

**CHILDHOOD, TRANSITION AND SOCIAL JUSTICE INITIATIVE
QUEEN'S UNIVERSITY BELFAST**

**RESPONSE TO THE CONSULTATION ON THE REPORT ON THE
REVIEW OF THE YOUTH JUSTICE SYSTEM IN NORTHERN IRELAND**

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CONTENTS

Introduction	3
Early Intervention	4
Policing	8
Diversion and prosecution	11
Bail and remand	12
Youth conferencing	13
Youth Court	13
Delay	14
Custody	14
Reintegration and rehabilitation	15
Special groups	16
Strategic and practical arrangements for delivery	16
Children’s rights and international standards	18
Appendix 1: Relevant CTSJI Publications	20

Introduction

The Childhood, Transition and Social Justice Initiative is an inter-disciplinary team of researchers from across Queen's University Belfast. Engaged in projects seeking to challenge the structural marginalisation of children and young people, our research is underpinned by the principles of social justice. We are concerned about issues of social exclusion, particularly in the contexts of the transitions experienced by all children and young people and Northern Ireland's societal transition from armed conflict.

The Initiative has previously expressed serious reservations regarding the constitution and process of the Youth Justice Review, including the membership of the Review Team, the administrative support for the Review and its remit. Subsequently, the Initiative provided a thorough synopsis of its youth justice-related research and attended the forum for academics at Hillsborough Castle. Reservations remain concerning these issues and also in relation to the organisation and scope of the current consultation, particularly the lack of participation by children and young people. However, we feel that it is important to re-emphasise the key issues arising from our work. This consultation response therefore draws on research carried out by Initiative members which has specific relevance to the review of youth justice in Northern Ireland (see: Appendix 1). We look forward to contributing to further debate with the intention of ensuring that children's rights are appropriately promoted and protected within the youth justice system and services intervening in their lives.

Early Intervention

Children, young people, parents/ carers and professionals need to understand what is 'normal' behaviour for children of different ages and in specific circumstances (especially during periods of transition, in response to difficult circumstances or lack of appropriate care and support). Much behaviour currently defined 'risky' is typical during periods of transition, distress or despair. Rather than interventions which may stigmatise or pathologise individual children and their families, those involved in behaviours perceived as potentially dangerous or harmful require additional support to address often complex unmet needs; ensure that young people are listened to; help individual children and parents understand the consequences of their actions and to make informed choices; develop parenting capacity.

Government commitment to early intervention

- A revised and reinvigorated *Strategy for Children and Young People* should include clear indicators under each of the 6 outcomes, including 'Living in a society which respects children's rights', accompanied by a time-limited action plan which is signed off by relevant departmental Ministers.
- The NI Executive should determine how best to secure *long term* funding to invest in early intervention based on easily-accessible, needs-led, strengths-based, locally available programmes and projects.
- Prevention of offending should be viewed as a social responsibility, in

which children are responded to as part of their family, school, local community or society - as participants rather than objects of socialisation and control. This would mean incorporating prevention of offending within early intervention programmes designed to promote children's personal development and well-being and to reduce negative outcomes (such as poor emotional and physical health, poor educational attainment) for individuals/ families/ communities.

- The NI Executive should set up an inter-departmental Early Intervention Unit (including the Departments of Education; Employment and Learning; Health, Social Services and Public Safety; Justice; Social Development).
- The Children and Young People's Strategic Partnership 'Early Intervention Sub-Group' could develop an *Early Intervention Strategy*, including achievable outcomes and accompanied by guidance based on best practice, as services are jointly planned and commissioned through this Strategic Partnership. Legislative change to introduce a statutory duty to co-operate would strengthen the Partnership's role.
- Development of an inter-agency culture will require significant de-compartmentalisation and collective responses based on pooled funding as well as collaborative working partnerships at both strategic and local levels.

Early Intervention Policy and Practice

- Early intervention provision should focus on ensuring that children's/

young people's needs are identified and addressed, supporting them to claim the rights to which they are entitled.

- Children and young people should be involved in the design, development, delivery and review of early intervention services as the issues impacting on their lives are often affected by their age, locality and personal circumstances.
- The voluntary and community sector should be adequately resourced to continue to develop non-stigmatising, holistic early intervention programmes in partnership with statutory agencies.
- Early intervention should be available for all aged under 18 years and not confined to under-13s, through provision of a continuum of universal services which can be accessed as and when required. This should include outreach services for 'vulnerable' groups, specialist services in response to specific needs, and the ability to transfer to other services as needs change.
- It is vital that the Early Intervention Unit, and any early intervention programmes, recognise the impacts of poverty and the legacy of the Conflict. In particular, the impacts on parenting capacity of trans-generational trauma, multi-generational poverty resulting from limited job opportunities in local areas, poor physical and mental health, domestic violence, substance misuse.
- Professionals working with families need to understand the contexts of young people's everyday lives - the social, cultural and political histories of

the families and communities with whom they work (including the contested nature of intervention by state agencies).

Specific gaps in existing early intervention provision

- Children and young people require access to age-appropriate, inclusive, safe, affordable play and leisure opportunities which are available during evenings/ weekends/ school holidays. In particular, this includes provision for those aged 13+, for girls/ young women, and for those living in rural communities.
- Individual children and young people require appropriate assessment of special educational needs, leading to provision of additional support in school/ at home/ through youth or health services where necessary.
- Children and young people require access to easily accessible, confidential counselling and advice about substance use, mental health issues, sex and relationships.
- Additional provision is required within schools to reduce the number of suspensions and exclusions through individual support programmes and child-friendly disciplinary procedures which pupils have been involved in developing.
- Children and young people who have been excluded from school require access to alternative educational provision based on identified need and support to help them deal with the issues leading to their exclusion.
- Young people require access to educational and training opportunities

which focus on provision of relevant information and guidance in addition to transferable knowledge and skills. In particular, young people require realistic and accurate information about sex and relationships, substance use, mental health and well-being; opportunities to explore feelings and emotions; careers advice and education/ training/ employment opportunities in their local areas; preparation for living independently and opportunities for development of 'life skills'.

- Children, young people and parents/ carers require access to readily-available, community-based family support which is focused on providing practical advice, improving self-confidence, developing coping strategies, encouraging communication and negotiation, accessing available sources of financial/ social assistance.

Policing

Prioritising children and young people

- The needs or concerns expressed by children and young people should be prioritised in police planning processes at both strategic and local levels.
- Children and young people should be involved in consultation and decision-making processes in their local communities through relevant Partnerships and Forums. Their views, experiences and suggestions should be acknowledged and feedback about the actions taken as a result of consultation should be provided.

Positive engagement with young people

- It is vital that police interaction with young people is based on respect for young people, who should be given the opportunity to have their views or accounts heard in all interactions.
- Continued mistrust of the police in communities needs to be acknowledged. This can be exacerbated by lack of clarity about the role of the police and inconsistencies in policing practices, which are likely to increase with development of additional discretionary powers.
- There should be greater recognition of the significant role played by youth and community workers as well as community-based restorative justice schemes in developing positive relationships with young people; providing mediation and advocacy; supporting young people in their communities. This should be the preferred option when concerns are raised about the behaviour of individuals or groups of young people (especially when this behaviour is not dangerous or harmful).
- Inaccurate description of young people's behaviour by the police, the media or adult community members as 'anti-social' should be challenged, especially when this relates to young people's presence on the streets or other public spaces in their communities.
- Young people should be protected from differential or discriminatory policing based on ageism, with all police officers receiving training focused on positive engagement with young people and knowledge of relevant international standards.

- Inappropriate responses of individual officers to young people (eg confrontational language or approaches, goading, threats, harrassment) are unacceptable and should be subject to rigorous investigation and disciplinary procedures.
- Children and young people should be made aware of complaints procedures and remedies, and provided with advocacy information.

Specific policing issues

- Involvement of young people in street disturbances and sectarian clashes is rarely 'recreational'. It should be recognised as the assertion of cultural identity, a response to perceived inequalities and political concessions to 'the other community', a negative reaction to inappropriate police intervention, or an expression of young people's marginalisation and lack of status. Interventions aimed at responding to these issues are required, rather than more intense policing.
- The continued impacts of 'paramilitary style' threats and punishments on young people should be acknowledged, with adequate resourcing of community-based restorative justice schemes and measures to ensure the safeguarding of young people.
- Violence in communities, including domestic violence, sectarian violence, violence directed at the police, paramilitary-style punishments and alcohol-fuelled fighting on the streets, significantly affects children and young people – undermining their safety, restricting their freedom of movement

and opportunities for play, and increasing their levels of victimization. The police need to work with statutory and non-statutory agencies to challenge acceptance of violence as a response to defending cultural identity and exerting interpersonal power and to protect children/ young people from intimidation or incidence of violence.

- It is vital that measures aimed at tackling 'crime' and 'anti-social behaviour' do not focus disproportionately on young people, criminalise behaviour that does not constitute an offence, inappropriately draw children into the criminal justice system, or alienate children and young people from their communities.
- Publication by the police of the details and photographs of under-18s places children at risk and breaches international standards. This should be discontinued.

Diversion and prosecution

- The UNCRC should be incorporated into domestic legislation. In particular, the 2002 *Justice (Northern Ireland) Act* should be amended to reflect Article 3 of the UNCRC - ensuring that the best interests of the child is the primary consideration in youth justice policy/ practice.
- Diversion from the criminal justice system should be a priority, with emphasis on multi-agency welfare-based support in their local community for children and young people involved in behaviour considered likely to affect their well-being or harmful to themselves/ others.

- Low level 'offending' behaviour should be the responsibility of parents, schools and communities, where necessary with additional support from welfare-based intervention programmes. Police involvement should be avoided wherever possible. Prosecution should be reserved for serious cases.

Bail and remand

PACE

- Use of Woodlands JJC as a place of safety under PACE should be abolished, with provision of welfare-based alternatives provided by social care services in local communities.

Remand

- For those under-18s accused of committing offences, use of custodial remand pending trial should be abolished and replaced by a presumption of bail without conditions. Where bail conditions are necessary, these should be proportionate, realistic, relevant and clearly understood by the young person and their parents/ carers.
- A range of support and supervision arrangements should be made available, including different types of accommodation.

Youth conferencing

- Although the restorative principles of youth conferencing are more progressive than punitive responses, this disposal remains within the criminal justice system and is therefore not diversionary. Alternative community-based provision, supported by statutory health and welfare agencies, should be further developed.
- Youth conferencing can be experienced by young people as a shaming process, undermining the positive potential of restorative justice and reparation.
- Successful youth conferencing is dependent on development of an action plan which is proportionate, meaningful to the young person concerned, and includes individually tailored opportunities/support to help them address the issues leading to their unacceptable or 'offending' behaviour.

Youth Court

- Guidelines for Youth Courts should be reviewed to ensure compliance with international standards, with establishment of arrangements to assess and promote adherence.
- Judges, magistrates and lawyers working in the Youth Court should receive training and accreditation to become specialists working within a single youth court jurisdiction established to ensure administration of child-friendly youth justice.

- Training for all those working in the Youth Court should include information about the UNCRC and other relevant international standards, particularly the Beijing Rules (OHCHR, 1985), Riyadh Guidelines (OHCHR, 1990), Havana Rules (OHCHR, 1990), Tokyo Rules (OHCHR, 1990); *General Comment No. 10: Children's rights in juvenile justice* (UN Committee on the Rights of the Child, 2007); *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (Council of Europe, 2010).

Delay

- The problem of delay in all areas of the youth justice system should be prioritised.
- Moves towards 'speedy' discretionary disposals should not compromise the rights of children to appropriate administration of justice.

Custody

- Consistent with international standards, custody should be used as a last resort, for the shortest possible period, and confined to those presenting serious, immediate risk of harm to themselves or others.
- No under-18s should be held on remand at, or sent to, Hydebank Wood Young Offenders' Centre. As a facility for young adults, Hydebank Wood is an inappropriate environment for children, however serious their offence.

- As stated previously, the practice of using the JJC as a place of safety for PACE procedures for any child should be abolished. There should be no PACE places in the JJC. Instead, these children should be accommodated within social care services.
- The over-representation in custody of looked after children, children with learning disabilities and other vulnerabilities (such as substance use and mental health problems) is a matter of serious concern. These young people require specialist assessment of their needs and welfare-based support in their communities.

Reintegration and rehabilitation

- Rehabilitation and re-integration should be central elements of custody, with provision of developmental opportunities and support while young people are in custody and when they return to their communities.
- While in custody, young people should receive the educational, health and personal care to which they are entitled – based on assessment of individual need and provided by specialists with appropriate qualifications, training and skills to meet these needs.
- Policy and legislation relating to rehabilitation of offenders should reflect the principles of proportionality, transparency and fairness. To avoid limitations being placed on their educational or employment opportunities, receipt of a diversionary disposal should not be kept on a young person's criminal record. Those convicted of offences should be able to apply for a

'clean slate' at 18, unless they are considered to pose a serious harm to others. In such cases, a transparent process for disclosure of information which is open to challenge should be established and the decision to disclose regularly reviewed.

Special groups

- Education about the effects of learning disabilities and ADHD (on behaviour, reasoning, ways of communicating, etc) should be provided for all personnel working within the criminal justice system. Training should raise awareness of appropriate responses to children and young people with special needs.
- Specialist support should be available for young people with mental health problems, for those experiencing depression, for substance users and for those who have experienced neglect/ abuse - both while they are involved in the youth justice system and within their communities.

Strategic and practical arrangements for delivery

- OFMDFM should re-confirm the Assembly's commitment to children through a Ministerial Committee whose aims are promoting social inclusion and delivering better outcomes for children. This will require a range of measures to address social and economic inequalities.
- The Children and Young People's Strategic Partnership should become the strategic forum through which regional and local priorities are agreed –

based on ensuring realisation of children's rights, especially for the most disadvantaged and vulnerable.

- The Criminal Justice Delivery Group, Criminal Justice Board and Ministerial Children's Committee should take responsibility for implementing the recommendations of the Youth Justice Review – informed by responses to this consultation as well as existing research about the characteristics and experiences of those involved in the youth justice system.
- Children involved in challenging or 'offending' behaviour should be defined *children* first – perceived to be 'children in need' (lacking adequate care, support and protection), rather than 'at risk of offending' or 'offenders'.
- Additional resources should be provided to expand youth and community work based on promoting the personal and social development of young people, participation and social inclusion. In particular, this should include projects working with those not accessing 'mainstream' educational or youth work provision; community-based outreach work to meet the needs of the most marginalised; and integrating provision into places where young people meet or are based (eg schools, Alternative Education Projects, residential homes, JJC).
- Youth provision should focus on exploring issues identified by children and young people as affecting them, including: challenging negative representations of young people; active involvement in decisions affecting them; interpersonal, intra- and inter-community violence; sectarianism;

racism; alcohol/drug use; bullying; crime and vandalism; suicide and mental health; emotional well-being and healthy lifestyles; gaining skills and knowledge to assist education and employability; having something to do and somewhere safe to go.

Children's rights and international standards

- The aim of the youth justice system should focus on children's personal development and well-being, rather than prevention of offending and public safety. This would require an amendment of S53 of the 2002 *Justice (Northern Ireland) Act*.
- The minimum age of criminal responsibility should be raised to 16, in line with other social responsibilities in Northern Ireland. In anticipation of debate about this contentious issue, the Department of Justice - in collaboration with DHSSPS and OFMDFM - should lead a public education campaign about the support required by 'children in need' and their families, the benefits of early intervention, the importance of separating 'responsibility' from 'criminalisation', and successful welfare-based interventions in countries where the minimum age of criminal responsibility is higher.
- In the intervening period, locally based children's services (education, youth work, health, social care) should be developed to meet the needs of, and provide support for, children and young people whose behaviour causes concern.

- The Department of Justice should specify how it fulfils its role as a duty-bearer responsible for promoting/ protecting children's rights and implementing international standards relating to youth justice. This should include an outline of how the Department has responded to the 2008 Concluding Observations of the UN Committee on the Rights of the Child, as well as the ways in which the criticisms and recommendations of the recent *Prison Review* (2011) and *Youth Justice Review* (2011) will be addressed in future policy/ practice.

Appendix 1: Relevant CTSJI publications

[Available at: www.qub.ac.uk/ctsji]

Children's rights

Haydon, D. (2007) *United Nations Convention on the Rights of the Child: Consultation with Children and Young People*. Belfast: Office of the First Minister and Deputy First Minister.

Haydon, D. (2008) *Northern Ireland NGO Alternative Report. Submission to the United Nations Committee on the Rights of the Child for consideration during the Committee's scrutiny of the UK Government Report (July 2007)*. March 2008. Belfast: Save the Children and Children's Law Centre.

Haydon, D. (2008) *Additional Information from Northern Ireland in Response to the List of Issues Relating to Implementation of the Convention on the Rights of the Child in the UK*, August 2008. Belfast: Save the Children and Children's Law Centre.

Haydon, D. (2009) *Developing a Manifesto for Youth Justice in Northern Ireland – Background Paper*, March 2009. Belfast: Include Youth.

Haydon, D. (forthcoming 2012) 'Children's Rights: The Effective Implementation of Rights-based Standards', in Sheehan, R., Rhoades, H. and Stanley, N. (eds) *Vulnerable Children and the Law: International Evidence for Improving Child Welfare, Child Protection and Children's Rights*. London: Jessica Kingsley Publishers.

Haydon, D. and McAlister, S. (2009) *An Independent Analysis of Responses to the Department of Education's 'Priorities for Youth' Consultation*, May 2009, Bangor: DENI

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Marshall, C., McAlister, S., Haydon, D. & Scraton, P. (2010) *A Bill of Rights for Northern Ireland: Next Steps NIO Consultation Paper - Response*. Belfast: Childhood, Transition and Social Justice Initiative, QUB.

McAlister, S., Scraton, P. & Haydon, D. (2009) *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland* Belfast: Queen's University/Save the Children/Prince's Trust.

Scraton, P. (2007) 'The neglect of power and rights: A response to "problem solving"' in Davies, Z. and McMahon, W. (eds) *Debating Youth Justice: From punishment to problem solving?* London: Crime and Society Foundation pp73-82.

Scraton, P. (2005) 'The denial of children's rights and liberties in the UK and the North of Ireland', *ECLN* Essay No 14.

Scraton, P. (2005) 'Scant respect for children's rights', *Safer Society*, No. 27, pp 17-19.

Criminalisation of children and young people

Convery, U., Haydon, D., Moore, L. & Scraton, P. (2008) 'Children, Rights and Justice in Northern Ireland: Community and Custody', *Youth Justice*, Vol. 8, No. 3, pp245-263.

Gordon, F., Haydon, D., Marshall, C., McAlister, S. & Scraton, P. (2009) *Together. Stronger. Safer. Community Safety in Northern Ireland: A Consultation Paper – Response*. Belfast: Childhood, Transition and Social Justice Initiative, QUB.

McAlister, S. (2008) 'Predictable Pathways: Negotiating Risk in the Context of Marginalisation and Social Exclusion', *Current Issues in Criminal Justice*, Vol. 20, No. 1, pp14-28.

McAlister, S., Scraton, P. and Haydon, D. (2011) 'Place, territory and young people's identity in the "new" Northern Ireland', in Goldson, B. (ed) *Youth in Crisis? 'Gangs', territoriality and violence*. London: Routledge, pp89-109

Scraton, P. (2010) 'Young people need to be listened to, not talked at' in *Belfast Telegraph*, 14/10/10.

Scraton, P. (2008) 'The Criminalisation and Punishment of Children and Young People: Introduction', *Current Issues in Criminal Justice*, Special Issue on the Criminalisation and Punishment of Children and Young People, Vol. 20, No. 1, pp1-13.

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Scraton, P. and Haydon, D. (2002) 'Challenging the Criminalization of Children and Young People: securing a rights-based agenda' in Muncie, J., Hughes, G. and McLaughlin, E. (eds) *Youth Justice: Critical Readings*. London: Sage/Open University, pp311-328.

Imprisonment of children and young people

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