

The Youth Justice System's Response to the COVID-19 Pandemic

Literature Review: Executive Summary

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About the research project

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This research project aims to understand the unprecedented implications that the COVID-19 pandemic has had on each stage of the youth justice system. Delivered in partnership between the Manchester Centre for Youth Studies (MCYS) at the Manchester Metropolitan University (MMU) and the Alliance for Youth Justice (AYJ), the project is documenting the impact of the pandemic on policy and practice responses, barriers and enablers to effective adaptation, and children's perspectives. Funded by the Economic and Social Research Council (ESRC) as part of the UK Research and Innovation's rapid response to COVID-19, findings and recommendations from the 18-month project will be shared widely with practitioners and decision-makers to shape future policy and practice.

About this review

This literature review was produced by the Alliance for Youth Justice, as part of a series of papers that will be published over the life of the research project. The review aims to provide a comprehensive overview of the existing policy, practice and research literature about the impacts of COVID-19 on the youth justice system. The review considers the impacts of the pandemic across each stage of the youth justice system, bringing together findings from community-based responses, the courts, and the secure estate. Findings from this review will be disseminated widely to the youth justice sector and utilised to inform the development of future stages of the project and recommendations for policy and practice.

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To view the full Literature Review, please visit [here](#).

Introduction

This literature review has been produced to map and draw together the available literature to capture and analyse the significant impacts of COVID-19 on the youth justice system. As the implications of the pandemic continue to emerge, the scope of this review is focused on relevant literature from the first year of the pandemic from March 2020, and significant updates through to July 2021. The review aims to document this exceptional period for youth justice, exploring the policy and practice responses, and the available evidence about the impacts on children.

Children in the community

The devastating toll of the pandemic on children

- The impact of COVID-19 on children has been described as ‘*devastating*’,¹ as not only have pre-existing vulnerabilities been exacerbated, but many more children and families are now exposed to new challenges.² Those from disadvantaged and marginalised communities suffering particularly adverse impacts.³
- With unprecedented challenges across areas such as children’s social care, education, and mental health, there has been a rapid erosion of support and many of the protective services that are crucial to children who face these huge pressures.
- With school closures and public services changing or scaling back their provision, there were immediate concerns raised about the drop in support and the reduced visibility of children, as well as the need to keep them safe and protect them from harm.⁴
- The impact on children’s education has also gained much attention, with the pandemic highlighting existing disparities in education provision, with particular impacts for those in deprived communities. Due to the high levels of disadvantage among children who enter the youth justice system, these issues are highly significant.
- Racial inequalities have also been exacerbated by the pandemic, with evidence indicating that COVID-19 has had a disproportionate impact on racialised communities in health outcomes of the virus,⁵ but also with regards to broader issues such as mental health, job losses, and disruption to education.
- Throughout the pandemic, significant concerns have been raised about the safeguarding implications for children, particularly those living in complex family situations and children in care. ‘Stay at home’ measures have intensified children’s experiences of abuse, neglect and domestic violence, in circumstances where their home can already be the least safe place.
- Heightened risks of children’s exposure to violence and exploitation by gangs and organised crime groups and involvement in associated criminal activities have been reported,⁶ but the full extent of the impacts of violence and criminal exploitation for children throughout the COVID-19 crisis are difficult to ascertain.
- COVID-19 has impacted the support available to children from statutory and voluntary services to intervene, safeguard children, and help prevent possible or further involvement with the criminal justice system, at the time when it has been most crucially needed. Children have been missing out on vital service provision and

safe spaces,⁷ and left with fewer routes out when they are in trouble.⁸ Many children have been left excluded from what support and interventions have been available due to a lack of digital technology.⁹

- There was a lack of clear and consistent communication as various pieces of guidance were issued and updated across the year, due to the sheer quantity of rapidly changing, sometimes conflicting guidance issued by different government departments and local authorities.¹⁰
- A decade of austerity and rising child poverty resulted in services for children and young people that were poorly prepared for the pandemic, with increasing demand for the education, health and social care services that were already struggling.¹¹
- Vital protections for children in care were removed when the Government introduced a statutory instrument amending children's social care regulations which temporarily removed or weakened 65 safeguards,¹² in the face of wide-ranging criticism.

Policing the pandemic

- With COVID-19 having uncertain impacts on the functioning of criminal justice, during March 2020-2021 policing decisions had an important role to play in preventing unnecessary arrests and throughput of children into the youth justice system.
- The Coronavirus Act 2020 and the 'Lockdown Regulations' created new criminal offences and police powers with implications for children.¹³ National guidance stated that all police forces should follow a 'Four Es' approach to securing compliance with COVID-19 rules: engaging, explaining, and encouraging, before enforcing the legal requirements.
- While data has not been published that could determine the extent to which children were policed for COVID-19 regulation compliance, children and young people have highlighted inconsistency in police approaches across different areas,¹⁴ and police confusion and mistakes in enforcing regulations and guidance.
- Concerns were raised about the need to restrict the arrest, police detention and interview of children to exceptional circumstances. Data is not currently available to shed light on the full extent that police decisions in dealings with children were affected by COVID-19.
- At police stations, significant adaptations were put in place at with the aim of minimising the impact of COVID-19 for police forces across the country, with police have conducting more business via telephone or video calls,¹⁵ and took part in virtual out of court disposal panels with Youth Offending Teams (YOTs).¹⁶
- In police custody suites, there have been some significant immediate changes, and possible longer-term implications for practice, including the use of remote legal representation at police interviews with children.
- Appropriate Adult (AA) arrangements remained 'robust' when other forms of support and advice became remote, and AA schemes were able to recruit staff and volunteers.¹⁷
- A survey of nearly 4,000 children and young people *Policing the Pandemic*¹⁸ raised concerns about policing during COVID-19 including age-based targeting and unfair targeting and treatment of different racial groups.

Children under the supervision of Youth Offending Services

- As lockdown began in March 2020, the Youth Justice Board (YJB) asked for business continuity plans from each YOT, who were also required to submit 'recovery plans' by September 2020, around how they planned to reinstate pre-COVID-19 activities and incorporate any new practices developed during the pandemic.
- Government guidance stated that YOT workers were deemed critical workers,¹⁹ but children on YOT caseloads were not listed as vulnerable children for access to schools during lockdowns, as well as for access to laptops and food parcels, unless local arrangements were put in place.²⁰
- A localised approach to the YOT response to COVID-19 was deemed effective by HM Inspectorate of Probation, allowing local services the flexibility to prioritise the most vulnerable and 'at-risk' children.²¹ YOTs in Wales took a coordinated approach and worked together on their plans.
- YOTs and local authorities had to read, understand and disseminate a huge volume of guidance, with no uniform format and no way for updates to be quickly identifiable, putting a strain on resources.
- YOTs were quick to respond and quickly shifted to remote working and engagement with children, balancing keeping staff safe with responding to the needs and risks of children. A 'digital divide' among YOT staff was identified, where some had access to modern information and communications technology, while others did not.
- YOTs adapted interventions and programmes to deliver them remotely, and developed online sessions with children, utilising varied approaches and sometimes involving parents and partners. A key concern raised by YOTs and HM Inspectorate of Probation was the difficulty in undertaking assessments of a child without meeting them in person, and adapting assessments to take into consideration new COVID-19-related risks.
- Face-to-face contact was maintained for children deemed to pose the greatest risk to others, and some children continued to visit YOT offices if this was preferred by the child. When restrictions eased YOT staff went on 'walk and talks' and other outdoor sessions with children, which were deemed by inspectors to be productive.
- YOTs continued their work overseeing sentences, some reparation work continued, and out of court disposals and referral order panels were initially halted but resumed quickly, virtually.
- A lack of access to digital technology and even phones for many children on YOT caseloads is a key concern, with inspectors finding a stark digital divide and just under half of children having insufficient access to technology.²²
- Vulnerabilities for all children have been exacerbated throughout the pandemic, with children on YOT caseloads being particularly vulnerable and often facing multiple disadvantage, making them likely to be some of the worst affected. YOT inspectors highlighted how the needs of children and families became '*much more acute*' as time went on.²³
- Inspectorate reports highlight that team managers have been stretched, and raise concerns about increasing demand on YOTs as the impacts of COVID-19 are realised and as normal business resumes.²⁴

Children in court

Court closures and backlogs

- In March 2020, as the county entered lockdown and social distancing restrictions came into force, criminal courts could not continue hearing cases as usual. Many courts closed, business moved online, and cases were put on hold.
- From mid-April 2020 Magistrates' courts were instructed by the judiciary to prioritise the listing of cases according to three priority categories, with urgent custody cases top priority.²⁵ The reintroduction of jury trials was announced in May 2020,²⁶ gradually increasing throughout the year.²⁷
- Child-friendly guidance for children attending court in person or remotely was published by the YJB and HM Courts & Tribunals Service (HMCTS), but not until June.²⁸
- The Ministry of Justice (MoJ) and HMCTS published recovery plans in July and September 2020^{29,30} setting out the short- and medium-term response to COVID-19. No specific measures for youth courts were included in the recovery plans.
- Understanding and scrutinising the extent of the backlog impacting children as a result of COVID-19 is extremely challenging due to the lack of data available, not only specific to children but for the whole system.³¹ There are various concerns raised in the available literature about the impact of long delays to cases.
- One of the key issues highlighted in the literature is the impact of court delays on those who allegedly committed offences as children but are approaching and turning 18 while awaiting their hearing.

Virtual justice and participation

- With social distancing measures and lockdown restrictions significantly reducing in-person court appearances, courts have used digital technology to continue conducting their business remotely. Live video and audio links, which enable a person to see and hear others taking part in a hearing when they are not in the same location, have been used to some degree for years before COVID-19.³²
- The expansion of 'virtual justice', and other adjustments under COVID-19 regulations, may have important impacts both on children's ability to effectively participate in their court proceedings and on justice outcomes.
- The Coronavirus Act 2020 temporarily expanded the situations in which live video and audio links may legally be used in criminal court proceedings, allowing for hearings to be conducted entirely by video or telephone in certain circumstances. In March 2021, the Government introduced the Police, Crime, Sentencing and Courts Bill, clause 168 of which would make the temporary live link provisions permanent.
- HMCTS rapidly expanded live link technology capability in the courts, including linking police stations and custodial establishments to courts,³³ allowing for confidential communication between lawyers and defendants.³⁴ Courts adapted quickly to remote hearings,³⁵ but figures specific to children are not available.
- For those having their remand hearings from a police station, virtual arrangements have meant many spend longer held in police custody awaiting their hearing.

- As the use of live links in court hearings increased during the pandemic, concerns were raised about how this may impact on children's understanding and participation in their hearings.
- The use of live links for children's hearings may also impact their justice outcomes, with concerns raised that children appearing over video link may be less likely to be granted bail, more likely to be remanded to custody, and more likely to receive custodial sentences.³⁶
- There is an overall lack of available literature on the experiences of children in court during this time, in particular a lack of evaluation of how children have been experiencing virtual justice.

Remand and sentencing

- Decisions made in the courtroom have played an important role in attempts to stem the flow of children into the youth justice system, where they would require various levels of supervision and intervention, and particularly into custody.
- The World Health Organisation, the Children's Commissioner for England, and a number of leading youth justice and legal organisations quickly raised concerns about the remanding and sentencing of children to custody, urging the Government and courts to take action to limit children entering custody.³⁷ No action was taken by the Government to intervene and concretely limit the sentencing or remanding of children into custody.
- The Sentencing Council confirmed that courts should bear in mind the practical realities of the public health emergency and the impact of immediate imprisonment in this context.³⁸
- It is concerning to see that the number of children in custody on remand has not fallen significantly during this period. The annual average number of children in custody on remand for the year ending March 2021 was 244.³⁹ Concerns have been raised about remand hearings taking place over video link, including that children may be more likely to be remanded when appearing over video rather than in person,⁴⁰ and about delays to remand cases and children spending longer in custody on remand.
- In September 2020 the Government introduced a statutory instrument to increase the Custody Time Limits from 182 days to 238 days for both adults and children,⁴¹ which children were subsequently exempted from following the threat of legal challenge.
- There is no known literature documenting the impact that COVID-19 has had on courts' sentencing decisions in practice. Published data shows a sharp fall in the number of prosecutions and court outcomes in April-June 2020, after which the number of children proceeded against appears to continue its pre-COVID-19 trend.
- The overall population of children in custody fell from 770 in February 2020 to 516 in March 2021.⁴² It is unclear from the available data the extent to which this drop is a result of slower processing of cases due to court closures and adjustments, the release of children already in custody, or conscious decisions by courts to minimise throughput of children into custody.

Children in custody

Conditions and regimes in custody

- As the country went into lockdown and emergency measures were put in place across the secure estate, questions were raised about the treatment and experiences of children in custody during this exceptional time. Children in custody are extremely vulnerable, and their experiences of detention exacerbates and compounds this vulnerability.⁴³
- Children sentenced or remanded to custody are held in Young Offender Institutions (YOIs), Secure Training Centres (STCs), or Secure Children's Homes (SCHs). The vast majority of literature on custody available across March 2020-2021 focuses on the experience of children in YOIs and STCs.
- Measures taken across the secure estate to manage the spread of COVID-19 have included restricting regimes; minimising inter-establishment transfers; compartmentalising including quarantining new arrivals, isolating those with symptoms, and shielding vulnerable people; and routine testing of staff, and of children on reception and transfer.⁴⁴ The imposition of restrictions varied significantly between different establishment types.
- In June 2020, the MoJ and Her Majesty's Prison and Probation Service (HMPPS) published a national framework for the easing of restrictions,⁴⁵ but concerns were raised that the specific needs of children had not been clearly articulated and a clear, separate plan for the children's estate was lacking.
- The daily experiences of children in custody during the COVID-19 pandemic have been described by secure estate inspectors as *'bleak'*.⁴⁶ The Children's Commissioner for England described the regime as *'draconian'* and *'likely to have long-term effects on the children incarcerated.'*⁴⁷
- With education and training severely restricted, concerns were raised about the *'significant'* impact on children's wellbeing, highlighting that the *'blanket ban'* on education in line with the adult estate was *'certainly not in children's best interests'*.⁴⁸ The Independent Monitoring Boards' annual report argues that most children in YOIs would have classified as *'vulnerable'* and therefore should have received some form of face-to-face education throughout lockdown.⁴⁹
- The overriding concern regarding children in custody during COVID-19 has been the impact on children's mental health. These concerns have several dimensions, considering the prevalence of mental health needs among children in custody prior to COVID-19, concerns about access to support services during the crisis, as well as the increased pressures on mental health associated with experiences of custody during the pandemic.
- Bullying and violence were initially reported to have decreased, but HM Inspectorate of Prisons' have noted that rather than having gone away, violence, bullying and intimidation had taken on new forms, with children reporting an increase in verbal abuse and intimidation at cell doors, through windows and across landings
- One of the initial concerns raised regarding custody was around staffing shortages due to COVID-19.⁵⁰ Reports on initial visits to YOIs highlighted staffing shortfalls at various points in time due to staff contracting COVID-19 or needing to self-isolate.

Visits and contact

- Between March 2020-2021, as well as restrictions to daily life within custody, children were also subject to restrictions on contact with those outside of custody, in order to meet national lockdown and social distancing guidelines. This has significant implications for the maintenance of relationships with children, oversight and safeguarding, and resettlement planning. Children's main complaint was the suspension of social visits,⁵¹ and that those in custody found it difficult to cope with.⁵²
- The rollout of video calling technology had been *'too slow to relieve the frustrations of not having face-to-face visits and this delay has been very keenly felt'*.⁵³ However, when 'Purple Visits' were available, there was relatively low take up due to children having no one to contact, finding it distressing to see loved ones, or families not having access to the necessary ID or technology.
- The MoJ also announced in March 2020 it was working to ensure the secure estate had more secure phone handsets,⁵⁴ and in November 2020 confirmed that additional funding had been provided for the rollout of in-cell telephony, with the children's estate prioritised,⁵⁵ and all public sector YOIs now had in-cell phones.⁵⁶

Release of children from custody

- As lockdown restrictions were announced, there were immediate calls for the Government to release children from custody, given concerns about the heightened risks of COVID-19 outbreaks in secure environments.
- Two schemes were put in place: Compassionate Release on Temporary Licence (ROTL), for pregnant women, those with babies, and those medically extremely vulnerable to COVID-19, and the End of Custody Temporary Release Scheme (ECTR), for those nearing their release date.⁵⁷
- In late April 2020, the Government confirmed fewer than 10 children were deemed eligible for the ECTR scheme,⁵⁸ and on 2nd June it was confirmed that no children had been released under the scheme.⁵⁹ The scheme was met with much criticism about its failure to result in any significant numbers of releases from custody.⁶⁰
- Restrictions imposed on the custodial regime also caused issues for transition planning, including arrangements for release and resettlement for children approaching the end of their sentence, primarily around communication between those outside custody and those inside. With visits suspended it was not only social contact that children were cut off from, but YOTs, social workers, lawyers and other professionals could not directly meet with children.⁶¹
- Children on remand experienced anxieties, frustrations and worsened experiences due to spending increased time in custody with uncertain futures.⁶²
- During this time fewer transfers to the adult estate were taking place meaning the children's custodial estate was holding an increasing number of 18-year-olds.⁶³

An over-centralised, disproportionate response?

- The literature reveals concerns that the approach to implementing restrictions across the secure estate was too centrally driven, leaving insufficient room for flexibility at an establishment level.
- While children were initially understanding of the need for restrictions, as time went on without restrictions easing, children became increasingly frustrated.⁶⁴
- The Youth Custody Service commissioned research in May 2020 to identify lessons from the experience of responding to COVID-19 in custody and inform recovery planning.⁶⁵ The expected publication date of this research has been delayed from spring 2021⁶⁶ to summer 2021.⁶⁷
- HMPPS guidance and communications for individual institutions indicate restrictions in the children's secure estate eased over 2020 faster than in the adult estate.⁶⁸ However, a deepening divergence emerged between the easing of restrictions on children in the community, compared with those in the secure estate.⁶⁹
- Overall, the literature raises significant concerns about the long-term impact of the restrictions for children in custody.

Conclusion

- The devastating impact of the pandemic on children and families, and the heightened levels of safeguarding concerns, are major concerns for children involved with the youth justice system as well as those in the general population facing new and increased challenges.
- The literature identifies a consistent theme about the lack of information, understanding and focus on children during the pandemic. The Government has often failed to distinguish between its approach to adults and children in their policy responses.
- Throughout the various stages of the youth justice system, digital models of communication and service provision have been adapted. A clear 'digital divide' has emerged between those who have access to digital technologies and those who do not.
- Across systems and services for children, including the youth justice system, there is a need for proper evaluation of the temporary measures implemented during COVID-19 before they become widespread and permanently embedded.
- From decisions to arrest, divert or prosecute children in the community, to remand and sentencing, there was a clear need identified to work to reduce the number of children passing through a system that is struggling to cope.
- The full impacts of delays on the courts and broader criminal justice system in the longer-term are yet to be fully understood but should be seen in the context of a system already under severe strain.
- Custody numbers fell overall, but the proportion of children on remand has increased, and unambitious custody release schemes have been criticised for being completely ineffective.
- The majority of children in penal establishments have been subjected to awful conditions for months on end, deprived of education, visits and contact, and amounting to solitary confinement. The harms experienced by children in custody, and the impacts on their longer-term health and wellbeing must be fully assessed and supported effectively.
- The next stages of the research project aim to make a significant contribution to addressing these gaps in knowledge and informing future strategy, policy and practice, in the best interests of children.

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