

Community Bail or Penal Remand? A Critical Analysis of Recent Policy Developments in Relation to Unconvicted and/or Unsentenced Juveniles

COMMUNITY BAIL OR PENAL REMAND? A CRITICAL ANALYSIS OF RECENT POLICY DEVELOPMENTS IN RELATION TO UNCONVICTED AND/OR UNSENTENCED JUVENILES

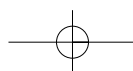
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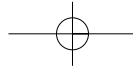
Abstract

This paper presents a line of argument which holds that contemporary youth justice policy formation and practice development is located within a highly-charged political environment. Despite the 'modern' emphasis on rationality and evidenced-based approaches, it is further argued that political calculations invariably exercise significantly more influence over youth justice policy, than 'what works' priorities and the messages that can be drawn from research and practice. This primary argument is applied and developed by focusing explicitly on bail and remand processes in relation to unconvicted and/or unsentenced juveniles. Underpinned by recently completed research, the analysis illustrates the means by which promising developments in policy and practice have been reversed and abandoned in order to suit the political moment.

Dealing with youngsters on remand has proved one of the most difficult problems of criminal policy in recent years. Everyone agrees that jail is no place to hold unconvicted school children (Towler, 1999: 20).

One of the biggest challenges we face is how to deal with young offenders who believe that [they are] untouchable, who flout the law, laugh at the police and leave court on bail free to offend again. The public are sick and tired of their behaviour and expect the criminal justice system to be able to keep them off the streets... That is why I am today closing the loophole in the law that allows these young persistent offenders to walk away from court on bail to create further havoc in the community' (David Blunkett, speaking as Home Secretary, cited in Home Office, 2002: 1).





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Rational Justice v Populist Punitiveness: A strained context for policy development

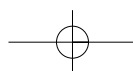
In recent years a discourse, underpinned by rationality, has apparently exercised substantial influence over criminal justice policy and practice. 'Evidenced-based' approaches, 'what works' priorities, and 'best value' imperatives, are now pervasive. 'Programmes' are routinely evaluated and 'outputs' are assiduously monitored. On one level, this is to be welcomed. Indeed, it is difficult to quarrel with any tendency which seeks to apply evidence (drawn from practice experience and research and evaluation findings) to the processes of policy formation and practice development.

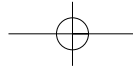
The construct of rational, evidenced-based, criminal justice policy has not escaped critique however. Muncie (1999a: 287-289) has observed that such ostensibly rational processes are actually fixed within a context of 'public sector managerialism' and, as such, 'rationalised inputs and outputs' are conceptualised in 'scientific and technical terms' and 'evaluations' are 'dominated by notions of productivity, task remits and quantifiable outcomes ... [whereby] evaluation comes to rest solely on indicators of internal system performance' which blinds it to the wider environmental context. Equally, the methodological rigour of some 'what works' research has been queried (Fraser, 2000), and the extent to which political imperatives can serve to circumscribe, and even obstruct, the research-policy relation has been detailed (Goldson, 2001). It is this latter point which primarily concerns us here.

Since the election of New Labour in 1997, youth crime, 'disorder' and 'anti-social behaviour' have been conflated, and have come to assume quite profound political significance. Moreover, there is an extraordinarily wide-ranging and deep-rooted populist belief that only 'tough' responses can be legitimised - which is invariably expressed through a crude retributive penology. This process has been examined in detail elsewhere, and such examination does not bear repeating here (Goldson, 1999 and 2002a; Muncie, 1999b; Pitts, 2001). Suffice to note that a political consensus appears to have congealed within which complex youth crime issues are reduced to vulgar sound-bites, underpinned, as they frequently are, by promises of firm action and punitive intervention. When the political moment demands, the raw edge of such populist punitiveness is exposed and rationality is subverted:

When the spin-doctors decree that a burst of ... toughness is required from government ministers, the precepts of scientific management go "onto the back burner"... For all the talk of radicalism, newness and rationality, the default setting of New Labour's new youth justice is "discipline" and, faced with electoral anxiety, it is to discipline that it reverts (Pitts, 2000: 10-11).

In this way youth justice policy formation in particular, and criminal justice policy more generally, is strained: stretched as it is across 'contradictory rationalities' which move it 'from one discursive register [rationality] to another [populist punitiveness]' and produce 'incoherence and contradictions' (Garland, 2001: 191). Indeed, the foundations upon





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which contemporary youth justice policy and practice rests - irrespective of the strength of its 'evidence-base' - is ultimately conditioned by political calculations, however short-term they might be. Recent policy developments in relation to bail and remand practice for unconvicted and/or unsentenced juveniles illustrate this general principle particularly well.

The Vexed Question of Bail or Remand: Three core concerns

The question of which unconvicted and/or unsentenced juveniles should be released into the community on bail (with or without imposed conditions), and which should be remanded into local authority accommodation (open or secure) or penal custody, whilst awaiting trial or sentence, is complex, long-lived and contentious. With regard to striking a balance within such deliberations, it has been suggested that three broad concerns have been prominent over the last forty years or so: first, the rights of the accused person; second, protection of the public; and third, the administration of justice (McIvor and Warner, 1996: 1). There is a substantial body of evidence in relation to each of these core concerns and taken together it signals a direction for the development of rational policy formation and practice development. For the purposes here the evidence-base will be briefly surveyed.

I. Human Rights and Humane Treatment

Every juvenile involved in criminal proceedings in England and Wales has a general right to bail, thus all courts are legally obliged to consider granting bail at every hearing. Further to consideration however, bail may be refused and in such cases the Court is initially guided by the Children and Young Persons Act 1969:

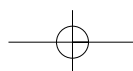
where-

- (a) a court remands a child or young person charged with or convicted of one or more offences or commits him (sic) for trial or sentence; and
 - (b) he is not released on bail,
- the remand or committal shall be to local authority accommodation' (Section 23(1), Children and Young Persons Act 1969).

Furthermore, in certain circumstances - when the conditions of Section 23(5) of the Children and Young Persons Act 1969 Act (as amended by the Crime and Disorder Act 1998) are satisfied - the court may make a secure remand. The criteria for a secure remand are complicated, and we shall simply summarise them (for a more detailed discussion see Ashford and Chard, 2000: 221-284). The criteria comprise two parts.

Part 1 provides that a juvenile must be:

- charged with, or have been convicted of, a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment of fourteen years or more, or
- have a recent history of absconding while remanded to local authority accommodation, and



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- be charged with, or convicted of, an imprisonable offence alleged or found to have been committed while s/he was so remanded.

Part 2 provides that:

- the court must be of the opinion that only remanding her/him to a remand centre or prison would be adequate to protect the public from serious harm from her/him.

Up until very recently (see later) both parts of the Section 23(5) criteria had to be satisfied before the Court was able to subject a juvenile to a secure remand, which in the case of boys (but not girls) aged 15-16 years, usually means prison custody (see Goldson, 2002b). Thus (notwithstanding its shortcomings) statute has served to provide safeguards in respect of the rights of unconvicted and/or unsentenced juveniles and, in the case of 15-16 year old boys, to protect them from unjust penal remands. Furthermore, in addition to the statutory provisions outlined above, the Human Rights Act 1998, together with international standards, conventions, treaties and rules (most notably the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Convention on the Rights of the Child), also serve to protect the rights of unconvicted and/or unsentenced juveniles (for a fuller discussion see Goldson, 2002b: pp. 45-50).

Such safeguards are particularly important in the case of those 15-16 year old boys who, as we have noted, are eligible for penal remands. This is so not simply to protect their rights with regard to bail, but also to protect them from the inhumane treatment and damaging conditions that invariably characterise the remand wings of Young Offender Institutions, as repeatedly reported by Her Majesty's Chief Inspector of Prisons:

The picture for young prisoners on remand ... is extreme... These statistics describe a group of young people ... isolated, victimised and disturbed. Many of them have experienced significant trauma and disruption in their domestic lives and their schooling, and are without the personal and social support they need to overcome their difficulties and begin to manage their lives and relationships. Many are mentally, emotionally and morally immature... Before any work can be done to sensitise them to the needs of others and the impact of their offending on victims, their own needs as maturing adolescents for care, support and direction have to be met (Her Majesty's Chief Inspector of Prisons, 2000: 25).

2. Protection of the Public and Community Safety

It is not just the rights and treatment of unconvicted and/or unsentenced juveniles that are at stake with regard to the bail-remand question however. Broader concerns in relation to public protection and community safety are also especially relevant, and we have no difficulty in recognising this. Indeed, the behaviour of some juveniles is such to place their own safety, and/or the safety of others at significant risk, and in these circumstances the restriction of their liberty whilst awaiting trial or sentence is very probably quite legitimate. However, by drawing upon the evidence-base we would make four qualifying observations in this respect.

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First, as we have just noted, if the human rights and humane treatment of juveniles are to be upheld in cases where it is thought necessary to restrict their liberty whilst awaiting trial or sentence, then the dangerous and damaging nature of prison custody cannot be regarded as fit for purpose.

Second, it would be quite erroneous to assume that all juveniles who are held on prison remand wings whilst awaiting trial or sentence, necessarily pose a serious risk to the public. Indeed, for many years there has been ample evidence to suggest that juveniles who present no such serious risk are routinely held in prisons on remand. In 'interpreting the facts' for example, Nacro (1994:10) concluded that 'it seems likely that custody is not essential for all those currently remanded', and more recently the Children's Society (2001: 11) has reported that 'around one-quarter of the children' surveyed by the National Remand Review Initiative during a twelve month period 'were remanded [in prisons] for property offences'. Similarly, Her Majesty's Chief Inspector of Prisons (2000: 20) has commented upon the very substantial number 'of prisoners held on remand [who] do not receive a custodial sentence', and after analysing the court disposals in relation to 603 juveniles who had been held in prison on remand the Children's Society (2001: 19) noted that 'around one-third of children received community sentences after the period on remand (and) a further 5.6% of children had their charges withdrawn or were found not guilty'. Taken together, analyses of pre-penal remand charges/offences and post-penal remand outcomes, suggest that substantial numbers of juveniles are being held in prisons unnecessarily and unjustly when account is taken of the 'serious harm' legal criteria that we referred to earlier.

Further concerns of this nature are evident in respect of geographical variations in penal remand practice. A recent survey in Wales for example revealed that 'remand into custody rates vary significantly across each local authority' (Nacro Cymru, 2000: 2). Having studied 506 remand case returns from 19 local authorities in Wales, the researchers found that some authorities produced no custodial remands whilst others produced almost three times the average. Similar patterns of geographical variation in England have been attributed to inconsistent remand/sentencing cultures within and between the courts, and the varying quality of remand management and bail support services made available by local Youth Offending Teams (Goldson, Peters and Simkins, 2001; Goldson and Peters, 2002). In such circumstances it is the quality of the available resources, as distinct from the nature of the alleged/actual offence/s, which is likely to determine the nature of the court's bail-remand decision.

Third, whilst penal remands might serve to provide short-term relief to the public in respect of the most serious juvenile offenders, the medium-term prognosis is significantly less comforting and, in many respects, such remands expose the community to heightened levels of risk. Indeed, locking-up juveniles is spectacularly ineffective in terms of preventing future offending. Furthermore:

such children invariably leave prisons not only more damaged but also more angry, more alienated, more expert in the ways of crime, more likely to

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commit more serious offences. In fact more of everything that the children themselves, and the community at large, need much less of (Goldson, 2002b: 159-160).

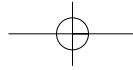
Fourth, in precisely the same way that it is mistaken to assume that penal remands provide for enduring public protection and community safety, it is equally misplaced to suppose that community bail supervision is ineffective in safeguarding the public from continued juvenile crime. Indeed, carefully executed and appropriately targeted bail supervision projects and remand management strategies have signalled some promising approaches, which are evidenced by the findings from our recently completed regionally-based research together with those drawn from nationwide meta-analyses, a point to which we shall shortly return.

3. The Administration of Justice

Balancing the human rights and humane treatment of unconvicted and/or unsentenced juveniles, with the imperatives of public protection and community safety, comprises a significant set of challenges for the justice system therefore. Furthermore, the primary question of community-based bail or penal remand, also embraces related issues with regard to the administration of justice. Some of these issues - including rates of compliance with community-based bail supervision programmes, ensuring attendance at court hearings, and curtailing the commission of further offences whilst on bail - will be discussed shortly. For now a more fundamental question of justice - 'racial' justice - is considered.

Despite the legal duty that applies to all 'persons engaged in the administration of criminal justice' to 'avoid discriminating against any persons on the grounds of race' (as provided by Section 95(1)(b) Criminal Justice Act 1991), together with the non-discrimination provisions of the international conventions, standards, treaties and rules referenced earlier, racism is endemic throughout the youth justice system (Goldson and Chigwada-Bailey 1999). With regard to the bail-remand question this 'corrosive disease' (Macpherson, 1999: para 6.34) not only means that unconvicted and/or unsentenced black juveniles are more likely (than their white counterparts) to be remanded in penal custody, but they also face the prospect of less favourable treatment and conditions whilst in prison. Indeed, Ashton and Grindrod (1999: 177) have reflected upon the 'hugely disproportionate use of prison custody being made in respect of black children... which was particularly marked in the case of those remanded to custody', and similar findings have been reported more recently by Goldson and Peters (2002). Equally, Her Majesty's Chief Inspector of Prisons has commented upon the 'brutal' treatment and conditions that confront 'minorities':

I have long been concerned that the biggest single problem facing the Director General [of the Prison Service] is the culture that still pervades parts of the prison system ...It is a culture that adopts an attitude to prisoners that is not only judgmental, but too often includes physical and mental



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brutality...One of its most obvious manifestations is in attitudes to minorities, of whatever kind, who are treated not as equal but as unequal because of their minority status. There are ... minority groups whose inequality of treatment concerns me - ethnic or cultural minorities (Her Majesty's Chief Inspector of Prisons, 2001: 16).

Bail or Remand? Key messages from the evidence-base

To summarise therefore, the bail-remand question is steeped in complexity. The Court must attempt to balance the rights of the unconvicted and/or unsentenced juvenile on one hand, and the imperatives of public protection and community safety on the other. We have no desire to understate such complexity. However, the above review of evidence reveals some key messages which, taken together, signal a direction for a rational set of policy and practice responses to the difficult primary question. Indeed, the inhumanity of penal remands for juveniles, the inconsistencies and injustices which routinely characterise their application, and the ineffective (at best) and iatrogenic (at worse) impact of such remands comprise messages which warn against their use. Add to this the extraordinary financial costs incurred by the practice of incarcerating unconvicted and/or unsentenced juveniles (see Goldson and Peters, 2000: 8), and the relative effectiveness of community-based bail supervision (ibid: 18-20), and the presumption in favour of bail for all but the few most intractable and serious cases begins to look compelling. Indeed, this appeared to be the conclusion that the government, through the Youth Justice Board for England and Wales (YJB), had reached.

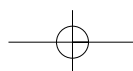
Rational Developments in Bail Policy and Practice

The YJB was established by the Crime and Disorder Act 1998, and in its first annual report it addressed the question of bail and penal remands:

Spree offending by a *few young people* on bail creates more victims. Young people failing to appear in court disrupt the business of the court, undermining respect for the legal process. Half the children and young people remanded to custody never receive a custodial sentence, but the lives of the young people and their families are disrupted at a substantial cost to them and to the taxpayer (Youth Justice Board, 1999: 22, emphasis added).

The YJB's statement was seemingly informed by research evidence and practice experience: 'spree offending' was attributed to a 'few young people'; the injustice of many penal remands was recognised; and the damaging nature of such responses together with their inordinate expense was also acknowledged. Moreover, the YJB appeared to respond rationally.

In December 1998 local youth justice services and the emerging Youth Offending Teams (YOT's - which were established by statute in all areas of England and Wales in April 2000) were invited to apply for Development Funding - allocated and administered by the



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YJB - in order to establish, develop and bolster community-based bail supervision schemes for unconvicted and/or unsentenced juveniles. The three primary objectives for such schemes were set by the YJB itself:

to reduce offending by young people on bail; to reduce delays to youth justice caused by young people not attending court; to reduce unnecessary remands of children and young people to custody (Youth Justice Board, 1999: 22).

The Chairperson of the YJB, Norman Warner, reported that £13 million had been allocated to support such bail supervision initiatives in 80 areas of England and Wales (ibid: 5). Furthermore, by 2000 the YJB reported that it had:

funded 122 Bail Supervision and Support Schemes... [which] *ensure* that offending on bail is reduced, that the individuals appear in court as required and the time spent on bail is spent constructively. The schemes also provide alternatives to custody *guaranteeing* proper community supervision' (Youth Justice Board, 2000: 14, emphasis added).

Not only did the YJB substantially expand the number of community-based bail supervision projects therefore, but it had little hesitation in trumpeting their effectiveness.

This pattern of expansion and reported success continued, and by 2001 the YJB announced that it had:

funded 128 bail supervision schemes that prevent offending on bail and ensure the young person returns to court... [and] remands to secure accommodation and custody were reduced by about 20 per cent during 2000-1 (Youth Justice Board, 2001a: 12).

Indeed, such was the YJB's confidence in the efficacy of community-based bail supervision that it 'expected to see wider usage in the future' (ibid: 12), and Norman Warner personally opined that 'remands to custody have dropped as courts find alternatives more appropriate' (Warner, 2001: 2). A similar view was also expressed by Lord Bassam, Home Office Minister, who explained to the House of Lords that:

It is with considerable delight that I say that bail supervision and support schemes funded by the Youth Justice Board are having a beneficial impact on the total remand population. I understand that it is down 22 per cent from April 2000 to January 2001. We believe that is real progress... and is something which all members of your Lordships' house should congratulate the Board on achieving (cited by Pilkeathley, 2001: 6).

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Even if it could be argued that the YJB's central claim of success for the new schemes was a little premature, its commitment to replacing penal custody with community-based bail supervision (in all but the most serious cases) was unequivocal. Moreover, the YJB was apparently determined to obtain hard evidence with regard to the 'performance' of the bail supervision initiatives measured against their three primary objectives, and a condition of the Development Fund grant-aid was that the providers of each new scheme had to commission independent research and evaluation.

We undertook three research-based evaluations of bail supervision schemes in the North West of England, each over the period 2000-2002. Such evaluations proved difficult, and to some extent the research process was impeded by four factors. First, the compressed and accelerated time-scales within which each of the schemes had to be established and become fully operational. Second, the need for centrally designed methodological instruments (in order to provide consistency for the purposes of national meta-analysis), which whilst understandable, also served to hamper the extent to which research methods could be tailored to suit the specificities of individual schemes. Third, the enormous pressure on practitioners and operational managers to establish data-gathering systems in addition to attending to project implementation and development within a fast-moving policy and practice context. Fourth, and related to the third factor, the associated and inevitable problems encountered by practitioners with regard to accurately collecting routine data and making it available to their research and evaluation partners.

Notwithstanding such confounds however, the research findings provide grounds for believing that the YJB's stated confidence in community-based bail supervision schemes for those unconvicted and/or unsentenced juveniles who would otherwise face the prospect of penal remands, is not unfounded.

By aggregating the data in respect of 90 unconvicted and/or unsentenced juveniles engaged within the three schemes which we evaluated the following became apparent:

- 52% of the juveniles complied with all aspects of their bail supervision programmes and a further 34% complied with some aspects of their programmes;
- 75% of the juveniles attended all of their court appearances during the period of bail supervision. Only 3% of juveniles were breached resulting in the termination of bail supervision as a result of failure to attend court;
- 87% of juveniles were not convicted of any additional offences during the period of bail supervision, and only 7% had bail supervision terminated on the basis of further offending;
- The bail supervision schemes made a tangible impact on reducing the numbers of unconvicted and/or unsentenced juveniles remanded in prison custody.

Owing to the four impeding factors outlined above, together with the limited duration of such evaluative research, such findings need to be interpreted cautiously (for a fuller discussion see Goldson, 2001). However, despite the need for such interpretive caution, the same findings also provide encouraging indicators in respect of the efficacy and

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potential of key aspects of community bail supervision, and they accord with some of the early findings to emerge from the meta-analysis of such schemes across England and Wales:

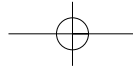
The additional support and assistance provided by schemes in ensuring that young people attend court appears to be having a significant impact and high success rate... Some areas report a significant impact in reducing offending... [and whilst] it is difficult to apportion the exact impact that bail supervision and support has had... it is likely that it has been a contributory factor in reducing the remand population (Nacro Cymru, 2001: paras. 16.2, 16.19 and 16.23)

Rational Developments in Remand Policy and Practice

With regard to policy and practice responses to unconvicted and/or unsentenced juveniles the YJB did not limit its focus to community bail supervision alone. Indeed, no sooner had the Board been established when it also turned its attention to the question of penal custody in general, and penal remand in particular. Again, the evidence-base ostensibly informed the Board's position, and it advised the Home Secretary that 'there is clear evidence that the current arrangements for juvenile secure facilities are highly unsatisfactory' (Youth Justice Board, 1998: 12, emphasis added). In many respects the YJB was simply amplifying an earlier message from the Home Office comprehensive spending review of secure and penal facilities for juveniles which had:

little positive to say about the present arrangements for ... remanded and sentenced children and young people. Regime standards are inconsistent and often poor... fundamental change is needed to the way in which the secure estate is planned and managed if it is to meet the aim of providing accommodation and regimes appropriate to the age and maturity of the young people held in custody on remand or under sentence and which addresses their offending behaviour and wider developmental needs (Summary of the Government's response to the Home Office Comprehensive Spending Review of Secure Accommodation for remanded and sentenced juveniles, July 1998 - cited in Youth Justice Board, 1998: 14).

Furthermore, such observations echoed the authoritative report findings from Her Majesty's Chief Inspector of Prisons that we considered earlier, which raised serious concerns about the conditions and treatment endured by juveniles on penal remand. Thus, with such weight of evidence behind it, the YJB implemented a root-and-branch reform of the 'juvenile secure estate' and insisted that institutional regimes must be based upon 'clear principles', that there 'should be a structured and caring environment' and that penal institutions 'should be safe and secure' (Youth Justice Board, 1998: 3). Accordingly the YJB assumed primary responsibility for planning, contracting,



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commissioning and purchasing 'placements' within the re-configured 'juvenile secure estate' in April 2000.

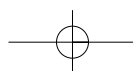
Within the wider context of institutional reform the YJB has placed significant emphasis on the importance of appropriate 'placements'. Indeed, in its initial advice to the Home Secretary the YJB identified a number of principles that would inform the 'placement' of juveniles within the 'secure estate':

young people should be placed in accommodation, which *most effectively* meets their needs and the risk of harm that they pose to themselves and others. The accommodation should be appropriate for their age, emotional maturity and *level of vulnerability*... placements for remanded and sentenced juveniles should be based on a *comprehensive* assessment of their needs and risks completed to defined national standards... juveniles should be accommodated as close to their home community as possible... those on *remand*... have *particular needs* as a result of the anxieties and uncertainties of being held on remand for which they may require *considerable support* (Youth Justice Board, 1998: 26-27, emphasis added).

This provides for a tidy rationality within which the placement process takes account of the 'specific 'vulnerabilities' of juveniles and matches individuals - on the basis of 'comprehensive assessment' - with the most appropriate institution within the 'estate'. Furthermore, special attention is afforded to juveniles on remand in recognition of their 'particular needs'.

In order to operationalise this process the YJB has established a centralised national Placements Team which takes the strategic overview of the contracted 'placements' within the 'juvenile secure estate' and - in conjunction with the locally based Youth Offending Teams - allocates places accordingly (Youth Justice Board, 2001b). However, the 'placement' process is characterised by competing tensions and complications and given that the overwhelming majority of available places are located within the Prison Service sector, it is inevitable that such tensions and complications will be most evident with regard to the pressing demand for placements in non-prison service provision. Moreover, the law (quite correctly) not only precludes the placement of all children under the age of 15 in prison custody, but it also severely limits the similar placement of 15-17 year old girls. Thus the determinations of statute mean that these constituencies of children have 'first call' on the places within Secure Training Centres and/or Secure Accommodation. This inevitably reduces the options available to the Youth Justice Board's Placement Team, thus leaving 15-16 year old boys (irrespective of their needs and vulnerabilities) facing the distinct probability of a prison sector placement.

Despite such tightly circumscribed 'placement' options and associated system pressure, and notwithstanding the wide-ranging problems associated with the reform of the 'juvenile secure estate' (Goldson, 2002b), there is a clear three-dimensional rationality discernible



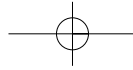
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within the YJB strategy. First, bolstering community bail supervision and in so doing reducing the number of juveniles being held on penal remand. Second, introducing targeted assessment and 'placement' measures to match juveniles with the most appropriate secure or penal setting, and minimising the placement of particularly vulnerable juveniles in prisons. Third, improving the treatment and conditions of those juveniles who are held in prisons. Moreover, such a strategy is informed and legitimised by evidence. Early results from research and evaluation appear to indicate that the expanded nexus of community bail supervision schemes, whilst not without certain shortcomings, is making commendable progress in meeting its primary objectives. Equally, whilst many problems remain in relation to the 'juvenile secure estate' and, indeed, with the very practice of holding juveniles in prison per se, there is little doubt that concerted effort and substantial financial resources have been invested to improve conditions, raise standards and aim to enhance effectiveness. However, as we indicated earlier, all such progress and rational justice is ultimately bracketed within the visceral context of political calculation, and as Jerome Miller (1991: xi) once astutely observed 'in the inane world of corrections, nothing fails like success and succeeds like failure'.

Return Populist Punitiveness: The Implementation of Section 130 Criminal Justice and Police Act 2001

We introduced this paper by arguing that contemporary youth justice policy formation is subject to political opportunism and populist punitiveness. As such, when the political moment demands, evidence-based practice and rational justice is superseded by 'tough talk', authoritarian posturing and 'knee-jerk' reaction. The most recent 'moral panic' was triggered by a widely (and sensationally) reported rise in inner-city street crime (essentially amounting to mobile telephone thefts), and re-engaged with the construct of repeat or persistent offending by some juveniles. The 'panic' was fuelled by the interjection of senior police officers, and it soon made the headlines with some of the leading mass-circulation newspapers demanding action to 'lock up the child thugs' (*Daily Express*, February 26, 2002). This particular wave of moral indignation and populist punitiveness showed no sign of abating and the government reacted. On April 16, 2002, David Blunkett, the Home Secretary, outlined the Government's intention to implement provisions of legislation which serve to substantially relax the secure/penal remand criteria in respect of unconvicted and/or unsentenced juveniles.

We outlined the criteria for a secure/penal remand - provided by Section 23 of the Children and Young Persons Act 1969 (as amended by the Crime and Disorder Act 1998) - earlier. The most significant point to re-emphasise is that part 2 of s.23(5) Children and Young Persons Act 1969 provides that 'the court must be of the opinion that only remanding him/her would be adequate to protect the public from *serious harm* from her/him'. However, Section 130 of the Criminal Justice and Police Act 2001 - to be implemented in ten areas from April 22, 2002 and all of the remaining areas of England and Wales from September of the same year, following the Home Secretary's



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announcement - effectively replaces the 'serious harm' test with a 'persistence' condition. In other words the court no longer has to be satisfied that a secure remand is necessary to 'protect the public from serious harm', and can instead institute such a remand if it regards it necessary in order 'to prevent the commission of imprisonable offences'. This potentially opens the floodgates, and it is likely to lead to a very significant increase in secure and penal remands for unconvicted and/or unsented juveniles.

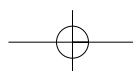
Such policy regression not only amounts to spectacular folly - in undermining the developments in community bail supervision and the reforms of the 'juvenile secure estate' that have been introduced by the YJB at considerable public expense - but, by increasing the numbers of remanded juveniles and imposing further strain on the system of locked-institutions, it will inevitably drive down standards in terms of institutional treatment, and expose such juveniles to dangerous conditions. 'Doubling-up' in cells is almost inevitable. Prison staff will be stretched as staff-juvenile remand prisoner ratios become more strained. Unconvicted and/or unsented juveniles will be neglected and will suffer. Human rights and humane treatment will be compromised. Protection of the public and community safety will be weakened in the medium-term. The administration of justice will become more problematic. Evidence and effectiveness will be buried, as the government once again sacrifices rational justice on the populist altar.

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