

## Children in prison during Covid-19: the new 'double jeopardy'

Concerns about children in prison in England and Wales have been growing in recent years. Publications have drawn attention to concerns about children in custody including the segregation of children (Children's Commissioner, 2018; Joint Committee on Human Rights 2019); the use of pain inducing restraint (Joint Committee on Human Rights, 2019; Taylor, 2020); the disproportionate numbers of Black, Asian and Minority Ethnic children (Bateman, Day and Pitts, 2018); and the disproportionate numbers of other vulnerable groups of children, including care experienced children (Day, Bateman and Pitts, 2020). Between 2018 and 2019, I was involved in a study which focused on the pathways of children into, through and out of custody (Day, Bateman and Pitts, 2020). We found that children had to develop survival strategies and a survival mentality to navigate each pathway. We found evidence to support the growing calls to 'End Child Imprisonment', and consider smaller, welfare-based accommodation, that is more suited to the needs of an individual child. The study completed three months prior to Covid-19 and the national lockdown in the UK. This piece explores the potential impact of Covid-19 on children in custody, and considers whether they are now subject to a 'double jeopardy' and the possible implications of this.

When Boris Johnson announced the lockdown at the end of March, an announcement quickly followed that all prisons will be immediately locked down, and visits cancelled. As of May 2020, there are 614 children in the juvenile custodial estate in England and Wales, with 538 of this group in Young Offenders' Institutions (Ministry of Justice, 2020). In England and Wales children (those aged under 18) remanded to custody or sentenced to custody are placed in one of three types of institution:

- a Young Offenders Institution (YOI) – for boys aged 15 – 18 only
- a Secure Training Centre (STC) - for boys and girls aged 12 - 17
- a Secure Children's Home (SCH) – for boys and girls aged 10 - 17

YOIs house the majority of children in custody, and are broadly based on the adult prison-model. This discussion will focus on YOIs. However, for the purposes of information STCs are smaller, purpose-built establishments designed to accommodate between 60–80 boys and girls. STCs have a higher staff-to-children ratio compared to YOIs and are used to accommodate more vulnerable children. SCHs have a higher ratio of staff to children and are small facilities of between 7 to 38 beds. They are designed to accommodate boys and girls aged 10–17 who are assessed as being particularly vulnerable.

For this group of children, as I write this piece at the beginning of July, for over 100 days some of the most vulnerable children in England and Wales have been locked in their cells alone for 23 hours per day, have not had any face to face visits from friends or family, and have had their education sessions cancelled. A number of key themes are evident from the limited literature in this area which will be explored in turn.

*The impact of prolonged solitary confinement for vulnerable children*

Her Majesty's Inspectorate of Prisons (HMIP) conducted visits to YOIs in April 2020 and found that most children are locked up, alone in their cells for up to 23 hours per day since the Covid-19 lockdown. HMIP stated that it was 'not acceptable' that children are locked up for this length of time (HMIP, 2020). They compared three publicly-run YOIs with the privately run Parc, who was managing to allow children out of their cells for 4 hours per day and receive 1-1 education, whilst maintaining social distancing. At the time of writing, the regime in the publicly-run YOIs has not changed. It was noted during oral evidence given by Peter Clarke, Chief Inspector of Prisons, to the Justice Committee on 16<sup>th</sup> June 2020 that governors of YOIs were frustrated with this and wanted to reduce the amount of time children were spending in the cells, but that the 'blockage' was coming from the centre, and namely The Ministry of Justice. Clarke stated that:

*'I have written to the Ministry of Justice setting out my concerns....about what I perceive to be the lack of flexibility, the lack of innovation and the lack of mitigation measures to address the obvious harm that will accrue from being held in what are, in many cases.....conditions that amount to solitary confinement for extended periods. We know very clearly that many governors want to improve things themselves, and there is a degree of frustration among governors at the lack of ability to move things forward.'* (Justice Committee, 2020: 3)

It is important to note that HMIP found some positive impacts of the isolation of children in their cells including that bullying had reduced across all YOIs, and children reported positive relationships with staff (HMIP, 2020: 11). However, the harmful effects of vulnerable children being locked up in solitary confinement for 23 hours a day will always outweigh any identified benefits. For example, in 2018 and 19 I was involved in a piece of research about the pathways of incarcerated children in custody. Many discussed the impact of 'separation' on their emotional wellbeing:

*'I used to self-harm in my pad, because they'd never let me out of my pad for about three or four days in a row, I'd have an outburst, a giddiness and they used to keep me in my pad, so I used to self-harm.'*

It is important to note that the young person, above, was discussing the impact of being placed in isolation for 3 or 4-day periods; not over 100 days. He also stated that being in isolation had caused him to self-harm and have suicidal thoughts for the first time, and that he 'never' experienced this whilst in the community.

#### *The loss of face to face visits with family and friends*

To mitigate against the loss of family contact, HMIP noted that all establishments had increased a child's phone credit (HMIP, 2020: 9), but stated that *'there was little reason for the significant difference in amounts given at each establishment'* (HMIP, 2020: 7). The MoJ have also trialled a 'purple visits' scheme to enable face to face video meetings in place of outside visits. Three Young Offenders' Institutes have been included in this trial. However, at the time of writing, children are only entitled to 1 video call lasting a maximum of 30 minutes a month. Larger YOIs only received 2 laptops from the MoJ to enable the video calls for a population of over 200 children. The technology is also such that your full face must remain in shot for the 30 minutes. If part of your face leaves the camera shot, the contact is terminated. The woeful response of the Ministry of Justice to children in custody during the pandemic

reflects a wider, and long-established pattern of disregard for their needs. One young person discussed the impact on children in custody who did not have family support:

*'Because obviously you've got no one to care, no one to tell them to think about things, do you know what I mean? I don't know, they won't care about anything, to them they don't care because they feel like nobody cares, so they'll just act up, they'll just do whatever and then they'll get themselves in trouble and then they'll feel down or they'll just feel comfortable because they've been in jail that long or that many times that it's home to them, it's the only home they've got.'*

Face to face visits serve a dual purpose as it allows incarcerated children to maintain contact with the outside world, and it also allows visitors to check in on children in custody, and advocate for them where necessary.

### *The deafening silence from children in custody*

Perhaps the most concerning aspect of the current lockdown for children in custody is that their voices are not being heard. We do not know how the measures are impacting on their mental and physical health and emotional wellbeing. At a time when hearing the voices of vulnerable children about their experiences in custody has never been more important, their voices are inaccessible to family, friends and professionals. A study by the Independent Panel on Deaths in Custody on the experiences of adults in prison during the lockdown found that adult prisoners were experiencing a 'prison within a prison' (Independent Advisory Panel, 2020: 3). The IAP teamed up with the National Prison Radio and accessed messages from over 200 prisoners. The wider lack of independent scrutiny and visibility of prisoner's experiences during Covid-19 was picked up by the IAP as a key theme emerging from their rapid review (IAP, 2020: 3). Information provided to children in the wider youth justice system from central government has also been slow: for example, the YJB published their own guidance for children in the youth justice system effected by Covid-19 on 25<sup>th</sup> June; more than 3 months after the lockdown.

### *The failure of the Early Release Scheme*

In March 2020, leading figures from Children's Charities and Youth Justice organisations wrote a joint letter to the Ministry of Justice, calling for the Youth Custody Service (part of the MoJ) to release and stop admitting children to custody who could safely be managed within the community (Article 39, 2020). They stated that: incarceration for children with learning disabilities and mental health difficulties can be unbearable during 'normal' times, and expressed grave concern about the impact of prolonged isolation on levels of self-harm and attempted suicide. The Office of Children's Commissioner also wrote to the Ministry of Justice in March 2020 (Children's Commissioner, 2020) expressing similar concerns, and calling for all children with underlying health conditions making them vulnerable to Covid-19 to be released. In addition, the Children's Commissioner urged the Ministry of Justice to review all children on remand; all sentenced children due to be released in the next six months; children aged under 14; and children in custody for non-violent offences for consideration of who could be safely released and managed in the community.

Sadly, the calls to release children from custody early have not materialised. Following lockdown, the Ministry of Justice announced that an early release scheme would be launched for prisoners identified as low risk and close to their release date. CYP Now reported in April 2020 that around 40 children were identified as eligible for this scheme in the juvenile estate. To date, 0 children have been released (Justice Committee, 2020). To be eligible, children had to be within weeks of their original release date. I overheard a conversation about a child who was 'nearly' released under the scheme; but by the time all the necessary paperwork had been completed and a suitable release address found, his original release date arrived, and he was released under standard licence conditions.

### *Concluding thoughts....*

The Standing Committee for Youth Justice in a recent report on child custody noted that '*children in custody are extremely vulnerable, and their experience of detention exacerbates and compounds this vulnerability*' (SCYJ, 2020: 2). It would therefore be reasonable to conclude that children's experiences of incarceration during Covid-19 will have significantly amplified this vulnerability, resulting in a form of double jeopardy, or as the IAP found for adult prisoners a 'prison within a prison'. The slow and insufficient response of the Ministry of Justice to the needs of children in custody is evidenced by the failure of the Early Release Scheme; the woeful arrangements for video contact with friends and family; and the lack of response to calls from HMIP to increase the amount of time children are unlocked from their cells and given access to education. As the Youth Justice Board has stated that all of their work is '*underpinned and guided by a child first offender second principle*' (Youth Justice Board, 2019: 3); I have to wonder whether the Ministry of Justice missed the memo?

### References

Article 39 (2020) 'Joint call for safe release of child prisoners', London: Article 39.

Bateman, T, Day, A and Pitts, J (2018) 'Looked after children and custody: a brief review of the relationship between care status and child incarceration and the implications for service provision', University of Bedfordshire.

Children's Commissioner (2018) 'A report on the use of segregation in youth custody in England', London: Office of the Children's Commissioner.

Children's Commissioner (2020) 'Calling on the Lord Chancellor and Secretary of State for Justice to ensure the rights of children in custody are upheld during the coronavirus outbreak', London: Office of the Children's Commissioner.

Day, A, Bateman, T and Pitts, J (2020) 'Surviving incarceration: the pathways of looked after and non-looked after children into, through and out of custody', University of Bedfordshire.

Her Majesty's Inspectorate of Prisons (2020) 'Report on Short Scrutiny Visits to Young Offender Institutions Holding Children', London: HMIP.

Independent Advisory Panel into Deaths in Custody (2020) "'Keep talking, stay safe" A rapid review of prisoners' experience under Covid-19', London: IAP.

Joint Committee on Human Rights (2019) 'Youth detention, solitary confinement and restraint', London: HMSO.

Justice Committee (2020) 'Oral evidence: children and young people in custody', HC 306, London: House of Commons.

Ministry of Justice (2020) 'Youth Custody Report', London: Ministry of Justice.

Simpson, F (2020) 'Young Offender's Eligible for Temporary Release to Ease Spread of Covid-19', CYP Now.

Taylor, C (2020) 'A Review into the Use of Pain-Inducing Techniques in the Youth Secure Estate', London.

The Standing Committee for Youth Justice (2020) 'Ensuring Custody is the Last Resort for Children in England and Wales', London: SCYJ.

Youth Justice Board (2019) 'Youth Justice Board Strategic Plan 2019 – 2022', London: Ministry of Justice.