countries) are required to fulfil two potentially competing objectives:

(i) firstly to help troubled young people to change, develop and overcome their problems - to provide a turning point in their lives

(ii) secondly to deliver a firm, prompt and appropriate response to youth offending – a response which offers the best means of protecting the public when necessary.'

(McAra, 2010: 288)

This report was commissioned by the Children's Policy Group (CPG); the Ministers for Health and Social Services (Chair), Education Sport and Culture, and Home Affairs. The drivers for the report include:

- the intention of the States of Jersey to become party to the United Nations Convention on the Rights of the Child (UNCRC)
- the adoption of a statement by the CPG recognising that the best interests of the child shall be their paramount consideration
- the production of a Children and Young People's Plan (CYPP) for Jersey and the decision to incorporate children's offending within this.
- concerns expressed by the Courts that they were powerless to deal with some of the children who appeared before them.

The report was commissioned by CPG in May 2010 and, in order for the findings to be incorporated into the CYPP, needed to be drafted by the end of August 2010. This has inevitably placed constraints on the depth and the extent of the research, but nonetheless the authors are confident that the findings are sufficiently robust and evidence based for conclusions to be drawn and recommendations made to the CPG. The Council of Europe Committee for the Prevention of Torture (CPT), visited Jersey in March 2010. Although we had no contact with the CPT and were not aware of their conclusions and recommendations, our report both provides some of the further information requested by the CPT and addresses some of their findings.

The Review team, led by Jersey's Chief Probation Officer, comprised academics and practitioners from both within Jersey and other jurisdictions. This has hopefully provided a blend of local knowledge and ownership, whilst also providing strong external academic and practice scrutiny. During the compilation of this report, the authors have considered data and published research concerning 42 different jurisdictions (see Appendix F) in addition to their own professional experience, in order to ensure that their consideration of options for Jersey was broadly based.

The Review Team found many strengths in the ways in which Jersey responds to children who break the law. There are some processes and structures in place which would be the envy of many other jurisdictions. Criminal offences committed by children are generally not a major social problem, and certainly no larger a problem than in other jurisdictions. The point should also be underlined that the problem of youth crime does not appear to be growing. It is important to remember this context when considering the conclusions and recommendations. If the report is to help improve outcomes for children who offend, it must concentrate on those areas where improvement can be made; but this is not to say that the system overall is fundamentally flawed.

Research in other jurisdictions shows us that the existence of legal frameworks is not necessarily correlated with good outcomes for children and the public. Italy, Finland, and Swansea can all demonstrate good processes and outcomes for children who offend **despite** legislation which does not seem to be welfare based. What these cities and countries have in common with jurisdictions such as Scotland, Belgium, Northern Ireland and Guernsey with their more child-focused legislation, are forms of practice based on the *needs* of the child, reserving compulsion for those children who do not respond to voluntary measures. They also recognise the importance of the family and wider community in effective responses to children's offending. In our conclusions and recommendations, therefore, we have concentrated on practice changes rather than legislative reforms in the short and medium term.

We have examined the criminal justice process as it affects children from behaviour and arrest through to parish hall, prosecution, court, detention and post-release after-care. We have found that considerable resources are already being spent on children who offend; it is our belief that the overall level of resource is probably adequate. However considerable redistribution will be necessary and some "invest to save" funding will be required if our recommendations are adopted.

A small proportion of children in Jersey will come to notice for behaviour that is labelled anti social and/ or criminal. An even smaller number at any one time will cause a great deal of difficulty for their families, the authorities and the broader population. There are no solutions or examples of jurisdictions where this is not the case. However, we are confident that by adopting the conclusions and implementing the recommendations contained in this report, Jersey would be

responding in a manner which reduces offending behaviour, maximises opportunities for positive change by these children and observes the principles contained in the United Nations Convention of the Rights of the Child (UNCRC) and the European Convention for Human Rights (ECHR).

2. Preliminary Considerations:

The Report is grounded in the wider research on youth justice and a review of the services offered to young people who break the law in Jersey. Accordingly, two questions are posed. Firstly, what does research tell us about the essential principles that should underpin ethical and effective practice with young people? Secondly, how can these general underpinning principles be applied and strengthened in the specific context of Jersey? The main Report duly summarises the salient messages arising from research in the relevant policy domains and key stages of the criminal justice process before proceeding to the consideration of specific options and recommendations in respect of Jersey.

Those wishing to familiarise themselves with the detail of the wider research are duly referred to the relevant appendices. It is, however, important to emphasise two preliminary points at this juncture. Firstly, whilst good practice from elsewhere has been highlighted, there are practises indigenous to Jersey that should be celebrated and strengthened. Indeed, news of such practices should be disseminated more widely. Secondly, when conducting comparative research there is a danger of becoming preoccupied by statutes, the specific details of the processes at work and the institutional architecture within which services to young people are delivered. What is important, though, is the expression of clear principles of practice and the delineation of explicit policy objectives. Such principles and practises, moreover, should not be agency specific. Rather, they should be shared across organisations (social services, police, probation, courts, etc.) and become established *communities of practice* (Wenger, 1998). In other words, a common outlook and agreed way of doing things can eventually take precedence over the respective institutional reflexes of individual agencies. A pre-requisite for developing a universal approach is, of course, open and honest discussion between key players at all levels of the respective organisations; not least amongst managers and practitioners. That this Review is taking place is indicative of the fact that this process of dialogue is well advanced in Jersey. It would also suggest that much can be achieved through ground-level practice initiatives and adjustments in the configuration of existing services rather than through major reorganisation or recourse to the legislative process.

There are three general areas that are worthy of preliminary consideration before the specificities of Jersey's youth justice system are examined: the nature of

childhood and youth; human rights, particularly in relation to children; and, finally, the challenges and risks of addressing young people's problematic behaviour in the criminal justice system. These three broad areas are dealt with below.

(A) Childhood and Youth Transitions:

At the outset it is probably helpful to revisit the main reasons why children and young people are treated differently to adult offenders.

- There is the issue of maturity. Children and young people are still in the process of growing up; not only in biological terms, but also in respect of their developing intellectual, social, emotional and moral competencies. Child and adolescent development is a highly individualised process, of course. It is for this reason that efforts to frame statutes which reflect young people's level of understanding or determine what constitutes age-appropriate behaviour are inevitably rather crude and fraught with difficulty. Nevertheless, it is widely accepted that young people do not have the same capacity to make fully informed moral judgements in the same way as adults. While children are certainly not devoid of moral awareness, they may not always understand the wider practical and ethical implications of their behaviour.
- Young people do not possess the same degree of independent agency as adults. Children are less able to implement personal decisions because they generally lack the personal and material resources so to do. Indeed, in all of the main necessities of life they are dependent upon adults. For the most part, moreover, they have very little influence over the identity of those adults who support them (parents, caregivers, teachers and social workers).
- The law determines that young people are unable to make decisions in a whole range of areas that are routinely available to adults (e.g., alcohol consumption, sexual consent, admission to a cinema to view adult-rated films, signing contracts, etc.).

In light of these considerations, it is important that interventions with children and young people strike the correct balance between respecting young people's competencies and sense of personal agency while at the same time applying nuanced judgements in respect of their capacity to make properly informed decisions. This issue will be returned to later in the Report.

While it is important not to represent adolescence as an inherently troublesome condition, self-report studies indicate that rule-breaking, boundary-testing, experimentation, challenging behaviour and transgressions of the law are not unusual amongst teenage children. For the most part these young people 'grow out' of such behaviours, often before they have come to the attention of statutory social and criminal justice services. It is therefore important to avoid the pitfall of *abnormalising* behaviour that is actually fairly common amongst young people. One of the criticisms levelled at the Anti-Social Behaviour and Respect agenda in England and Wales is that it has conflated some conduct that quite rightly

deserves close attention with less serious behaviours which represent nuisances and incivilities rather than crimes.

Asking why young people stop offending rather than asking why they start in the first place may be therefore a question that elicits a more helpful set of answers for policy makers and practitioners. The *desistance* literature can broadly be divided under three main theoretical headings: *individual*, *structural* and *integrative*. *Individual* theories include a set of explanations based on maturational processes being allowed to take their course (Glueck & Glueck, 1940; Rutherford, 1986). This can include, for example, the rational reassessment of priorities following the onset of more advanced cognitive, emotional and moral development (Cornish & Clarke, 1986; Barry, 2006). A *structural* account, meanwhile, commonly refers to not only access to material opportunities such as continuing education, employment and constructive leisure, but also the corresponding *social bonds* of stable family life, pro-social friendship networks and fulfilling personal relationships with spouses, partners and work colleagues (Hirschi, 1996; Rutter, 1996; Sampson & Laub, 1993 and 1995; Shover, 1996). *Integrative* theories attempt to combine both *individual* and *structural* perspectives (McNeill, 2006; Maruna & Immarigeon, 2008). Crucially, though, the research conducted from an *integrated* perspective also draws heavily upon the accounts of those who have actually given up offending (Williamson, 2004). What emerges clearly from such research is the importance to such individuals of being able to shuffle off the self-image of 'offender' and assume the *identity* of a pro-social citizen. The process of positive *identity reinforcement* afforded by the establishment of a positive set of *social bonds* appears to be a crucial element in the desistance process. In the literature this is often described in terms of ex-offenders moving from a *condemnation script* (young people accepting their label as an offender) to a *redemption script* (whereby they embrace a more positive, pro-social identity) (Maruna, 2001).

The language of *risk factors* (Farrington, 2007) is widely used in policy circles, but equally important is the notion of *risk processes* (Evans, forthcoming). One such process that is central to an understanding of youth policy is that of *youth transitions* (Furlong & Cartmel, 2007). In western societies the *status transition* from dependent childhood to independent adulthood has in recent decades tended to become more extended, complex and risk-filled (although it is perhaps important to make a distinction between some of the more socially atomised northern European societies on the one hand and, on the other, the extended family-oriented, solidaristic communities of parts of southern Europe which duly reduce some of the associated risks). Whereas it was once a reasonable expectation to leave school and move directly into full-time employment, this is now less common experience in many European societies. Consequently, many young people continue in education for longer periods and – because they are not able to fund their independence – remain in the family home for extended periods. In some cases they 'yo-yo' between independence and the family home after a period in higher education.

In northern Europe in particular there have been significant changes in family structure that include higher divorce rates and the growth of lone parent and reconstituted families. It is not making a moral point to say that such diversity in family structure can, at certain times in certain circumstances, lower family income and heighten instability for some young people. Such families still have a crucial role to play in sponsoring their children's transition to independent adult status, of course, but the wider community's responsibility to provide appropriate support and advice for young people also becomes even more important. There are many reasons why a young person risks failing to accomplish a successful transition: specific family issues (bereavement, disability or ill health of a family member, poor parenting, abuse, etc.); disengagement from formal education; the high cost of accommodation; substance misuse; mental ill health, macro-economic difficulties (that tend to impact disproportionately on the youth labour market); and, of course, contact with the criminal justice system (this subject is dealt with in more detail below).

In light of the above analysis it can be argued that an integrated child & family/youth policy should be developed in order to ensure that all young people – irrespective of social background or personal circumstances – have access to services that will enable them to realise their potential and thus achieve a successful transition to independent adult status. The Council of Europe recommends that youth policies should be opportunity-focused rather than problem-oriented. Services and packages of opportunity should thus include coverage of such domains as education, health, social protection, careers advice, accommodation and leisure (Williamson, 2002 and 2006). Practitioners and policy analysts, meanwhile, should identify potential points of risk where young people may become detached from meaningful provision. This can occur within systems (e.g., the transition from junior to secondary school) or between systems (e.g., the relationship between public care and criminal justice systems).

It should be noted that Jersey's Children and Young Persons Plan is currently in the process of being developed. This represents a chance to build a policy that provides wraparound services and opportunities for all young people on the island. The fact that youth justice will be an integral part of this Plan is particularly welcome.

(B) Human Rights:

Jersey is already a signatory to the European Convention on Human Rights (ECHR) and has recently committed itself to signing the United Nations Convention on the Rights of the Child 1989. The UN Convention is, of course, used as a source of guidance by the European Court of Human Rights, along other guidance from the United Nations and Council of Europe. By actually signing the UN Convention on the Rights of the Child, though, Jersey will commit

itself to dealing with all children within an explicit framework of human rights. What are the implications of this important step?

Basically, as citizens of Jersey will already know through the state's commitment to the ECHR, human rights are inalienable. One has these rights because of one's humanity, not by virtue of one's conduct. 'Bad people' as well as 'good people' share the same set of unconditional rights (although these may be modified by the rights of others). Children in Jersey already enjoy rights given to them by the ECHR. The additional rights enshrined in the UNCRC 1989 can be divided into four main categories:

- I. Survival Rights (inherent right to life, food, healthcare, etc.)
- II. Development Rights (education; access to the arts; cultural rights, etc.)
- III. Protection Rights (protection from persecution and sexual exploitation; the right to a fair trial, etc.)
- IV. Participation Rights (right to freedom of expression, access to information, freedom of peaceful assembly).

It will be seen, therefore, that the Convention not only confers individual rights (freedom, etc.), but also unconditional social rights (to education, for example). Access to such social rights is not dependent upon whether a young person has or has not broken the law. In the circumstances the kind of integrated policy (Children and Young Person's Plan) being developed in Jersey is entirely consistent with the type of human rights framework delineated in the UNCRC. In Wales, for example, the youth policy *Extending Entitlement* is based on a human rights framework. Services are thus characterised as entitlements based on principles of universalism, citizenship and social inclusion (as opposed to being conditional and discretionary).

All of the articles contained in the UNCRC apply to all children, whether they are offenders or not. Which, though, are those of greatest relevance to the youth justice domain? The most pertinent articles are set out below.

- In all actions concerning children...the best interests of the child shall be a primary consideration (Article 3).
- States Parties recognise the rights of the child to freedom of association and freedom of peaceful assembly (Article 15).
- No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Article 16).
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37a).
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37b).

- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child shall be separated from adults unless it is considered in the child's best interest not to do so (Article 37c).
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (Article 37d).
- States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (Article 40(1)).
- States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. (Article 40(3)).

Ideally, the UNCRC should be used in conjunction with key United Nations guidance for youth welfare and justice; namely:

- The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985;
- The Directing Principles for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990;
- The Rules for the Protection of Juveniles Deprived of Liberty (Havana Rules), 1990;
- The Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), 1990; and
- The Economic and Social Council Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), 1997.

Although Jersey is not a member of the Council of Europe (COE), given the States of Jersey's commitment to the ECHR reference should be made to the *European Rules for Juvenile Offenders Subject to Sanctions or Measures* (2008) and the indispensable companion *Commentary on the European Rules for Juvenile Offenders Subject to Sanctions or Measures* (2008). Compliance with

these conventions is reviewed through inspection and audit; in March this year Jersey was visited by the COE Committee for the Prevention of Torture (CPT) who visited and reported on custodial facilities and practices on the island.

It will be noted from the above cited human rights framework that there are profound implications for practice for any nation-state that becomes a signatory: in terms of the way that young people are treated in public spaces, the age of criminal responsibility, diversion from the formal criminal justice wherever possible, a strong emphasis on rehabilitation and reintegration back into the community, and the use of custody as a measure of last resort. Philosophically, though, it also represents a shift of the debate away from the technical question of 'what works' in reducing young people's propensity to offend to the deeper moral question of 'what is the *right* way to deal with young people who break the law?' Thus, the best interests of the child are deemed to be a *primary* consideration (a *paramount* concern in the original French). A young person who commits a crime is thus a *child first, offender second*. Happily, the answer to the ethical question generally coincides with the answer to the technical question: doing the *right* thing is usually *what works*.

In order to develop a meaningful, mature and balanced human rights culture, it is helpful if two supporting measures are taken.

- I. Human Rights education/awareness-raising. This includes those who have contact with children and young people (social workers, probation officers, teachers, youth workers, police officers, magistrates, etc.). However, if children's rights are to be properly enacted, it is also necessary to promote young people's awareness of their rights in school and youth service settings. The Council of Europe has, for example, produced age appropriate training materials for children in junior schools, secondary schools and non-formal education settings such as youth clubs (Brander *et al*, 2002; Council of Europe Youth Directorate Website). Such practice examples could be, with very little additional work, adapted to the context of Jersey. The advantage of early and interactive work on human rights with children is that it seeds the notion of not violating the rights of others. The idea of rights being balanced by responsibilities to other citizens is a lesson best learnt at a young age and practised in the school council and other consultative fora.
- II. Given that children and young people's competencies are still in the process of development, it is important that they have access to effective advocacy services. This helps to ensure that young people are able to articulate their wishes and concerns across the range of issues that affect them (healthcare, education, social protection, social services, legal issues, etc.). We are aware that such services do exist in Jersey, but cannot comment authoritatively on their coverage or quality. It should be noted that

some countries appoint children's ombudspersons and commissioners in order to safeguard young people's rights. This is a matter that Jersey may wish to consider.

(C) Children, Young People and the Criminal Justice System:

It is commonplace for practitioners to assess the risk that young people pose to themselves or others. It is less common to analyse what risks are posed to young people by agencies, organisations and systems. The fact that practitioners can represent organisations which subscribe to a welfare philosophy does not in itself insulate a young person from risk of harm by such agencies. Although the criminal justice system should not be concerned solely with matters of punishment, it has been argued persuasively that criminal justice agencies are not always best placed to deliver welfare services.

The risks posed by the criminal justice system are well documented. Contact with the formal criminal justice system can stigmatise and label a young person, introduce her/him to more robust and sophisticated offenders, reinforce the self-image of being a criminal and narrow future opportunities in the labour market. In short, a criminal record can accelerate a young person's journey into social exclusion. Custodial sentences - even when given for ostensibly welfare reasons - attenuate family and community ties, corrodes a sense of self-responsibility, impacts negatively on mental health, places young people at risk of peer abuse and self harm, and demonstrably increases the risk of offending – not least through a process of '*contamination*' (criminal skills acquisition from other inmates, the facilitation of new anti-social networks and socialisation into attitudes that are generally supportive of offending) (Goldson, 2006).

Policy makers and practitioners will be familiar with the *Risk Factor Prevention Paradigm* (Farrington, 2007; Farrington & West, 1990 and 1993) and the substantial body of social scientific work based on this approach. Whilst such studies have yielded important insights into the profile of those who offend, the methodological basis of this work has been open to challenge (Case, 2007; Case & Haines, 2009); not least in respect of hindsight bias. Moreover, it has on occasions encouraged dangerous levels of therapeutic optimism amongst some policy-makers and practitioners whereby early intervention in family life is believed to remedy the risk of future offending. In order to counterbalance this type of analysis, it is worth mentioning the *Edinburgh Study* (McAra & McVie, 2007a, 2007b and 2010). Here the focus is more on the risks posed by *social processes* and *systems*. Four key findings emerge from the Edinburgh data:

- Persistent serious offending is associated with victimisation (e.g., abuse and neglect), acute vulnerability and social adversity.
- Early identification of 'at risk' children is not an exact science. It also poses the risk of labelling and stigmatisation (thus increasing the risk of offending and criminalisation);

- Pathways into and out of offending are facilitated or impeded by ‘critical moments’ and ‘key decisions’ at crucial points (practitioners and gatekeepers therefore have a vitally important part to play in the subsequent trajectories of young people: e.g., whether to arrest or problem solve, exclude from school or reintegrate, caution or prosecute, breach or facilitate compliance, etc.).
- Diversionary strategies facilitate the desistance process. (McAra & McVie, 2010)

On the latter point it is reasonable to ask to where young people should be diverted. In the UK during the 1980s diversionary strategies succeeded in reducing the number of young people in custody, but in many cases their very real and pressing needs remained unmet (Haines & Drakeford, 1998). It is the argument of this Report that, in the phrase coined by the Independent Commission on Youth Crime and Antisocial Behaviour (2010), offending behaviour should lead to ‘*meaningful consequences*’; in terms of challenging young people’s conduct **and** meeting their welfare needs. The type of models developed in Northern Ireland (Jacobson & Gibbs, 2009) and Swansea (Appendix C) represent two different ways in which these twin aims can be met. In response to the question posed, summarised below are clear principles that emerge from the research.

- Domain Integrity Management (Evans, forthcoming). As far as possible it is important that problematic behaviours presented by young people are dealt with within the domain within which they occur. This might be in the family (helping parents to intervene effectively with their children), the school or the residential children’s unit. In the latter case there are examples from across the UK of ‘looked after’ young people entering the criminal justice system as a result of comparatively trivial incidents that, had they occurred in their homes, would have resulted in their being ‘grounded’ or losing pocket money. Clearly there is scope for informal restorative practices in schools and children’s homes in such cases. Another aspect of domain integrity management involves filtering out those young people who, because of their vulnerabilities and high needs, should not enter the criminal justice system (e.g., some children with learning disabilities, severe mental health problems and victims of serious abuse or neglect).
- The dark side of Domain Integrity Management is that it can lead to the development of a ‘*shadow youth justice system*’, particularly in the mental health and social welfare sectors. This has arguably happened in Finland where many young people are detained in psychiatric and public care secure units (Pitts, & Kuula, 2005). It should be noted, incidentally, that the UNCRC applies to children in such facilities. Therefore it is important that models of *rights-based welfare* (involving the application of principles of due process) are developed and supported by effective advocacy services.

- Where young people have become disengaged from families, communities and education/training/employment, efforts should be made to reconnect them where this is appropriate. Once again the importance of developing a fully integrated Children and Young Person's Plan/Youth Policy needs to be underlined. This process of reconnection may need to be overseen by an appropriate practitioner or mentor.
- Problematic behaviours and offending need to be addressed. Where appropriate (i.e., where there is a sufficient level of understanding present), young people need to take responsibility for what they have done and, as far as possible, make amends. Genuinely restorative practices, such as those developed in Northern Ireland (Jacobson & Gibbs, 2009) and elsewhere, are to be encouraged. In some cases practitioner-led interventions may be required (e.g., from the education, youth service or probation service sectors). In other cases mentoring from volunteers or - as has been suggested by Mackenzie (2008) – Circles of Support and Accountability (COSA); an intervention more commonly associated with adult sex offenders, but one which could work very well in a society with strong traditions of voluntary service. This approach may be particularly suitable in circumstances where a young person's ties with family are frayed or even severed.

What is important is that young people receive a swift a response to their offending in terms of addressing their behaviour, making amends to the victim (where possible), reconnecting with the family (where appropriate), restoring or initiating contact to essential services, and generally reintegrating into the wider community.

Although the remainder of the Report contains references to practice elsewhere and the wider literature, on the whole it will focus mainly on specific aspects of the youth justice system in Jersey: prevention, early intervention and diversion; the courts and statutory supervision; and custody and the deprivation of liberty.

3. Prevention, early intervention and diversion:

At the outset it should be stated that, in comparison with many other jurisdictions, Jersey is a safe place with low levels of serious youth crime. Nevertheless, concerns have been expressed about certain aspects of some young people's behaviour. These concerns relate to the risks such behaviours cause to young people themselves as well as those posed to others. It is against this background that this section of the Report deals with the closely related subjects of prevention, early intervention and diversion.

Tonry & Farrington (1995) describe four main types of prevention strategy:

- *Developmental* approaches involve targeting individual protective factors.
- *Community* strategies are aimed at improving the quality of life for families and neighbourhoods through the establishment of shared resources and the promotion of supportive local groups, clubs and societies.
- *Situational* approaches are based on the idea of reducing the opportunities to commit crime through target-hardening (e.g., improving locks and alarms) and improved design of public spaces.
- *Criminal Justice* interventions generally involve rehabilitative measures. The paradox of criminal justice interventions, as will already have been gathered, is that there is an associated risk of accelerating young people's journey along the pathway to social exclusion and further offending. This is partly the result of labelling and partly because the acquisition of a criminal record can represent a formidable barrier to reintegration into wider society. A criminal conviction can, for example, bar young people from entry into certain occupations. This is not an argument against rehabilitative criminal justice interventions, of course, but it does underline the importance of trying to prevent as many young people entering the formal criminal justice system as possible.

In this section of the Report the main focus will obviously be on measures that can be taken prior to young people entering the court system. It is organised under three main headings: services to children, young people and families; policing and public order; and the Parish Hall Enquiry System.

A) Services to Children, Young People and Families:

- The C&YPP, which is currently in the process of being developed, should provide a clear map of the comprehensive set of universal services available to all children and young people in Jersey.
- In addition to this map of universal provision, it is important to outline services of a more targeted nature. To that end a risk

analysis should be conducted in respect of those points in the interlocking systems where young people are most likely to become detached from provision or fall between the cracks that can open up between different service providers. Clear lines of communication, accountability and responsibility therefore need to be developed at these points of heightened risk.

- An audit and review of Jersey's mentoring and advocacy strategy should be undertaken. We consider this to be an important part of ensuring that young people receive the services to which they are entitled.
- Young people need to be partners in shaping the C&YP Plan. It is recognised that more work needs to be undertaken in respect of extending the youth participation agenda through the further development of schools councils and the establishment of a fully functioning National Youth Council/Assembly. The Youth Service is well placed to lead on this youth participation agenda.
- The Review Team's attention was drawn to the lack of affordable and appropriate accommodation for young people. This should form an important plank in the C&YP Plan.
- Supporting effective parenting represents an important investment in the next generation. It is also an essential part of any serious crime prevention strategy. We were greatly impressed by the quality and variety of parenting support programmes available at The Bridge. It is to be hoped that the C&YP Plan is able to identify clear routes for parents seeking help with rearing children and young people at risk of entering the criminal justice system.
- Young people, as well as parents, also need to access advice and guidance in respect of dealing with problematic family relationships. We were interested to learn that the main category of referral to the Youth Service's counselling service was described as 'relationships'. In most cases, we understand, this referred to issues with parents. The counselling service is already well used, but it is most important that as many young people as possible are informed that this resource is available to them.

B) Policing and Public Order:

- The States police are probably the first point of contact people have with the criminal justice system. It is therefore a matter for concern that the young people we met, along with many of the practitioners who work with them, expressed concern about the heavy-handed policing style often adopted in relation to youth. It was argued that the police appear to have a negative view of young people, an attitude possibly shared by many adults in the wider population and – we were told – reflected in some parts of the

media. As far as the police are concerned, though, this attitude was reportedly manifested in a rather confrontational 'move on' strategy in respect of young people who congregate in public space. This is possibly partly due to an over-reliance on Operational Response Units. As a result, the style of policing tends to be reactive rather than problem-solving. We were advised that there are plans to move towards a more patch-based system at Inspector level. Such a move would certainly help to improve the cultivation of better relationships with young people at local level.

- The recent introduction of distraction events by the States of Jersey Police in conjunction with partner agencies at the time of significant events such as exam results days and Halloween is by way of contrast an initiative to be welcomed.
- The SOJP treat 17 year old detainees as Adults. This is not compliant with international convention.
- We believe there is merit in the idea of exploring whether the youth service might take a more active role in police training.
- We believe there is scope for the police to use the youth service's street-based detached/outreach workers as a resource for dealing with potentially challenging public order incidents. Whilst recognising the boundaries between the two agencies the possibility of working in closer partnership with the youth service should be explored, as they have in the past.
- Young people should be consulted about issues of community safety, the use of public space and other crime prevention issues (including access to leisure, recreation and other facilities).
- Alcohol misuse appears to be an issue that affects all sections of the community in Jersey. In the case of young people, however, the consequences of binge-drinking tend to be more visible in public places. A youth-targeted health promotion strategy in respect of alcohol does, therefore, need to be developed.
- Jersey's excellent Youth Service is engaged in a range of activities that contribute to crime prevention, community safety and the welfare and development of young people. The provision of practical advice through YES (Youth Enquiry Service) in conjunction with its counselling service means that the Youth Service is trusted and used by a high proportion of the island's young people. The Service must, however, beware that it does not allow itself to be 'colonised' by the criminal justice system. Although it should certainly work in partnership with other agencies, it must remain independent if it is to continue enjoying the trust of young service users.

C) Diversion and the Role of the Parish Hall Enquiry System:

- In line with advice given to other countries by the United Nations Committee on the Rights of the Child, consideration should be given to raising the age of criminal responsibility. It may be appropriate to set up an internal review in order to progress this matter. Although the rationale for reviewing this question relates primarily to such issues as young people's maturity, one of the consequences of raising the age of criminal responsibility is that it would reduce the number of entrants to the criminal justice system, (there have been 38 cases involving 10 and 11 year old children and 3 or 4 children of this age have appeared in Court over the last 30 months from data provided by the States of Jersey Police). This would, of course, necessitate strengthening appropriate interventions outside of the formal criminal justice system that addressed young people's problematic behaviour.
- In some circumstances it may not be appropriate to deal with certain children in the formal criminal justice system. This may be because of learning disabilities, mental health problems, extreme vulnerability or particularly complex family histories involving neglect or abuse. Consideration should be given to establishing assessment systems that prevent such young people from entering the formal criminal justice system. Ideally, such young people could be dealt with in other ways.
- The *Parish Hall Enquiry* (PHE) System provides a distinctive and effective first tier of intervention. It is well placed to identify when a young person is disengaged from family and school or is in need of being referred to other services. It is also a process that can facilitate victim-offender mediation/restorative justice when appropriate. There is a demonstrably good relationship between the Centeniers and the probation service. It is, however, important to increase the level of support to the PHE. Improving multi-agency information sharing could enhance the process significantly. More information from Education, for example, would be extremely helpful. Early contact with young people and their parents could also prepare the ground in advance of the PHE. The present system works well for most young people, so we are anxious not to tamper with the present arrangements too much. Ideally, an enhanced process is envisaged in the following terms. Initial information gathering would be led by the probation service and this could be shared with the PHE. Child and parental involvement – and victims if they wish – would continue to be managed by the Centenier at the PHE. The PHE could then (a) use one of its customary alternatives to prosecution, as currently happens, or (b) defer a decision to the allow the Child Assessment and Support Team (see Section 4) to develop a plan, mobilise the necessary resources and – if appropriate – set up a conference to involve parents and initiate Restorative Justice. The plan should be presented and endorsed at a second PHE in order to authorise the proposal. Prosecution should ensue only if no satisfactory alternative can be devised or the offence is so

serious that the Centenier regards prosecution as unavoidable in the interests of justice.

- The Attorney General's Guidelines to Centeniers could be revisited in order to spread greater consistency of practice and to encourage the use of diversion from Court where informal measures are likely to be successful. This would need to be supported by making more training available to Centeniers in respect of effective practice with children.
- The Probation and After Care Service undertakes excellent work in the field of Restorative Justice. However, in order to spread a sense of community ownership of this philosophy, it is recommended that efforts should be made to recruit and train more volunteers to allow its use to be extended more widely for example to Honorary Police Officers, within residents' associations and schools.

4. The Courts and Statutory Supervision:

This section is divided into parts: the first deals with the courts and related matters; and the second addresses services and statutory supervision for children who appear in court.

A) The Courts:

- Magistrates and Youth Panel Members are to be commended for their efforts to overcome the formal arena of the court room by engaging with young people and their parents in a direct, responsive and informal way. The welfare of the child is clearly a primary consideration in the court's deliberations.
- Remands to custody appear to be over-used. It is recognised that such decisions may be made on partially welfare and child protection grounds. This issue is addressed in more detail in the second section of this Report.
- It was the perception of some of the sentencers that there needed to be more statutory community-based options available to the Court. Whilst we understand and respect this viewpoint, the position of the Review Team is that there already exists considerable flexibility within the present statutory framework. It may, therefore, be a case of exploring the potential of what already exists in order to develop the most appropriate supervision packages for individual young people. This issue is dealt with in more detail in the second part of this section.
- Concerns were expressed by a number of people about the quality of the legal advocacy service to young people in the court. Accordingly, Section 6 contains a recommendation that may go some way towards addressing this issue.

B) Services and statutory supervision for children who appear in Court

One of the drivers for this review of Youth Justice was the question of whether custodial sentences for young offenders in Jersey are appropriately used and managed. This question is considered in more detail in the following section, but at this point three facts are worth highlighting:

- Reconviction rates following release from the YOI are, in Jersey as in other jurisdictions, very high (73% in two years was the rate recorded in Miles and Raynor's 2009 report – two thirds for a serious offence) and higher than for offenders with a similar initial risk of re-offending who receive a community penalty. This means that any initial improvements in public protection during the sentence are quickly lost through the higher than average subsequent offending rate.

- A large proportion of the young people in Jersey who spend time in custody are on remand rather than sentenced.
- Sentencers have consistently pointed out to us that custody is used as a last resort, when community-based options are perceived as unavailable or exhausted, or people have not complied with them.

These facts suggest that it is important to consider the nature and use of community-based options in the light of experience and research elsewhere. This section identifies a number of approaches which have been used with some success: fuller details of available evidence will be found in the Appendices. We have concentrated particularly on options for change which could be implemented through changes in practice, often of a fairly modest nature, rather than necessarily requiring new legislation, though the latter might be desirable to consolidate changes and ensure their durability.

In relation to custodial remands, it is clear that these are often used because of concerns about further offending while awaiting a court appearance, or concerns that the defendant might not attend court. The need to remand in custody for these reasons could be reduced by measures designed to ensure that defendants can be bailed to suitable accommodation or to specialist foster placements where an element of supervision can be provided. Appendix B provides some examples of what can be done, and it would clearly be beneficial to bring together relevant agencies in Jersey (primarily Probation, Education, Youth Service, Children's Services) to consider the development or extension of relevant services. These could be largely or completely self-financing if substantial reductions in custodial remands can be achieved. As with most diversionary measures, the aim would be to achieve early referral of cases by the Police so that a supported bail plan could be put to the Court at the time when remand arrangements are being considered.

In relation to custodial sentences, the aim should be to reduce the number of occasions when sentencers have to conclude that they have no alternative to a custodial sentence. Whilst the supervision of offenders in the community is highly developed and demonstrably effective in Jersey, as evidenced by a series of evaluation reports on the work of the Jersey Probation Service, it is a useful exercise to consider what has been done in other jurisdictions to meet the particular supervision needs of prolific and persistent offenders, and of young people at risk of custodial sentences. Relevant research is summarised in Appendix D. Briefly, there have been particularly interesting developments in relation to multidisciplinary working, intensive contact and the management of non-compliance. Important points are:

- Schemes for the supervision of prolific and/or persistent offenders in the community have made effective use of joint working by police and probation staff, and of multidisciplinary management boards, which can include representatives of health, education and social work services.

Intensive supervision schemes, usually developed in order to offer Courts an alternative to custody, are most effective when intensive services have a clear helping purpose and are provided in a way which addresses the difficulties which young people in trouble actually face. When intensiveness is pursued for its own sake and the requirements with which young people are expected to comply are multiplied for punitive reasons, this is usually counter-productive, leading to little improvement in behaviour and a high probability of failure to comply, incurring further punishment. Approaches to compliance should be based on securing improvements in co-operation (which will often be shaky to begin with) rather than on punishing non-compliance. The idea of generating evidence-based policy proposals on youth justice is a logical development of the Probation Service's commitment to evidence-based effective practice which goes back to 1996, and has generated more evidence of the high quality and positive impact of supervision than is available in other probation services.

- Failure to comply with a community disposal should be seen primarily as a problem to be solved, rather than a deliberate challenge to the Court's authority. It is generally more advantageous for people to complete their community penalties, even with some slip-ups along the way, rather than to fail to complete. For example, numerous studies of the outcomes of offending behaviour programmes show that while completers may do well, non-completers are likely to re-offend more than similar offenders who never undertook the programme. When people with significant offending histories and many personal difficulties are supervised in the community some failures in compliance are inevitable, and where possible they should be dealt with in a way which makes the order more likely to be completed. An understanding, supportive and encouraging approach from sentencers who listen is usually greatly appreciated by offenders who are struggling with their orders.
- There are also cases that may not need to come to Court: for example, the problem-solving approach is well developed in the Parish Hall Enquiry system (see the comprehensive evaluation by Miles and Raynor [2005]), but at present all re-offending by persons subject to a community order must go to Court, even if it is an offence of a kind which would normally go no further than the Parish Hall. If such cases were dealt with at the Parish level instead, the breach of the Order could then be reported to the Court, but need not result in a hearing if it is considered that the Parish Hall Enquiry has already responded proportionately to the actual behaviour. Such an approach is consistent with the principle of the 'horizontal tariff', in which the response to offences primarily reflects the relative seriousness of the current offence, rather than the 'vertical tariff' in which penalties are progressively escalated by the fact that there have been previous offences, even though those past offences have already been punished. Putting these principles into practice would not require new legislation in Jersey, but could require some rearrangement of

services and practices. The valuable work of the Parish Hall Enquiries, and the desirability of supporting and strengthening them, has already been mentioned in an earlier section of this report. The Probation Service is well placed to make more comprehensive information about offenders available to the Parish Hall Enquiry when appropriate. The development of multi-disciplinary services requires a commitment from several organisations: in particular, it would be desirable for an appropriate police officer to specialise in liaison and joint work relating to youth justice. There would also be a need to develop information systems to monitor youth justice work which would be accessible to and understandable by all agencies involved.

- The Youth Action Team's current service model appears unsuited to current circumstances and new needs. It appears on occasion to duplicate unnecessarily the work of the Probation Service, and the review team is not aware of any systematic evidence of its effectiveness. The resources committed to it could be better used as part of a proposed Children's Assessment and Support Team (see 'Recommendations'), to support diversion and the provision of effective help. Discussion of new patterns of service and intensive forms of supervision often leads to concerns about costs. However, these need to be considered in the context of the costs of custodial sentences which alternatives can help to avoid. It is also important to consider the issues discussed in this section alongside the earlier discussion of how to reduce the need for a formal criminal justice response to misbehaviour by young people. If the number of young people entering the youth justice system is, over time, reduced, this is also likely to reduce the number who progress far enough in the system to require formal supervision.

5. Custody and the Deprivation of Liberty:

Although some of what follows repeats points made earlier in the Report, the Review Team consider it important to underline the key issues because we consider them to be so important.

Under Article 37 (b) of the United Nations on the Convention on the Rights of the Child the detention or imprisonment of children should be “used only as a measure of last resort.” In order to ensure that this is the case, the sorts of preventive and diversionary measures identified in the earlier sections of this Report should ideally be implemented. Despite the best efforts of committed staff in custodial institutions, we know that the deprivation of liberty can pose a range of risks to young people as well as increasing the likelihood of reoffending (Goldson, 2002 and 2006; Social Exclusion Unit, 2005; National Audit Office, 2004). Some of these risks are summarised below:

- A weakening of ties to family and community.
- Disruption or damage to prospects in education (school and college), training and employment. Writing about education in the context of England and Wales, Stephenson (2007) has expressed concern that custody can diminish protective factors and increase risks. Firstly, it can constrain and erode decision-making and planning skills. Secondly, the education provided takes place within such an abnormal environment that its subsequent applications can be of limited value. Finally, the removal of young people from formal education or training – even in cases where that connection is attenuated - causes further disruption and an increased sense of dislocation. This makes reconnecting the young person with community provision on release even more problematic.
- The deleterious impact of the deprivation of liberty on mental health and coping strategies (Cesaroni & Peterson-Badali, 2010; Gosden *et al*, 2003; Harrington & Bailey, 2005; Otto-Salaj *et al*, 2002), especially in respect of the sense of uncertainty that can often haunt those on remand (Freeman & Seymour, 2010).
- Exposure to peer abuse.
- The hidden curriculum in even the best run custodial regimes may bequeath the fledgling offender a wide repertoire of criminal skills, a set of attitudes that are supportive of anti-social behaviour, and access to an expanded network of deviant peers. Notwithstanding the risk of ‘criminal contamination’ through contact with more sophisticated offenders, it is important to recognise that good and settled peer relations in custody play an important part in helping young people reduce the psychological distress of incarceration (Biggam & Power, 1997; Chambers *et al*, 2000; Cesaroni & Peterson-Badali, 2010). Consequently, there can be negative impacts on mental health as a result of either high inmate turnover in busy institutions or prolonged periods of social isolation in underused facilities.

It is important to make the point that secure accommodation in the welfare domain can share many of the same characteristics as custodial institutions within the criminal justice system. Ultimately, depriving young people of their liberty and grouping them together in secure accommodation can pose exactly the same challenges and risks as those described in relation to penal institutions (Evans, 2010; Taylor, 2006). It is therefore always important to ask whether the institutional option really promotes the best interests of the child. Ironically the better the facilities and the more positive the regime, the more likely it is that the facilities will be over used by those looking for solutions to difficult behaviour. However, it must be emphasised that no matter how good the facilities or how positive the regime, outcomes for children are likely to be worse than if they had remained at liberty.

In order to reduce the use of custody within Jersey, preventive strategies and diversionary measures must, as far as possible and appropriate, be used to re-route young people away from the criminal justice system. For those who do enter the formal criminal justice system, the flexible use of community-based sentences should generally be preferred to the custodial option. One of the challenges facing the court, however, is that of remands. It is recognised that the courts will, on occasions, reluctantly remand young people to Greenfields and La Moye YOI on essentially child protection and welfare grounds. It is further recognised that sentencers will quite rightly be uneasy about such remands because the criminal justice system is not ideally placed to promote the welfare of these more vulnerable young people. The policy emphasis should therefore be shifted in the direction of those with responsibility for delivering welfare services to young people. The development of the CYPP clearly has an important part to play in ensuring that community 'wrap-around' provision is available to those most in need. The Courts need to have confidence in the welfare support networks in the Community. In the meantime, the feasibility of developing remand fostering and supported lodgings needs to be explored as a matter of urgency. It is recognised that some capacity building will need to be undertaken in respect of recruiting, training and professionalizing remand fostering services.

Inevitably, perhaps, some young people will be deprived of their liberty. It is therefore important that they receive the best possible services whilst they are living at Greenfields or La Moye. It should be emphasised that the Review Team did not attempt to conduct an 'inspection' of either institution. Rather, we tried to engage with staff and young people in order to help us understand the particular challenges and risks associated with managing secure and custodial services in Jersey. The following issues emerged:

- There is a major challenge and inherent risk in working with small numbers of young people. On the one hand there are concerns about the social isolation and boredom some young people may experience while

they are detained. At La Moye, for example, we met one young male who had served part of his time in almost complete isolation. He had high praise for the staff at the YOI, but said that it was difficult being the only young person in the facility during this period. The young people we met also complained that there were long periods when there was very little to do. There were complaints about long periods being 'banged up'. It was claimed that there was limited educational provision and no access to work. The economies of scale inevitably make it difficult to deliver a full programme of educational and recreational activities, but time weighs heavily for a young person deprived of liberty. This seems to be true at both La Moye YOI and Greenfields. On the other hand, of course, the young females at La Moye mix with older women (in breach of international conventions and guidelines). We did not have the opportunity of meeting these young people, but there are obvious concerns here about the potential for 'criminal contamination' through association with older and more sophisticated female offenders. There are no easy answers to the dilemma of isolation on the one hand or association with adults on the other, but it is important to highlight the particularities of the Jersey context. The staff at both Greenfield and La Moye are undoubtedly committed to the welfare of young people, but delivering appropriate services in this context remains a major challenge.

- It was reported that the communication of case information to La Moye YOI could be improved. Vital information from Education and Children's Services about young people entering the institution is often unavailable or minimalist in character. It was mentioned that there had been cases where personal issues about prisoners had not been shared. This could clearly have placed some young people at risk.
- There needs to be a shared understanding of the aims of a custodial sentence served in the YOI. The view expressed by the staff we met was that the punitive element of the sentence involved the deprivation of liberty rather than the harshness of the regime itself. The opinion was expressed that the role of prison staff and colleagues from partner agencies was primarily to help break young people's cycle of offending and secure their rehabilitation. It was acknowledged that more work needed to be undertaken in respect of running programmes to tackle offending behaviour, though. Progress had been made in respect of educational provision (visits by the staff from the Alternative Curriculum and the provision of flat-screen televisions for educational purposes), skills training and connections with Job Centre Plus, the Prince's Trust and accommodation agencies had also improved. Nevertheless, it would seem that there is still scope for prison-based education and training to be better aligned with provision in the community. We understand that an opportunity for Highlands College to provide education and training directly to the prison (including the use of a virtual learning environment) was rejected some years ago (prior to the present governor's tenure). Given the high quality of provision available at Highlands and the potential

for young people to move directly from YOI to college on their release, it is to be hoped that the possibility of developing such a seamless service will be re-examined in the near future.

- The Review Team had some concerns about the adequacy of staffing levels at Greenfields: in terms of both safety and the capacity to engage with individual young people when required. It must be emphasised that this comment is not a reflection on the calibre of staff; rather it is a question of staffing capacity.
- Although Greenfields could be redesigned to separate young people who enter Greenfields via the criminal courts from those who enter through the welfare route, it needs to be recognised that at the present time this form of categorisation may not reflect the actual level of vulnerability of the respective populations. Indeed, the young people concerned may share the same type of profile, but be at different points in their lives. Categorisation should not, therefore, be determined solely on the basis of the source of referral. We understand that the establishment of a Vulnerability Panel to oversee placements and establish a risk-based model for custodial provision is now being considered. This is to be welcomed.

One of the concerns expressed to the Review Team was that young people's post-release experience was patchy and uneven. In some cases experience was good, but in others young people were ill-served. The problem of being placed in inappropriate accommodation, for example, was raised on a number of occasions. Indeed, one of the young people we met at La Moye echoed this concern. To experience such anxieties whilst serving a custodial sentence is deeply unsettling for young people. Many of the core features of good resettlement practice in respect of adult ex-prisoners also apply to young people. Some of the key elements involved in developing a seamless service are characterised by Raynor (2004) in the following terms:

- Assessment and planning from the earliest stages (i.e., as soon as a person enters custody).
- Custodial programmes that focus on developing skills that will be relevant in the community.
- Community programmes that build on the work done in the custodial phase.
- An overarching case management system that provides both direct and ongoing supervision as well as brokering access to essential services.

According to Maguire (2007) these essential services might include:

- Accommodation
- Education, training and employment
- Mental and Physical Health (including counselling and substance misuse services)

- Advice and advocacy in respect of finances, benefits and debt
- Guidance and support in respect of family and personal Relationships
- Working on promoting pro-social attitudes, beliefs and behaviour.

The post-release supervision process entails ensuring that ex-prisoners are connected to the services they require, supported in the process of establishing pro-social relationships within the community, and encouraged to sustain positive habits of mind and behaviour.

As far as young people are concerned, of course, there are additional considerations that relate to their maturity, relative powerlessness and vulnerability. There is, in short, a duty of care. Accordingly, there is a responsibility to ensure that young people are duly connected to the services to which they are entitled through the relevant children's/youth policy. In the case of Jersey, this would be the forthcoming C&YP Plan.

Young people, especially those with more difficult backgrounds, cannot be expected to access services and negotiate challenging transitions without close guidance and support. Youth policy literature underlines the importance of 'trusted adults' (SEU, 2005) in the lives of young people; adults who are available when weighty decisions need to be made. These adults are trusted because they are knowledgeable (or at least know where to go in order to obtain information), honest, reliable and committed to promoting the best interests of the young person. Williamson (2004) uses the phrase 'critical adults at critical times' because sometimes this role involves not only support and encouragement, but also telling the young person a few uncomfortable home truths. Nevertheless, despite this, they still 'stick with' the young person concerned. For many young people this trusted adult will be a parent, member of the extended family, teacher or youth worker. Some less fortunate young people, including many of those leaving custody, may not have such a person in their immediate social milieu. The Report *Young Adults with Complex Needs* (SEU, 2005) addressed the issue in respect of 16-25 year old young people who fell into this category (ex-offenders, care leavers, those with mental health and/or substance misuse problems, etc.) and concluded that it was important to identify 'trusted adults', mentors or guides. This vital role involves,

"Building and maintaining a trusting relationship; and advising and encouraging young adults, through small but significant steps, towards positive outcomes."
(SEU, 2005: 72)

The Review Team believes it is important that Jersey reviews its current mentoring strategy and considers how it might identify and engage with those young people in the criminal justice system that might benefit from such a service. It may be that YAT workers would be in a position to fill this role. In our view it should become common practice to explore the possibility of identifying

mentors for young people well before the end of their period under statutory supervision.

The Review Team believes it is imperative that any young person leaving custody, including those who have been on remand, are allocated a clearly identified practitioner who can supervise the transition from custody into the community. Currently this is only the case with sentenced children. In the case of custodially sentenced young people, CAST should draw up an individualised resettlement plan prior to release. This would include a clear description of the arrangements for supervision support. It would also identify the key practitioner responsible for ensuring all elements of the plan are delivered. The key practitioner would have the power to reconvene a CAST meeting for the purposes of review. CAST may also become involved in assembling packages of support for vulnerable young people leaving custody after a period on remand. It would make sense for the probation service to assume overall responsibility for deciding when this is appropriate.

6. Some implementation issues

In general the standards of management and administration in public services in Jersey allow us to have a high degree of confidence that proposed reforms, if adopted, can be implemented successfully. However, experience elsewhere suggests that it will be particularly important to bear the following points in mind:

- We have suggested a multi-agency approach to aspects of the youth justice system in order to ensure that the right people and organisations are brought together to address what are in most cases cross-cutting and multidisciplinary problems.
- In such arrangements, it is important that people come together with a shared agenda and joint aims, and buy into the purposes of the multi-agency work instead of sticking to the customary positions and precedents of their own organisations.
- Successful joint working can be facilitated by preparation: for example, joint training in the objectives and approaches of new arrangements. This needs to include orientation training for managers as well as implementation training for front-line staff. Without full informed commitment from managers, the multi-agency aspect of any new approaches can become tokenistic and ineffective. It is encouraging that in Jersey all relevant Ministers are involved in the process of the Children and young People's Plan, as this should help to ensure the necessary focus in management.
- The implementation of new approaches to youth justice creates new monitoring and information-sharing requirements. Appropriate specialist staff from relevant agencies need to meet to identify information and monitoring requirements for youth justice and to develop a common approach to gathering and using information. A lead agency or agencies should be jointly identified to oversee information requirements.
- The overall impact of any changes in the youth justice system needs to be properly evaluated in order to identify problem areas or any further changes that might be needed. Arrangements to do this need to be put in place at an early stage, before changes are made. One approach would be to establish a specialist post at senior level to oversee a comprehensive programme of evaluative research in the criminal justice system in Jersey: this would support the development of evidence-based policy and practice not only in Youth Justice but throughout the criminal justice system. Without such oversight, evaluative work could still be undertaken in a piecemeal fashion but it will have less strategic impact. We recognise that financial constraints apply, and that the wider implications of a criminal justice research and information strategy go beyond the scope of our report, but the advantages of such an approach are well worth considering.

6. Summary of Recommendations:

Many of our recommendations can be adopted through changes in practice prior to any legislative changes. Such practice changes would allow the impact to be measured prior to any legislative change. Nonetheless we believe that to ensure the changes survive and to demonstrate compliance with international conventions and legislation, law changes should be made as recommended in the longer term. These recommendations are interdependent and careful thought should be given to their individual implementation to avoid unintentional and potentially harmful consequences if adopted individually.

An important principle underlying many of these recommendations is that children who persistently offend are also children at risk and in need, and their welfare needs should be met by the appropriate welfare agencies rather than leaving the criminal justice system to fill the gap. For example, it is not best practice to put the Court in the position of feeling obliged to remand in custody for reasons which are primarily about protecting children. However, such problems can only be avoided if the agencies responsible for the welfare of children develop a more responsive and timely way of interacting with the Court, so that sentencers can seek and receive information from them with a minimum of delay, and so that resources can be mobilised quickly enough to allow Courts to take them into account in their decision-making about custodial remands or sentences. For example, the timely availability of supervised accommodation can sometimes avoid a custodial remand. This points to a significant development agenda for Children's Services, but without such development many of the proposals in this report risk being regarded as unrealistic.

1. The States of Jersey should immediately request the United Kingdom government to ratify the UNCRC on its behalf, or alternatively incorporate the UNCRC into domestic legislation. Whilst it may be some time before Jersey is technically compliant with the Convention, ratifying it indicates a firm intention to comply. Many signatory nations are not yet fully compliant with the Convention.

2. Policy and Practice in Youth Court.

(i) In order to ensure that children are represented by lawyers who understand children's matters, specialist training in children's legislation and effective practice should be made available to all Advocates who work in the Youth Court.

Target date: immediate. Resource implication; training from JPACS / Institute of Law / Highlands College.

(ii) That Youth Court Panel Members and Magistrates are provided with similar training to that provided for convenors, reporters and Hearing panel members in Scotland and Guernsey to reinforce their existing problem solving approach.

Target date; immediate using the existing training budget.

(iii) Youth Court practice should continue to reflect a problem solving approach; in particular recognition that a vertical tariff and numerous specific conditions to orders are unlikely to be effective.

Target date: ongoing

5. Prosecution and the Parish Hall Enquiry.

(i) In order to allow for a considered decision based on good information the States of Jersey Police will normally only request Centeniers to attend at Police Headquarters to consider charging a child if the child is to be detained in custody pending a first court appearance. In all other cases the child and parents/ guardians will be warned for a Parish Hall Enquiry.

Target date: immediate.

(ii) There should be at least a two week period between release from Police Headquarters and the Parish Hall Enquiry during which time the JPACS should contact the family to help them to prepare for the enquiry and prepare a verbal or written report for the Centenier. This period allows the family to demonstrate that they have taken action to deal with the offending behaviour by their child.

Target date: immediate through Centeniers, CJU and JPACS

(iii) The Constable of the Parish issues driving licences and therefore in appropriate cases Centeniers could be authorised to ask the child to consider surrendering their licence for a period. If agreed to by the family this should be recognised as a de facto endorsement or disqualification, and allow Centeniers to deal with some motoring matters which presently have to go before the Youth Court. (Mandatory disqualification cases would still have to go to Court)

Target date: January 2011. Approval required from AG, Comité des Connetables and Youth Court

(iv) Discussion to take place with the Attorney General to vary the guidelines which govern Centeniers' discretion around the charging of children, so that

they may deal with those already subject to orders and deal with more children informally who do not require compulsory measures to prevent their re offending.

Target date: January 2011 discussion with AG. New guidelines in place by March 2011.

(v) The JPACS restorative justice officer post to be expanded to provide training and support to the Honorary Police and other community representatives in order to develop further their skills in conflict resolution in their work in the parishes. This would have the dual benefit of positive crime prevention activity and making service in the Honorary Police more attractive to Parishioners.

Target Date: Immediate: funding required for increase in Officer's hours by 5 per week.

6. Policing of children.

(i) No child should be labelled as a Priority Persistent Offender without consultation with JPACS and the Social Services Department. Disruption practices when used in isolation can be counterproductive when used on children who are already excluded from mainstream living. These children will be managed through the CAST system.

Target date: immediate through discussion with Chief Officer of Police

(ii) The States of Jersey Police and the Honorary Police should take up the offer of training in interacting with children which has been offered by the Youth Service. Senior managers of both organisations should meet to explore and resolve tensions between their organisations.

Target Date: A Programme to be in place for 2011

iv) Those children causing most concern to agencies because of their offending behaviour should be managed according to a multi agency model akin to that of the Child Protection Case Conference or RAMAS but with the focus being on the child's best interests. This process has been labelled CAST (Children's Assessment and Support Team) in this report. All Departments should undertake to co operate in this process and allocate resources as a priority to this group.

Target date: Immediate through a memorandum of understanding. Meetings can be convened by any agency but chaired by the Probation and After Care Service.

(v) Children's home staff and schools should not call the Police to deal with incidents that would be dealt with by a responsible parent in their own home. (However, it is recognised that a parent may wish to make a complaint to the Police following a playground fight or another child may wish to bring a charge in a children's home for example). The principle is that a child should not be penalised because they are a looked after child or be already known to the police.

Target date: immediate, but staff will need to feel supported in resolving the conflict informally. Training to be provided in conflict resolution and restorative practices.

(vi) The practice of reporting all children who leave a Children's home without permission as missing persons should be reviewed. Wherever possible the child's parent or key worker should return a missing child once found.

Target dates. Immediate: Consultation with law officers about how far duty of care requires notification to SOJP and what action Police are obliged to take. Protocol in place by March 2011.

7. Probation Supervision.

(i) Probation Supervision needs to be age appropriate e.g for children under the age of 15 it should focus on structured family work – work with the child alone is unlikely to succeed.

Target date: immediate: all staff members have been trained already, but a more robust implementation required.

(ii) JPACS should exercise more active strategies in order to help children comply with the reporting requirements of their orders. For example the Alternative Curriculum picks children up from home to ensure they attend; a similar strategy for those older children attending without their parents could reduce breach for non compliance.

Target date: Immediate, subject to approval by the Court.

(iii) More use of indirect reparation and compensation should be made in Probation Orders. The expertise of the Community Service Scheme can be used to assist with this but it should be recognised that Community Service Orders are not always an effective way of responding to offending by many children. Therefore agreements to make indirect restitution by children should be performed generally as part of a Probation Order.

Target date: March 2011

(iii) JPACS should remain responsible for Court based work and the Parish Hall Enquiry System.

(iv) Resources should be transferred from YAT to JPACS to provide bail support and develop services to children at risk of custodial remand.

Target date: immediate

(iv) JPACS should work with victim support and the CJU to establish whether greater use of Compensation Orders would be a viable option for the Court.

Target date: immediate

8. Youth Action Team. (YAT)

(i) YAT should operate at arms length from the criminal justice system working with those children at risk of school exclusion, who are looked after or who are at risk of coming to official notice. YAT can provide a valuable social work support in these circumstances and should be available to Probation, residential care staff and teachers as well as being able to accept direct referrals from parents. It is important for the reasons outlined earlier in this report, and its role as originally envisaged, that YAT is not seen as a Youth Offending Team (YOT), but as a key resource to the CAST process for our most needy children.

9. Children's Service

(i) Children who find themselves repeatedly in the justice system, particularly those who are seen as persistent or who are sentenced to custody, should be considered children in need, and afforded the same level of service as those children who are "looked after" – in many cases they will already have this status.

(ii) Emergency fostering should be available as an alternative to a custodial remand. Any issues around Social Security or Employment Law should be referred to the CPG and CoM for resolution. Although expensive this form of intervention is less expensive and less damaging to a child than a custodial remand.

Target date: February 2011: action plan completed.

10. Other

Discussions should take place with the Guernsey authorities regarding the sharing of secure facilities at Greenfields and the YOI.

Legislative changes required for compliance with the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights.

1. Criminal Justice (Young Offenders) (Jersey) Law 1994

(i) The Criminal Justice (Young Offenders) (Jersey) Law 1994 to enshrine the welfare principle.

Statements to be inserted into the Criminal Justice (Young Offenders) (Jersey) Law 1994 to the effect that:

- The welfare of the child shall be a primary consideration when children come into conflict with the criminal law;
- Compulsory measures should only be used where voluntary means have failed and are unlikely to be successful in the current case.

Both of these statements contain principles which are found in Criminal Justice Systems which produce good outcomes for children, and are compatible with the UNCRC, ECHR, the Children (Jersey) Law 2004 and the statement of purpose of the CPG.

Practice change: All stakeholders in Youth Justice system should agree to work under this ethos as far as this is possible under the existing legislation and issue a joint statement to this effect.

(ii) Article 2 of the same law should be amended to raise the age of criminal responsibility to 12 years to comply with international conventions and to ensure that 10 and 11 year old children do not experience the arrest and prosecution process and do not appear before the Criminal Courts. This may not prove contentious as might first appear; Police statistics show only 3 or 4 children of this age appearing before the courts between January 2008 and July 2010.

Practice change: The Attorney General could direct that prosecution of children under the age of 12 years should cease other than in exceptional circumstances as it is incompatible with international law and convention. (See for example UNCRC report on UK 2008)

(iii) Article 4 (2) be amended to reflect that a child may only be sentenced to youth detention for the purpose of preventing serious harm to the public and to ensure that the child receives help and education that cannot be provided in a non secure setting, unless the offence falls under Article 5 provisions. A statement to be inserted to state that a child so sentenced may be accommodated within a secure children's home should the Minister for Health and Social Services consider this appropriate. A further clause should be inserted permitting the Minister for Health and Social Services to manage the

child's placement during sentence as though it was a secure accommodation order under Article 22 of the Children (Jersey) law. (Secure Accommodation Order provisions); This would allow temporary return home, transfer to a non secure venue etc. and allow one set of rules for the establishment rather than two.

Article 2 (a) does not appear to be compatible with international conventions and Article 2 (c) may require modification to be compliant.

Practice change: None possible without law change

(iv) Article 5 should be reworded to reflect the interpretation being currently used by the Royal Court.

(v) A statement to be inserted into Article 16 to make clear that children should only be placed in a remand centre (or YOI) if the Court is satisfied that they will not appear in Court subsequently otherwise or it is necessary to protect the public from harm or that they will interfere with witnesses. Conditions should only be attached to bail or warnings to appear, when they are *directly related* to the offence e.g. not to drive, or are necessary to protect others from harm only.

Practice Change: If the Court is concerned about a child's own safety it could invoke (vii) below.

(vi) The Youth Court should be empowered to deal with all offending by children under 17 years of age except for matters where a sentence under Article 5 is likely.

Practice Change: The Royal Court could agree this change in practice.

(vii) The Youth Court should be empowered to make an Order equivalent to that available in family proceedings under Article 29 of the Children (Jersey) law 2002 where a child is under 17 years of age to require the minister for Health and Social Services to investigate a child's circumstances and report back to the Court and further be empowered to direct the Minister for Health and Social Services to apply for a Secure Accommodation Order under Article 22 of the Children (Jersey) Law 2002, if it believes that the circumstances of the child warrant such a procedure.

Practice Change: The Minister or Health and Social Services could agree to investigate as if the provision was in place

(viii) The Youth Court be empowered to refer a case back to a Parish Hall Enquiry. (We understand there may be another legal principle which may prevent implementation of this recommendation.)

Practice Change: A Centenier could offer no evidence on the advice of the court and invite but not require the child and parent to attend an Enquiry.

(ix) The provisions of Article 13 of the Criminal Justice (Young Offenders) (Jersey) Law be extended to Royal Court proceedings for compliance with the ECHR and UNCRC requirements that matters concerning children should not be dealt with in public.

Practice change: The Royal Court could order the public gallery cleared in proceedings involving children.

(x) The practice of detaining young offenders between the ages of 18 and 21 in the YOI be reviewed

2. Children Law Jersey (2002).

Article 22 should be clarified to ensure that it applies to any child in the care of or subject to inquiry by the Minister for Health and Social Services. Currently only children who are “looked after” by the Minister can be made subject to a Secure Accommodation Order.

Practice change: none possible.

APPENDIX A: The File Study

One of the drivers for this review of youth justice in Jersey has been the perception that a small number of particularly troublesome young people are unmanageable within the system as it stands, and unresponsive to intervention. As part of the background research for this report, and in order to explore this perception, Magistrates were asked to identify the 'top ten' young people who caused them most concern, or appeared to them to be most problematic. No other criteria were used, and eleven young people were nominated (six male, and five female, with ages ranging from 13-17 years). A search of readily accessible official records held by the Probation Service and the Youth Action Team was then carried out by Jersey-based personnel to identify offending histories, known problems and past contacts with official agencies, and a summary was provided for the Welsh-based researchers. We are particularly grateful to Cathy Phillips for carrying out the study, and to Gillian Hutchinson for her comments on the results. Three young people with extensive experience of the youth justice system were also interviewed by members of the review team in the course of a visit to La Moye prison.

It is not appropriate to reproduce the full detail of these findings in this report, as this would involve misuse of confidential information and could identify individuals. In addition, many documents which would have been of interest could not be consulted, including records held by Children's Services and the Youth Action Team. However, certain common features and problems were so widespread in this small sample that it is important to draw attention to them, and to some of their implications:

- All but one were born in Jersey, to English-speaking parents.
- Most lived in and around St.Helier.
- All had histories of contact with social services, in most cases from an early age.
- All had histories of suspension from school and truancy.
- All had been in residential care at some point, in various care homes and Greenfields.
- All had been in contact with the Youth Action Team.
- Early family environments tended to be problematic, with inconsistent parenting, often with stressed mothers and limited or no positive involvement from fathers.
- There was widespread evidence of alcohol abuse by parents, and some drug abuse
- Domestic violence was widespread, and some of the young people were victims of violence in the home.
- Many of the young people abused alcohol, but far fewer were involved in drug abuse than would be expected in a comparable UK sample.

- Most had a number of convictions, ranging from 6 to 15; these varied in seriousness: for example, one was for refusing to obey a Police Officer.
- Many of the young people had 'anger issues' and some had received anger management counselling.
- Several were known to have mental health difficulties and a small number had histories of self-harm.
- The majority had been co-defendants with at least one of the others at some stage.
- Some offences reflected the young person's existing involvement with the system: for example, relatively minor misbehaviour in children's homes can be criminalised and lead to prosecution when residential staff decide to deal with it by calling in the police instead of dealing with it themselves; offences of non-compliance with bail conditions or court orders may be made more likely by the inclusion of large numbers of requirements.

One of the researchers with access to this material summed it up as follows: 'In summary, the opportunity to experience positive life outcomes for this group of young people seems to be compromised by several factors:

- Their early experience of disruption to attachment to a significant parental figure;
- Their early experience of maltreatment;
- Their experience of being "looked after";
- Their disaffection from school;
- Their misuse of alcohol from an early age;
- Their exposure to violence, in particular domestic violence.'

Another raised the question of whether these families, mostly well known to the authorities, had received any real help 'to be more effective parents'. In the absence of access to relevant records (for example, care plans, child protection conferences, whether plans were actually implemented or followed up) it is difficult to comment on this aspect. However, being well known is not necessarily the same thing as receiving effective help. Investigation of these aspects has often proved helpful in other jurisdictions: for example, retrospective studies of Local Authority Social Services' involvement with children who subsequently received residential care orders or custodial sentences led to many improvements in practice in England and Wales in the 1980s, with consequent reductions in custodial sentencing. There can also be a tendency for helping agencies to reduce their involvement with young people who become involved in the criminal justice system, in the expectation that Courts will use their sentencing powers to intervene effectively in the young people's lives: however, Court orders or sentences in themselves are sometimes not particularly effective

at mobilising help for young people who need it, and may contribute to further problems by creating opportunities for breach and further punishment. Some of these issues are explored further in Appendix D.

In general, it appeared to the research team that it could be very useful to carry out such studies in Jersey, with a particular focus on Children's Services and Education. It was also noted that an inspection was due later in 2010. Another possible approach to learning from these problematic cases would be to treat each custodial sentence passed on a young person as the trigger for a case review, to consider both past involvement and decisions and what could be done in the future. Such a review could be carried out by a body such as the Children's Advice and Support Team, the establishment of which is recommended elsewhere in this report. It is clear that some of these young people and families are very difficult to help, and this is recognised by the research team: however, it is highly unlikely that *no* improvements are possible. The crucial point is that a relatively small reduction in the number of young people penetrating so far into the criminal justice system, or a slowing down of the pace at which they do so, appears eminently feasible, and would contribute a great deal to removing the unhelpful perception of a 'hard core' of incorrigible youngsters.

Appendix B:
STATISTICAL DATA ON YOUTH CRIME 2007-2009
JERSEY AND SWANSEA

The datasets for Swansea and Jersey afford broad comparability, although jurisdictional differences require that some areas of activity are compared due to their similarity rather than being the same. The following data and commentary cover the years 2007-09, Given the population difference between Jersey and Swansea, all data have been expressed in actual levels and as a rate per 1000 population of those aged 10 -17 years. Population data have been derived from census data:-

Jersey - Population 10 -17, 7848 Swansea – Population 10 -17, 21,353

1. Total Reported Offences by Young People 1-17 years of age

	Jersey	Rate per 1000 pop	Swansea	Rate per 1000 pop
2007	455	58	1044	48.9
2008	675	86	836	39.2
2009	665	84.7	632	29.7

2. Number of Notified Individuals 10 -17 years of age

	Jersey	Rate per 1000 pop	Swansea	Rate per 1000 pop
2007	244	37.2	533	25
2008	248	31.6	465	21.8
2009	225	28.7	335	15.7

Commentary:

The offences reported are in large amount those of a less serious nature. South Wales Police have applied a gravity score to all offences ranking 1 (least serious) to 4 (grave offences) which allows for examination of all offence types by relationship to the threat of public well being. For Jersey the type of offence is

categorised by nature. What is clear for both areas is that offences tend to be less serious with isolated serious offences more likely to be associated with persistent offenders.

For Jersey the level of offences has risen significantly at the lower end of seriousness, which may represent a policing trend to confront anti-social behaviour by formal entry into the criminal justice system. In Swansea the introduction of the Bureau and informal disposals has reduced the number of first time entrants dramatically. Those dealt with in this method also appear to commit fewer further offences; there being an overall reduction in reported offences and offenders in the Swansea system.

Pre – Court Diversion

	Jersey Parish Hall Enquiry	Rate per 1000 pop	Swansea - Reprimands & Final Warnings Informal Disposals (Bureau)	Rate per 1000 pop
2007	505	64.3	402	18.8
2008	405	51.6	320	15.0
2009	401	51.1	309	14.5

Jersey has, in its Parish Hall Enquiry, a strongly established methodology for managing low level seriousness in youth crime. It is both effective in diverting young people from the courts and compliant with the requirements Jersey will need to evidence in meeting the UNCRC. Notably, prosecution should be a last step and the welfare of the child should be met as well as the needs of justice.

However, numbers have reduced at Parish Hall Enquiries while the overall number of young people arrested has increased. There does not, however, appear to be an increase in the seriousness of offence type. This may, therefore, reflect a changing and less tolerant attitude towards young people. Swansea introduced its Youth Bureau in 2009; its aim being to achieve the same type of process methods used in the Parish Hall Enquiry. Namely, having a process that engages the parent and young person in decision making, takes account of welfare issues for the young person and – where appropriate - engages a restorative justice methodology to meet the needs of justice and the victim of the offence.

The overall level of young people entering the criminal justice system and the number of offences reported have reduced substantially, but the diversion rate - whilst dipping slightly - has remained relatively consistent.

It remains the case that Jersey diverts a significantly greater proportion of young people. However, the fact that Jersey, with a youth population of 7848, has numerically more young people at this stage of the system than Swansea, with a population of 21,353, suggests that formal processes are used more frequently in Jersey.

Court Based Outcomes

There are significant differences in the Youth Court sentencing powers. In the England and Wales jurisdiction the majority of young people (all but a few charged with offences of high seriousness) who appear before court for the first time are made subject to a Referral Order for a period of 3 – 12 months. This involves the Youth Offending Service and trained members of the public working to an agreed methodology with the young person and their parent/carer through regular supervision. This form of direct intervention has effectively replaced Bindovers, Conditional Discharges and Fines as a first sentence.

The Referral Order can be “topped up”, but not used repeatedly. This, for persistent offenders, means escalation to a Youth Rehabilitation Order. The YRO has a set of 15 separate requirements from which sentencers can choose, with guidance from the YOS, to make the order bespoke to both the needs of justice and the young person concerned. The Order has a duration of 3 months to 3 years. It embraces options such as community service, drugs treatment and routine supervision in the community. The YRO replaced the range of separate sentence options previously available to the courts in November 2009.

Given the introduction of Bindover provisions in Jersey in 2009 and the emphasis on intervention models in Swansea, there is a narrowing in the methodology dominantly used. However, for the purposes of establishing trends in youth crime, these features cannot be reliably included due to limited implementation. Probation Supervision Orders have been, together with Community Service Orders, the dominant sentencing options in Jersey.

	Jersey Sentencing Community Sentences	Court Rate per 1000 pop		Swansea Sentencing Community Sentences	Court Rate per 1000 pop
2007	69 (P.O 46, C50 23)	8.7	2007	207 (P.O. 77 Order 130)	9.7
2008	53 (P.O 40, C50 12)	6.8	2008	229 (P.O. 107, Order 122)	10.7
2009	72 (P.O. 56, C50 16)	9.1	2009	162 (P.O. 95, Order 67)	7.5

Numbers are relatively proportionate between the two areas, although showing a significant decrease in Swansea in 2009.

Custodial Sentencing

	Jersey	Rate per 1000 pop		Swansea	Rate per 1000 pop
2007	11	1.3	2007	27	1.3
2008	7	0.9	2008	25	1.2
2009	7	0.9	2009	9	0.4

In England and Wales all custodial sentences for those below 18 years of age are accompanied by formal community supervision. In Jersey all sentences of 4 months or more are accompanied by formal community supervision.

The use of custody, both at sentence and remand, remains a key issue for Jersey as a separate jurisdiction; reflecting both high cost and concerns about the regime for detained young people when numbers in custody are not just low, but at times reduced to one young person (or none) in the entire youth secure estate population. This issue has, of course, been addressed in the main body of this report.

Concluding Comments

The nature of the criminal justice system in Jersey will, of course, be well known to most readers of this Report. Those wishing to know more about the Swansea experience are referred to Appendix C.

APPENDIX C: **A case example - the Swansea Bureau**

This is a slightly abridged and edited version of the first independent evaluation report concerning the Swansea Bureau. It is included here to illustrate what can be achieved by a well-thought-out strategy to help and control children and young people in trouble without over-use of the criminal justice system. The reconviction figures are provisional and research is ongoing, but it is clear that the behavioural outcomes of the scheme are highly encouraging, and better than those reported for other recent youth justice innovations in England and Wales. The principles behind it are commended as offering possible approaches to improving outcomes for children and young people in Jersey: details and processes for implementation would require re-designing taking into account local conditions and resources, not least the Parish Hall Enquiry system, an outstanding resource which is not available in England and Wales. We are grateful to the researchers for permission to reproduce the report.

The Swansea Bureau: children first, offending second

Kevin Haines and Anthony Charles¹

July 2010

Introduction

The Swansea Bureau is an innovative youth crime prevention initiative which has been designed to divert young people out of the criminal justice system. Not merely a diversionary programme, the strands of the Bureau process extend to tackling underlying causes which may promote youth crime and mechanisms which seek to promote pro-social behaviour. Born of a partnership between Swansea Youth Offending Service, South Wales Police and supported by local agencies (South Wales Police / Swansea Youth Offending Service (YOS), 2009), the Bureau is designed to provide new, better ways of supporting young people who have offended, based on non-criminalising problem solving and targeted interventions. Predicated upon the importance of children's rights, the role of families in crime prevention and the constructive nature of long-term, non-stigmatising approaches, Swansea's Bureau represents an holistic, principled

¹ Kevin Haines is Professor of Criminology and Youth Justice and Director of the Centre for Criminal Justice & Criminology, Swansea University (k.r.haines@swansea.ac.uk). Anthony Charles is Youth Justice Research Officer at the Centre for Criminal Justice & Criminology, Swansea University (a.d.charles@swansea.ac.uk).

and pragmatic model for youth crime prevention and reduction. The initiative's first full year of operation (May 2009-April 2010) has yielded significant, positive results and these, together with the ethos, development and process of the Bureau are the main focus of this paper.

Situating the Bureau

Youth crime diversion schemes are hardly new inventions, e.g. the Northamptonshire Juvenile Liaison Bureau, (see Kemp et al., 2002) and the Triage system (London Criminal Justice Board, 2009, Cardiff BCU, 2010). Swansea's Bureau, recognising the potential impact of existing initiatives, sought to blend them, creating a new process which met specific local needs:

“... we pinched pieces from all over the place... we looked at some work which was done in Northamptonshire... We looked at the Scottish reporter system. We looked at some of the processes in Europe which are much more family orientated... we sort of melded all three of those elements to shape it into a system which we think suits the needs of young people in Wales.”

(YOS Manager, 2010)

Thus, emerging from reflections on practice developed at local and international levels, Swansea's Bureau is a composite, consisting of the 'best ideas' applied to tackle youth crime and its underlying causes.

Swansea's Bureau differs from existing models primarily because it is multi-strategic in nature. Traditionally, diversion initiatives have focused on the negative impact of a child's engagement in the criminal justice system, how Police discretion is utilised and the types of support services afforded young people and their families (see for e.g. Mott, 1983, Pratt, 1986, and Sanders, 1988). Whilst embracing such concerns, the Bureau goes further and provides something new. Eschewing approaches (both past and current) which emphasise swift decision making, administrative efficiency and more processual types of justice (c.f. London Criminal Justice Board, 2009), the Bureau limits state involvement, devolving power and responsibility back to young people, families and the community. The Bureau deliberately moves away from the prescriptive, one-size-fits-all approaches characteristic of much central Government policy. Instead, the Bureau breaks with orthodoxy, slowing down the justice system, amending processes and seeing the child and its family: not just young offenders.

From a policy perspective the intention appears, *prima facie* to accord with the stated aim of the YJB to reduce the level of first time offenders entering the criminal justice system (e.g. YJB, 2010). However, despite an apparent common intention, the implementation of policy by the YJB and the Swansea Bureau are very different. The policy of Central Government and the YJB has been to reduce

numbers of first time entrants, but the method has favoured intrusive interventions, labelling young people as criminals whose offending behaviour needs to be addressed. Generally, Government and YJB policies have contributed to a hardening of attitudes towards children, net-widening measures (e.g. Anti-Social Behaviour Act, 2003) and the adoption of a centrally governed, managerialist youth justice system. Conversely, the Swansea Bureau seeks to reduce the level of first time entrants coming into the youth justice system by applying a child-rights, evidence-based, non-stigmatising approach. The Bureau's approach uses a different methodology which intentionally focuses on the child, their family and the deployment of bespoke services to promote pro-social behaviour. Promoting participation and deploying restorative processes, the Bureau seeks not just to decrease FTE levels, but also to ensure young people are equipped to avoid future involvement with the justice system. When the approaches of the Bureau and central Government are compared, it is perhaps ironic that, despite Governmental support for Every Child Matters (2004) and the United Nations Convention on the Rights of the Child (1989) rhetoric does not match reality (see UK Children's Commissioner (2008)). The Bureau however is located very much within the aspirations of the UNCRC (1989), Every Child Matters (2004), Extending Entitlement (2000) and the All Wales Youth Offending Strategy (2004) (see also, Haines, 2010).

The direction in which central Government and the YJB have pushed the youth justice system have created the conditions which precipitated the development of the Bureau. In particular, three issues crystallise fault lines in the juvenile justice system. Firstly, there is the problem of target conflict. Between agencies, there are from a policy perspective, confused messages with diametrically opposed targets being simultaneously proposed (e.g. Police sanction detection and bringing cases to justice targets are incompatible with Youth Justice Board general requirements for youth crime prevention and specific targets for reducing FTEs). Secondly, policy incoherence is evident in the area of youth justice (and children and young people policy generally) at a UK level (e.g. legislation such as the Children Act, 2004 has been enacted yet S. 34 of the Crime and Disorder Act 1998 abolished the presumption of *doli incapax*). Thirdly, the social justice agenda of Government has given way to distant, managerialist techniques which use risk based predictive tools and state power rather than community action to solve complex, localised problems (e.g. the Scaled Approach, (YJB, 2009)). Combined, these issues which help to illustrate the apparent confusion within central Government policy towards children have led not to a proportionate, prospective vision of youth justice, but one where the veil of liberalisation conceals a more punitive reality.

The Development of Policy and Services in Wales

The Welsh Assembly Government's strategy for children and young people, 'Extending Entitlement' (2000) has facilitated a shift in thinking away from traditional, punitive discourses concerning youth justice. Instead, reflecting the

effects of 'Dragonisation' (Edwards and Hughes, 2009) a different emphasis has been effected:

"Thus the distinctive ideological approach in Wales eschews notions of risk, responsibility or containment and is based on a commitment to a rights-based approach..."
(Haines, 2010)

The distinct approach facilitated in Wales is woven through policy statements such as the Seven Core Aims (WAG, 2004) and the Children and Families (Wales) Measure (2010). Operationalising a concept of universal, inalienable entitlements (Extending Entitlement, 2000), WAG holds to a vision of young people that is more sophisticated than the risk-based, hard-end interventionist stance adopted in England. Rather than criminalising a young person and denying them and their families key support services, WAG insists that children remain children with entitlements even though they might be an offender. Simultaneously, WAG perceives there to be a critical need to protect and support young people, whilst still engaging them in appropriate activities to prevent future re-offending and build positive, constructive lives. This perspective is mirrored through the All Wales Youth Offending Strategy (2004):

"... there is no contradiction between protecting the welfare of young people in trouble and the prevention of offending and re-offending ... young people should be treated as children first and offenders second..."
(All Wales Youth Offending Strategy, 2004)

Articulated via its policy and legislative processes, WAG has consistently promoted approaches to young offenders that recognise their entitlements to participate in decision making, access to a broad range of services and to lead fulfilling lives. Partnership working between central Government and the YJB, most obviously through the Youth Justice Committee for Wales, has provided a platform to make a difference to Welsh youth justice policy: albeit one which is rooted not in law, but one which has been achieved through persuasion and the application of a coherent, child-focused philosophy.

WAG is not alone in reaching the conclusion that children need a better deal from the youth justice system. Pre-dating, but mirroring the rapid adoption of child-rights focused policies are agencies and the Local Authority in Swansea. Historically, an emancipatory approach to children and young people has been mainstreamed in Swansea, becoming evident in the mid -1990's and manifesting in key areas of service delivery. For more than fifteen years the Local Authority, Youth Justice Team (subsequently the YOS), Police and other partners have collaborated to tackle issues negatively affecting children and leading to offending behaviour. Prominent examples of work undertaken include those aimed at improving educational attainment (e.g. Promoting Positive Behaviour,

(Haines and Case, 2003)), reducing substance use (e.g. Helping Young People through Peer Education, (Haines and Charles, 2008)); and evolving programmes to promote participation and community engagement (e.g. Promoting Prevention, (Case, 2004), Swansea Youth Action Network, (SYAN, 2010). In each of these cases a positive, pro-social, and children-first philosophy has been adopted, recognising children's rights and the vital importance of non-criminal interventions:

“Yes, we have to take note of what the Government [UK] wants us to do. But, at the same time, we have got to remember why we are here. Our primary role is to prevent offending... But we can't do that alone, nor can we achieve that by criminalising children... I strongly believe that it is only by adopting a child-rights approach, one where we treat children as children first and serve them by meeting their needs, and very often supporting their families: only then will we make progress.”
(YOS Manager, 2010)

This broad approach has wide strategic, inter-agency and operational support. In the words of a Police Officer:

“... we are not just looking at the offence and thinking what is most appropriate, a remand or a final warning, but actually looking at what is appropriate in terms of the needs of the youngster... so that they don't come back into the system again.”
(Senior Police Officer, 2010)

Programmes developed in Swansea have been characterised by their multi-agency nature, often challenging existing working practices and structures, e.g. Police Officers working directly with youth workers, close inter-agency working with schools. It is certainly the case in Swansea that traditional barriers between agencies have not prevented effective inter-agency co-operation and endorsement of a common philosophy and strategy.

Building a better future for young people in Swansea

Swansea's Bureau was developed primarily through a partnership between the Swansea YOS and Police. The main aim behind the Bureau was to create a multi-agency process to divert young people away from entering the youth justice system. This process engages key stakeholders (children, parents, victims and other agencies) and, utilising intelligence-led assessments, provides appropriate non-criminalising services designed to reduce re-offending and promote pro-social behaviour. To achieve the Bureau's main aim, three objectives were identified by the Swansea BCU Commander and YOS Manager.

Firstly, changes were required to the existing Police bail system to prevent minor offenders being brought into the criminal justice system. Secondly, intensive targeting of the underlying causes of crime should occur, operationalised through comprehensive assessments on every child engaged within the Bureau process. Thirdly, in consultation with children, families and victims, the Bureau should offer an holistic range of services to promote positive, pro-social behaviour. The aspirations for the Bureau were intentionally ambitious:

“It was intended to do a lot of things but mainly to change the way that we work with young people at the lower end of offending. We needed not to criminalise those young people and instead work with them to stop them getting into harder end offending, and the only way that could happen is if we worked with our partners and the young people... If we fail the young people at that end we are storing up problems for the future.”
(Senior Police Officer, 2010)

The Swansea Bureau

The structure of the Swansea Bureau is intentionally simple; comprising two distinct, but interrelated stages. The first stage comprises comprehensive assessment and decision making processes. In its second stage, the Bureau offers bespoke services to address the consequences of offending and to promote positive behaviour. Both stages are described below.

Stage 1: Comprehensive assessment and decision making

The first stage of the Bureau's process begins at the arrest of a young person. Upon being brought to a custody suite, a Custody Officer will assess a child to establish whether they meet core criteria to enter the Bureau process. The core criteria are: a) the young person admits that they have committed an offence; b) the offence perpetrated has a gravity score of 1-3²; and c) the child is a first time offender. Should the criteria be met a Custody Sergeant will bail the young person to appear before the Swansea Bureau. The bail period will be between 14-21 days. Young people must answer their bail at the Swansea YOS' headquarters which between 4pm and 7pm each Tuesday becomes a designated Police Station (see Police and Criminal Evidence Act, 1984). After a bail decision has been made a Custody Officer will post an F11³ into the NICHE⁴

² Offences committed are allocated a gravity score which ranges from 1 (low gravity) to 4 (high gravity) based on offence seriousness. Assessment of offence seriousness and the consequent allocation of a gravity score are undertaken by agencies such as the Police with reference to standardised instruments, e.g. ACPO (2009).

³ F11's are the official Police documents that record arrests, offences and bail decisions.

record management system. Notification of a child's bail is made available to the Bureau Co-ordinator, a Police Officer based at the YOS. Electronically, F11's are accessed by the Bureau Co-ordinator (the Co-ordinator) triggering a dual assessment process: one for the young person; another for any identified victim.

The assessment of young people

Specifically in relation to children, a comprehensive assessment process is initiated by the Co-ordinator who requests information about the young person from a broad range of agencies. Principally, intelligence⁵ is requested from the Police, YOS, Social Services, Anti-Social Behaviour Youth Team, Schools and the Local Education Authority. The intelligence is collated by the Co-ordinator and passed to an Officer within the YOS' Pre-Court Team, who will arrange to meet with the young person to carry out an assessment. The assessment undertaken by the Pre-Court Officer is designed to undertake three critical tasks. Firstly, to explore the circumstances of the offence. Secondly, to discern any underlying problems being experienced by the young person such as family or School issues. Thirdly, by applying a reflexive, participatory approach, the young person is provided the opportunity to consider their behaviour and to offer their views about what can be done to repair harms caused by their actions and what actions are needed (by the young person themselves, their family or others) to promote positive, pro-social behaviour. Combining the views obtained through youth engagement and inter-agency intelligence, the Pre-Court Officer produces a report for a formal Bureau meeting, which includes a formal recommendation for future action. The report offered by the Pre-Court Officer contains a narrative assessment, focusing on key themes within a young person's life, e.g. education and family life, and also a mini-ASSET. (ASSET is the risk and need assessment system promoted by the Youth Justice Board in England and Wales). Recommendations articulated within the Pre-Court Officer's report address two key issues. Firstly, a recommendation is made about whether a young person should receive a formal sanction or a non-criminal disposal. Secondly, drawing upon their assessment (which includes the views of the child) a recommendation is made focusing on whether services should be offered to support the young person. If a recommendation is made supporting the provision of services, the type, duration and content of these are specified in the report.

Assessing the needs of victims

In addition to assessment of children, an analysis of victims' needs is undertaken. Following receipt of an F11 by the Co-ordinator, Officers from the YOS' Victim Support Team contact any identified victim. Echoing young people's

⁴ NICHE is the South Wales Police Force official computer system build upon and unifying existing databases such as the Police National Computer.

⁵ Intelligence requested from agencies derive from a variety of data, both formal and informal, e.g. education records relating to behaviour and attainments, or community-based information such as that held by the YOS' anti-social behaviour youth team.

assessments, Victim Support Officers seek the views of victims about the impact of a crime on them and what they think should happen to resolve harms committed. Opinions expressed by victims are shared with the Pre-Court Officer and young person, thus informing the child's assessment and recommendations made in the Bureau report. Victims are offered a range of flexible engagement options including a home visit, telephone call or correspondence: all of which are intended to encourage participation in a fashion suitable for them, "I think that it plays a huge part... the victim has a say in the process..." (Co-ordinator, 2010).

Decision making: Panel and Clinic

The Bureau Panel is a multi-agency pre-court decision making forum which consists of the Co-ordinator, a Police Sergeant and a community representative⁶. At a Bureau Panel, the Pre-Court Officer's report is discussed with an interim decision being made - which is then subject to consultation with the child. Interim decisions draw upon recommendations in the assessment and may be: a Police reprimand; a final warning; prosecution at Court; or a non-criminal disposal. Additionally, depending on what needs or issues a young person presents, the Bureau Panel may consider it appropriate that a tailor-made package of services is offered to prevent further offending and promote positive behaviour. The Bureau Panel is a closed meeting which is not attended by children, their parents/carers or victims.

The final part of the assessment and decision making stage of the Bureau takes the form of a Clinic. The Bureau Clinic, which is held on the same day as a Panel, consists of the Co-ordinator, a Police Sergeant, the young person and, should they wish, their parents/carers. Through the Bureau Clinic, the history and consequence of the child's actions are discussed and a decision is mooted. Participatory in nature, the young person is expressly provided the opportunity to contribute to the decision of the Bureau Clinic, including challenging Bureau recommendations and offering alternative views about their behaviour, as well as other proposed courses of action. Additionally, parents/carers may offer opinions on the course of action being considered by the Bureau Clinic. Following discussion a final decision is made at the Bureau Clinic, having due regard to the views expressed by Officers, children, parents/carers and via the assessment, victims. If the final decision of the Bureau Clinic is one of a Police reprimand or final warning, arrangements are immediately made for the administration of these. Should the Clinic determine that a non-criminal disposal is most appropriate, this will be activated immediately. Potentially combined with these decisions is an offer of tailor-made services for a young person (see Stage 2 below). The Bureau Clinic may also determine that a child should be prosecuted.

Stage 2: Offering bespoke services

⁶ The community representative is a lay volunteer who, having participated in Referral Order Panels, receives specialist training to engage with the Bureau process.

The second stage of the Bureau process focuses on the provision of bespoke services. Services provided through the Bureau are intrinsically linked to the assessment and decisions which are made at Stage 1 and, where offered, constitute part of a sequential process. Echoing the approach adopted within the assessment process, services are provided to young people and the victims of crime. In both cases, stakeholders (children and victims) offer views about what they feel would be appropriate for them. The commissioning and delivery of services is managed by the Co-ordinator who engages with local agencies to match programmes (including amending existing provision) to meet stakeholder needs. Services offered through the Bureau are distilled from intelligence presented in the Bureau assessment and consultation with young people, victims and Officers. Accordingly, since individuals have diverse needs, a broad range of parties may become involved in this stage of the Bureau process.

Services for young people

As a result of the Bureau process, services may be offered to children to address offending behaviour, repair harm caused, to help deal with problems faced by the young person and to promote positive, pro-social behaviour. Consequently, services may focus on a broad spectrum of themes including education, family life, recreational opportunities or emotional problems:

“... by thorough assessment we have put together packages for that young person... that can range from doing nothing with them because they don't need it, to identifying a wealth of issues and getting other people involved...”

(Co-ordinator, 2010)

The Bureau process is not a backdoor route into heavy end, criminalising, offence or offender focused services or treatment. In many circumstances services are relatively informal and integrated with existing programmes such as youth clubs, specific-interest activities and community based projects. Fundamentally, services are intentionally not perceived as sanctions or punishments – either in their delivery or receipt - rather they are instruments of reintegration, regeneration and restoration: designed to be constructive, positive and promoting pro-social engagement and behaviour. The Bureau process was designed intentionally to see each case of youth offending as unique; therefore services offered reflect the individual needs of children. A senior Police Officer described the service element of the Bureau as being:

“... about getting the youngster the right interventions at the right time. This is not just looking at the symptom of the offence but the underlying causes”

(Senior Police Officer, 2010)

The young person-focused nature of Bureau services has required the generation of a comprehensive recipe of options which can be accessed by a

child. Hence, services made available through the Bureau can vary significantly in length, ranging from a single meeting to longer-term engagement. Also, the depth and intensity of the service may change, e.g. a young person may agree to take part in longer-term peer mentoring programmes or get involved in more generic, community-based recreational activities. Combined with opportunities for personal growth and conflict resolution, services are also vehicles for restorative actions and may link with requests made by victims during the assessment period e.g. providing a vehicle through which a child can make an apology: in writing or in person. Additionally and importantly, in line with Extending Entitlement (2000), children are not merely 'responsibilised' (see Goldson 2002) for their actions, thus the responsibilities of others (e.g. adults, service providers, schools etc) to provide child-friendly and appropriate services is explicitly recognised and acted upon. Operationally, services are delivered in a multi-agency context, being provided by partner organisations, e.g. the Community Justice Intervention Wales team for Swansea offers the Duke of Edinburgh Award, welcoming young people from the Bureau into its activities. Certainly, staff engaged in the Bureau process recognise that the provision of services is an important component in its operation:

“... I think it works because of the interventions... That's why the re-offending rates are down because we are talking to the kids... and you are giving them focus in life.”
(Police Sergeant, 2010)

Although the assessment and decision making stage of the Bureau links to the statutory Police bail process, the services component is characterised by its voluntary nature. Children must agree to engage with services: no power of compulsion exists. If young people feel uncomfortable or unhappy with the services they are provided, they can raise concerns with the Co-ordinator. In such circumstances a joint decision making exercise will ensue between the child and the Co-ordinator to change or revise the services offered through the Bureau process.

Services for victims

Victims of crime are eligible to receive services through the Bureau and are encouraged to engage with such opportunities. Mirroring the approach adopted with children, victims are asked by Victim Support Officers to identify those activities or support services which would help them come to terms with harms caused. Critically, the work of the Victim Support Officers is to deploy restorative practice to enable victims to have a voice because:

“If you go down the criminal justice system, and go to court, the victim hardly ever gets in the box and explains what has happened... restorative practice gives them a voice...”
(Victim Support Officer, 2010)

Reflecting the broad, restorative principles which underpin the Bureau, the intention of the process is not to promote a punitive regime, but rather to resolve harms caused by youth offending. An element of the Victim Support Officers work is also to promote greater understanding of what a young person has done and to help explain the circumstances of a crime because:

“They are dehumanised... On the whole, they [children] have acted in an act of stupidity or tomfoolery. But they [victims] see they are humans and they understand...”
(Victim Support Officer, 2010)

Victim Support Officers work with victims throughout the course of the Bureau process to discern services which may be of use to them. Moving away from more administrative decision-making based input, e.g. by including victims views in the Bureau assessment, Victim Support Officers seek to offer practical support designed to repair the damage caused by youth crime. Accordingly, services offered through the Bureau include: counselling, working with agencies to effect change (e.g. conflict resolution between neighbours) and specialist crime-specific support. Mirroring the work of the Co-ordinator, Victim Support Workers act as facilitators of services, engaging with local agencies, partnerships and networks. The services offered to victims may last longer than those made available to children in recognition of and response to the needs of the individual.

The Bureau in practice: is it making a difference?

Two key outcome measures are identified to evaluate the impact of the Bureau. Firstly, the diversionary effects of the Bureau. Secondly, the impact of the Bureau on re-offending. Three statistical measures are used to draw comparison between pre- and post-Bureau processes. Firstly, drawing upon data between 2005 and 2010, the number and percentage of first time entrants (FTE's) is compared to illustrate FTE levels pre- and post-Bureau. Secondly, a comparison is made between pre-court, sentencing and re-offending⁷ data recorded between 1st May 2008-31st April 2009 and 1st May 2009-31st April 2010⁸. Thirdly, a pre- and post-Bureau comparison of decision-making in respect of those young people who re-offended following pre-court determinations.

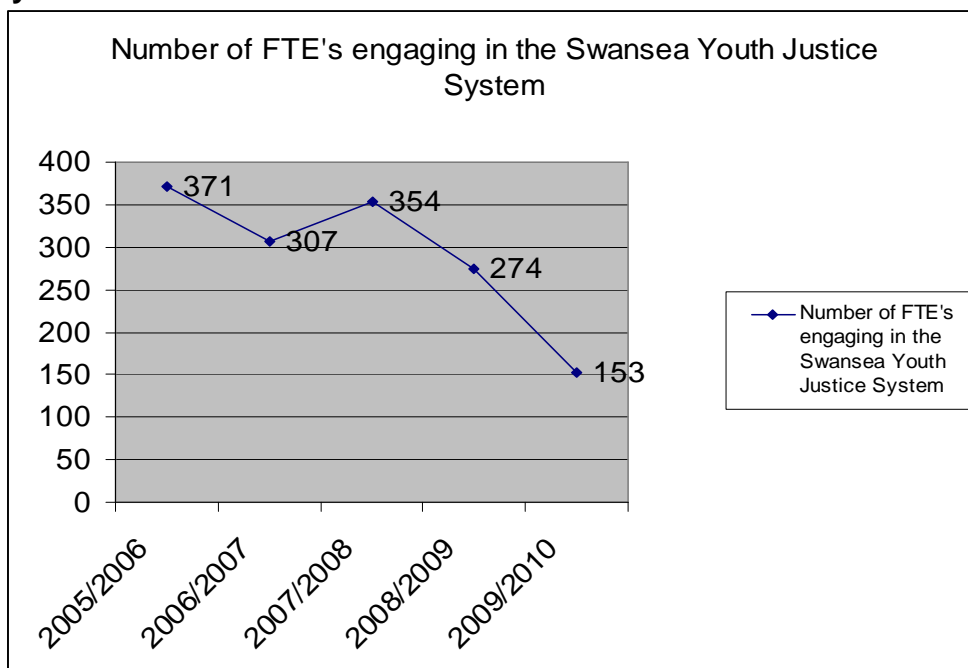
⁷ Due to potential double counting of Detention and Training Order license breaches as re-offending, these data have been excluded from the comparison exercise. It should be noted that the impact of this is minimal, relating to 6 breaches/re-offences in 2008/2009 and 3 in 2009/2010.

⁸ A May-April calendar year has been developed to take account of the fact that the Bureau began to operate in May 2009.

First Time Entrants to the Swansea Youth Justice System

A core objective that has driven the development of the Swansea Bureau was to decrease the number of FTE's into the youth justice system. Derived from the evidence (McAra and McVie, 2010) that formal intervention can be counterproductive and that it is better to keep children out of the justice system unless absolutely necessary, numbers of FTE's gain prominence when measuring the impact of the Bureau. Since its inception in 2000, Swansea YOS has recorded an almost consistent drop in FTE's. Because of this, data concerning numbers of FTE's from 2005 to 2010 has been included to provide context and a longer-term perspective of the Bureau's impact (see Figure 1).

Figure 1: Number of FTE's engaging with the Swansea Youth Justice System



The data from 2005 to 2010 indicates that although generally, and particularly since 2007, a fall in the number of FTE's has been occurring, the rate of decrease between 2008/2009 and 2009/2010, following introduction of the Bureau, has accelerated considerably. In 2008/2009, 274 young people were FTE's. A year later, post introduction of the Bureau, that number was 153 (a fall of 121 young people) representing a decrease of (44%). This compares with a decrease in FTE numbers from 354 to 274 (80 children), a fall of 23%, between 2007/2008 and 2008/2009. Thus, following implementation of the Bureau the rate of decrease in the number of FTE's increased.

Corresponding with a sharp fall in FTE numbers since the Bureau became operational, the percentage of FTE's as a proportion of all offenders (FTE's compared to re-offenders) also decreased (see Table 1) from 60% in 2008/2009

to 51% in 2009/2010. This data indicates that between 2008/2009 and 2009/2010, the fall in the numbers of FTE's was independent of the falling number of young offenders – representing a real additional decline.

Table 1: The number of FTE's, total number of offenders (FTE's and re-offenders) and FTE's as a percentage of total offenders 2005-2010

Year	Number of FTE's	Total Number of Offenders (FTE's and re-offenders)	FTE's as a % of total offenders
2005/2006	371	593	63%
2006/2007	307	524	59%
2007/2008	354	533	66%
2008/2009	274	457	60%
2009/2010	153	297	51%

The shift in recorded numbers of FTE's helps to draw out a key impact of the Bureau. Data clearly indicates that following its implementation, the Bureau is effectively diverting children out of the formal criminal justice system.

Re-offending by those who have engaged in the Bureau process

To understand shifts in decision making and their impact on re-offending a comparison of data at two levels is useful. Firstly, a more general, global picture can be generated by focusing on the number and percentage of decisions at pre-court, prosecution and re-offending stages within the youth justice system: drawing upon data recorded between 1st May-31st April 2008/2009 and 1st May-31st April 2009/2010 (see Figures 2 and 3).

Comparison between decision making during 2008/2009 and 2009/2010 highlights a critical change which has been driven by the Bureau. The proportion of all decisions made at pre-court stage increased in 2009/2010 to 58% compared with 46% in 2008/2009. Further, the distribution of decision type also changed between 2008/2009 and 2009/2010. Most prominently the proportion of determinations accounted for by reprimands (60%) and final warnings (35%) in 2008/2009 fell in 2009/2010 to 33% and 20% respectively - forming a trend of movement away from formal interventions. Additionally, the proportion of decisions which were informal rose substantially from 1% in 2008/2009 to 43% of all determinations in 2009/2010. This critical difference suggests that following the introduction of the Bureau the types of decisions made, particularly at pre-court stage have changed substantially, moving from formal sanctions to informal action⁹.

⁹ Even though the Bureau process formally introduced non-criminal disposals, for the purpose of comparison the term 'informal action' is used to accord with current recording practices.

Figure 2: The number and percentage of decisions made in the Swansea Youth Justice system 2008/2009

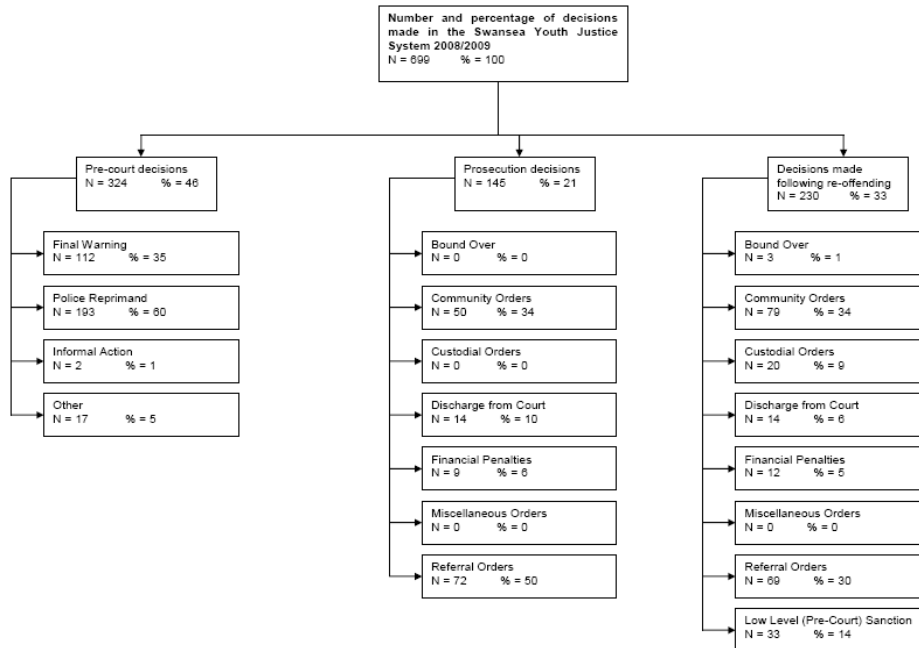
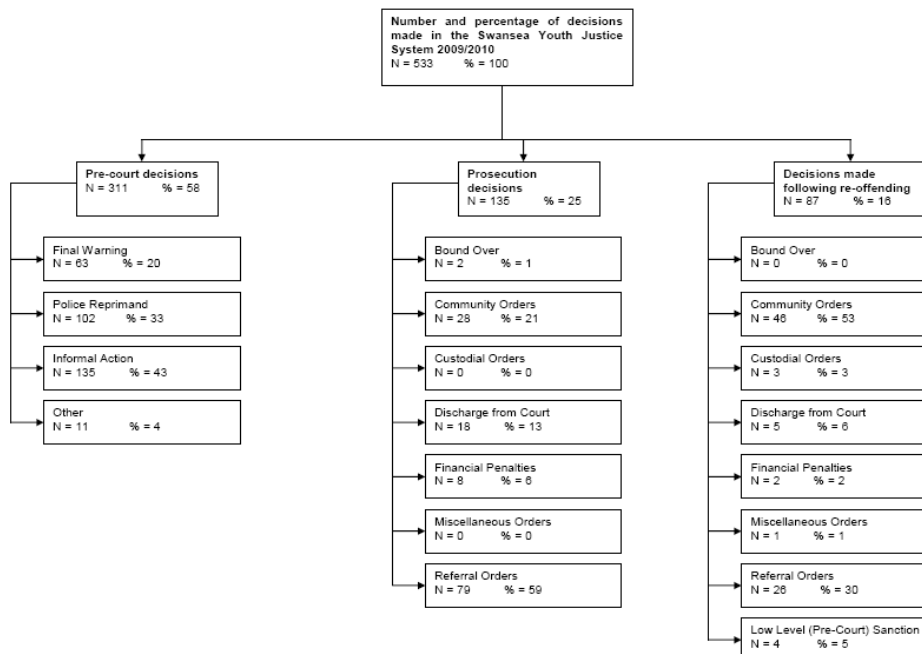


Figure 3: The number and percentage of decisions made in the Swansea Youth Justice System 2009/2010



Secondly, decreases in re-offending evidenced between 2008/2009 and 2009/2010 reveal the more sophisticated impact which the deployment of informal decision making via the Bureau is having on young people. To help

illustrate the impact of changes in decision making, Figures 4 and 5 are presented below. In these figures are highlighted re-offending numbers and percentages during 2008/2009 and 2009/2010 following engagement with pre-court decision making processes and determinations post-reoffending.

Figure 4: The number and percentage of decision made following offending post pre-court engagement in the Swansea Youth Justice System 2008/2009

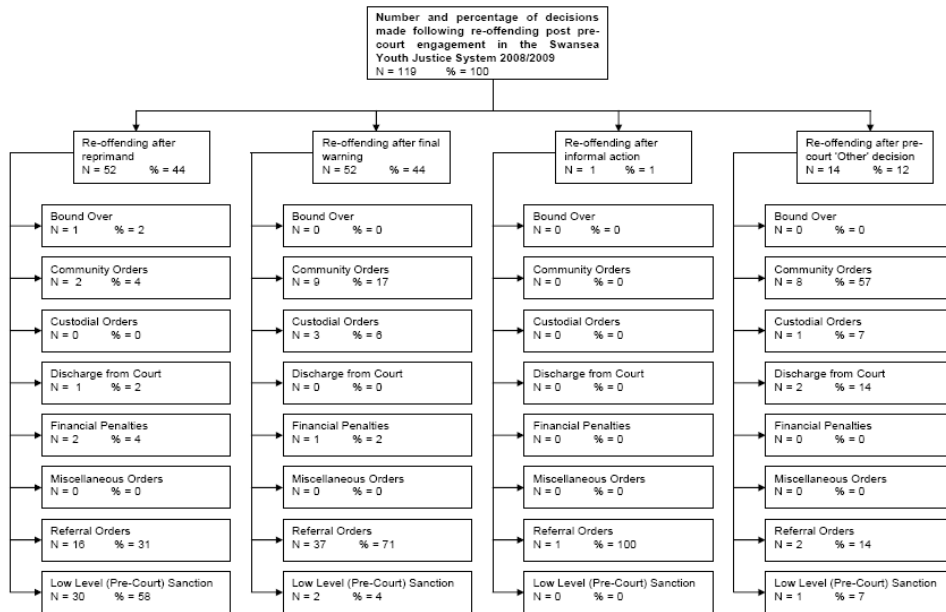
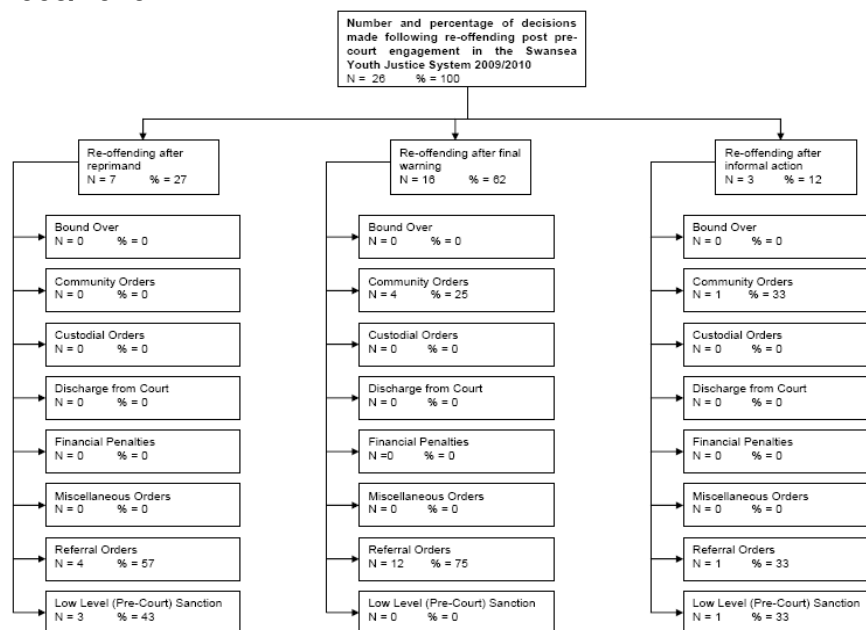


Figure 5: The number and percentage of decision made following offending post pre-court engagement in the Swansea Youth Justice System 2009/2010



At pre-court stage, the data suggests that the Bureau has demonstrated two impacts. Firstly, a substantial decrease in offending post-engagement with the Bureau has been achieved. In 2008/2009, 119 young people offended after receiving a pre-court disposal: this had fallen by 78% (to 26 children) in 2009/2010. Secondly, following the general trend shift in decision making towards informal actions, re-offending data suggests that a use of non-criminal disposals has lowered the incidence of re-engagement in the youth justice system. During 2008/2009 when non-criminal disposals did not exist, re-offending following reprimands and final warnings was 44% (52 out of 119 young people were recorded for another offence). The movement in decision making to informal action in 2009/2010 resulted in 135 being offered non-criminal disposals. Re-offending data shows that of those 135, 3 young people were reported for further offences: accounting for 2% of those who were given an informal action. Thus the Bureau and associated processes appear to be having a dramatic effect in reducing re-offending.

Although this re-offending data is preliminary, as the period of opportunity to re-offend is truncated, these results are indicative of a process which has achieved re-offending rates lower than those for any other known intervention.

Scratching behind the surface: the reasons for the Bureau's success

The official statistics clearly show that the Bureau process is making a difference to young people, the youth justice system and youth crime in Swansea. To

greater contextualise and understand the impact of the Bureau, it is appropriate to reflect on the views of managers and those staff who engineered and operationalised the process. Three key thematic issues are discerned which help to explain how the Bureau is changing the way that youth justice operates in Swansea.

The adoption of rights-based, participatory approach to youth justice

One of the distinguishing features of the Bureau process has been its clear location within a child-rights agenda that emphasises the critical importance of participation and youth engagement. Strategically (e.g. South Wales Police / Swansea YOS, 2009) and operationally (e.g. Swansea YOS, 2010) the intention of the Bureau to acknowledge and promote a child-rights approach has been embedded and translated into practice, i.e. most clearly through the assessment process and the engagement of the child in decision/action-making processes. Although frequently, when children's rights are referred to in the criminal justice system, allusion is made to procedural safeguards or broad, diluted minimum standards (e.g. YJB, 2010), the Bureau has adopted a more comprehensive vision.

Existing youth justice processes do not provide distinct opportunities for children to explore and express their views about decisions that are to be made concerning them. This creates a gulf between what adult decision makers believe to be best for children, including what key issues are challenging young people. Effectively, because of its highly formalised constitution the youth justice system denies young people fundamental rights. This is in stark contrast to the UNCRC (1989):

“... 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”
(Article 12 (2), UNCRC, 1989)

Seeking to exceed a minimalist approach to children's rights, the intention behind the Bureau is that young people are:

“... part of the solution, not a part of the problem... Its time that people realised that young people can be constructive. If a young person accepts what they have done and decides to change that is so powerful...”
(YOS Officer, 2010)

In this context, the Bureau can be seen as the summit of an incremental process that has been developed over a period of fifteen years. Combining and rearticulating core policies which have been driven by clear philosophies, e.g. the

Swansea Children and Young People's Charter (1999), the Bureau juxtaposes beliefs in children's rights with the functioning of the youth justice system. This juxtaposition encourages a mutually reinforcing decision making process, giving it clarity, focus, and context. In essence, children's participation strengthens the justice system augmenting its ability to meet the goal which it was designed to achieve, i.e. the long-term prevention of youth crime (S. 37 (1), Crime and Disorder Act, 1998).

Hence, a positive, child-rights and young person-focused methodology has been enshrined within the Bureau process. Distinctively, children are offered multiple opportunities to have their say about decisions made about them, how they think their behaviour should be dealt with and also to offer reflections on the impact of their actions on others. In reality, the Bureau's participative process operates as a sophisticated, multi-focused response to youth crime because it transfers a greater degree of responsibility for offending and the resolution of such behaviour to young people. Particularly during the assessment and decision making stage of the Bureau process children are challenged to reflect on their behaviour, develop responses to it and to consider the implications (and possible resolution) to the offences they have committed. Solutions are jointly developed by youth justice system staff and children following consultation and are not merely imposed.

The power of the participatory processes are usefully contextualised through the views of the Co-ordinator,

"Our Bureau gives kids the chance to get their view across... I got asked about this at a conference recently. I was quite proud to say that not only can we say, 'Over to you' during the assessment: which allows them to say what decision the Bureau should make... kids have a second chance to voice their opinions at the Bureau Clinic. If they think we haven't taken account of something they can tell us. They can also say if they think we are wrong. I think sometimes they are shocked that we listen to them. But, their views are so important. After all, the Bureau is about them and their lives."

(Co-ordinator, 2010)

Parental engagement: resurrecting the power of the family

A second unique feature of the Swansea Bureau is its deliberate intention to re-establish and fully recognise the role of families, particularly parents/carers, in tackling problem behaviour, resolving offending and promoting positive behaviour. Eschewing a policy focus which has supported the punishment of parents/carers for non-adherence to the expectations of Government (c.f. Goldson and Jamieson, 2002), it is the stated intention of the Bureau to acknowledge the importance of families. Embedded within the Bureau process is an express belief that families have an important, indeed central role, in bringing

up their children and dealing with the problems they face - including offending behaviour.

Parental involvement in the Bureau takes two differing but equally important forms. Firstly, engagement which occurs primarily at assessment and decision making stages, especially during the Bureau Clinic. At the Clinic, parents/carers are able to attend with their children, speak during the meeting and engage informally with staff. This seemingly innocuous opportunity to get involved has proved immensely popular with parents/carers and attendance at the Bureau Clinic has been high: in only two cases did parents not attend and these related to Looked After Children.

Secondly, the real power of parental engagement in the Bureau's structural processes is found in the emotional, experiential impact which parents/carers have on children. Universally, staff have noted that parents/carers have been supportive of children and expressed concerns that appropriate services and outcomes are agreed for the young people they care for. Even in those cases where a parent/carer has previously offended themselves, anxiety that their child may be drawn into the criminal justice system has been evidenced:

“You find even the ones, the parents who have been through the mill themselves, the last thing they want is for their kids to go through the same... [they] don't want their kids going down that line... they do try.”
(Police Sergeant, 2010)

In addition to attending meetings, a second, arguably more powerful effect has been evoked through the Bureau that impacts on the role of parents/carers. Increasingly, staff have witnessed the consequential impact of the elongation of the bail process, coining the term the “golden fortnight” (YOS Officer, 2010). Intentionally, the Bureau has slowed down the Police bail process, ostensibly to allow time for assessment and arrangement of decision making meetings. The prolonging of the bail period has also permitted parents/carers space to re-assert their authority at home. Being formally informed of their child's behaviour and having between 14-21 days before bail has to be answered, parents/carers have, in a concerted way begun to informally resolve offending behaviour. The Co-ordinator for instance noted that:

“... the majority of parents who come to the Bureau will say, 'I am glad we have had this two week period. He has been grounded, sanctions have been put in place: his laptop has been taken off him, no pocket money'... so, I think they do take on that role.”
(Co-ordinator, 2010)

The impact which parental decision making appears to be having has been conveyed to Bureau staff by young people. A striking example of how children have responded to action by their parents/carers to address their behaviour was reported thus:

“One of the boys who was involved in the Bureau told me that he thought it was a hard option... I asked him why and he replied that, “The Bureau is a cruel and unusual form of punishment... it meant I have to spend time with my parents!” When I thought about it, yes, I suppose he’s right, he has to cope with his parents and the Bureau. That’s the last thing a teenager wants. So much for the Bureau being soft!”
(YOS Manager, 2010)

A philosophical question arises in relation to the intention of the Bureau to engage parents/carers within the youth justice system. Contrasting with previous policy and legislative approaches which have sought to increase state power, extending interference into parenting approaches and family life, e.g. Parenting Orders established under the Crime and Disorder Act (1998), the Bureau’s philosophy is different. Mirroring the philosophy adopted about children, parents/carers are considered to be critical components of youth justice. The principles underpinning the Bureau recognise parents/carers to be important, constructive actors who form an integral facet of the informal action element of the justice process. Rather than criticising parents/carers for failing to control their child, the Bureau acknowledges that they may be best placed to influence and remedy offending behaviour and to put their child ‘back on track’. Additionally, support for parents/carers who are finding it difficult to cope with their child can be mobilised, retaining familial relationships and reinforcing these to achieve long term positive behavioural change.

Tackling crime through appropriate, informal actions

The third key feature of the Bureau which is contributing to its successful implementation rests in its utilisation of appropriate, informal actions to tackle youth crime and promote positive behaviour. Instead of operationalising a punitive, sanctions based approach to the offending behaviour of children, the Bureau differs substantially from the policy favoured by central Government. The vision from which the Bureau emerged was one wherein safeguards were built into the process to block young people entering the formal youth justice system unless absolutely necessary. Thus, the Bureau intended to shield children from the stigmatising effects of criminalisation and the corrosive effects which labelling and cross-pollination with other, harder end offenders could engender. In particular, the Bureau process is designed to minimise the unintentionally damaging consequences of the formal youth justice system meaningfully described by McAra and McVie (2010):

“This has resulted in a group of youngsters, who might readily be called the usual suspects, who become sucked into a repeat cycle of contact with the system and for whom such contact has damaging consequences in terms of inhibiting desistance from offending and in terms of youth to adult criminal justice transitions...”

(McAra and McVie, 2010)

The potential danger posed to young people by formal criminalisation is not artificial and even low level formal sanctions can impact on a child's life:

“I work with lots of kids, and it is heart breaking when you get some who have been silly and done stupid things. When you try to help them get College places, traineeships or apprentices you hit a brick wall once it is discovered that they have a previous criminal record... Even though the law says that some offences are spent, they are always there. They can ruin a kid's life.”

(Education, Training and Employment Officer, 2010)

Of course, denial of training, employment, prosperity and social mobility may all contribute to future offending behaviour by blocking access to opportunities.

Implementation of non-criminal disposals via the Bureau accords with the children-first ethos that underlies the process:

“Getting kids into court, criminalising kids will only do harm as far as I am concerned because it will affect them later on in life when they go for other jobs and whatever... if we can work with the problem without criminalising the young people, that's definitely the way forward.”

(YOS Officer, 2010)

Whilst not a statutory intervention, the locally developed non-criminal disposal has already proved to be a powerful tool at the disposal of the Bureau and it offers Officers a broader array of options when determining what would suit a particular young person.

Importantly, non-criminal disposals have also acted to correct perceived flaws in the existing youth justice system. With the previous system of cautions being replaced by reprimands and final warnings (Crime and Disorder Act, 1998) questions have been raised about the efficacy of one-off, lower end sanctions. Driven by central Government policy the framework of reprimands and final warnings constitutes a one-off, administrative penalty which does not seek either to understand offending, nor consider how it can be avoided in the future: these

sanctions are merely punishments. The Bureau process offers something different which is more holistic, but:

“It isn’t a soft touch because the young people now involved in it get far more attention than if they were reprimanded... With this process you have participation: you get so much engagement because people are onto you about your impact...”
(BCU Commander, 2010)

Accordingly, utilising an informal sanction process, buttressed by comprehensive assessment, the Bureau has shifted youth justice in Swansea away from essentially administrative, arguably meaningless forms of official action. Instead, an interactive process has been designed that involves all key stakeholders, is child-focused, is problem solving and future oriented, is positive and pro-social and is ultimately, in both quantitative and qualitative terms, highly successful.

Conclusion

The Swansea Bureau is an innovative programme which is succeeding in diverting young people out of the youth justice system and in reducing re-offending by young people. Through a strategic, multi-strand approach, the Bureau process engages children to provide holistic assessments to understand offending behaviour and provide bespoke services to address the problems faced by young people and promote positive behaviour. Swansea’s Bureau is grounded in a clear philosophy, one which espouses a positive, rights-based approach. The Bureau has been designed to operate in a constructive, prospective fashion, simultaneously acknowledging the potential power of the youth justice system to stigmatise children, blight their futures and inculcate further offending or to re-set children on a positive, pro-social life trajectory.

The evaluation of the Swansea Bureau has highlighted cohesive inter-agency working based on consensus, a common philosophy concerning children and young justice and a willingness to dare to be different. The Bureau in Swansea offers an alternative vision of youth justice that differs from the prevailing political prescription: instead of an ineffective punitive approach, a positive and effective rights-based children-first platform is offered.

Although, as yet, only indicative of the levels of success, this evaluation of the Swansea Bureau has shown it to be possibly one of the most innovative developments in juvenile justice, not just in Swansea, Wales and the UK, but internationally. It is not only the most effective process yet developed to divert young people away from the stigmatising and harmful effects of engagement within the formal youth justice system, the data indicates that it is also the most effective known process in reducing re-offending by young people.

The impact and outcomes of the Bureau should be of great interest to those responsible for juvenile justice around the World. If adopted more widely across Wales, the UK and beyond, the Bureau has the potential to revolutionise youth justice, to divert entire generations of children from unnecessary criminalisation, to reduce youth crime and to promote positive actions and futures for young people, their families and society itself.

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APPENDIX D

SUPERVISION, COMPLIANCE AND ENFORCEMENT

Introduction

A persistent theme in the recent development of probation and community sentences has been the attempt to make them more intensive and demanding, often with more requirements, more rigorous enforcement and more severe penalties for non-compliance. Equally persistent has been evidence that these approaches do not necessarily produce the desired result: they cannot be guaranteed either to divert from custody or to improve the behaviour of persistent offenders. Research on the effectiveness of correctional services and rehabilitation consistently shows that effective help has a more positive effect on offenders' behaviour than measures designed primarily to punish and deter: for example, a comprehensive review of international studies by McGuire (2004) finds 'appropriate services' reducing re-offending by up to half, while 'sanctions and deterrence' increase it by up to a quarter. A similar review by Canadian researchers (including their head of correctional research) covered 374 sets of research findings and concluded that 'delivering human services' was on average associated with reductions of 12% in re-offending, whilst 'sanctions and deterrence' showed increases of 3% (Andrews and Bonta 2006). Of course it can be challenging to ensure that services really are 'appropriate', and it has often proved difficult to replicate the outcomes of the best research in practice (see Lipsey 1999; Raynor 2004). Also it can be argued that one of the objectives of punishment is to send a message to others as well as to the offender, and that general deterrence is a legitimate aim of punishment. However, the empirical evidence for general deterrence remains weak and contradictory, and in any case it can hardly be the primary aim of punishment for children and young people when the welfare principle is paramount: the primary concern must be the effect of the sentence on the particular child.

In the context of Jersey, it is important to consider what 'appropriate services' might be. The Jersey Probation and After-Care Service has been thoroughly evaluated (much more than most others: see Raynor & Miles, 2007) and its work has been shown to be generally effective, but the review of youth justice presents an opportunity to consider what else might be learned about the supervision of persistent offenders from current and recent developments elsewhere. Relevant experience in Britain can be found in four main areas: the development of schemes for the supervision of persistent and prolific adult offenders ('PPO schemes'); the history and recent revival of 'intensive alternatives to custody'; the 'heavy end' Intermediate Treatment schemes developed for young offenders in the 1980s, and the emergence of 'therapeutic jurisprudence' in the form of problem-solving court processes and review hearings.

Supervising prolific offenders

There is a growing research literature on such schemes in England and Wales. Perhaps the best account of their principles and development is provided by Worrall and Mawby (2004), and an evaluation of their effectiveness by the Home Office suggests that they tend to reduce the offending of offenders under active supervision, though there is less evidence of a long-term effect after supervision ceases (Dawson and Cuppleditch 2007). Their main innovative features have been their multidisciplinary approach and their pattern of supervision. Schemes for the supervision of prolific and/or persistent offenders in the community have made effective use of joint working by police and probation staff, and of multidisciplinary management boards, which can include representatives of health, education and social work services. These arrangements facilitate information sharing (for example, police information about the behaviour of offenders can be made directly available for their supervisors), frequency of contact (several times a week, even daily, with appropriate services and resources), and timely referral to other necessary services to address problems which are contributing to the risk of offending (e.g. drugs, accommodation, use of leisure time etc.). A multidisciplinary team approach can incorporate staff from different agencies into a common style of working, and develops specialist skills and knowledge in the staff, which has been the experience of many Youth Offending Teams in England and Wales. As Worrall and Mawby put it:

‘Prolific offender projects, if implemented properly, represent the development of a model of partnership working that balances the care and control of prolific offenders. They have the potential to support offenders, reduce their offending and bring wider benefits.’ (p. 281)

Their possible lessons for managing persistent offenders in Jersey lie in the combination of frequent contact, access to help and services, and monitoring of behaviour through timely sharing of police information. For maximum effect, such schemes probably need to remain in contact with offenders for long periods, including the availability of voluntary contact when no statutory supervision is in force. However, other aspects of the PPO projects used in England and Wales are *not* recommended as models for Jersey: it would be unwise, for example, to adopt the same definitions of prolific offenders that are used on the mainland, since it is clear that in Jersey behaviour is brought to the attention of the Police and drawn into the orbit of the criminal justice system which would probably not attract the same attention on the mainland. Problematic behaviour in small communities has high visibility, but methods for dealing with it need to avoid the over-inclusive approach of drawing too many people into the criminal justice system. Intensive forms of multi-modal supervision are useful for some people who are persistently in trouble, provided that care is taken over requirements and enforcement (see below); however, the guiding principles should be in line with those of countries which successfully combine economical use of sanctions with effective responses to young people in trouble. McAra (2010) identifies some of

these: for example, in New Zealand the law requires that 'criminal proceedings should not be used if alternatives are possible', and in Canada custodial sentences cannot be imposed unless no feasible alternatives are proposed; the purpose of sentencing is to ensure that offending has 'meaningful consequences for the young person . . . that promote his or her rehabilitation and reintegration', and court judgments have made it clear that custody is not to be used as a substitute for child protection, mental health services or other social measures (Bala et al. 1990).

Intensive supervision and alternatives to custody

The attempt to develop intensive forms of probation and other community-based options to compete with and reduce custodial sentencing has a long history, particularly in the USA and in England and Wales. In the USA there is little evidence that the 'intensive probation' movement achieved either diversion from custody or reductions in re-offending (Petersilia 1990). On the other hand, there is ample evidence that appropriate content and processes in supervision can reduce re-offending, and that inappropriate content does not (for summaries see, for example, Andrews and Bonta 2006; McGuire 2002). In England and Wales the picture is somewhat more complicated, since a variety of different approaches have been tried and evaluated, and politicians have regularly announced new initiatives and variants. In a recent paper to the European Society of Criminology conference (Raynor 2008) a comparative analysis of aims and results was presented covering three national 'alternative to custody' initiatives (Community Service, Day Training Centres and Intensive Probation) and three more locally-based initiatives (the West Glamorgan Alternative [see Raynor 1988], the Hereford and Worcester Young Offender Project [see Roberts 1989] and the Mid Glamorgan STOP programme [Raynor and Vanstone 1997]).

The clear evidence from outcome studies, focusing both on diversion and on whether the projects resulted in lower re-offending than custodial sentences for similar offenders, was that the more local projects tended to be more successful, and had been promoted not primarily as 'intensive' projects but as projects designed to help offenders to reduce their offending. What matters is effective supervision and programme content geared to helping offenders to learn what they need to learn and to access the resources they need to build more satisfactory lives. Effective content will sometimes require intensive contact, but pursuing and marketing intensiveness for its own sake, in an attempt to make community sanctions look more punitive, has clearly not been an effective approach, even (or perhaps especially) when actively promoted by politicians. Such approaches also carry the risk that they may be overloaded with rules and requirements with the intention of looking 'tougher', leading to counterproductive levels of breach and re-sanctioning.

A similar emphasis on the need for well-designed supervision regimes with effective and helpful content is found in the major evaluation of the Intermediate Treatment schemes developed as alternatives to custodial sentencing for young offenders in England and Wales in the 1980s (Bottoms 1995). Whilst a number of the schemes in the study successfully targeted people who were at risk of custodial sentences and therefore arguably reduced custody, which was often the major aim of practitioners, only some could be shown to reduce offending. However, it is clear that significant reductions on the custodial sentencing of young offenders occurred throughout England and Wales in the 1980s, only to be reversed by a new political emphasis on 'toughness' in the 1990s. The lessons are clear: intensiveness and punitiveness in community sentences should *not* be pursued for their own sake; effective content and good methods of supervision are more important, and are likely to have a better impact both on offenders and on levels of custodial sentencing.

Compliance and enforcement in supervision

Issues of compliance and enforcement in community sentences have an interesting and somewhat troubled history in England and Wales. Politicians anxious to make probation 'tougher' (and, one suspects, to get themselves noticed by the media in preparation for moving on to more senior posts) have, since the early 1990s, reduced the discretion of probation officers to decide when enforcement proceedings were necessary, and have instead created standardised guidelines and targets, leading to more breach proceedings reaching Court. This happened in spite of the view of many magistrates that they would prefer officers to use 'common sense' about when to initiate breach action – see Maguire, Perroud and Raynor (1996). The 2003 Criminal Justice Act required magistrates always to respond to breach of community sentence requirements by imposing more restrictive requirements or a more severe penalty, with the predictable result that the prisons became more overcrowded as large numbers of people were imprisoned because of what could be quite minor breaches of community sentences, often with no new offence. More recently, attempts have been made to reverse this counterproductive trend by substituting 'compliance' targets (which encourage probation areas to complete more orders successfully) for 'enforcement' targets (which encouraged them to breach more people).

To make this new approach work, it is now recognised that it is important to understand the underlying processes of desistance and compliance: how do offenders change, and why do they co-operate with supervision? To sum up (and inevitably simplify) a growing body of literature, people who have a history and pattern of offending do not normally desist from offending in one move, so to speak: they have lapses, they have good and bad periods, and the process has been described as a 'zigzag'. What is important is to help people maintain motivation, develop skills and resources, and try to deal with (if possible, anticipate) the circumstances and problems that lead to lapses. This approach is

also consistent with some of what we know about compliance: people are more likely to comply with supervision, and with the law generally, if they feel they are listened to, treated fairly and with respect, and understood and helped. Importantly, people will comply against their own inclinations or short-term impulses if they regard the demands made on them as legitimate and justifiable (Tyler 1990). All of this points to an approach to compliance and enforcement which is based not on punishing non-compliance by escalating sanctions (presumably on the assumption that if the medicine doesn't work you simply increase the dose), but on establishing communication with offenders and using the Court's authority to assist in problem-solving. (A full review of recent literature on desistance and compliance can be found in McNeill, Raynor and Trotter [2010]).

Therapeutic jurisprudence

Problem-solving approaches to non-compliance are often discussed under the heading of 'therapeutic jurisprudence', in which sentencers become involved in the management of community sentences through periodic progress review hearings where offenders are praised for good progress as well as helped to approach problems rationally when the situation is more difficult. In Britain this approach has been most successfully developed in the Scottish Drug Courts, in which sentencers become closely involved in managing compliance with orders, and hearings for breach of requirements (for example, a positive drug test) become a dialogue between sentencer and supervisee about what went wrong and what might be done to avoid the same problem in future. A frequent result of this approach to compliance is that a supervisee will be warned and returned to supervision with the aim of completing it. In Jersey, problem-solving discussions with people who have offended are a regular feature of Parish Hall Enquiries, where levels of compliance and perceived legitimacy are high. There would be advantages in a system which allowed the Parish Hall Enquiry to deal with minor offences by supervised persons, just as there would for an unsupervised person. The fundamental point is that difficulty in complying with the requirements of a community sentence should be seen primarily as a problem to be solved, rather than as a challenge to the authority of the Court. People with chaotic lives make mistakes; they are unlikely to think about whether the Court will be annoyed, unless a relationship with interested sentencers has already been established.

Compliance is also facilitated when orders, or bail conditions, are not overloaded with requirements. Experience in other jurisdictions suggest that sentencers sometimes do this in order to ensure that promised packages or features of supervision are actually delivered, and this is understandable; however, where supervising agencies or officers are well known, have a good track record and are trusted, this approach is less necessary. An alternative approach would be to use regular review of cases, perhaps on a drug court model, to reassure sentencers that supervision is meeting their aims. Jersey law contains the power to do this.

Throughout the review team's fieldwork in Jersey it has been clear that people involved in the youth justice system are aiming to be helpful to the young people who appear before them. The approaches discussed in this Appendix offer some additional resources for this, and in particular, some ways of avoiding unwanted counterproductive outcomes.

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APPENDIX E: Authors' affiliations

Dr Jonathan Evans: University of Glamorgan
Brian Heath: Chief Officer, Jersey Probation and After-Care Service
Eddie Isles: Manager, Swansea Youth Offending Service
Professor Peter Raynor: Swansea University

Assisted by:

Brenda Coster: Jersey Probation Service
Professor Kevin Haines: Swansea University
Gillian Hutchinson: Home Affairs Department and Swansea University
Dr. Helen Miles: Jersey Police and Swansea University
Cathy Phillips: Jersey Child Protection Committee
Professor Bill Whyte: Edinburgh University

APPENDIX F:

A list of jurisdictions concerning which the compilers of this report have considered data and/or research:

Australia
Austria
Belgium
Bosnia and Herzegovina
Bulgaria
Canada
Croatia
Cyprus
Czech Republic
Denmark
England and Wales
Estonia
Finland
France
Germany
Greece
Guernsey
Hungary
Ireland
Italy
Japan
Kosovo
Latvia
Lithuania
Malta
Netherlands
New Zealand
Northern Ireland
Poland
Portugal
Romania
Russia
Scotland
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Turkey
Ukraine
USA

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