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Reviewing the Provision of Education for Young People in Detention: Rights, Research and Reflections on Policy and Practice



Preface

This thematic Report is the third in a Special Report Series addressing the rights and well-being of children and youth in Ireland and Northern Ireland. The Report corresponds with three key UNESCO aims: to strengthen awareness of human rights; to act as a catalyst for regional and national action in human rights; and to foster co-operation with a range of stakeholders and networks working with, or on behalf of, children and youth.

The terms 'children' and 'young people', in this Report, refer to those under the age of 18 and reflect the age of criminal responsibility in the youth justice systems in both jurisdictions.¹ The focus on children and young people in the Report reflects the age range corresponding to the definition of a child in the United Nations Convention on the Rights of the Child (UNCRC).

The Children and Youth Programme adopts a rights-based approach to policy development and implementation, with the intention: to have an all-island focus; to retain academic independence; and to ensure the voice of children and youth is present. The Special Report Series of the Children and Youth Programme will be the primary output of this approach. The objectives of the series are to:

1. focus on a topical issue considered to affect the well-being of children and youth;
2. examine the impact of selected policy and practice interventions on human rights and well-being;
3. gain an understanding of the processes of implementation;
4. share learning that will enable duty holders to better meet their commitments to children's rights and improved well-being;
5. share learning that will enable rights holders to claim their rights.

A common theme which permeates the special thematic reports is education. The right to education is firmly established in international law and is crucial for the exercise of other rights. Education reinforces, integrates and complements a variety of other Convention rights and cannot be properly understood in isolation from them. In doing so, the Report reflects the UNESCO position that education is a universal inalienable human right which plays a critical role in the development and empowerment of every child, regardless of their gender, age, race and mental and physical abilities.

The authors are responsible for the choice and presentation of views contained in this Report and for opinions expressed therein, which are not necessarily those of UNESCO and do not commit the Organisation.

¹ In Ireland, the minimum age of criminal responsibility is 12 for all but the most serious offences, s.52 Children Act 2001, as amended by s. 129 Criminal Justice Act 2006. In Northern Ireland, the age of criminal responsibility is 10, Article 3 of the Criminal Justice (Northern Ireland) Order 1998. The age of criminal responsibility in Northern Ireland is to be reconsidered as part of a major review of the youth justice system. For example, see Youth Justice Review, recommendation 29.

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1

Introduction

In the last decade, the legal and policy landscape for children in conflict with the law in Ireland and Northern Ireland has witnessed substantive reforms which have brought both jurisdictions closer in line with international child rights standards (Moore, 2011; OCO, 2011; Kilkelly, 2008a).

Education is a fundamental right of all children regardless of status or location and the educational rights of incarcerated young people are enshrined in law and must be met by statutory agencies and detention centres (Convery *et al.*, 2008). Education within custody is often viewed as a “medium for pro-social modelling” (Stephenson, 2007: 135) and is widely accepted as a vital component in rehabilitation and in preparation for release (CRC, 2007; Ramsbotham, 2003). Nonetheless, despite the importance of education for young people in custody, the evidence base is relatively meagre (Stephenson, 2007; Howell, 2003). Where evidence is available, it suggests that access to educational opportunities for young people can be limited and some basic rights to education are not being realized (OCO, 2011; CPT, 2011; CJINI, 2011a, 2011b; Haydon, 2009).

Although much practice in places of detention seeks to respect the rights of children in their care a myriad of questions have been raised by monitoring bodies and commentators in both jurisdictions on issues such as the detention of children with adults; use of custodial remand and placements under investigatory powers of police; statutory right to education; and inadequate mental health provision (CRA, 2012; Youth Justice Review, 2011; Kilkelly, 2008; CJINI, 2008; NICCY, 2008; CRC, 2008, 2007, 2006, 2005, 2002; Haydon, 2007).

“Education is a fundamental right of all children regardless of status and location”

This Report adopts a rights-based approach to reviewing the provision of education for young people in detention. Using the General Measures of Implementation² as a fundamental tool for good policy (CYP, 2011) together with the principles of best interests³ and voice of the child,⁴ the objectives of the Report are to:

1. identify the rights for children and young people to education in custody in Ireland and Northern Ireland;
2. analyse and review the legal and policy provisions for the educational needs of children and young people in custody;
3. highlight research evidence and data in relation to the voice and educational experiences of young people in custody and identify gaps in existing provisions and pedagogy;
4. explore new strategies of providing education in custody and make recommendations for policy development and implementation.

The Report comprises the following sections: Section 2 briefly outlines the relevant rights instruments and standards for the education of young people in detention; Section 3 provides a profile of children in the youth justice system with reference to education; Section 4 documents the legislative and policy context for the provision of education of young people in custody in Ireland and Northern Ireland and highlights areas of concern; Section 5 assesses the role of education for young people in detention and explores modalities of educational provision; and Section 6 draws concluding messages for policy in relation to custodial education and well-being of young people.

2 United Nations Committee on the Rights of the Child (2003) General Comment No 5 (2003) General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5 United Nations Committee on the Rights of the Child.

3 Article 3 of the United Nations Convention on the Rights of the Child 1989.

4 Article 12 of the United Nations Convention on the Rights of the Child 1989.



2

The Rights of Children and Young People in the Youth Justice System

2.1 The Rights of Children and Young People in Conflict with the Law

The most important piece of international law governing the rights of children is the United Nations Convention on the Rights of the Child (UNCRC, hereafter, referred to as the Convention). Although the Convention does not relate exclusively to youth justice, many of its provisions apply to children in conflict with the law⁵ and act as benchmarks to assess the extent to which youth justice policy and implementation meet the fundamental human rights of young people below the age of 18 years (Commissioner for Human Rights, 2009; Convery *et al.*, 2008; Kilkelly, 2008; UNICEF, 2007). In addition, a range of international instruments further outline minimum standards for the treatment of young people who come into conflict with the law.⁶ Despite the fact that those instruments do not formally create legal obligations under international law (Kilkelly, 2008b; Goldson and Muncie, 2006) they provide a clear framework and common reference point from which to measure and monitor a fair and proportionate youth justice system (Moore, 2011; CLC, 2011; Kilkelly, 2006).

International law is clear that children must only be detained as a measure of last resort and for the shortest period of time⁷ (Article 37(b) UNCRC; Martynowicz and Ní Dhrisceoil, 2009) with special efforts

5 For example: Articles 2, 3, 6, 12, 28, 29, 37, 39 and 40 of the UNCRC.

6 See: The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules', 1985); the United Nations Rules for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines', 1990); the United Nations Rules for the Protection of Juveniles deprived of their Liberty (1990); European Rules for juvenile offenders subject to sanctions and measures (the European Rules); The Council of Europe's Guidelines on Child Friendly Justice, adopted in November 2010. Also includes: The International Covenant on Civil and Political Rights (ICCPR); The Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT); The United Nations Standard Minimum Rules for the Treatment of Prisoners (1977); The United Nations Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; The European Prison Rules (2006).

7 For example, see: Article 37(b) of UNCRC; Office of the High Commissioner for Human Rights (1085) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) Rule 19.1; Office of the High Commissioner for Human Rights, (1990) United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Guideline 46; Council of Europe (2006) European Prison Rules Rule 3; United Nations General Assembly (1990) United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) General Assembly Resolution 45/110, Rule 6.2; United Nations Office of the High Commissioner for Human Rights (1990) United Nations Rules for Juveniles Deprived of their Liberty (Havana Rules), Rule 2).

undertaken to avoid pre-trial detention.⁸ Where detention is deemed unavoidable, this should be rights-compliant and likely to provide positive outcomes for the 'young offender' (Haines and O'Mahony, 2006). Children who are deprived of their liberty have the right to education and health; to protection and to be treated with dignity and respect (Article 37(c) of the UNCRC) and to receive all necessary support and care (Include Youth, 2011; OCO, 2011). This means that places of detention for children should aim to maximise their chances of rehabilitation and integration into society (Article 40(1) of the UNCRC) by providing an environment where they will be assisted, through education and other programmes, to make better choices about their lives during and after custody (CRC, 2007; Kilkelly *et al.*, 2002).

2.2 The Right of Young People in Custody to Education

The educational rights of incarcerated young people are enshrined in law and must be met by statutory agencies and detention institutions without discrimination⁹ (Convery *et al.*, 2008). International standards state that if detention is to have a positive effect it must involve a co-ordinated effort to address the problems that give rise to the offending behaviour of the child. Crucially, this includes education that is suited to their needs and abilities, including the right of children with learning difficulties to have their special educational needs met.¹⁰ Accordingly, institutions should have in place an appropriate system to secure a placement for the young person according to their immediate educational, developmental and safety needs as well as rehabilitative and vocational options that will prepare them for release.¹¹

8 Rule 10 of the European Rules 2008.

9 See: UNESCO Convention against Discrimination in Education 1960; Articles 28 & 29 United Nations Convention on the Rights of the Child 1989; Article 2 First Protocol to the European Convention on Human Rights and Fundamental Freedoms 1950; United Nations Committee on the Rights of the Child (2001), General Comment No. 1 (2001) Article 29 (1): The Aims of Education. CRC/GC/2001/1, United Nations Committee on the Rights of the Child; Article 13 & 14 of the International Covenant on Economic, Social and Cultural Rights 1966; Convention on the Elimination of All Forms of Discrimination against Women (1981).

10 Rule 38, United Nations Rules for the protection of Juveniles deprived of their Liberty, 1990 (United Nations Rules); Para 21(a)-(c) Council of Europe Child Friendly Justice Guidelines (2010).

11 Rule 61, European Rules 2008; Rules 38-42; 47 Havana Rules.

Programmes should be meaningful¹² and planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.¹³ Fundamentally, children themselves should be involved in the formulation, development and implementation and evaluation of programmes.¹⁴ International standards highlight the importance of ensuring that education provided to young people in detention is provided by qualified teachers and “... is integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty” (Rule 38, Havana Rules (1990)). This requires ‘joined-up government’ and the need for inter-ministerial and inter-departmental co-operation on the provision of education¹⁵ (CRC, 2001) including any information and any report about the child’s past and his or her educational and welfare needs on admission to a detention facility.¹⁶

12 Rule 12 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules) and Rule 26 United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules).

13 Principle 48, Riyadh Guidelines.

14 Principle 50, Riyadh Guidelines.

15 Rule 26.6 Beijing Rules.

16 Section E.10 European Rules (2008).

Key Messages

- The right to education for young people in custody is enshrined in international law. A range of legal and statutory provisions, international treaties and regulatory frameworks provide for the treatment of young people while they are in custody.
- Education for young people in custody must be focused on the overall development of the child and, as a minimum, should be co-ordinated to ensure it is suited to their educational and vocational needs and rehabilitative to prepare them for release.
- Children and young people should be involved in the formulation, development and implementation of educational programmes in detention facilities to meet their best interests and needs.



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3

Profile of Children and Young People in the Youth Justice System

3.1 Profile of Young People in Conflict with the Law

Although young people within the Youth Justice System are not a homogenous group, they are some of the most vulnerable and troubled youth in society (Hammarberg, 2008; Gillen, 2006). For this reason, most children entering custody present challenging behaviour; inevitably, the responsibilities of those working with this group are numerous and complex (Martynowicz and Quigley, 2010; Kilkelly *et al.*, 2002).

“Education within the custodial setting can be crucial for the future of young people”

Research evidence consistently demonstrates that most children in conflict with the law come from structurally disadvantaged and impoverished communities (Jacobson *et al.*, 2010; The Howard League for Penal Reform, 2010) and their lives are frequently characterised by neglect and abuse (Prison Review Team, 2011; Prison Reform Trust, 2010; YJB, 2007; Nacro, 2003; Hazel *et al.*, 2002; Goldson, 2002). Evidence further highlights pervasive behavioural and mental health problems (Chitsabesan *et al.*, 2006; YJB, 2005; Hagell, 2002), poor educational outcomes (Stephenson, 2007), low attainment, persistent truancy, exclusion from school (Tye, 2009; HMIP, 2003) and special educational needs (ECOTEC, 2011; YJB, 2003). The prevalence of low levels of numeracy and literacy (Talbot, 2010; Stephenson, 2007) means that children and young people in conflict with the law are significantly more likely to be unqualified compared with those who have no contact with the criminal justice system (Hurry *et al.*, 2010; Machin, 2010; Stewart, 2008). As a result, children and young people in conflict with the law also constitute a significant proportion of the cohort of young people not in education, employment or training (DEL, 2011; YJB, 2006), suggesting that the vast majority of those in detention have had an interrupted education or are unemployed. Therefore, education within the custodial setting can be crucial for the future of young people.

It has long been recognised that poor academic performance is related to the prevalence and onset of delinquency and escalation in the frequency and seriousness of offending (Pajares and Urdan, 2004; Sparkes and Glennerster 2002). The correlations between education, offending and re-offending are often exacerbated by the proximity of

young people to socio-economic and structural impediments, particularly those arising from poor educational achievements (Farrall *et al.*, 2006; Webster *et al.*, 2006). Education has a fundamental role in prevention¹⁷ (CRC, 2007) and, recognising the well-researched link between educational underachievement and young people in conflict with the law,¹⁸ suggests the need to increase investment in educational policy to target those who are most at risk. This includes children living in interface areas in Northern Ireland, looked after children, children living in poverty, children excluded from schools and children with special educational needs and learning disabilities.

Young people in conflict with the law across the island of Ireland share many of the same characteristics with their peers in other jurisdictions (Youth Justice Review, 2011; Cruickshank and Barry, 2008; Kilkelly, 2008a; Convery and Moore, 2006; Kilkelly *et al.*, 2002). In both jurisdictions a high number of children and young people in custody have few if any educational qualifications; they suffer from mental health difficulties and have drug or alcohol addictions (IYJS, 2011; McAlister *et al.*, 2010; Redmond and Dack, 2009; Convery *et al.*, 2008; Hayes and O'Reilly, 2007). A higher than average number of those in custody have been Looked After Children¹⁹ and figures suggest that 'those in care, or who have suffered care in Northern Ireland are significantly more likely to experience prison' (Prince's Trust, 2011; Include Youth, 2011; SC/CLC, 2008; Cruickshank and Barry, 2008).

In Northern Ireland, research indicates that the reduction in paramilitary influence in many communities 'may have opened the door to ordinary problems of large urban environments' (Gallagher, 2004, p. 643). Indications are that drug use, antisocial behaviour and disaffection with, and exclusion from, school are related (McCrystal *et al.*, 2007; Gallagher, 2004). Violence, for many young men 'is a major factor in [their] lives' (Reilly *et al.*, 2004, p. 474) in that "violence and paramilitary influence continue to perpetuate a male youth subculture epitomized by sectarianism and increasing racist attitudes" (Harland, 2010, p. 414).

17 See also: IV.10 Riyadh Guidelines.

18 See: United Nations Committee on the Rights of the Child (2007) General Comment No 10 (2007) Children's Rights in Juvenile Justice. CRC/C/GC/10, United Nations Committee on the Rights of the Child, p. 7.

19 In Northern Ireland, recent figures reveal that over a fifth (22%) of total admissions in 2010/11 were subject to a care order (Include Youth, 2011). More than 37% of admissions to Woodlands JJC are looked after children (Youth Justice Review, 2011, p. 78).

“Social exclusion and marginalisation, through a range of social, economic and political contexts, is a recurrent issue”

In these circumstances, young boys are heavily involved in antisocial behaviour and crime which leads to contact with the youth justice system (Chapman and Wilkins, 2010). As a result, young people are at risk of associated social, emotional and psychological health problems (McAloney *et al.*, 2009) and there is a clear need for more realistic ways to engage and integrate marginalized young men into their communities.

For young people in conflict with the law, social exclusion and marginalization, through a range of social, economic and political contexts, is a recurrent issue (Horgan, 2011; McAlister *et al.*, 2010; NICCY, 2008; Monteith *et al.*, 2008). The proportionately higher numbers of young people in Northern Ireland with below average levels of literacy and numeracy skills (National Audit Office, 2008; Palmer *et al.*, 2007; Kenway *et al.*, 2006) and higher levels of dissatisfaction with school (Moore and Convery, 2009; Convery *et al.*, 2008;) are at risk of involvement in antisocial behaviour (Leonard, 2007, 2006). This can lead to petty or serious crimes and a subsequent prison sentence. Therefore, appropriate local services and programmes focusing on prevention and early intervention are clearly needed for young people who would otherwise enter the criminal justice system (Youth Justice Review, 2011; Haydon, 2009).

In Ireland statistics and research suggest that theft, criminal damage, drink related offences, public order, traffic offences, burglary, vehicle offences and minor assault are the most common offences committed by young people (IYJS, 2010, 2009; Carroll and Meehan, 2007). As in Northern Ireland, research indicates that children and young people in conflict with the law in Ireland experience social and educational disadvantage, mental health issues, learning and behavioural difficulties and alcohol and drug addiction (Seymour and Butler 2008; Kilkelly, 2008; Hayes and O'Reilly, 2007). Other studies suggest a link between offending and early school leaving (McCoy *et al.*, 2007; NEWB, 2007; Barry, 2006; Bolland, 2003) and recurrent findings confirm that the majority of children in detention in Ireland are from a poor educational background, are below the minimum school-leaving age, have low levels of basic skills and have been out of the school system as a result of behavioural difficulties or other problems (Seymour and Butler, 2008; McCoy *et al.*, 2007; McPhillips, 2005).

3.2 Research and Data on Children and Young People in the Youth Justice System

Research and data on children in conflict with the law is generally inadequate (Ofsted, 2011). The scarcity of basic and disaggregated data on the quantity and nature of offences and conviction rates (CRC, 2007) has created an area that is described as “cloudy, with unreliable statistics and estimates and difficulties with semantics” (Stephenson, 2007, p. 142).

In both jurisdictions there has been recurrent criticism of the lack of data and research on young people in conflict with the law (CRA, 2012; CLC, 2011; Youth Justice Review, 2011; Gray and Horgan 2009; NICCY, 2008; Kilkelly, 2008; CRC, 2008, 2007, 2006, 2002). In Northern Ireland extensive gaps remain in the knowledge on issues underpinning youth crime and the experiences of young people in the criminal justice system (Youth Justice Review, 2011; Haydon, 2009; NICCY, 2008). Although research has begun to address the deficit (Convery *et al.*, 2008; Convery and Moore, 2006; Kilkelly *et al.*, 2002) there is still little research on children in custody and a corresponding lack of longitudinal data on children who are detained in either in Hydebank Wood Young Offenders Centre (YOC) and Woodlands Juvenile Justice Centre (JJC) (CLC, 2011; Include Youth, 2011). The lack of data and robust evaluations of specific interventions, means that Children’s rights activists have expressed concern that this lack of comprehensive information significantly impedes policy responses (Moore and Convery, 2008; Haydon, 2008), particularly when good data is not shared across, or between, organisations (Youth Justice Review, 2011). In Ireland, limited and sometimes unreliable data has made it difficult to identify trends or provide an accurate portrait of children in conflict with the law, including the voice and experiences of young people and the impact of interventions and custody (Kilkelly 2008a; Seymour and Butler, 2008; Walsh, 2005 p. ix: 313).

It should be noted that systems of data collection have been progressed in both jurisdictions. In Northern Ireland the government has committed to building on available data to produce ‘More accurate and meaningful information on those

Research and data on children in conflict with the law is generally inadequate

offending' (OFMDFM Action Plan, 2008-2011) through integration of information systems. The publication of reports by the Youth Justice Agency (YJA), in collaboration with Northern Ireland Statistics and Research Agency (NISRA) statisticians, is a positive development, enabling the publication of statistical bulletins detailing youth re-offending rates (Lyness and Tate 2011a; Lyness and Tate, 2011b) and annual statistics (Tate and Lyness, 2011). These provide a more comprehensive picture of the youth justice landscape, although there is further scope for improving data and information, for example, through additional indicators and comparing the effectiveness of different disposals. In this context, it is notable that the YJA states the intention to "develop this report in the future, where possible, to cover areas such as mental health, substance misuse, educational attainments within custody, risk levels and to further enhance the information on Section 75 equality categories and Looked After Children" (Tate and Lyness, 2011, p. 1). Also, although data sources of information vary across departments, it is positive that the Children and Young People's Strategic Indicators Update attempts to collate this information²⁰ (OFMDFM, 2012). Furthermore, the Youth Justice Review has recommended that data inconsistencies and the paucity of high quality statistical data and research across the criminal justice system should be urgently addressed (Youth Justice Review, 2011, p. 117).

In Ireland, the issue of data and information was addressed as a high level goal of the National Youth Justice Strategy 2008-2010²¹ (IYJS, 2008). This sought to: "strengthen and develop information and data sources in the youth justice system to support more effective policies and services" (IYJS, 2009). In recent years, the Irish Youth Justice Service (IYJS) has produced annual reports (IYJS, 2010; IYJS, 2009) which provide statistics and baseline data; and accounts of key developments in the youth justice arena during the year. They also report on progress made on the high level goals, although this Strategy is out of date. A new strategy is to be published in 2012. An internal Statistics Group was created in the IYJS in 2009, resulting in the production of monthly statistics on young people in the youth justice system (IYJS, 2009). It is also positive that the IYJS continues to work collaboratively with related Departments and Agencies in the youth justice system to improve the quality of statistics available (IYJS, 2010).

20 Available at: <http://www.ofmdfmi.gov.uk/equality-publications-2012>

21 Available at: http://www.dcy.gov.ie/documents/publications/IYJS_Strategy.pdf

Notably, methods are currently being considered in relation to the sharing of personal data of children between the IYJS and the Health Service Executive to facilitate improved service provision (*ibid*).

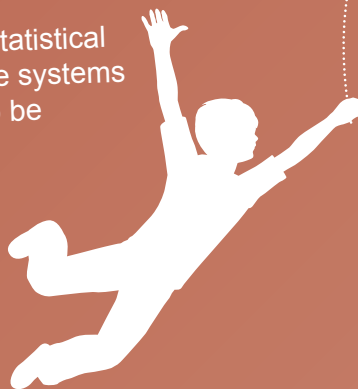
Although research has begun to address some of the gaps in youth justice data in Ireland and Northern Ireland (OCO, 2011; Seymour and Butler, 2008; Convery *et al.*, 2008) overall data still falls below international standards of best practice. The rudimentary nature of data collection does not allow for more detailed analyses of youth justice in both jurisdictions, including those relating to education. Therefore, difficulties remain with evidence on education in custody and there are few evaluations of practice. There is no real systematic monitoring of attainment levels and academic or vocational progression of young people in the youth justice system (Stephenson, 2007). For those young people in custody, an initial assessment of their literacy and numeracy skills is taken on entry but rarely on exit, and it is difficult to monitor individual progression (*ibid*). Acknowledging the data deficits, it is positive that in Ireland the National Strategy for Research and Data on Children's Lives 2011–2016²² (DCYA, 2011) commits the Government to collate data on children and young people who interact with the youth justice system which will enable tracking of pathways and outcomes for those children and young people (CRA, 2012). More specifically, actions include profiling the full range of supports and services available to existing young offenders to reduce youth offending. In Northern Ireland, it is encouraging that a recent Criminal Justice Inspection Report noted the need to compile a more detailed database of children's offence profiles to yield data in relation to re-offending (CJINI, 2011a) and Woodlands JJC has commissioned longitudinal research to explore the transition and resettlement patterns of children.²³ Clearly, this data is much needed.

22 Available at: http://www.dcy.gov.ie/documents/publications/NSRD_main-report.pdf

23 Wahidin, A. and Carr, N. (2010) Transitions from Woodlands, Proposal to the Youth Justice Agency (Study in Progress)

Key Messages

- There is a common profile of young people in custody in the two jurisdictions, mostly young people who experience socio-economic disadvantage and exclusion; educational disaffection and underachievement; and mental and behavioural difficulties.
- Prevention and early intervention through targeted policy and programmes should be prioritised as a matter of urgency for those at most risk of coming in contact with the criminal justice system.
- There is a dearth of information and evaluation emanating from those young people directly involved in the system and longitudinal profiling needs to be introduced to develop an enhanced research base documenting the lived experiences of learners in custody.
- The paucity of high quality statistical data across the youth justice systems in each jurisdiction needs to be urgently addressed.





4

The Provision of Education for Young People in Custody

4.1 Law and Policy in Northern Ireland

Recent years have witnessed a wide range of reforms of the youth justice terrain in Ireland (OCO, 2011) and Northern Ireland (NICCY, 2008) and criminal justice policy has diverged due to the very different social, economic and political contexts which have developed in both jurisdictions (Moore, 2011; Convery *et al.*, 2008; Kilkelly, 2008).

Recent years have witnessed a wide range of reforms of the youth justice terrain in Ireland and Northern Ireland

Although the youth justice system in Northern Ireland has been influenced by developments in law, policy and practice in England (Muncie, 2011; Moore and Convery, 2008; NICCY, 2008), the complex political context in Northern Ireland has produced a distinct system of youth justice (Prison Review Team, 2011 Goldson, 2004; Pinkerton, 2003), meaning that analyses of rights and justice for young people should be located within the social, economic and political context of the jurisdiction (Convery *et al.*, 2008; Moore and Convery, 2008). The main legislative framework for the detention of children in Northern Ireland is provided by the Criminal Justice (Children) (Northern Ireland) Order 1998 which restricts the circumstances in which children may be remanded in custody and places a requirement on the court to give reasons for the use of custody (CLC, 2011). The current age of criminal responsibility is ten years old and children may be remanded or sentenced to detention in the Juvenile Justice Centre under the 1998 Order and also detained under the Police and Criminal Evidence (Northern Ireland) Order (1989) (PACE) (Moore, 2011; Quinn and Jackson, 2003). Restrictions to sentencing powers of the court mean that 17 year olds are routinely sentenced to the adult facility at Hydebank Wood YOC, save in exceptional circumstances (CLC, 2011; NICCY, 2008; CLC, 2008;). The 1998 Order was heavily criticised for introducing changes to policy without sufficient regard to the broader context of the lives of children and young people in Northern Ireland and for, *inter alia*, its failure to introduce the principle of the child's best interests (Article 3 of the UNCRC) and failure to separate young people from adults (Article 37(c) of the CRC).



It is argued that current youth justice legislation and policy in Northern Ireland does not meet child rights standards in several respects



Following the Good Friday Agreement (1998)²⁴ and devolution, the Criminal Justice Review (2000) led to the passing of the Criminal Justice (Northern Ireland) Act 2002, the Justice (Northern Ireland) Act 2004 and to the introduction of more inclusive community based disposals²⁵ and restorative approaches to youth justice, such as youth conferencing²⁶ (NICCY, 2008; Chapman and O'Mahony, 2007; O'Mahony and Campbell, 2006). The 2002 Act established the principal aim of the youth justice system as being to protect the public by preventing re-offending by children and to re-integrate children and young people back into their communities. This was emphasised by the 'Charter for Youth Justice', a framework for co-operation between voluntary and statutory bodies across the Youth Justice sector (CJSNI, 2007). Although the Justice (Northern Ireland) Act 2004 recognised the need for human rights standards, the 2002 and 2004 Acts largely failed to address key concerns about the over-use of remand, the principle of the child's best interests, and retained provisions for the detention of 15 and 16 year olds in the prison system (NICCY, 2008; Kilkelly *et.al.*, 2002). The introduction of the Criminal Justice (Northern Ireland) Order 2008 did little to change many of these issues (NICCY, 2008), although it had the practical effect of removing young girls from adult custody (Moore and Scraton, 2010). As a result, it is argued that current youth justice legislation and policy in Northern Ireland does not meet child rights standards in several respects (CLC, 2011; Haydon, 2009), exemplified by the current statutory aims of the youth justice system which fails to include the 'best interests' principle within the Justice (Northern Ireland) Act 2002.²⁷ (CLC, 2011; Include Youth, 2011; Haydon, 2009; CRC, 2008). Notably, the Youth Justice Review Team has recommended that the 2002 Act be amended to reflect the best interest's principle espoused in Article 3 of the Convention (Youth Justice Review, 2011, p. 100) to ensure that it is a principal aim of the youth justice system and is explicitly reflected in practice and policy (*ibid.*, p. 14).

24 Agreement reached in Multi-Party Negotiations, 10 April 1998 - which led to the establishment of the devolved Northern Ireland Executive.

25 PSNI Youth Diversion Scheme, including 'Informed Warning' and 'Restorative Caution'.

See: www.youthjusticeagencyni.gov.uk/youth_justice_system/youth_diversion_scheme/

26 Available at: www.youthjusticeagencyni.gov.uk/youth_justice_system/diversionary_conferences/

27 Section 53(1) of the Justice (Northern Ireland) Act 2002

Most recently, as a consequence of the Hillsborough Agreement²⁸ (2010), criminal justice matters are devolved and the Youth Justice Review Team have published a review which considers the youth justice landscape in Northern Ireland, including the provision of education (Youth Justice Review, 2011). Similarly, the Prison Review Team has published an interim report, which considers the situation in Hydebank Wood YOC (Prison Review Team, 2011).

Currently, young people can be detained at Woodlands JJC which is operated by the Youth Justice Agency and accommodates up to 48 children aged between 14 and 17 years (Moore, 2011; CJINI, 2011a; CJINI 2008a). Alternatively, boys and young men aged 15–23 years old can be detained at the Grade C prison at Hydebank Wood YOC.²⁹ The detention of boys in Hydebank Wood YOC alongside young adults contravenes international standards on the treatment of children in custody (Scruton and Moore, 2007; Convery and Moore, 2006) and inspection reports have noted limited access to education, instances of self-harm and insufficient staff training in child protection (CJINI, 2007; HMCIP/CICJ, 2005) although there has been some improvement in these areas recently (CJINI, 2011b). Nonetheless, the practice of detention of boys aged 15–17 in Hydebank Wood YOC is particularly concerning as statistics indicate that the age profile of young people held on sentence has got older from previous years, with the majority of young people (80%) held on sentence in 2010/11 aged 16 or 17. Notably, both the Youth Justice Review Team and Prison Review Team have recommended that there is an end to the detention of young boys under 18 years of age in Hydebank Wood YOC (Youth Justice Review, 2011; Prison Review Team, 2011).

28 Para 7, Hillsborough Agreement 5th February 2010 provides for a “Review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice”

29 Article 13(1)(b) of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides that 15 year old boys can be detained in Hydebank Wood YOC if they are considered a danger to themselves or others; section 5 of the Treatment of Offenders (Northern Ireland) Act 1968 provides that young people aged 16 years can be imprisoned in Hydebank Wood YOC for offences which would be punishable with imprisonment in the case of an adult aged 21 years or over.

There is no dedicated youth justice strategy in Northern Ireland although the Children's Strategy (OFMDFM, 2006) and associated Action Plan respectively contains high level and further specific outcomes for young people in custody.³⁰ More recently, it is suggested that a Ministerial Committee should be established to, amongst other things, promote social inclusion and prevent offending and that the Children and Young People's Strategic Partnership (CYPSP) could become the strategic multi-agency forum to unite practice to meet the needs of children and reduce their offending (Youth Justice Review, 2011, p. 96: 117). Other relevant strategies include the Northern Ireland Prison Service Juvenile Implementation Plan which sets out procedures to enhance the general conditions and regime available to under 18 year olds arising from CJINI inspections. The Juvenile Justice Centre Rules (Northern Ireland) 2008 provide many detailed and positive standards on education and vocational training and are broadly compliant with international standards. They require that the child is encouraged to develop their potential and skills through education, vocational training, physical education and programmes³¹, according to their age and needs,³² to prepare them for re-integration into the community.³³ They further state that, for a child who is of compulsory school age, the curriculum shall be appropriate to the age, aptitude and ability and to any special educational needs they may have.³⁴ However, there is some concern that standards are not being met in practice across a number of areas. In particular, by limiting obligations to 'so far as practicable'³⁵ and 'as far as possible'³⁶ to continue education following release the objective and obligations of the standards with respect to the education of children in custody are seriously diluted.

30 The Ten Year Strategy for Children and Young People has a high level outcome for children and young people 'contributing positively to community and society'. This outcome has a number of indicators and drivers for change in order to monitor and improve performance in areas associated with youth justice system.

31 Article 43 (2) Juvenile Justice (NI) Rules 2008.

32 Article 43 (1) Juvenile Justice (NI) Rules 2008.

33 Article 43 (3) Juvenile Justice (NI) Rules 2008.

34 Article 43 (4) Juvenile Justice (NI) Rules 2008.

35 Article 43 (3) Juvenile Justice (NI) Rules 2008.

36 Article 43 (4) Juvenile Justice (NI) Rules 2008.

4.2 Law and Policy in Ireland

Reform of the Irish youth justice system has been underway since the Children Act was passed in 2001 (Kilkelly, 2008c) and represented an attempt to put in place a modern statutory framework for the treatment of children in conflict with the law³⁷ (Kelly *et al.*, 2012; Martynowicz and Ní Dhrisceoil, 2009, p. 11). A review of residential provisions recommended that the lack of coherence between existing Children Detention Schools be urgently addressed by appointing a single management structure (Kilkelly, 2006). Since March 2012, the schools operate under a single Board of Management but retain individual directors responsible for operational issues.³⁸ Furthermore, under the 2001 Act Children Detention Schools were to provide appropriate educational and training programmes and facilities for children and promote re-integration into society by having regard for their health, safety, welfare and interests, including their physical, psychological and emotional well-being.³⁹ The focus of the Act on preventative measures and restorative justice mechanisms (IYJS, 2009) represents an approach that can protect the rights of children and young people who come into conflict with the law without resort to youth justice measures (OCO, 2011).

Article 37(c) of the UNCRC requires that children in custody should be held separately from adults

Legislative review (DJELR, 2006) brought detention services for children and young people under 18 under the aegis of the Department of Justice, Equality and Law Reform⁴⁰ and provides for all children under 18 to be detained in Children Detention Schools (IJYS, 2010). While this has been written into the law, 16-17 year old boys can still be detained in St. Patrick's Institution (part of the Mountjoy Prison in Dublin) on the basis of interim arrangements which were made in 2006, until such time when it would be possible to move all under 18 year olds into refurbished Detention Schools at Oberstown (Martynowicz and Ní Dhrisceoil, 2009). In 2007, responsibility for Children Detention Schools: Trinity House School; Oberstown Boys' School; Oberstown Girls' School

37 See: The Garda Diversion Programme; Garda Youth Diversion Projects. Available at: www.iyjs.ie/en/IYJS/Pages/WP08000061 and www.iyjs.ie/en/IYJS/Pages/WP08000062

38 See: www.iyjs.ie/en/IYJS/Pages/WP08000052#Children_Detention_Schools_Overview

39 Section 158 Children Act 2001.

40 Section 122 Criminal Justice Act 2006.

in Lusk and the (now closed) Finglas Child and Adolescent Centre was vested in the Irish IYJS, who had a remit to co-ordinate youth justice services, develop a youth justice strategy and establish administrative structures at central and local level to implement the Children Act (Martynowicz and Ní Dhrisceoil, 2009). From 1st January 2012, responsibility for Detention Schools transferred to the Minister for Children and Youth Affairs and the Irish Youth Justice Service is now an office within the Department of Children and Youth Affairs. Furthermore, in 2008 the Government sanctioned proposals to build a new National Children Detention Facility to accommodate all detained children aged under 18 years of age, however, due to financial constraints there will now be investment in the existing Children Detention School facilities.⁴¹ An important element of these proposals was to end the inappropriate detention of 16 and 17 year old boys with adult males in St. Patrick's Institution, a practice which breaches children's rights, and in particular, Article 37(c) UNCRC requiring that children in custody should be held separately from adults (CRA, 2012; Martynowicz and Ní Dhrisceoil, 2009; Kilkelly, 2008; CRC, 2007). The Programme for Government 2011 pledged to "end the practice of sending children to St. Patrick's Institution".⁴² From 1st May 2012, all newly remanded or sentenced 16 year old boys are no longer sent to St Patrick's Institution, but will be detained in the Children Detention Schools, with St Patrick's Institution set to close within two years.⁴³ This interim development has been welcomed by the Ombudsman for Children, the Irish Penal Reform Trust and the Children's Rights Alliance (IPRT, April 2012) although it does seem that 17 year olds may continue to be detained in St Patrick's Institution until its closure.

Despite reform in Ireland, there has been continuance of regressive practices such as the lowering of the age of criminal responsibility to ten years old for those who are charged with serious offences⁴⁴ (Kilkelly, 2008a; CRC, 2006), the IYJS lacks a statutory basis and the Ombudsman for Children remains excluded from investigating complaints emerging from St Patrick's Institution and from undertaking

41 See the Ministerial statement on this at:

www.iyjs.ie/en/IYJS/Pages/WP08000052#Development_of_a_National_Children_Detention_Facility

42 Programme for Government 2011, p. 19. Available at:

www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf

43 For details of the statement by the Minister for Children, see:

www.dcy.gov.ie/viewdoc.asp?DocID=1842.

44 s. 52 Children Act 2001, as amended by s. 129 Criminal Justice Act 2006.

inspections of police stations (CRC, 2006). Whilst there is a separate Garda Ombudsman who deals with complaints relating to all age groups regarding treatment in police detention, this may be difficult for children and young people to access.

Article 12 of the UNCRC requires that children and young people have the right to express their views freely in all matters affecting them

Further developments in the youth justice terrain have seen the publication of a National Youth Justice Strategy 2008-2010 (IYJS, 2008) with a new Strategy to be published in 2012, and the new standards for the inspection of places of detention for children and young people in Ireland⁴⁵ (IP, 2009; DES, 2004). Collectively, these govern procedures and conditions for the rights of young people and have been heralded as a welcome and significant development in youth justice policy (OCO, 2011).

4.3 Assessing the Provision of Education for Children and Young People in Custody

Article 12 of the UNCRC requires that children and young people have the right to express their views freely in all matters affecting them (CRC, 2007) and that these views should be recorded and highlighted (Kilkelly, 2008b). In each jurisdiction, research, monitoring reports and submissions from key stakeholders, using evidence from the experiences of young people, highlight a number of areas of concern in law and policy. This is important as even though the Ombudsman is restricted in Ireland and research in both jurisdictions is limited but evolving, the voices of children are becoming a powerful force for improvements and reform, and for the fulfilment of their rights (CRC, 2007).

In Ireland, in cases where a custodial sentence has been imposed by the courts, young people are detained in one of the three Children Detention Schools or in St. Patricks Institution.

⁴⁵ The Standards and Criteria for the Children Detention Schools, Department of Education and Science 2004; The Standards for Inspection of Prisons in Ireland: Juvenile Supplement, The Office of the Inspector of Prisons 2009.

The Children Detention Schools provide an environment of care and education for incarcerated children in Ireland (IYJS, 2010). Education provision is operated by the Vocational Educational Committees⁴⁶ and, on site, by the respective principals and teachers who ensure that the provision of education is tailored to the needs of the young people being detained.

Legislation also requires inspections of Detention Schools to be carried out annually by the Health Information and Quality Authority (HIQA), with the most recent inspection reports published in March 2011.⁴⁷ Currently, education performance is measured against the 'educational standard' which recognises education as an important factor in the lives of young people in detention. Each young person has a right to receive an appropriate education, which is actively promoted and supported by those with responsibility for the care of the young person. Of particular relevance is that a written care plan for each young person will provide appropriate provision to meet his/her educational, health, emotional and psychological needs.

Recent inspection reports on Detention Schools have positively noted the progress of an approved curriculum framework (IYJS, 2010) and found that educational practice measured well against both national and international standards with good relationships between staff and young people (HIQA 2011a, 2011b, 2011c; 2010a, 2010b, 2010c). However, evidence from the inspection reports also highlight there are a number of concerns in relation to the provision of education for young people in Detention Schools which go against human rights standards. This includes: shortfalls in the sharing of information⁴⁸; poor inter-agency collaboration; lack of strategy or capacity to re-integrate young people back into the community; lack of capacity to offer outreach on a systematic basis; concerns relating to a lack of choice in activities; lack of child rights knowledge; use of single separation and increased regime restrictions for young people detained on custodial remand (HIQA 2011a, 2011b, 2011c; 2010a 2010b, 2010c).

46 City of Dublin VEC and County Dublin VEC.

47 Section 186 (1) Children Act 2001 (as amended by section 152 Criminal Justice Act 2006).

48 Although it should be noted that recent discussions have transpired between the Irish Youth Justice service and the Health Service Executive in relation to information transfer (IYJS, 2010).

St Patrick's Institution has been criticised by international and national monitoring bodies and stakeholders alike (CRA, 2012, 2011; IPRT, 2012, 2011; CPT, 2011, 2007; OCO, 2011; Kilkelly, 2008; CRC, 2006) collectively highlighting that educational and vocational provision was critically lacking and not mandatory (OCO, 2011; IHRC, 2008; CPT 2007a). Following the opening of a school within the institution in 2007, significant improvements in the standard of education and training for young males have been noted (PVC, 2010, 2009, 2008). However, research into the experiences of young people in St. Patrick's Institution by the Ombudsman for Children noted there are still some gaps in provision including optional and poor attendance and dissatisfaction with the range of education and training options. Consequently, it was recommended that the range of accredited education and training options be extended including trade and skills based training to prepare young people for employment (OCO, 2011), a recommendation previously proposed by the Inspector of Prisons (IP, 2010). The Irish Prison Service state that many of these issues are being addressed (OCO, 2011).

Research evidence (Convery *et al.*, 2008; Convery and Moore 2006; Kilkelly *et al.*, 2002) and inspectorate reports (CJINI 2011b, 2008, 2007; IMB, 2009) on youth in custody in Northern Ireland illuminate recurrent and substantive issues which breach international children's rights and human rights standards. This is reflected in the observations of the United Nations Committee on the Rights of the Child, which noted its concern that: "the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort". Concerns were also noted that "the number of children on remand is high" and that "children in custody do not have a statutory right to education" (CRC, 2008: paras 77c: 77d).

In Northern Ireland, education provision in juvenile justice estate is currently the responsibility of the Ministry for Justice and not the Department of Education. It has been repeatedly argued that current policy marginalises children from mainstream education, in that they have no legal entitlement to be taught in line with the Northern Ireland Curriculum, which has implications for educational options and qualifications post release (CLC, 2011; Haydon, 2009; Moore and Convery, 2009; Kilkelly *et al.*, 2004; Kilkelly *et al.*, 2002).

Furthermore, the failure of the government to adhere to the rights of children is starkly manifest in the dual nature of the detention of children within the youth justice and adult prison systems.

The well managed and structured provision of education at Woodlands JJC (Moore and Convery, 2011) has been commended by inspectors (CJINI, 2011a, 2008) who observed that young people are required to attend education; class sizes are small; initial and progress educational assessments are performed in a timely fashion; there are significant improvements in levels of literacy and numeracy for children; programmes include a range of vocational and occupational skills as well as standard curricula, and teaching staff enjoy good working relationships with children (CJINI, 2011a). As a result, inspectors had 'no matters of substantive concern' relating to the care of the children detained in the centre (CJINI, 2008, p. vii). However, research evidence also revealed that teachers within the Education Learning Centre at Woodlands JJC were required to address a wide variety of educational needs, due to the diversity and complex needs of the young people (CJINI, 2010) and the high level of short-term remands made it difficult to plan effectively for each individual (Moore and Convery, 2008). The most recent inspection of the facility also noted issues in relation to insufficient ICT resources; that children left the Centre with little or no notice and coursework was not forwarded in a timely manner to new educational providers to ensure good continuity of education (CJINI, 2011a). Overall evidence suggests that while not all human rights concerns have been effectively addressed, the educational conditions and the regime within Woodlands JJC are superior in many aspects to that in Hydebank Wood YOC (CLC, 2011; Prison Review Team, 2011; CJINI 2011b, 2008).

The historic focus on political prisoners in Northern Ireland has largely prevented discussion of viable alternatives to prison within Northern Ireland (Moore and Convery, 2011). Of fundamental concern in the Hydebank Wood YOC facility (CJINI, 2007; Haydon, 2007) is the detention of children along with young male adults and on the same site as adult women and a lack of age-specific policies (Prison Review Team, 2011; Youth Justice Review, 2011; Moore and Scraton, 2010).

There are deficits in work and training opportunities to support desistance on release (Prison Review Team, 2011) and low education attendance (Moore and Convery, 2011), most likely explained by the ability of young people to opt out of education, even those of compulsory school age. Education provision is not assisted by difficulties in acquiring adequate information from outside agencies about young people (CLC, 2011; NICCY, 2008; Convery and Moore, 2006) and difficulties with antiquated industrial relations (CJINI, 2007). Young people also reported issues including: inadequate 'purposeful activity'; distant relationships between staff and young people; limited opportunities for work and training and variable quality of educational provision (CJINI, 2007). Noting these issues it was recommended that education and training required a 'coherent strategy' with sufficient work and educational opportunities to keep them positively occupied and prepared them for their release (Include Youth, 2009; CJINI, 2007). The most recent inspection of Hydebank Wood YOC highlights that many of the previous recommendations of the inspectorate had not been implemented⁴⁹; education was under-used; the quality of teaching fell short of what was required (CJINI, 2011b); and the capacity and range of vocational programmes was outdated (*ibid*). Notably, the inspectorate recommended the need to urgently establish effective collaborative partnerships with external education and training providers, such as further education and/or work-based learning suppliers (*ibid.*), an area identified by young people as a key support need on release into the community (Include Youth, 2010). This approach finds credence with the Youth Justice Review Team, who have recommended that day release of young people from custody for the purpose of education, training and employment and continuing access to support on a multi-agency basis should be considered (Youth Justice Review, 2011, p. 116).

49 Only 27% of the previous education recommendations had been implemented. The Prison Review Team also stated that many of the improvements were not sustained see: Prison Review Team Final Report (2011) Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons. Prison Review Team.

Key Messages

- The Youth Justice Systems in Ireland and Northern Ireland have developed based upon the legal and social landscape in each jurisdiction. The system in Northern Ireland is a legacy from years of conflict but developments in recent years have sought to align the system with international standards and conventions. Equally, legislative developments in Ireland have been positive and have brought Ireland closer into line with international standards.
- There are still major breaches of international law with the detainment of young people with adults in Hydebank Wood YOC in Northern Ireland and St Patrick's Institution in Ireland.
- In Ireland, the announcement that young people will no longer be committed to St Patrick's Institution is an extremely positive development for the rights and provision of young people in custody. However, the education provision of those who remain in custody needs to be improved.
- In Northern Ireland, it is recommended that young people should not be detained in Hydebank Wood YOC.
- Despite improvements in practice, many aspects of education provision in each jurisdiction continue to fall below the standards required by international rules and guidelines and greater priority needs to be directed at rehabilitation and re-integration of young people in custody.
- Young people in custody in Northern Ireland still have no legal entitlement to be taught in line with the Northern Ireland Curriculum. This has implications for educational options and qualifications post release.
- The over-use of remand still remains a concern which has implications for the educational careers of young people in custody in both jurisdictions.



5

Assessing the Role and Provision of Education in Custody

5.1 The Role of Education in Custody

“It is widely accepted that education has a key part to play in re-integration and rehabilitation”

It is widely accepted that education has a key part to play in re-integration and rehabilitation (Machin *et al.*, 2010; O'Brien, 2010; Ramsbotham, 2003). However, provision of effective education in custody is difficult as places of detention can provide so little robust evidence on outcomes (Stephenson, 2007) or systematic monitoring of attainment levels. The structures and processes within the criminal justice system are complex and challenging particularly for children and young people (Include Youth, 2011). Therefore, it is critical that information about those entering and leaving secure establishments is good enough to enable effective planning to address their needs (Ofsted, 2010). Research and monitoring reports in each jurisdiction have noted that difficulties remain in acquiring adequate information about young people from outside agencies (HIQA, 2011a, 2011b, 2011c; Convery and Moore, 2006; Kilkelly *et al.*, 2002). The poor transmission of information between schools and young offender institutions at entry and exit points of custody (CJINI, 2011a, 2011b; HIQA 2011a, 2011b, 2011c; Talbot, 2010; Stephenson, 2007) is exacerbated by short notice of release (CJINI, 2011; Martynowicz and Quigley, 2010).

Education and training can have a significant impact in reducing re-offending (Schuller, 2009; Audit Commission, 2004; Social Exclusion Unit, 2002), however, evidence indicates that there are insufficient vocational training opportunities for young offenders in custody (HMIP, 2011; Ofsted, 2010; The Howard League of Penal Reform, 2010; Cooper *et al.*, 2007). Recent consultation with young people in each jurisdiction has noted the lack of variety in vocational training and poor attendance of those in custody (OCO, 2011; Include Youth, 2011; CJINI, 2011b). There are significant challenges for children and young people who have not been educated within the national curriculum while detained in terms of gaining qualifications and continuing on a programme of study following release from detention. This practice does not conform to international principles and standards and the lack of statutory education is highly associated with re-offending (YJB, 2005).

The custodial experience and associated stigma also means the chances of re-integration into mainstream schooling are difficult (Stephenson, 2007).

The evidential link between education, employment and successful re-integration and resettlement in the community is unequivocal

Despite evidence in each jurisdiction suggesting that education provision in custody is generally good and improving, data and research indicate that there are a number of difficulties. Crucially, although there can be positive changes for youth within custodial institutions, this is somewhat ephemeral when judged in terms of post release integration into the community and recidivism rates. Moreover, although there is an emerging body of research on re-integration and re-offending⁵⁰, there remains a paucity of robust data on what is working in terms of preventing offending and re-offending (Youth Justice Review, 2011; Barry, 2009) and virtually no research on re-integration of children and young people post-custody in Ireland and Northern Ireland.

5.2 Education Provision and Re-offending

For education provision to be successful in reducing re-offending, diversionary measures must incorporate school attendance, training and employment prospects (Prison Review Team, 2011; Utting and Vennard, 2000; Utting, 1996). However, high re-offending rates suggest that current approaches to education and training needs are not working (The Howard League for Penal Reform, 2010). Research on young people re-offending indicates a correlation with how they perceive their life chances and their ability to desist (Seymour and Butler, 2008; McNeill 2006). The poor performance of custody in preventing re-offending is evidenced by statistics which indicate that approximately 70% of young people released from detention establishments re-offend (Lyness and Tate 2011a; Lyness and Tate, 2011b; Home Office, 2004). Nonetheless, research also shows that although the majority of young people want to return to education or find work on release, only a minority were successful (Grey, 2011). As noted above, educational

50 See: NIO (2009) Reducing Re-offending: A critical review of the international research evidence. Belfast: NIO; Ministry of Justice [E&W] (2010) Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders. UK: The Stationery Office Limited; O'Mahony, D. and Higgins B. (2005) An Evaluation of the Positive Steps Through-Care Programme In The Young Offenders Centre, Hydebank Wood, Belfast: Queen's University.

attainment of marginalised individuals can help reduce crime and there is an economic, social and moral rationale for improving lifelong learning for offenders (Machin *et al.*, 2010). The evidential link between education, employment and successful re-integration and resettlement in the community is unequivocal and research shows that people with convictions who enter and remain in employment are significantly less likely to engage in criminal behaviour (Home Office, 2005). Re-integration support should, therefore, be one of the vital components of penal and wider social policy to stem re-offending (Martynowicz and Quigley, 2010). Although the re-integration needs of young people will be different, research with young people indicates that improving employment and education prospects is associated with dissidence (Barry, 2009; Cruickshank and Barry, 2008). However, this requires partnerships and collaboration across and within government and education and employment services (Kelly *et al.*, 2012; Prison Review Team, 2011). There is a deficit in provision of appropriate training and pre-employment programmes to successfully engage young people in custody and little strategic planning or policy to provide whole service interventions (Prison Review Team, 2011). This observation has been noted by the experiences of young people (Include Youth, 2010).

In Northern Ireland, specialised training and pre-employability programmes for young people post custody, such as Northern Ireland Association for the Care and Resettlement of Offender's (NIACRO) 'Youth Employability programme', Include Youth's 'Give and Take Scheme' and programmes provided by EXTERN, Opportunity Youth and the Princes Trust, have proven advantageous for young people but can only meet the needs of a small proportion. Much more could be done and many opportunities are missed such as external employers providing training workshops (Prison Review Team, 2011). Northern Ireland statistics indicate that the one-year recidivism re-offending rate for all young people discharged from custody in the 2007 and 2008 cohorts was over two thirds in both cases (Lyness and Tate, 2011a, 2011b). Of further concern is that within three months of custodial discharge, half had re-offended on at least one occasion and by six months, two thirds had re-offended (Lyness and Tate, 2011b). In Ireland, there has been little attention to recidivism and young people (Kilkelly, 2008). Research reveals that the vast majority of boys detained in detention schools had been detained on at least one other occasion (Hayes and O'Reilly, 2007) and research by O'Donnell *et al.*,

(2008, p. 135) into recidivism in Ireland estimates that, when disaggregated by age, the re-imprisonment rates for persons under 21 years of age is around 50% higher than for offenders aged 30 and over (60% versus 40%). Clearly, statistics and research in relation to re-offending are currently limited and better disaggregated data and information on offending is required to inform policy imperatives.

In Northern Ireland, young people's views on effectiveness of custody revealed that incarceration does not stop them offending and exacerbates many difficulties (Include Youth, 2011). In Ireland, the Ombudsman's consultation with young people highlighted that their experience of custody did little to equip them to break the cycle of offending behaviour (OCO, 2011). Comparative evidence supports the premise that high incarceration rates and tough penal regimes are flawed and do not control crime (Barry, 2009; Lappi-Seppala, 2006). Instead, progressive social and educational measures coupled with restorative practice work better (Goldson and Muncie, 2006).

The number of young people in custodial remand presents a difficult problem in relation to the management and planning for their education and rehabilitation.⁵¹ Building capacity is not the answer unless long-running issues such as the ineffectiveness of short custodial sentences are tackled (Prison Review Team, 2011). There is a clear need to introduce a range of specialist services and alternatives to reduce custodial remand (CLC, 2011; Seymour and Butler, 2008; NICCY, 2008). The need for alternatives is reflected in current proposed options in the United Kingdom that include neighbourhood academies and alternative intensive interventions (Youth Justice Review, 2011; Johnson, 2011). These options accord with the recommendation of Kilkelly *et al.*, (2002) who advocated that small, family sized units, based in local communities would be more in keeping with human rights standards. In practice there are real challenges in operationalizing educational provision. Due to the fluctuating population and high numbers of children on remand, it is often difficult to provide tailored programmes for all residents (Moore and Convery, 2008).

51 In Ireland, annual admissions figures reveal that, in 2010, 81% of admissions of young people were on remand and that 82% of discharges of young persons from Detention Schools in 2010 were those on remand (IYJS, 2010). In Northern Ireland, figures show that the number of total admissions in to custodial remand has risen steadily over the last three years from a low of 198 in 2008/09 to 255 in 2010/11. Moreover, the number of PACE admissions in 2010/11 (256) was 113% higher than in 2008/09 (120) and accounted for 46% of all total admissions in 2010/11 (Tate and Lyness, 2011:7). In 2011, 42% those in Hydebank Wood YOC at the time of the inspection were on remand (CJINI, 2011b).



Overuse of custody and remand remain a negative feature of the youth justice landscape in both jurisdictions



Arguably, the most effective diversionary strategy is to remove children and young people from the custodial nexus altogether. However, despite the introduction of diversionary options such as youth conferencing and discretionary powers through law reform and policy in Ireland and Northern Ireland, overuse of custody and remand remain a negative feature of the youth justice landscape in both jurisdictions (Moore 2011; Freeman and Seymour, 2011).

5.3 Exploring Modalities of Education Provision for Young People in Custody

Whilst prison education generally is contested (Irwin, 2008, 2003), provision for the educational needs of children and young people is enshrined in law (Moore, 2011; OCO, 2011; Martynowicz and Ní Dhrisceoil, 2009; Convery *et al.*, 2008). Research on the profile and experiences of young people in custody indicates that they are faced with a plethora of difficulties in their lives, including poverty and social exclusion, family breakdown and their experiences of care. These experiences impact on their educational chances and their ability to learn in the general educational systems. Although inspection and monitoring reports in each jurisdiction have observed some progress, difficulties remain, particularly improvements in approaches to teaching and educational provision for young people incarcerated with adults (OCO, 2011; CJINI 2011a, 2011b; PRT, 2011; CPT 2011, 2007). Essentially, this indicates that a more fruitful approach needs to take account of the relationship between effective teaching strategies and learners' academic attainment (Martynowicz and Ní Dhrisceoil, 2009; Vorhaus, 2003). Some common themes emerge to enhance the current provision.

5.3.1 Teaching and Learning

Those in custody differ in motivation, personality, and emotional and cognitive abilities and these characteristics can influence the responsiveness to educational modalities. (Bonta and Wormith, 2007).

The education of a young person who is incarcerated can sometimes be a difficult task, particularly if they are not socialised into the classroom and their previous experiences of compulsory education are negative (Hurry *et al.*, 2010; Othmani, 2002). However, this does not necessarily imply incapacity to learn (The Howard League for Penal Reform, 2001).

The development of positive pupil-teacher relationships is a fundamental criterion (Ozarow, 2011; Prison Review Team, 2011; Barry, 2007). Inspection reports and research in both jurisdictions noted the affirmative relationships many young people had with staff in places of detention in Ireland (HIQA, 2011a, 2011b, 2011c; OCO, 2011) and Woodlands JJC in Northern Ireland (CJINI, 2011a). In an environment where wariness characterises so much of the human associations, trust is not easily developed and may take considerable time and effort. Young people need to feel that teachers in education are trustworthy and empathise with their needs. Engagement in apparently inconsequential 'informal' interactions or so called 'chat' with learners, lays the foundations for a learning culture within the Prison (Irwin, 2008a). Reports indicate that 'special people' (OCO, 2011; Pike, 2008), such as prison and educational staff, are often instrumental for a prisoner when deciding to engage in education. Yet teachers working in this area may not receive specialist training (Irwin, 2008, 2003) and frequently have to deal with the multiple problems presented by young people before they can begin work within the relevant curriculum. In Northern Ireland, teaching staff have attended essential skills training (CJINI, 2011a, 2011b), although access remains limited and there have been inadequate links with Educational Library Boards to support young people on release. Notably, the Ombudsman for Children in Ireland has recommended that staff working directly with young people under 18 in St Patrick's Institution receive initial and follow-up training in child protection policy, procedures and practices; children's rights and the rehabilitative aims of juvenile justice, with an emphasis placed on developing empathetic understanding among all staff of the multiple and complex needs of young people committed to the Institution (OCO, 2011). In Northern Ireland, it was also recommended that "All staff should have training to help them understand, engage with and intervene effectively with young people in custody" (CJINI, 2011b, p. 42) as there is "little understanding of how staff might reduce re-offending" (Prison Review Team, 2011, p. 36).

5.3.2 Innovative Pedagogy

The learning environment for young people in custody largely conforms to a traditional classroom layout yet this approach is not always appropriate (Parker *et al.*, 2000).

Disaffected students often find traditional classroom activities 'boring', and overly focused on writing tasks rather than more interactive forms of learning (Riley *et al.*, Solomon and Rogers, 2006, 2001) and this is true too of children and young people (OCO, 2011; DfES, 2005). Other learning barriers include a lack of confidence, poor autonomy, low levels of self-esteem and dis-engagement with formal approaches to the curriculum (NCCA, 2007). For example, literacy and numeracy is often taught in a 'decontextualised' way that gives young people "few opportunities to demonstrate their knowledge and skills in new situations" (CJINI, 2011a, p. 36). Consequently, young people in conflict with the law generally prefer to study vocational courses (NRDC). Research indicates the success of embedding these essential skills within the occupational context (Barton and Papen 2005) and such a contextualised approach is now promoted in policy initiatives (Irwin, 2008a; Barton and Papen 2005). In recent years the concept of a place of detention 'Academy' has been posited where learning is at the heart of all activities whilst serving a custodial sentence. Likewise 'learning wings' where learners are kept together in a 'learning community' where they can debate and engage in social learning practices could be introduced relatively easily. This has already begun with the Child Detention Schools in Ireland but could be more radically conceptualized, particularly in Northern Ireland (CJINI, 2011a), for example, through a secure college with external collaborators, as suggested by the Prison Review Team (Prison Review Team, 2011, p. 72).

Research into alternative pedagogies suggests a range of options to re-engage young people in custody (Ellis and France, 2012; Prior and Mason, 2010). Significantly, one-to-one teaching, and individualised programmes of learning such as those found in the Child Detention Schools and Woodlands JJC are considered the most effective teaching strategies for young people in custody (NCCA, 2007) whilst informal learning is a valid and underused option that if harnessed well by custodial staff can lead to more successful outcomes (Field, 2000).

Research in both jurisdictions noted the affirmative relationships many young people had with staff in places of detention

“The use of technology offers an unprecedented opportunity to reconceptualise and radicalise learning in custodial environments.”

Other research has highlighted the benefits of re-designed classroom layouts (Hodges, 2007), ‘outdoor learning experiences’ (Riley *et al.*, 2006, p. 17), sport and physical activity (Sandford *et al.*, 2008; Bailey, 2005) and e-learning (Levy, 2004). Inspection reports across both jurisdictions have generally commended the level of physical activity, although in some facilities concerns remain that children spend too much time locked up (OCO, 2011; CJINI, 2011b; Prison Review Team, 2011).

5.3.3 Technology

The use of technology offers an unprecedented opportunity to reconceptualise and radicalise learning in custodial environments (Irwin and Pike 2012). Technology in the form of e-learning traverses distances, organisations and social structures (Weller, 2007) and could provide the prison learner with the opportunity to engage fully in an online learning community. Well-designed pedagogical programmes which fully integrate active teaching and learning allow the development of higher cognitive skills (such as articulating, and debating issues and ideas) which offer valuable personal as well as academic skills (Salmon, 1998). Nonetheless, the use of ICT facilities and technology remains critically lacking in places of detention in Northern Ireland including limited internet access and on-going ICT technical issues which prevent the effective use of this resource (CJINI, 2011a; 2011b).

The use of online assessments offer an opportunity for early diagnosis of individual learning needs and an e-portfolio system for the transfer of records including educational achievement has been supported by government (House of Commons, 2005) and recommended by the inspectorate in Northern Ireland (CJINI, 2011). The concept has the potential to be extended to become a receptacle for prisoners’ achievements and accreditation, and used to travel ‘between education and employment, including vocational pathways and work-based learning’ (Hartnell-Young *et al.*, 2006, p. 860). There are many examples of innovative e-Portfolio projects successfully implemented across educational sectors and geographical regions (Florea, 2008; Heinrich *et al.*, 2007; Hartnell-Young *et al.*, 2006) which are potential working models for replication in a custodial setting.

Key Messages

- The overuse of custodial remand continues to inhibit the provision of education of young people.
- Although education and training are not a panacea to prevent re-offending, the high level of re-offending rates suggest that the current provision of education and training of young people in custody is not having the desired effect of preparing young people for release and preventing recidivism.
- There is a paucity of research on re-integration of children and young people post-custody in Ireland and Northern Ireland.
- Innovative approaches to pedagogy, including the use of ICT need to be implemented to engage with those who find it difficult to engage with traditional approaches to teaching and learning.
- Education should be re-conceptualised beyond the traditional classroom based approach currently delivered. Identification of informal learning patterns and personal interests should be used to re-orientate learners towards the more formal provision offered.
- Specialist training for teachers working in this area should be introduced. Consideration of extending this training for appropriate custodial staff and other identified 'mentors' should also be considered.
- The curriculum delivered needs to extend beyond simple subject options to include personal and health education and options which enhance self-esteem and promote employment opportunities.
- Links with external education and training providers should be developed to ensure that learning opportunities can be continued seamlessly upon release. Appropriate and robust funding mechanisms and support arrangements to facilitate this transition will also be necessary.



6

Key Conclusions for Youth Justice Policy

The purpose of this Report has been to provide academic analysis to contribute to a shared understanding of a rights-based approach to the provision of education for children and young people in custody in Ireland and Northern Ireland. The General Measures of Implementation are intrinsic benchmarks to good policy and practice, helping to promote the full enjoyment of all rights in the Convention through ‘... legislation, the establishment of co-ordinating and monitoring bodies, comprehensive data collection, awareness-raising and training, and the development and implementation of appropriate policies, services and programmes’ (United Nations, 2003, p. 3).

Education is a fundamental right for children and young people in custody; it must be provided by places of detention and can be a vital ingredient in preventing recidivism. By synthesising the evidence, a number of issues relating to the General Measures provide key conclusions for youth justice policy.

Key Conclusions

1. The current arrangements for children and young people in custody in Ireland and Northern Ireland are falling short of the standards of the Convention, United Nations rules and the recommendations of United Nations Committee on the Rights of the Child.
2. Improved co-ordination and information sharing between government departments and key service providers are critical to meet the rights and needs of children and young people in custody.
3. Collaborative partnerships, between places of custody and external education and training agencies, is crucial to improve the re-integration of children and young people post custody.
4. Data collection on young people in custody is underdeveloped, sparse and needs to be progressed to identify gaps and provide comprehensive data to inform educational outcomes and pathways for young people in custody.
5. Dedicated training of educational staff and development of pedagogical approaches are essential to realise the rights and educational needs of children and young people in custody, both to improve educational outcomes and decrease the possibility of re-offending.

6.1 The current arrangements for young people in custody in Ireland and Northern Ireland are falling short of the standards of the Convention, United Nations rules and the recommendations of the United Nations Committee on the Rights of the Child.

Adopting a rights-based approach has permitted the best interests and voice of young people to be considered against the provision of education for young people in custody in Ireland and Northern Ireland. In some aspects, recent reforms of the systems in both jurisdictions have been informed by children's rights standards but the implementation often falls short of what is required by those same standards. The provision of education often falls short and remains problematic.

The core requirements of good policy making can also be used to enhance the rights and provision of education for young people in custody and help government in both Ireland and Northern Ireland to develop better outcomes for young people in custody and society in general. Crucially, this should include more reference to the voice and experiences of children and young people themselves.

6.2 Improved co-ordination and information sharing between government departments and key service providers which are critical to meet the rights and needs of young people in custody.

The needs of young people in custody are many and complex; these are often compounded by institutional issues and weakness in multiagency working including, poor transmission of key information and lack of continuity between custodial-based education and provision in the wider community. If detention of young people is to have a

positive effect it must address the problems giving rise to the offending behaviour and prepare them for life following release. Central to this is the provision of co-ordinated education, training and support.

Whilst there has been some progress in this area, evidence in Ireland and Northern Ireland indicates that it is still not fully realised in practice and there have been consistent calls for joint collaboration between relevant government departments, agencies and community organisations. It follows, therefore, that policies and practice with regard to information retention and sharing should be carefully reviewed. Consideration of statutory guidance elsewhere (for example, guidance developed by the Welsh Assembly⁵²) may usefully inform comprehensive provisions for children and young people in a youth custody setting, including legal responsibilities and guidance on the information transfer relating to education.

6.3 Collaborative partnerships between places of custody and external education and training agencies are crucial to improve the re-integration of young people post custody.

Adopting a collaborative approach between youth custody settings and external agencies facilitates constructive use of evidence to support young people during and after their time in detention. Education or work-based placement on release is a significant deterrent for re-offending. However, the overall lack of access to, and support in, securing such placements post custody can have a detrimental effect on successful re-integration. The development of external relationships, for example, with further education and work-based learning suppliers will undoubtedly make it easier for young people leaving custody to re-integrate into mainstream education and training. The proposal to transform prison education departments into learning centres for staff and those in custody is an option that should be explored.

⁵² Welsh Assembly Government (2011) Learning for children and young people in a youth custody setting in Wales: Statutory guidance for local authorities in Wales. Cardiff: Welsh Assembly Government.

6.4 Data collection on young people in custody is underdeveloped, sparse and needs to be progressed to identify gaps and provide comprehensive data to inform educational outcomes and pathways for young people in custody.

Access to quality information and research that produces policy relevant knowledge can inform policy imperatives and provision. Significant difficulties clearly remain with evidence on education in custody. There is relatively little systematic monitoring of attainment levels and academic or vocational progression of young people in the youth justice system in either jurisdiction. Although assessment practices do occur, for those young people in custody, limitations in practice, such as assessment on entry but rarely on exit, means it is difficult to monitor individual progression. This problem is often compounded by lack of information or portfolio about educational gains made in custody. There is a clear need for comprehensive data systems in both jurisdictions, particularly longitudinal and disaggregated data on young people in custody and data on re-offending and destination post release.

6.5 Dedicated training of educational staff and development of pedagogical approaches are essential to realise the rights and educational needs of young people in custody, both to improve educational outcomes and decrease the possibility of re-offending.

Children in custody are rights holders and not merely recipients of penal care. The critical role of professionals working with children in places of detention cannot be under-estimated as their input and influence can shape the individual and collective behaviour and experiences of young people, and equip them with learning and skills to re-integrate into society.

To date, there are deficits in child rights training for staff in places of detention for young people in Ireland and Northern Ireland. Furthermore, there are deficits in training on the complex and rehabilitative needs of young people in custody. As a matter of urgency, government in both Ireland and Northern Ireland should take steps to reduce this deficit, giving more confidence to both staff and young people held in custody.

6.6 Next Steps

This Report has analysed how policy in Ireland and Northern Ireland has realised the right to, and provision of, education for young people in custodial settings. It has reached five key conclusions, based on a wide range of research evidence. Using the General Measures of Implementation of the Convention and other international legal instruments, allied to related examples of best practice, it provides a basis to help policy makers to make more informed decisions about the provision of education for young people in detention in both Ireland and Northern Ireland.

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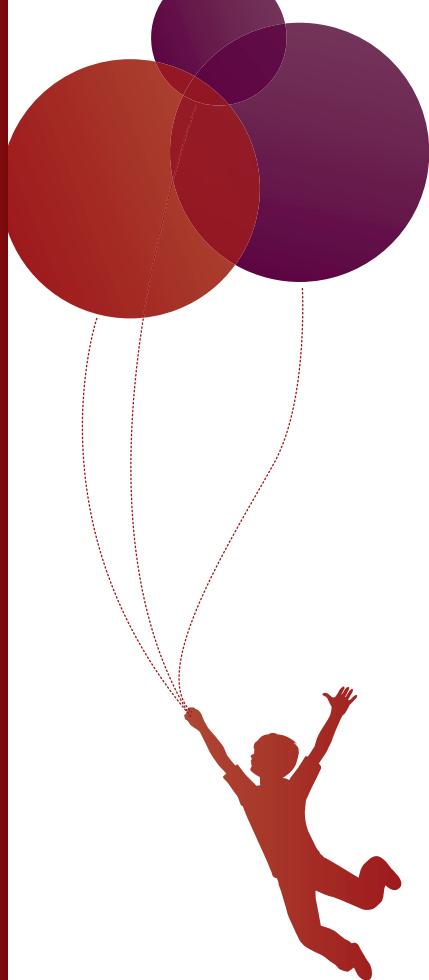
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