

Police, Crime, Sentencing, and Courts Bill

House of Lords Second Reading Briefing

TURNING 18 IN THE CRIMINAL JUSTICE SYSTEM

ABOUT JUST FOR KIDS LAW

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued. This briefing is informed by our work monitoring implementation of the UN Convention on the Rights of the Child (UNCRC) in England and our direct advocacy and legal case work with children and young people who are in conflict with the law.

The Police, Crime, Sentencing and Courts Bill is a missed opportunity to address the inequities that exist for children who turn 18 between offence and conviction in the criminal justice system. It is an opportunity to adopt a fair and consistent approach to childhood offending, where those who offend as children are treated as children and can benefit from the youth sentencing framework and shorter rehabilitation periods designed to apply to them. This protection is currently afforded to those who commit offences as children and are convicted as children, but not those who commit offences as children and turn 18 prior to conviction, even where this may be the result of system delays.

INTERNATIONAL AND DOMESTIC LEGISLATION

1. The UN Committee on the Right of the Child (UN Committee) has been clear that “child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.”¹

Article 40(1) of the UN Convention on the Rights of the Child (UNCRC) provides that “States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which **takes into account the child’s age** and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

Recently, the UN Committee asked the UK to explain the measures taken or envisaged to “**ensure the application of the child justice system to all children...**that it extends protection to children who were below the age of 18 at the time of the offence but who turned 18 during the trial or sentencing process.”²

The youth justice system in England and Wales has been criticised by the UN Committee on the application of laws and procedures to children that do not properly take into account their age and maturity. It remains unclear why the Government is not proposing to take any steps to address the inequities that exist for children who were below the age of 18 at the time of the commission of the offence but who turn 18 prior to conviction.

2. The principle aim of the youth justice system is undermined by the inequities experienced by children who turn 18 in the criminal justice system.

Section 37 of the Crime and Disorder Act 1998 places a duty on all persons and bodies carrying out functions in relation to the youth justice system to have regard to the principal aim of the youth justice system – that is, **to prevent offending** by children and young persons.

The statutory principle aim of preventing offending by children and young people makes clear the important link that there should be between the work of the youth justice system and wider work to help prevent children and young people offending. It recognises that preventing offending and re-offending is in the best interests of all concerned. It promotes the welfare of the child or young person. It protects the victim and the public. We believe this overarching aim is undermined by the treatment of those who are under 18 at the commission of the offense but turn 18 before the completion of the justice process.

DELAYS IN THE CRIMINAL JUSTICE SYSTEM

3. Those who offend as children should not lose the opportunity to benefit from the youth sentencing framework and shorter rehabilitation periods because of system delays that are no fault of their own, which existed before the coronavirus pandemic.

At Commons Committee the Minister addressed the issue of court backlogs by stating: “Court backlogs have developed as a consequence of coronavirus...Of the excess case load caused by coronavirus, about half has been eliminated already. Every week that goes by, the outstanding case load drops by – the last time I checked – about 2,000 cases.”

However, data from the Ministry of Justice and the Youth Justice Board for England and Wales shows that, even **before the coronavirus pandemic**, the average number of days taken from offences to completion for youth criminal cases in England Wales in the year ending December 2019 was 160 days – that is over 5 months and nearly 23 weeks.³ This is an increase of 58 days (8 weeks) from December 2011 – the earliest year with available data. Worryingly, there has been a year-on-year increase – this is despite the number of completed youth criminal cases having reduced by nearly two-thirds (65%) from 88,981 in 2011 to 30,905 in 2019. The coronavirus pandemic has exacerbated already existing delays in the criminal justice system.

CROSSING A SIGNIFICANT AGE THRESHOLD BETWEEN COMMISSION OF OFFENCE AND SENTENCE

4. Ensuring that those who cross a significant age threshold, such as the age of 18, between committing the offence and being convicted and sentenced are not subject to a more severe sentence than the maximum the court could have imposed when the offence was committed, should be a statutory aim and not mere guideline.

At Commons Committee the Minister addressed the shadow Minister’s points about crossing a significant age threshold stating: “...the sentencing guidelines already say that the sentence that should be adopted as a starting point is that which would have applied at the time of the offence....The new clause would not make any material difference to the way the system operates because of the sentencing guidelines currently in force....Pre-sentencing reports, which are prepared, take into account, and judges then take into account on sentencing, the maturity of the defendant when they are being sentenced.”

However, we believe that a statutory provision, combined with existing sentencing guidelines, would provide a necessary framework for practical action and multi-agency working in the criminal justice system – a clear benchmark against which to measure success. Although the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, it remains a fact that those who committed offences as children are receiving sentences under the adult

regime and there is no consistent approach to childhood offending. Those who offend as children but are not convicted until after their 18th birthday are subject to hugely disproportionate outcomes to their peers who committed an offence on the very same day and were convicted before their 18th birthday.

The concept of lack of maturity has been introduced into formal sentencing guidance as a mitigating factor and courts have an obligation to order a pre-sentence report prior to sentencing an offender to a custodial or community sentence.⁴ Yet, the Sentencing Council's new guidelines do not require a court to assess maturity at point of sentence – those who turn 18 during proceedings and before conviction have to rely on the extent to which they can persuade a sentencer that the fact of their age and/or immaturity is a mitigating factor.⁵ In 2014, the Sentencing Council analysed crown court data on the operation of sentencing guidelines and found that, across all sentencing decisions for all ages, “age” was taken into account in 25% of cases and “age and/or lack of maturity” in 9% of cases. The Justice Committee also concluded that: “Both age and maturity should be taken into significantly greater account within the criminal justice system. The rationale of the system for young adults should presume that up to the age of 25 young adults are typically still maturing”.⁶ The sentencing process would be vastly improved by a statutory requirement to consider the lack of maturity of young adults, by ensuring that reaching the age of 18 does not present a cliff edge for the purposes of sentencing.⁷

REHABILITATION PERIOD FOR CHILD OFFENDERS

5. Longer rehabilitation periods act as a barrier to a pro-social identity and inhibit young adults' ability to build a crime-free future, which comes at a huge cost to society and the public purse.

At the Commons Committee the Minister responded to an amendment on rehabilitation periods stating: “...the Bill significantly reduces rehabilitation periods for children and for adults...On the starting point, or the rehabilitation point, the regime that applies is calculated from the point of conviction, rather than the point of offence.”

We welcome the Government's direction of travel on criminal records. However, we disagree with maintaining the current regime where the rehabilitation point is calculated from the point of conviction, rather than the point of offence. The Bill does not go far enough in addressing the inequities for children who turn 18 between offence and conviction. It is unclear why the Government is not taking this opportunity to extend the protection afforded by the youth justice system to all those who offend as children. Two children who commit an offence on the same date and are convicted on different dates, one below the age of 18 and the other over the age of 18, will have different rehabilitation periods. The childhood regime will apply for one child and the adult regime will apply for the other, which will generally be double for the latter, despite both having committed the offence as a child. This undermines the overall progress the Government has made in this area and the aspirations of the youth justice system, and directly conflicts with the UN Committee's recommendations and the statutory principle aim of preventing offending under section 37 of the Crime and Disorder Act 1998.

The damaging consequences of turning 18 between the date of the offence and conviction include: loss of presumption of diversion and reduced likelihood of being diverted from a cycle of reoffending;⁸ much longer supervision periods and a heightened risk of breach and further criminalisation; loss of anonymity and much longer rehabilitation periods which reduce employment prospects and impact future life chances.

Government officials have recognised the sentiment behind the case for change but sustain that it will not be possible to take any action due to the complexity of applying the criminal records disclosure regime to individuals convicted as adults, especially those who have been convicted for historical offences and offences spanning over a period of time. Additionally, for the purposes of the criminal records disclosure regime, the conviction date is always linked to an offence which is not always the case with the date of the offence. It submits that there is a risk for unintended consequences if change is rushed into. However, given the serious impact the status quo has on children turning 18 we believe that reform is urgently needed. We estimate that each year approximately 2,500 children offend as children but turn 18 prior to conviction.⁹ There is still no publicly available data to determine the scale of the problem, yet we know that a disproportionately large number of children do not currently benefit from the welfare-based approach of the youth justice system and are instead subjected to the more punitive purposes of the adult system. Data on the date of the offence and conviction, which can be utilised for criminal records disclosure regime purposes, is available on Police and Her Majesty's Courts & Tribunals Service databases.

CONCLUSION

6. The Police, Crime, Sentencing and Courts Bill presents a tangible opportunity to address the injustice currently faced by a vast number of our children. The sentencing framework and rehabilitation period ought to reflect the criminality of the offence, including the circumstances of that offence and the age at the point of offence, not the arbitrary date of conviction.

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The Youth Justice Legal Centre have published a [legal guide](#) on turning 18 in the criminal justice system as well as a [briefing](#) on the same issue.

¹ United Nations Committee on the Rights of the Child (2019) *General Comment No. 24 on children's rights in the child justice system*, para 31

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUXFivhToQfjGxYjV05tUAlgpOwHQJsfPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2BfORPR9UMtGkA4>

² United Nations Committee on the Rights of the Child (2021) *List of issues prior to submission of the combined sixth and seventh reports of United Kingdom of Great Britain and Northern Ireland* [Treaty bodies Download \(ohchr.org\)](#)

³ Ministry of Justice and Youth Justice Board (2021) *Youth Justice Annual Statistics: 2019 to 2020 additional annexes*, Annex D1 <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

⁴ Section 156 of the Criminal Justice Act 2003

⁵ Howard League for Penal Reform (2017) *Judging Maturity: Exploring the role of maturity in the sentencing of young adults* <https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf>

⁶ Justice Committee (2016) *The treatment of young adults in the criminal justice system* <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/oral/27782.html>

⁷ *R v Clarke* [2018] EWCA Crim 185

⁸ Crown Prosecution Service (2020) *Legal Guidance: Youth Offenders; Home Office (1994) The Cautioning of Offenders: Circular 18/1994* <https://www.cps.gov.uk/legal-guidance/youth-offenders>

⁹ Figures obtained from the Youth Justice Board. Just for Kids Law (2020) *Timely Justice: Turning 18 A briefing on the impact of turning 18 in the criminal justice system* [YJLC Turning 18 briefing \(June 2020\)_0.pdf \(justforkidslaw.org\)](#)