

The right support at the right time: Where the justice system fits in

The Government's Green Paper, 'SEND Review: Right support, Right place, Right time', rightly acknowledges the stark figures of how many children with overlapping and complex education, health and social care needs are in contact with the youth justice system in England Wales. Recent Government statistics reveal that 80% of cautioned or sentenced children had received a diagnosis of some level of Special Educational Need.¹ This briefing brings attention to the damaging impact that this interaction with the justice system has on these children's lives, and provides some practical ideas about what can be done to address this harm.

Recommendation 1: Recognising the impact of the justice system on children with special educational needs and disabilities

As well as being overrepresented in youth justice statistics, contact with the youth justice system has a knock on effect on the education and social care outcomes of children with Special Education Needs and Disabilities (SEND) in later life. Therefore, it is critical that the justice system is included in the scope of cross-governmental work such as the Send Review Green Paper. This is in line with the multi-agency spirit of other government plans seeking to improve the life chances of children with SEND, such as the 2021 National Disability Strategy and the Ministry of Justice's response to the Joint Inspection of Neurodiversity in the Criminal Justice System.

Multiple studies have evidenced the negative impact that contact with the justice system has on a child's outcomes, particularly regarding their education, career prospects and likelihood of reoffending.² For children with SEND, who we know are already more likely to experience poorer outcomes in these areas, this contact can be particularly damaging. For example, the disruption that an arrest, court attendance and possible custodial sentence brings to a child's attendance at school is particularly acute for children that rely on vital support structures accessed through their education, such as Education, Care and Health Plans and alternative provision services. Similarly, the harmful consequences that a criminal record has on a child's future labour market opportunities are likely to be more impactful to children who face greater challenges entering the workplace.

The impact of the justice system on children with neuro-disabilities is also often more severe, with higher rates of children entering custody from an earlier age, receiving longer custodial sentences and being associated with higher rates of reoffending and more violent crimes.³ Studies have linked these poorer outcomes to children with neurodevelopmental disorders finding it hard to understand the behavioural expectations and consequences of a police interview, being charged, cautioned, bail conditions and court orders, with children pleading guilty to an offence without fully understanding the impact on their case and future life chances.⁴ This, in combination with associated social and emotional behavioural difficulties, can lead to children being excluded from diversion schemes, which act as a gateway out of the youth justice system and into a programme of support.⁵

Recommendation 2: Keeping justice services separate from education settings

The Government's plan to co-locate youth justice services in alternative provision settings in schools as part of a multi-disciplinary team, that was announced in the SEND Green Paper, is likely to draw even more children with SEND into the justice system. Expanding the presence of justice services into a space where children with SEND are highly represented is likely to inadvertently increase contact with the justice system to a greater degree, a process known as net widening. The negative impact that overextending the reach of the justice system has on the lives of children is well documented. It is strongly linked with increased reoffending, as it can interrupt the natural trajectory most children experience, who grow out of committing crime. Labelling theory holds this is caused by exposure to peers and institutions that create and strengthen a 'criminal' identity.⁶⁷ While the justice

system has a responsibility to engage with children with SEND already in contact with the police and Youth Offending Teams (YOT), outlined further below, it is important to ensure that it does not substitute welfare responses to children with additional needs, and only intervenes following an offence.

Recommendation 3: Fostering effective information sharing between youth justice services and schools

While the co-location of justice services in alternative provision has negative net widening implications, effective information sharing is needed, where appropriate, between youth justice services and schools, to ensure that the respective systems make better informed decisions that will be more responsive to the needs of the child. The Government rightly includes youth justice agencies in SEND partnership arrangements with health and social care partners, though there needs to be more focus on how these bodies can better work with each other, to ensure the best possible action is taken for the children in their care.

Frequent and formalised information sharing between education providers and the YOT would help build up an accurate picture of the child's needs at the earliest point of contact. Facilitating this engagement can be particularly challenging considering the complexity of the language used in the youth justice system, and the prevalence of speech, language and communication amongst the cohort of children in the system; 71% of children in the justice system need some sort of speech, language and communication needs support.⁸ YOTs can begin to overcome these barriers by conducting assessments that draw on the wealth of information held by the ecosystem of actors who have been responsible for the care of the child. This includes health and social care professionals, speech and language therapists, parents, but most importantly schools. Schools, particularly SENCOs and learning support assistants, will have the most relevant and up to date information on their individualised support needs from working with the child closely on a daily basis. This information is particularly valuable considering the long delays a formal diagnosis on CAMHS can take, and consequential prevalence of undiagnosed disorders. YOTs should actively seek out this information from schools the minute that a child is arrested, so the response of each agency can be tailored to their need. This was a recommendation of the Taylor Review of the youth justice system in 2016, which called for YOTs to routinely seek out relevant information from the local authority to inform their charging decisions.⁹

Disproportionate rates of school exclusion are an additional challenge faced by neurodivergent children. Children in England and Wales with an identified special educational need (SEN) are seven times more likely to be excluded from mainstream education than their peers.¹⁰ There is a well-established link between these high exclusion rates of children with SEND, and being overrepresented in the justice system, which has become known as the 'school exclusion to prison pipeline'.¹¹ Given this link, it is crucial that children get the right support at an early point, that addresses and understands the cognitive and emotional traits associated with particular neurodivergent disorders, which is often wrongly interpreted as 'bad' or 'disruptive' behaviour.¹² Schools and the justice system should also work together to prioritise keeping children in education, wherever possible, while they engage with youth justice services. For example, YOTs should keep the child's schools informed of absences caused by justice related commitments, such as attending court, and schools should respond with flexibility to accommodate these absences, and not use them to justify an exclusion.

Endnotes

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