

the **Howard League** for **Penal Reform**



Youth justice in Wales

Thinking beyond the prison bars

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1. Introduction

Amidst the current debate surrounding the All Wales Convention and the discussions of national pride, further devolution and even independence that currently engulf the Senedd; there is a vibrant debate occurring about whether the youth justice portfolio should be devolved to Cardiff. The Howard League for Penal Reform supports a stronger role for the Welsh Assembly Government in improving the experience of Welsh children in the secure estate.

Although the UK Government claims to adhere to the United Nations Convention on the Rights of Child (UNCRC) and in particular Article 37b where, detention or imprisonment of a child shall be, ‘used only as a measure of last resort’ both the very low minimum age of criminal responsibility and the very high numbers of children in custody demonstrates that England and Wales, as a jurisdiction, is currently in breach of the UNCRC (1989a).

Certainly the concluding observations published by the UN Committee on the Rights of the Child in October 2008 reiterated a number of concerns relating to children in custody in England and Wales, including the low minimum age of criminal responsibility and the fact that custody was not being “applied as a measure of last resort” (United Nations 2008, Art 77(c)). In addition, the widespread use of custody has been ineffective at preventing reoffending and making communities safer – with 77% of children aged under 18 released from custody in 2006 in England and Wales reoffending within a year (Ministry of Justice 2008a).

In the past the Howard League has expressed some reserve about devolving youth custodial budgets to local authorities. The primary reason for this is it will not achieve any positive outcomes without being accompanied by a fundamental review of the use of custody for children. This should not be the case in devolving youth justice policy to Wales, given the Welsh Assembly Government’s commitment to a rights-based agenda in its approach to all children and young people.

In the event that powers over youth justice are devolved, the focus on the “secure estate” should not obscure the wider discussion that needs to be had about how Welsh children are treated in the youth justice system. Overly focusing on the current woes in the (largely English) secure estate is the wrong way to frame the discussion. There is an opportunity to say clearly that “Welsh children deserve better” and that this pertains to all aspects of how Welsh children in trouble with the law are treated, not simply in the secure estate but also in the community.

Focusing on the “secure estate” leads to descriptions of community based solutions as “alternatives to custody”, as if prison is the unalterable premise rather than one option among many. This is important, given that for children, in particular, prison is also an option that will almost always be inappropriate. Rather than cling to the assumptions and a mindset associated with the punitive yet ineffective approach that has emanated from Whitehall, Wales should be looking to fresh and wider thinking in order to take the debate forward and pioneer a distinctively Welsh approach. Just because something has been done badly in the past, there is little reason to keep repeating English errors in the future.

2. Facts and figures of youth justice in Wales

Before having a convincing debate about whether or not to devolve and the best way to do it, it is important to see exactly what is happening to young people in Wales and some of the problems they face.

As of January 2009 there were 139 males and 5 females, totaling 144 Welsh children within the secure estate (Welsh Assembly Culture and Communities Committee 2009a). The total number in secure estate is now 161 children (Welsh Government 2009). From the January 2009 statistics, half of these children were placed in Wales, the other half in England. 118 children were in Young Offender Institutions (YOIs) and the remaining 26 were placed in secure training centres (STCs) and secure children's homes (SCHs). (Welsh Assembly Culture and Communities Committee 2009a)

There are now more children from South Wales (109) than North Wales (35) in the secure estate. In both Wales and England the proportion of children receiving custodial sentences out of all the nation's children is approximately one percent.

In Wales 13 places for younger children aged 12-15 or those who are highly vulnerable up to 17 years are available at the Hillside SCH. Bridgend's Parc Prison provides 69 places for boys between 15 and 18 years of age and acts as Wales' YOI. The prison also holds approximately 1200 adult male prisoners.

In terms of spending in 2007-08 the total cost of youth justice in Wales was £17,741,352. Of this total figure £2.9m was given to the YJB, £1.6m to the police, £1.4m to the probation service, £8.9m to social services, £0.7m on education, £0.8m on health and £1.4m on local authority chief executives (Welsh Government 2009).

Placing a child in the Hillside facility costs £3,983 per week. STCs cost approximately £3,650 per place and YOIs cost around £1,000 per week.

It is also vital to discuss more broadly the core figures and statistics about children who find themselves in the secure estate, albeit these figures are taken from the England and Wales justice system as a whole (Howard League 2008).

Many children in custody are incredibly vulnerable and challenging, with chaotic family backgrounds and histories of neglect and abuse.

- 29 per cent of boys and 44 per cent of girls in prison custody had been in care.
- Two out of five girls and one in four boys in prison reported having suffered violence at home.
- One in three girls and one in 20 boys reported being sexually abused
- 81 per cent of boys and 76 per cent of girls in custody had been excluded from school.
- Around 15 per cent of children in custody have statements of special educational needs, compared to 2.9 per cent of the general population
- 90 per cent had used illegal drugs.

It is also worth considering the safety of children in prisons.

- 30 children have died in custody since 1990. This includes 28 children in YOIs and two in secure training centres.
- 29 of the deaths were self-inflicted and one followed restraint by staff.
- In 2007, there were 1,007 self harm incidents among 15-17 year olds in prison.
- Between November 2005 and October 2006, physical restraint was used, 732 times on boys in prison.
- The Howard League for Penal Reform found that up to one in five instances of restraint resulted in an injury to the child or staff member.
- Strip-searching is routinely carried out on all children on arrival in prison. Children are being forcibly strip-searched if they refuse to comply
- Between January 2005 and October 2006, the forcible strip searching of boys took place 100 times.
- On average, there is one social worker to every 171 children in prison custody. In four prisons, the ratio is one social worker to over 200 children and in three prisons, there is no social worker at all.

It is also necessary to consider the effectiveness of use of the prison on children.

- Her Majesty's Inspectorate of Prisons found that 59 per cent of boys and 44 per cent of girls in prison had been in custody before.
- 79 per cent of boys and 57 per cent of girls aged 15-17 released from custody re-offend within two years.

To summarise this data, imprisoning children exposes the most vulnerable in our society to conditions of oppression that do not prevent them committing crime in the future.

3. The worst possible option – Welsh children jailed in England

The statistics illustrate that as of January 2009 72 Welsh children were imprisoned in England. Extrapolating from the data one can estimate that this means 59 Welsh children found their way into an English YOI and 13 Welsh children found themselves in either an English STC or an SCH.

There is a consensus that children with behavioral problems are better placed within reach of their families. The Youth Offending Team Managers Cymru has expressed a target that all young people below 16 years of age should serve their sentence in Local Authority Secure Units within a 50 miles radius of their family home (YOT Managers Cymru 2009). The Howard League for Penal Reform is in little doubt that such a target is a step in the right direction and believes that aside from the numerous other breaches and human rights complications that come with imprisoning young people to imprison a minor any further from their family would constitute an egregious breach of article 8 of the Human Rights Act 1998. Indeed, there should be no reason why Welsh 16 and 17 year olds serving custodial sentences could not also be similarly housed in SCH-type accommodation and closer to home.

The Welsh Minister for Health and Social Services, Edwina Hart, outlined some further problems with children being so separated from their families (Communities and Culture 2009a, para 11.):

“I am also concerned that Welsh children are sometimes culturally and educationally disadvantaged by going to England, and there are other issues, such as the lack of Welsh language provision for young people in juvenile secure accommodation in England... I stress that that [an English prison] is no substitute for the establishment of appropriate accommodation in Wales. The lack of Welsh facilities is significant for people from north Wales, and I am fully supported by the Children’s Commissioner for Wales in my views that more small centres that have more of a community focus should be established in Wales to deliver for those Welsh children who do have to go into custody.”

Devolution comes with cultural ramifications and reintegration of young people back into society. It is hugely disappointing that despite political devolution, Welsh children in trouble with the law must still endure further cultural and social alienation by being imprisoned in England.

Perhaps a bigger problem with reliance on English facilities to imprison Welsh children is the English reliance on STCs. There are four STCs in England that between them provide up to 300 prison places for children. The most likely STC for Welsh juveniles is Rainsbrook, near Daventry. Rainsbrook, like the other STCs in England, is a privately run prison. The Howard League for Penal Reform believes there are a number of problems when profit is introduced as a motive for running a penal service. In America, prison populations have increased, partly because companies financed to run prisons have little incentive to act to cut the prison population.

Despite the fact that Rainsbrook has made some partial progress (OFSTED 2008) it is hard to forget the tragic death of 15 year old Gareth Myatt in 2004. Gareth’s inquest revealed the STC’s horrendous “macho culture” where officers had nicknames

such as “crusher”, “clubber” and “mauler” (Youth Rights UK 2005). A facility chiefly motivated by corporate profit simply cannot ever be an environment appropriate for children.

STCs have incredibly high incidents of restraint on young people. Despite the vulnerable nature of the children held in STCs, and the fact they hold only 8 per cent of the juvenile population, 31% of all restraint incidents between October 2006 and June 2008 occurred in these privately run jails (FOI 2008).

Between October 2006 and June 2008, the top three establishments using restraint were:

- Oakhill STC with 1,493 restraint incidents
- Medway STC with 1,419 restraint incidents
- Hassockfield STC with 843 restraint incidents

In fourth place was Ashfield, a prison for teenage boys aged 15, 16 and 17. This privately run young offenders institution (YOI) is one of the biggest in Europe, holding twice as many children as the three STCs above combined. The Howard League figures show that staff in Ashfield used physical restraint 805 times between October 2006 and July 2008.

One undoubtedly huge benefit of devolving youth justice to Wales and the creation of an independent Welsh service would be the eradication of the use of STCs, as all four are currently situated in England. It is hoped the Assembly would stick firmly to its policy that private provision of public services is largely unacceptable, this is certainly true with regard to STCs, which openly admit to using force against detained children and young people to “ensure good order and discipline”.

The Howard League for Penal Reform makes no secret of its dislike for the English penal system’s treatment of children. Wales and Welsh children would be better off if Welsh youth justice was restricted to Wales and the Assembly’s rights-based agenda. Consequently, this is not an arena where cross-border service provision is appropriate. The further cultural arguments in favour of devolution also make a compelling case.

4. Another bad option – Welsh children in an English system in Wales

The danger of discussions about devolution is that the matter of where children are dealt with overpowers the more important issue of how to deal with them. Looking at testimony from the Welsh Assembly's Communities and Culture Committee that danger frequently rears its head when questions were focused simply on how to implement the necessary infrastructure to house the additional children rather than any more broad discussion surrounding whether those young people should be in the secure estate in the first place. Changing the place a child is incarcerated doesn't change the damage done by incarceration.

Indeed there is ample evidence to suggest that the current system in Wales is quite capable of making mistakes when it comes to handling children in the penal system. Our legal department has represented a number of young people from Wales in the secure estate, as a result of which we have identified particular problems in resettlement services, educational support and mental health provision. J, a Welsh young person represented by the Howard League, was a survivor of sexual abuse and had complex needs. He came from an area of great deprivation, high criminal activity and drug abuse. He had been in care and known to Caerphilly social services department for at least three years prior to entering custody. While in prison, J was on suicide watch and became a victim of bullying.

Eventually J earned early release due to his progress and good behaviour in custody. He contacted the Howard League because he was worried that no accommodation had been located for him less than a month before his release date. The Howard League issued legal proceedings against J's local authority.

Three days before J's release date, accommodation identified by the Howard League was opposed by the local authority. When J was finally released a month later, he was collected from prison two hours late by social services and taken to the homeless person's unit, where he was offered bed and breakfast accommodation in Cardiff, far from his home and family. He was too scared to take up the accommodation and was left homeless for nearly two weeks. At a further court hearing, the local authority agreed to offer J bed and breakfast accommodation closer to his home and family. This remained unsuitable for J's needs. The final judgment of the court found the local authority guilty of serious failings and non-compliance with legal duties. The judge found the local authority's assessment and planning process hopelessly inadequate. He was further concerned by the "mindset and culture" of the local authority, which he felt came close to breaching J's rights under Article 8 of the European Convention on Human Rights.

In our experience, this is a common scenario. The oft-neglected duties of local authorities towards children in custody have been explored in the Howard League (Howard League 2006). It is strongly recommended that adequate resources, training and guidance be provided to local authorities in Wales in order to strengthen the provision of resettlement services in keeping with the commitment to using child custody as a last resort, in line with the UNCRRC.

MP, a young person from Bridgend represented by the Howard League, was adopted at a young age following abuse and neglect by his heroin dependent parents. Social services' input ended with the adoption and when MP began to manifest serious mental health problems at a later age, he and his adoptive family were left unprepared and unsupported. MP's offending behaviour escalated and he spent most of his adolescent years in custody from the age of 15, including in HMYOIs Parc, Ashfield, Portland, Aylesbury and Feltham.

In custody MP self-harmed in an extreme and repetitive way, placing his life and long-term health in danger. He did not receive adequate mental health treatment and attempts to get him transferred to a psychiatric hospital were blocked by South Wales Forensic Psychiatric Service. He was left to deteriorate in prison until his self-harming escalated to such an extent that his life was at risk and the prison could no longer cope. It was only at this point that a transfer under the Mental Health Act was initiated. The transfer was further delayed due to wrangling over which trust was responsible, until finally the court took matters into its own hands and made a hospital order. MP stabilised rapidly in hospital and has made significant progress.

This case highlights the lack of effective mental health provision for Welsh children who go through the care and/or criminal justice system, including difficulties in diverting them from the criminal justice system.

Further, the Howard League has severe reservations about the potential reliance of any devolved Welsh justice system on Parc YOI. Parc is a category B men's prison in Bridgend that houses 69 children in a separate wing. Section 2 of this paper highlights just how ineffective use of prison is on young people and the dangers to which it subjects young people. These statistics are equally applicable to Parc YOI. Furthermore, Parc YOI also happens to be privately run – so that the vast majority of Welsh children in custody are likely to spend time in private institutions which punish for profit.

Ian Powell, a seventeen year old, hung himself in Parc YOI in 2002 and while the institute has not registered any further self inflicted deaths in custody since that point, it is the Howard League's submission that the suicide of one highly vulnerable 17 year old should be more than enough to make us think twice about placing children in prison custody.

In young offender institutions, the per-person rate of restraint usage is on the rise. Parc Prison uses restraint on children 10 times per month; this is low by YOI standards but still a worrying statistic (FOI 2008). It is a concern that, perhaps because there is a lot of focus on what is going on in secure training centres, focus is slipping away from the young offender institutions.

Another major concern surrounds the use of segregation. When children misbehave in young offender institutions, there is a chance that they will be put into solitary confinement, and that is often wholly inappropriate. The Howard League for Penal Reform is involved in an inquiry into the treatment of an English girl who had severe mental health problems and was in prison. The staff's response to those problems was to put her into solitary confinement. She had severe mental health problems

and was self-harming with blades. Once she was in solitary confinement, she self-harmed even more and was even more distressed. The prison was institutionally incapable of helping her, indeed it only exacerbated her harmful behaviour to the point that her life was at serious risk. The Howard League for Penal Reform eventually managed to get this young girl removed from prison, by court order, into a mental health setting.

Simply put, imprisonment of children in YOIs does not work and any expansion of YOI capacity in Wales to cater for an all Welsh youth justice system should be cautioned against in the strongest possible terms. Indeed, the Howard League would go further and argue that the YOI places in Parc should be closed. Parc is an inappropriate place for children to be held, and instead of funding ineffective and dangerous regimes for children Wales should use some of funds currently being put into sustaining Parc YOI to fund new secure children's home and alternative programmes. To put it more bluntly, YOIs simply do not work, whether in England or Wales and any future Welsh youth justice strategy should not perpetuate the historic failure found in England.

Custody for children should be used only as a last resort. Of course there is some recognition that Wales needs some form of custodial provision for the few cases where it is absolutely required. Of the current options available for the secure estate in Wales this paper has eliminated YOIs and English STCs. The only custodial option that the Howard League for Penal Reform believes to be appropriate is based around the local authority secure children's homes model. Over the past 20 years there have been 30 deaths of children in custody, two of these have come in privately run STCs, 28 have occurred in YOIs, while there have been no deaths in secure children's homes.

SCHs are small, local and have a high staff to child ratio. Staff will usually have a social work background and the environment is more therapeutic than that found in either young offender institutions or secure training centres.

Wales currently has one secure children's home, Hillside in Neath. If funding was made available to introduce a local authority secure children's home in North Wales as an alternative to Hillside for those very few children who would require custody, then this would be welcome as long as steps were taken to close the YOI element of Parc prison. This would solve the proximity to family problem, discussed above. Indeed, removing children from Parc would likely free up Youth Justice Board funding which could be diverted into the setting up of a North Wales secure children's home as well as release funding to better support solutions based in the community.

The Howard League for Penal Reform's vision for a Welsh system of youth justice is one where STCs and YOIs are no longer in use. This is not wishful thinking. YJB funding which is currently used to commission places in Parc could be used to create an alternative to Hillside in North Wales. Following this step, in accordance with the All Wales Youth Offending Strategy the child's prison population should be cut with other more appropriate facilities provided (this is detailed below). An All Wales Youth Justice competence should imprison less and treat children as children not offenders, it is the Howard League's belief that the Welsh Assembly is in a strong position to fulfill this brief that is the driving force behind their support for

further devolution and it is this human rights based approach that will dominate the remainder of this paper.

5. Current signs of a human rights approach in Wales

Despite the above criticism for Parc YOI there is a great deal of cause for optimism at the Welsh Assembly Government's current approach to youth justice.

The All Wales Youth Offending Strategy is an impressive document that uses the right language about youth justice (Welsh Assembly Government 2004). The focus of the document is on education, community sentences and prevention of youth offending. The document rightly accepts that 'young people should be treated as children first and offenders second' and that all of Government needs to be focused on cutting children's offending (pp.3). A holistic approach across Government is what is laid out and required. It is also pleasing to see the Welsh Assembly Government updating the 2004 document. The 2009-2011 Delivery Plan renews the objectives and sets ambitious goals aimed at the reduction of young people in prison and focused on educating children not imprisoning them (Welsh Assembly Government 2009).

Commitments to protect children in prison and take preventative action to avoid child custody are enumerated in the One Wales document and the Wales Change Programme objectives. One Wales states as a core goal (pp.29):

'To continue prioritisation of preventative intervention and non-custodial solutions in relation to youth offending and youth justice matters (a) in the funding of these areas and (b) in the use of diversion from custody strategies consistent with an emphasis on evidence on efficacy...'

The Welsh Assembly Government has also taken positive steps on preventative action to protect young people such as the £4.5 million expenditure for the Safer Communities Fund which supports local projects aimed at youth crime, prevention and diversion.

Further an additional £6.8 million has been made available to strengthen the range of mental health services for young people across Wales. Mental health advisors should now be frequently available to Youth Offending Teams and the formulation of the Autistic Spectrum Disorder Strategic Action Plan is a vital tool for supporting vulnerable children.

Section 81 of the Government of Wales Act 2006, which prevents ministers from acting incompatibly with the Human Rights Act 1998, is a guiding tool for much of the work the Welsh Assembly has conducted on young people in prisons. This means a respect for children as children and the section has produced a genuine human rights culture that is at the heart of many of the policies enumerated above.

Outside of the Welsh Assembly Government's direct influence there are other positive steps being taken to prevent youth crime. North Wales Police Force has a restorative justice scheme; the core aim of which is keeping young people out of the clutches of the justice system. It has been used, 'to deal with issues ranging from neighbourhood disputes and bullying to some types of criminality (North Wales Police 2008).'

This approach provides an alternative mechanism to deal with young people on the first occasion they come to police attention. The scheme also helps victims of relatively low-level crime. Restorative Justice processes give victims the chance to tell offenders about how the crime affected them, have their questions answered and to receive an apology. This is far more effective than locking a young person in jail.

The combination of successful schemes in Wales has seen an impressive decline in first time entrants to the Welsh youth justice system of 14.1% (Welsh Assembly Government 2009). However more could still be done.

6. What more can be done to foster a human rights approach in Wales

In the event the youth justice portfolio was devolved to Wales a first vital step would be the closure of Parc YOI. Such a strategy may at first seem challenging as Parc prison is a privately run prison on a contract. However this only applies to the main prison itself not the youth justice wing, this is largely supported by Youth Justice Board funding that could be freed up. The Youth Justice Board commissions the places in Parc prison. If it stopped commissioning places, that funding would be freed up, and, if criminal justice policy were devolved, it should go to the Welsh Assembly Government to spend as it wished.

The Welsh Assembly Government could spend the funds saved on the many alternatives to imprisonment it has developed, as well as a further SCH in North Wales. The Howard League for Penal Reform maintains that Wales should have reduced the numbers of children who are in custody substantially so this should provide adequate capacity. Those who are serious and violent offenders would require custody and that would be a secure-children's-home-type setting only. Wales already has one SCH in Neath and could create another for the North. While the SCH model would provide the basis for a facility, there is no reason why Wales could not innovate in order to offer a form of SCH-type provision that could cater for both under 16s and 16 and 17 year olds, most likely with partitioning so that the age groups do not mix. It is possible to improve the current SCH model.

Another vital pragmatic change that could be implemented, concerns mental health care in Wales. As previously stated, Wales has made big strides in this area over recent years with impressive targets being set for the Child and Adolescent Mental Health Services. However, provision for mental health needs is still a major concern. The case of MP, referred to in section 4, demonstrates what can happen when a young person is denied provision for mental health needs. NHS trusts across Wales will need to change their ethos of care for troublesome patients and this shift in ethos is something the Assembly should drive along. Many young people who are currently found in YOIs require a much stronger level of care that they can receive there. They have more fundamental problems that such an institution is incapable of tackling.

More generally, in terms of thinking about how to deal with crime, particularly youth crime, Wales needs to be a little more imaginative about how it spends money than the current orthodoxy. There are other ideas out there, other than just specific community programmes that deal with a specific group of people. While these can play a vital role; the Welsh Assembly Government as a whole needs to adopt a wider approach about how it tackles the problem of crime.

Recently, the Howard League for Penal Reform set up an independent commission, the Commission on English Prisons Today, to think radically about the purpose and limits of a penal system and how it should sit alongside other social policies (Howard League 2009). One aspect of the Commission's work was to examine the concept of 'justice reinvestment', which has developed in the United States. In America, the authorities deal with so many people in prison that some states actually

cannot balance their budgets. Therefore, in certain states, there has very much been cross-party support for finding ways of reducing the prison population. This movement has grown in popularity because it looks at what is called 'million dollar blocks'. Experts map where people who are in prison come from. They find that, in certain areas, there are blocks where \$1 million is spent each year on incarcerating its inhabitants. In essence it is about asking, 'What could we spend that \$1 million on differently that might actually help the block and, if we help the block, will we see a reduction in crime?'

The whole project becomes not just about community programmes as part of community sentences, but also about a coalition between the private, public and voluntary sectors; they will be given some funding, because they close a prison, and they will look, in a very holistic way, at what can be done for the area. It could be about public spaces, education and employment or health—the approach is one of joined up governance where all the aspects that are intrinsically linked to patterns of criminality are covered. It is necessary to think beyond the criminal justice system for more solutions to these problems.

Scottish youth justice also presents some interesting ideas worthy of exploration. It has the children's hearing system, which means that children under the age of 16 do not encounter the criminal justice system at all unless they are charged with extraordinary crimes. Generally, the question as to why a child finds themselves in trouble with the criminal law becomes a question of welfare, not wholly criminal justice. The question is, 'what can we do to stop the situation that has led this child to offend?' rather than 'how do we punish this child?' There is copious evidence, not least in the reoffending rates, that punishing children entrenches rather than reduces offending behaviour and the Scottish approach acknowledges this by treating child offending as a welfare issue.

The Scottish System is described well on their website an extract of which is found below:

"The grounds (legal reasons) for bringing a child or young person before a hearing are set down in section 52(2) of the Children (Scotland) Act 1995 and include that the child:

is beyond the control of parents or carers

is at risk of moral danger

is or has been the victim of an offence, including physical injury or sexual abuse

is likely to suffer serious harm to health or development through lack of care

is misusing drugs, alcohol or solvents

has committed an offence

is not attending school regularly without a reasonable excuse

is subject to an antisocial behaviour order and the Sheriff requires the case to be referred to a children's hearing.

“Children under 16 are only considered for prosecution in court for serious offences such as murder, assault which puts a life in danger or certain road traffic offences which can lead to disqualification from driving. In cases of this kind the Procurator Fiscal has to decide if prosecution is in the public interest. Even if so, it is still by no means automatic that the child will be prosecuted. The Procurator Fiscal may refer the child or young person to the Reporter (see below) for a decision on whether referral to a hearing is more appropriate.”

“Where the child or young person is prosecuted in court, the court may, and in some cases must, refer the case to a hearing for advice on the best way of dealing with the child. The court, when it considers that advice, may also refer the case back to a hearing for a decision...”

“The children’s panel is a group of people from the community who come from a wide range of backgrounds. Panel members are unpaid and give their services voluntarily, but are carefully selected and highly trained. They must be at least 18 years old but there is no upper age limit.”

“Every local authority has a children’s panel, and panel members sit on hearings on a rota basis. A children’s hearing has three panel members, of which there must be a mix of men and women. The hearing must decide whether compulsory measures of supervision are needed for the child and, if so, what they should be.” (Children’s Hearings website)

Similarly, the Howard League for Penal Reform has recently worked co-operatively with the Local Government Association and Wessex Youth Offending Team on a pilot project in North Hampshire. Here the local authority set up a Children’s Panel that would intervene when a child started to come to the attention of the police or the Youth Offending Team. The function of this panel was to review the case of every child sentenced to custody, and to see if there were further actions that might have been taken or services that might have been provided, that might have prevented the young person going into custody.

The main method of analysis when looking at every case of a child in custody was a study of pre-sentence reports (PSRs). A particular strength of the panel has been its ability to access (through the attendance of a skilled trainer/consultant) expert advice on the quality of PSRs.

The Panel’s make-up frequently consisted of educational professionals, workers from children’s services and a representative from the court that would not jeopardise judicial independence. The custody panel would then give its recommendation to the court upon the sentencing of the child.

The success of the scheme was rather remarkable; the panel saw a dramatic reduction of 42% in the numbers of sentenced children going into custody, during its first year. It might very well be possible for the Welsh Assembly Government to play a role in setting up such schemes with local authorities.

7. Conclusions

There is no right answer to the question of how best to handle the youth justice portfolio if it were to be devolved to Wales. The only certainty about the subject is that there is a wrong answer. The current Whitehall-led option of imprisoning such a high proportion of vulnerable children in unsafe circumstances cannot be acceptable. The Welsh Assembly Government has taken big strides to work on prevention rather than detention but such a focus on a rights-based approach should be continued if any devolution of the youth justice portfolio were to occur.

When you consider the problem of youth crime, as policy makers, there are two levers that you can pull and push. One is on the social welfare side, which is the most important because, most children who commit crimes, particularly those who commit such serious crimes that they end up in custody, are very likely to be children in need. The other lever is the criminal justice system, which has a role to play in some cases but which is a blunt tool. It cannot tackle the underlying causes of crime, which develop from social problems that afflict these young people's childhoods with chaos, neglect and abuse. Despite the limited effectiveness of the criminal justice system as a lever to tackle youth crime, it seems somewhat perverse that the Assembly has access to the social welfare lever but not the criminal justice lever. If the Assembly had control of both levers then it would have the ability to move finances between the two accordingly. Money currently spent on ineffective prisons could be transferred to bolster prevention and social welfare strategies.

To that extent the Howard League for Penal Reform would encourage further devolution of the youth justice portfolio to the Welsh Assembly, provided the Sennedd doesn't become fixated with the latter lever. The problem with prisons is that they often make us prisoners in our thinking about what can and cannot be done. Criminal justice plays a very important role, but it is not the only option. Indeed as this report has tried to stress it is not even the effective option.

The Welsh Assembly has a very short history but even in the 11 years since its inception it has developed a reputation for boldness and a famous determination to experiment for the good of social justice. It is this reputation that is needed when it comes to tackling child crime in Wales. It involves holistic thinking and a fresh progressive approach. The Howard League for Penal Reform ardently believes that Wales can do better than its English counterparts when it comes to youth justice. By transforming the lives of its most vulnerable children, Wales could light a shining path for the rest of the United Kingdom to follow.

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The Howard League for Penal Reform works for a safe society where fewer people are victims of crime

The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives

The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community

the **Howard League** for **Penal Reform**

1 Ardleigh Road
London
N1 4HS

t 020 7249 7373
f 020 7249 7788
e info@howardleague.org
w www.howardleague.org

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