INTERNATIONAL EVIDENCE TO SCOTLAND’S CHILDREN’S HEARINGS REVIEW

DECISION MAKING AND SERVICES RELATING TO CHILDREN AND YOUNG PEOPLE INVOLVED IN OFFENDING

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# International Evidence to Scotland’s Children’s Hearings Review

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EXECUTIVE SUMMARY

This report was commissioned by Scottish Executive to contribute to its review of Scotland’s Children’s Hearings System. The Children’s Hearing system has remained relatively unchanged since its inception, in contrast to rapid and ongoing changes in child welfare and youth justice systems internationally. The intention of the report is to examine readily available evidence on effectiveness in children’s services as they apply to children and young people involved in offending around five “key themes”:

- Approaches which balance welfare and offending issues in reaching decisions/taking action
- The role of parents in decision making processes and implementing activities to address issues/problems
- Participation of lay individuals in processes and procedures
- Entry and exit criteria from children’s services systems.
- Delivering specific improvements in outcomes for children/young people

The international literature surrounding child welfare and youth justice is extensive and beyond the scope of any brief review. This review was undertaken in a six week period and, as such, did not permit an extensive or systematic comparative analysis of social policies and practices on an international scale. Such a process is complicated and the quality and nature of data sources varies greatly. More information tends to be available from the USA and from England, than from continental European countries. The material and countries chosen in this review reflect both the availability of information and its relevance to our key themes.

No attempt is made to examine the antecedents of abuse and neglect in children, nor specialist child protection responses. This review limits itself to a brief examination of the antecedents of youth crime, which highlights that many children and young people who become involved in crime are themselves victims of abuse and neglect and in need of protection. Reference is made to child welfare and protection processes, where relevant, by way of illustrating when justice systems or welfare and protection systems are invoked when both could be seen as relevant. This raises serious challenges in all jurisdictions about the interplay and overlapping responsibilities between systems of child welfare, protection and youth justice.

International Guidance

Benchmarks set by international agreements and regulations including the European Convention on Human Rights, the UN Convention of the Rights of the Child (UNCRC) and associated guidance (Beijing, Rules, 1985; Riyadh Guidelines, 1990; and Havana Rules, 1990;) have had an important influence on developments in child welfare and youth justice provision in the last decade. Article 3 of UNCRC requires that, ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. International obligations have challenged jurisdictions to be more transparent and evidence-led in their approach to children and young people and to demonstrate effectiveness in their practices.

Welfare and Justice - the balance
The terms welfare and justice each have more than one distinct meaning, though these are connected. Sometimes the terms are used descriptively to refer to the agencies and decision-making bodies that deal with care and protection issues (child welfare) or youth crime (juvenile or youth justice). It has also been common to contrast approaches to youth crime as either oriented to:

- **a welfare approach** (by making decisions according to judgements about the needs and welfare of the child based on an assessment of the child’s circumstances) or
- **a justice approach** (with attention to due process and decisions made with a more narrow focus on the offence and proportional response to it).

More generally welfare denotes a child’s well-being and interests, while justice has a wider sense of social justice or fairness.

Legislation in most jurisdictions maintains a separation between systems dealing with the care and protection of children and young people (child welfare) and responses to offending by children and young people (youth justice). With respect to young people in their teens who offend, the second half of the twentieth century saw a swing away from welfare approaches to systems associated more with access to due process, directed by principles of proportionality and accountability, and with greater recognition of the place of victims. Nonetheless all countries allow for varying degrees of overlap and convergence between child welfare and youth justice systems. Nearly all continue to deal with children who offend within a welfare system, but with the age of transition to the youth justice system ranging from 10 to 15 years. The near universal ratification by states of the United Nations Convention on the Rights of the Child (UNCRC) has placed importance on providing ‘a level playing field’ for all children through universal prevention and early social intervention measures. UNCRC requires that with respect to a child or young person under the age of 18, that in all legal and administrative decisions made with respect to a child or young person under the age of 18, the child’s best interest should ‘a’ primary consideration. This, combined with a growing international recognition of the interconnected factors which expose children to risk and result in them coming to the attention of authorities as in need of protection and/or on account of their offending behaviour, has influenced many western countries to try and find a better balance; to construct a kind of synthesis or compromise between the two basic sets of ‘principles’ of justice and welfare recognising the importance of holistic strategies, cultural diversity and community involvement in decision making.

Many different models exist; few are completely satisfactory; compromises abound. The manner in which each country has responded to children’s needs and risks cannot be understood in isolation from their historical development, which makes comparison problematic. Few countries are comfortable with too rigid a distinction or separation between justice and welfare with the result that there are many variations in the balance of the common ‘ingredients’ of prevention, early intervention, diversion, social intervention treatments and sanctions or punishments required for effective child welfare, protection and youth justice approaches. Most are searching for new and better ways.

Available evidence suggests that despite the systematic difference between, for example, common law and continental law in European countries, the challenges facing child welfare and youth justice do not differ greatly between countries. In all states national legislation provides for a wide range of measures, which allow for intervention, restriction and ultimately the removal of children and young people whether for welfare
or behavioural and criminal difficulties. The scope of activities of local authorities and municipalities can encompass investigation into cases, making applications to courts or other decision making bodies, proposing adequate measures, care planning, placement of children and young people, support of and co-operation with parents and families, and the control of the implementation of legal orders. In many cases, the local authority has been in contact with the child and family in question for a considerable amount of time before formal proceedings begin and has been responsible for offering voluntary assistance. This can be viewed as a *de facto* child welfare monopoly and inadequacies in preventive welfare provision can create conflicts of interest when the main service provider is also responsible for ensuring children’s ‘best interests’ and needs are met.

A further challenge facing most states is facilitating the participation of children in legal proceedings and decision making as well as the situation after the implementation of formal measures. While the position of children in formal proceedings has been strengthened within recent decades, there are still deficits to be noted and much debate about the most appropriate forum for participative decision making.

While core features vary considerably, systems in all western jurisdictions reflect a belief that all children and young people should have the same rights and at the same time be treated differently from adult (offenders) and that in many circumstances they require protection of some sort. What constitutes ‘a child’ and ‘a youth’ varies between jurisdictions and with this the demarcations between those deemed not criminally responsible and those who are. No good comparative data across jurisdictions exists on the relative use of justice and welfare or protection systems. While we know that youths who are heavily involved in crime often have substantial welfare needs, we know little about the decisions that are made which determine when justice systems or welfare protection systems are invoked when both could be seen as relevant. What is clear is that western jurisdictions have not arrived at a consensus on how best to respond to troubled and troublesome children and young people, though there are trends and changes that are widely shared, such as recent interest in reparation and victim mediation. The New Zealand model of family group conferences has been adopted and adapted in many other parts of the world, as an alternative or prior means of dealing with youth crime and child abuse.
Entry and exit points to youth justice systems

Despite common basic assumptions, there are major differences in the way countries elaborate their own systems and manage entry and exits to, from and between welfare and justice systems. Most struggle with the very difficult combination of trying to achieve a welfare approach within judicial and criminal structures. Few have found a very satisfactory solution in compromise. Systems are constantly undergoing a great deal of political ‘doctoring’ to managing the ‘mix’ between social and protective measures and punitive responses and sanctions.

Age thresholds represent the most significant formal entry and exit criteria to welfare and justice systems in western societies. Since the introduction of UN CRC, the worldwide trend has been to raise the age threshold for entry to youth justice systems to around the age of 14 or 15. Those countries with an age threshold of less than 14 tend to be British Commonwealth countries or countries that have an early association with the British legal system. Youth under age 18 tend to be dealt in these countries through a modified system of justice geared mainly towards compulsory intervention or diversion through social services, with incarceration only as the last resort. The exit age from child welfare systems tends to conform with the UNCRC recommendation of 18. For youth justice the age of ‘criminal majority’ generally corresponds with the age of civil majority, which varies between countries. Some exceptions to this classification exist and elements of a welfare and social-education approaches continue with regards to some young people up to 21, for example in Germany.

Pathways of entry and exit to youth justice systems are also influenced by ‘seriousness’ and ‘persistence’ of offences. Research suggests that there is no straightforward definition of persistent offending that allows a simple classification of those at highest risk of re-offending. Attempts to compare youth crime trends across jurisdictions are extremely difficult. Most jurisdictions have dual or parallel pathways through which more serious and persistent offenders aged above minimum entry thresholds but below the normal exit age, are ‘transferred’ and dealt with in adult criminal processes. The rationale for ‘passing’ up a child normally relates to issues of deterrence, public protection and the fact that punishments and sanctions available to adult proceedings are usually greater. Comparative studies reveal that those entering youth justice systems often share common features. They are more likely to be male, from a minority background, socially disadvantaged and have a history of public care. Most commit minor offences but a small proportion account for a disproportionate amount of crime, minor and serious.

The role of parents

Studies suggest that the absence of collaboration with parents tends to have a negative impact on the success rate of interventions involving children and young people, but there is limited research on the effectiveness of parental participation in decision making. Children and young people below the age of criminal responsibility in different jurisdictions are, generally, dealt with either by social welfare committees or agencies and/or by specialist judicial systems (inquisitorial or adversarial) both for protection and behavioural difficulties. Adversarial courts often attract the general criticism that they provide limited opportunity for parental involvement in decision making. The use of inquisitorial processes in continental Europe and the widespread introduction of restorative justice approaches, in particular family group conferences, into child welfare
and youth justice practice represent mechanisms thought to be better geared to involving parents, families and victims directly in decision making and in problem resolution for children and young people.

Changing patterns of welfare and justice affect different countries in different ways. Nonetheless decreases in use of institutional provision, and the re-emergence of the problem of child abuse and neglect and its influence on the balance between the rights and responsibilities of the state and parents, has provided greater focus across jurisdictions on family preservation and family based interventions requiring partnership with parents. Few countries in continental Europe attempt to coerce parents to become involved in decision making processes or subsequent intervention on the assumption that this is rarely likely to help their children. Programmes which promote the development of parental responsibility and skills are available in a number of countries often as early intervention measures for ‘at risk’ families. Attendance at programmes may be voluntary or compulsory. Compulsory parenting orders represent a new development in the relationship between the state and parents. While there is limited evidence available on the impact of compelling parental participation in programmes, conclusions from an initial evaluation in England suggest that short-term programmes aimed at parents, while having positive benefits, were thought unlikely to have much immediate impact on young people’s behaviour.

Participation of lay people in processes and procedures

There is a long tradition in most jurisdictions of involving lay people in decision making both in adult and youth criminal processes. In some countries like Finland and England, and N. Ireland lay people contribute routinely to decision-making in youth courts. Also common is to involve members of the community at the pre-court stage. In the USA, developments in restorative practices and new developments in community justice such as ‘Balanced and Restorative Justice’ (BARJ) are organised around principles of ‘localism’ and ‘lay participation’. The aim is to increase the focus on neighbourhood initiatives to create more accessible and less formal justice provision aimed at shifting intervention decisions to the locality affected directly by the crime. The development of Youth Aid Panels and Peer/Teen Courts in the USA, Youth Justice Committees in Canada, Youth Offender or Community Panels in England have resulted in the growth and development of a more distinctive lay involvement in early and preventive intervention and decision making arenas aimed at de-criminalisation and preventing the use of custody. Developments in community justice and restorative justice also provide for victims to participate and to be recognised within the process.

Despite the optimistic intentions of such approaches, research suggests some unintended consequences. The evaluation of the first year of community panels and referral orders in England highlighted a degree of net-widening. Many magistrates, youth offending teams and community panel members felt that the compulsory conditions were operating too widely, particularly where offending was of low seriousness and where a less intrusive disposal would have sufficed. Compliance with teen court sentences in the USA has been associated with a reduced likelihood of recidivism. These outcomes, though positive, have to be set against general evidence that most first offenders, when detected, do not re-offend following diversion from any formal processes. A general criticism is that community justice approaches are largely state driven and have not ‘emerged’ from community movements as such. To that extent, rather than provide a new approach to
justice, they represent an extension of existing criminal justice approaches and have been
described as ‘new names for unchanged ‘programmes’.

**Delivering specific improvements in outcomes for children/young people**

Risk factors associated with delinquency and other problem behaviours are now
recognised as being cumulative in effect; the more that are present, the greater the risk of
involvement in problem behaviours. Not all children and young people exposed to
multiple risk factors become offenders and there are important aspects of young people’s
lives that can protect them against risk. Protective factors include individual and social
characteristics, such as having a resilient temperament or a positive social orientation,
positive and warm relationships that promote close bonds with family members, teachers,
and adults who encourage and recognise a young person’s competence, as well as close
friendships with peers. While protective factors are recognised as reducing the impact of
risks or changing the way a child responds to them the precise nature of the causal
relationships between risk and protective factors and offending is not yet clearly
understood.

There is no single approach to helping children or young people change their behaviour
and precise knowledge about which methods seem to work best with specific kinds of
behaviour or offences remains limited. Nonetheless there is much promising evidence
from recent and rigorous studies that well structured social interventions can help
children and young people persistent in their offending build the necessary personal and
social skills (‘personal capital’) to resist and desist from crime. However, evidence
suggests that personal change in young people is unlikely to be maintained without
access to social opportunities and social relationships (‘social capital’) to facilitate social
participation and re-integration. This is seen as vital in maintaining desistance from
offending over time.

There is now little disagreement in criminological literature about predictors of offending
such as age, gender, criminal history, early family factors, schooling and criminal
associates. However there has been much debate about which factors are changeable
(dynamic) and which predict re-offending. Those involved in anti-social or criminal
behaviour at an early age and experiencing multiple social adversities are more likely to
become persistent offenders. Programmes to prevent or reduce crime should be part of
wider programmes to address difficulties such as school failure, substance misuse and
social exclusion.

**What interventions do not work?**

Research has identified common characteristic of programmes that did not work in
reducing offending. Those emphasising punishment and deterrence alone, without
‘human service’ aimed at resolving the social life problems of young people show no
positive outcomes. The findings suggest that creating additional legal or formal sanctions
will have little or no positive impact on offending, in themselves. Most studies have
found that sanctions alone are associated with increased offending. Both theoretical and
empirical evidence suggests that punishment and deterrent sanctions work best with well
socialised, non impulsive, ‘future oriented’ (‘stop and think’) children with average and
above IQ, who are cautious have low arousal thresholds and have minimal punishment
experience and history. Such approaches tend to fail with young people with multiple
problems, persistent in their offending, whose personal characteristics tend to be the opposite of those described.

What kinds of interventions are effective with children and young people who offend?

Research findings are consistent enough to establish directing principles for effective practice. These include increasing the intensity of intervention with increased risk; focusing on changeable factors that support crime (criminogenic need); using a combination of methods (multi-modal); community based; and adapting to the learning styles and general/specific abilities of the young people involved (general/specific responsivity). There is a growing consensus that programme integrity - delivering a service as intended - has to be achieved if intervention is to be effective. Data from recent re-examination of research reviews suggest that these directing principles have an accumulated effect and only the comprehensive application of all these directing principles demonstrates very positive outcomes on offending. The quality of staff and their relationships with young people emerges as a key success factor.

The evidence from reviews suggests that programmes classified as ‘effective’ tend to be behavioural and skills based in nature but not exclusively so. Common characteristics that distinguish successful from unsuccessful approaches include that they:

- are carefully designed to target the crime related characteristics that can be changed (dynamic characteristics) by the intervention and those that are predictive of the individual’s future criminal activities
- are implemented in a way that is appropriate for the participant using techniques that are known to work and which require participants to spend a reasonable length of time in the programme considering the changes desired (sufficiency)
- are designed, delivered and evaluated by knowledgeable skilled individuals, appropriately educated and experienced, with a capacity to engage warmly and creatively with young people
- give the most intensive programmes to those at the highest risk of re-offending
- use cognitive and behavioural methods based on theoretical models such as social learning or
cognitive behavioural theories of change, emphasise positive reinforcement, provide contingencies for positive social behaviour and are individualised as much as possible.

Research also shows that programmes deploying in a systematic way a range of methods from different professionals or agencies tend to have positive effects on offending. Moreover evidence from a range of contexts indicates that for serious offenders with complex problems the involvement of young people and parents often needs to be frequent and sustained over a considerable period in order to have a lasting impact. Some data is available on the long term impact of preventative universal provision. Early years services targeted at children and young people at risk and well structured intervention for children with persistent and serious behavioural difficulties provide promising results.

Family based initiatives - Home visiting by skilled and committed professionals aimed at helping and training parents of young children in adversity have consistently shown positive effects in reducing later criminal activity by the children. One concern is the growing trend in the use of centre based programmes which risk ‘watering’ down one of
the defining elements of such programmes namely intervention in the home. Evaluations of structured family work have shown reductions in re-offending rates of young people who offend persistently by 25 to 70 percent in a series of rigorous trials. The most promising parent and family-based interventions combine training in parenting skills, child development and the factors that predispose children to criminal behaviour with other approaches such as social and problem-solving skills, pro-active classroom management, and peer related programmes for older children. It is important to note that research equally suggest that family work that does not focus on risk factors in not effective.

**School-Based Approaches** - A cluster of risk factors for offending by young people are strongly related to early and persistent anti-social behaviour, academic failure and truancy. Reducing offending has not typically been a primary goal of school, after-school or other youth development programmes. Consequently few studies have measured the direct impact of such work on offending. Literacy programmes and reading schemes with parents and children aged between three and six from disadvantaged areas aimed at improving the skills of both provide positive forms of early intervention. The Fast Track programme is one of the most promising family-school initiatives, using a combination of approaches including parent training, bi-weekly home visits, social skills training, academic tutoring and teacher-based academic interventions aimed at improving behavioural management. Early findings suggest that after one year the programme group were showing signs of better parental involvement in school, increased cognitive skills and reduced problem behaviour compared to controls. Programmes aimed at reducing school exclusion and truancy are viewed as effective although, as yet, limited outcome data is available. On balance research findings give optimism that school based programmes can have a positive effect of risk factors such as attendance and performance, bullying and drug use. There is as yet limited evidence on long term effects on offending.

**Community based approaches** – There is a consistent trend within available research to suggest that effective intervention with children and young people involves multi faceted approaches which target a number of ‘needs’ and ‘risks’ and use a range of techniques, which result in the acquisition of social and life skills, pro-social attitudes, learning to stop and think and understanding consequences of crime. There is promising evidence to suggest that effectiveness can be enhanced and sustained by the provision of youth work programmes, employment and education initiatives, sport, leisure and adventure programmes. However there is little evidence to suggest that these approaches will have a positive impact on reducing offending in isolation. Restorative approaches have also provided promising though modest outcomes when applied specifically to children and young people. When community members are asked to help plan and become involved in an intervention, they develop a sense of ownership. Mentoring programmes appear, at face value, to be a promising approach to reducing youth offending and involve community members but for which there is, as yet, insufficient consistent data to demonstrate whether, and under what circumstances, it is effective. Like restorative justice approaches for young people, mentoring can only be described as promising and may provide a vehicle or lever for change but is unlikely in itself to be enough to impact significantly on the behaviour of a persistent young offender with multiple difficulties. Involving the community can also make it easier to obtain resources and volunteers to carry out interventions. A community approach to risk and protection focused prevention
is at the heart of the Communities that Care projects developed in the USA and Europe and more recently in Scotland

Institutional Provision - Research consistently suggests that removing young people who offend from their homes is seldom a ‘winning’ strategy for reducing long-term offending and can be very damaging to the well-being of young people. Most facilities suffer very high recidivism rates. Despite this, there are young people who present such risks to others or to themselves and containment may be required. Containment will prevent the crimes that these young people would otherwise commit on the street. However it is a high risk strategy that should be reserved only for the most ‘risky’. Residential and institutional provision, as well as for community based provision, should be directed by principles of effectiveness and evidence of what is likely to produce positive outcomes for children and young people. This will include

- Identifying and reducing key risk factors which sustain and support offending e.g. antisocial peers, substance abuse, family functioning, school failure. The greater the number of risk factors addressed by an intervention, the greater its impact.
- Targeting young people with a high predicted risk of further offending, particularly those with prior offences and both property and serious/violent histories.
- Providing more intensive interventions (more time, programme components, frequency of contact) for high risk young people;
- Working across multiple systems within which young people operate – family school/work, peer group and neighbourhood
- Using behavioural skill based approaches and ‘contracts’ to train young people in new skills, highlight un/desirable behaviour, responding positively and negatively as appropriate;
- Using cognitive techniques to teach positive social attitudes and values, problem solving skills changing thinking that supports criminal activity and harm to victims;
- Training interpersonal skills and social perspective taking;
- Providing multiple services and change techniques;
- Assisting young people take their share of responsibility and make good if possible;
- Use family networks to support effective parental supervision and contribute to positive change;
- Increasing educational skills and achievements, employment skills and experience, general life skills offering a long term stake in society;
- Helping young people build new positive relationships
- Increasing contact between young people and positive members of their community;
- Matching young people to appropriate programmes to suit their needs/risk;
- Graduating levels of intervention with assessed levels of risk/need;
- Providing well structured and focused interventions aimed at changing offending;
- Making sure programmes to what the intend to do

Conclusion
In all jurisdictions there are overlaps and marked tensions within and between child welfare, protection and youth justice systems. Few countries are comfortable with too rigid a distinction or separation with the result that there are many variations in the balance of the common ‘ingredients’ of prevention, early intervention, diversion, social intervention treatments and sanctions or punishments required for effective child welfare, protection and youth justice. Benchmarks set by international agreements and regulations have had an important influence on developments in the last decade.

Age thresholds represent the most significant formal entry and exit criteria to welfare and justice systems and nearly all jurisdictions continue to deal with children who offend within a welfare system, with the age of transition or threshold to the youth justice system ranging from 10 to 15 years. Pathways of entry and exit to youth justice systems can also be influenced by the ‘seriousness’ and ‘persistence’ of offences. Programmes which promote the development of parental responsibility and skills are available in a number of countries often as early intervention measures for ‘at risk’ families. Few countries in continental Europe attempt to coerce parents to become involved in decision making processes or subsequent intervention on the assumption that this is rarely likely to help their children.

Developments in community justice to increase the focus on neighbourhood initiatives to create more accessible and less formal justice provision aimed at shifting intervention decisions to the locality affected directly by the crime. There is a long tradition in most jurisdictions of involving lay people in decision making both in adult and youth criminal processes. However the tendency has been to replicate traditional decision making rather than create new ways of problem resolution and decision making.

There is no single approach to helping children or young people change their behaviour and precise knowledge about which methods seem to work best with specific kinds of behaviour or offences remains limited. Nonetheless there is a growing body of evidence about what interventions do and do not work and guiding principles based on research evidence are available to direct service development. Structured skills based programmes aimed at preventing or reducing crime should be part of wider social programmes to address difficulties such as family difficulties, school failure, substance misuse and social exclusion. The evidence for community based approaches is stronger than for institutional provision.

A focus on international obligations, on children’s rights and the growing evidence on effective interventions suggests that ‘Tough is not enough…it’s important to get SMART’.

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1 Specific, measurable, achievable, realistic, time limited
1. What Works

1.1 Introduction

This report was commissioned by Scottish Executive to examine research evidence on key themes of relevance to a government review of Scotland’s Children’s Hearings system. The intention of this review is to identify the available evidence on effectiveness (“what works?”) in children’s services as they apply to children and young people involved in offending around five “key themes” below:

- Approaches which balance welfare and offending issues in reaching decisions/taking action
- The role of parents in decision making processes and implementing activities to address issues/problems
- Participation of lay people in processes and procedures
- Entry and exit criteria from children’s services systems.
- Delivering specific improvements in outcomes for children/young people

The Kilbrandon committee recommended an integrated approach in Scotland to decision making for children in trouble with the law and those in need of care and protection on the basis of evidence that the similarities between such children outweigh their differences. This recognition is reflected in National Objectives and Standards for Youth Justice Services in Scotland (Scottish Executive 2002) where responses to youth justice, particularly prevention and early intervention, require to be set within a framework of integrated welfare provision for children and families.

It is not the intention of this review to examine the antecedents of abuse and neglect in children, nor specialist child protection responses required for effective decision making. A full discussion of these matters can be found in the Scottish Executive review of child protection ‘It’s everyone’s job to make sure I’m alright’ (Scottish Executive 2002). This present review limits itself to a brief examination of the antecedents of youth crime, which highlights that many young people who become involved in crime are themselves victims of abuse and neglect and in need of protection. This raises serious challenges in all jurisdictions about the interplay between systems of child welfare and protection and youth justice. Reference is made to child protection systems processes, where relevant, by way of illustrating when justice systems or welfare and protection systems are invoked when both could be seen as relevant.
1.2 Methodology
The international literature surrounding youth justice is extensive and beyond the scope of any brief review. This report was undertaken in a six week period and is, therefore, intended only to be a brief examination of the subject material and has required a degree of selectivity. Time and space did not permit a rigorous and systematic comparative analysis of social policies and practices on an international scale. Such a process is complicated and the quality and nature of data sources varies greatly. More information tends to be available from the USA and from England, than from European countries. The material and countries chosen in this review reflect both the availability of information and its relevance to our key themes.

The review was based largely on secondary analysis of literature. Relevant material was identified through computerised searches of databases. Particular use was made of Eric, Web of Science, data base of the Canadian Correctional Agency and the Office of Juvenile Justice and Delinquency Prevention. In addition, World Wide Web sites on the internet were scanned through the use of popular search engines. We also undertook a brief survey of our international contacts in Australia, Canada, Finland, Germany, New Zealand, Sweden and the Netherlands to seek views and information on the main themes. The report should be read in association with a number of reviews carried out in Scotland in recent years. In particular Children, Young People and Offending in Scotland (Asquith et al 1998) commissioned by the Scottish Executive; ’What Works with Young People involved in Crime?’ (Whyte and Buist, 2004 - www.cjsw.ed.ac.uk/) commissioned by Audit Scotland to inform their report Dealing with Offending by Young People (Audit Scotland 2002), and McNeill & Batchelor’s (2002) review of desistance literature.

1.3 International Guidance
The Kilbrandon principles directing Scotland’s Children’s Hearings were considered radical for their times. Many of the Kilbrandon concepts and principles have been adopted by international agreements in the subsequent thirty years and there has been a degree of convergence internationally following the development of key guidelines and conventions. Since the incorporation of the European Convention on Human Rights into Scots law, a number of practices, e.g. regarding reports to hearings, have been changed to
comply with European court rulings. Three United Nations promulgations are of particular significance to youth welfare and justice, namely

- Minima Rules for the Administration of Juvenile Justice (Beijing Rules), UNICEF 1985;
- Directing Principles for the Prevention of Juvenile Delinquency (Riyadh Guidelines), 1990;

The **Beijing rules** set standards for the administration of justice with a particular emphasis on children’s rights, and stress the well being of the young person; recommend that the age of criminal responsibility (see section 4 exit and entry) be based on emotional, mental and intellectual maturity and that it should not be fixed too low. They stress the adoption of socio-educational responses to youth crime rather than punitive ones; diversion from criminal proceedings and the avoidance of drawing young people unnecessarily into any formal processes to avoid criminalisation. They emphasise the importance of the young person’s right to representation and the avoidance of deprivation of liberty unless the seriousness of the offence merits it and then only as a last resort. They propose minimum standards for children under 18 deprived of liberty; and stress the importance of appropriate training for professionals.

The **Havana rules** focus on the independence of prosecutors and their role in promoting diversion from criminal proceedings for young people; and the **Directing Principles of Riyadh** stress the value of child centred early intervention; shared responsibility in the socialisation of young people and in promoting non criminogenic attitudes through multi-disciplinary approaches to crime prevention. They recommend the appointment of an independent child ombudsman.

Ratification of the UN Convention on the Rights of the Child (UNCRC) by the UK brought with it the expectation that the Scottish system will operate within the benchmarks set by international agreements, regulations and obligations. Though UNCRC is not incorporated fully into Scots Law, the international convergence sought by these UN promulgations cover general policy principles and set benchmarks which should direct the practices of modern democratic states. Despite this guidance, there
remains significant variation between signatory countries reflecting political, socio-economic and cultural contexts.

Three key principles, reflected in Scots Law through the Children (Scotland) Act 1995, are expressed in the first 3 Articles of the UNCRC:

- Article 1 recommends that young people under the age of 18 should be regarded as children, unless the local age of majority is lower;
- Article 2 promotes a non-discrimination principle which demands that all rights apply to all children without exception.
- Article 3(1) requires consideration of the ‘best interests’ of the young person in decision making. It states ‘in all actions, concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration’.

Policy direction in Scotland aimed at prevention, early voluntary intervention and compulsion only as a last resort is consistent with these international obligations. The recent appointment of a Children’s Commissioner reflects an ongoing commitment to children’s rights.

Diversion from prosecution is a central principle in Scotland’s Children’s Hearings and relatively few children under the age of 16 are dealt with through criminal processes. However Scotland remains the only UK country dealing routinely with young people aged 16 and 17 in adult criminal proceedings and has a proportionately larger numbers of young people in secure accommodation and custody than comparable sized European countries.
2 Children, Young People and Crime

2.1 Introduction

Policy and service responses to youth crime require to be informed by what seems to be effective in reducing criminal activity. They must, equally, be informed by evidence of the personal and social factors associated with criminal activity, by the nature of youth crime itself and by those important ingredients which assist children and young people sustain positive change over time and desist from offending. The first part of this review provides a brief overview of research evidence on factors associated with criminal behaviour in children and young people before considering research evidence on the five key themes identified in the specification.

The individual and the social context are relevant to understanding and preventing or reducing crime. The modern trend in criminology has been to try and develop more integrated social development theory which draws from earlier theories of crime. Individual characteristics fostering anti-social tendencies in young people tend to be long term ones such as impulsivity and poor internal controls, poor ability to manipulate abstract concepts (cognition), low empathy, weak conscience, poor internalised norms and attitudes supporting offending, and long term influences such as desire for material gain, and status with peers. Factors influencing whether or not anti social behaviour is likely to lead to offending are often short term situational influences such as boredom, frustration, alcohol or drug misuse, opportunities to offend, and perceived costs and benefits of delinquency. ⁴

In addition to understanding the developmental needs of young people, those concerned to reduce offending require to understand the nature of youth crime itself as a social phenomenon; the significance of its form (the relationship of offender and victim); the social context (nature of peer or other significant relations) and the shape of crime (different types of offences present different networks of relationships), its direction through time and space (where and when it takes place). Research and theory alike are increasingly agreed that for intervention to be effective it needs to focus on key intermediate factors, which reinforce and sustain criminal behaviour and that are amenable to change.
These so called 'criminogenic needs' include

- Changing anti social attitudes and feelings
- Reducing anti-social peer associations
- Promoting familial affection/communication
- Promoting familial monitoring and supervision
- Promoting protection
- Developing positive-social role models
- Increasing self control, self management and problem solving skills
- Replacing the skills of lying, stealing and aggression with more pro-social alternatives
- Reducing misuse of chemical substances
- Shifting the distribution of rewards and costs associated with offending behaviour so that non criminal activity is favoured
- Ensuring that the offender is able to recognise risky situations and has concrete and well-rehearsed plans for dealing with those situations
- Confronting the personal and circumstantial barriers in the way of effective service outcomes.

Crime related needs are to be distinguished from other wider social needs and disadvantages, which require to be tackled as part of any re-integrative approach, but which are unlikely on their own to impact on reducing offending. For example, the following may respond to a young person’s needs, but not have an impact on offending:

- Increasing self esteem without reducing anti-social thinking
- Increasing the cohesiveness of (anti-social) peer groups but failing to provide positive social models and pro-social significant others such as social mentors
- Increasing employment or educational aspirations without concrete assistance to achieving these aspirations.

Youth crime understood in its relational context, taking account of the victim, the community, the offender and the ‘agencies’ of social control, can assist in the development of evidence-led responses aimed at restoring these relationships.

Any discussion on evidence-led policy and practice must rest on a realistic understanding of the nature of the social sciences, and limitations in the scope for measurement in human relations interventions. Many factors are unpredictable, in particular the social context, which changes with time and space. Realist evaluators stress that processes and social context as well as outcomes are crucial in the evaluation of any social programme. The same programme may work in different ways in different circumstances, and sometimes it will not work at all. It is not always possible to ensure that effective programmes can be replicated in a mechanical way with the expectation that the approach will work everywhere and always.
2.2 Youth Crime and associated factors

Crimes committed by children and young people account for a substantial minority of known offending in Scotland. This is equally true in other jurisdictions. Research in England & Wales found 55% of young males aged 14-24 and 31% of young females admitted committing at least one of a list of 23 offences at some time in their lives. Most only admitted to one or two offences but a small proportion reported very high rates of offending. This and other research indicate that ‘persistent offenders’ account for a large proportion of crime. The most commonly admitted crimes were of dishonesty for both males and females, in particular theft and handling stolen goods. Most recorded offences committed by young people tend to be property related and those who persistently engage in offending are not disproportionately engaged in the most serious and violent crimes.

There is no straightforward definition of persistent offending that allows a simple classification of those at highest risk of re-offending. One study in England and Wales adopted three definitions: three offences in a twelve month period, ten offences over a shorter period, and offence seriousness as a crude marker of persistence. Each group identified by the three definitions overlapped but, generally, did not identify the same young people. The common characteristics of the three groups identified was less the offence definition applied and more their social adversity and history of public care. A distinction also needs to be made between the number and type of offences and the number of episodes in a given time period – one episode, such as car related crime, can appear as a large number of offences. Similarly persistence and seriousness were not mutually inclusive. The researchers concluded that any single or overly narrow definition is likely to miss out an equally important group of young people when targeting intervention.

There is evidence that for some young people, early involvement in offending may be a stepping stone in a pathway to more serious, violent, and persistent offending. Studies confirm the significant implications of early criminal activity combined with multiple disadvantages as an early warning sign of continued offending. A US National Youth Survey suggested that the risk of becoming a persistent offender is two to three times higher for child offenders aged under 12 than for a young person whose onset of
delinquency is later. However, because younger children tend not to commit particularly serious or violent offences, and because they usually have not acquired an extended pattern of criminal behaviour, they often receive limited appropriate attention for this behaviour.  

Some children are considered to be at higher risk of offending than others. For example, children at risk of more serious or violent behaviour often exhibit clear behavioural markers of violent activity in their earlier years including:  

- Bullying other children or being the target of bullies  
- Exhibiting aggressive behaviour or being alternately aggressive and withdrawn  
- Being truant from school  
- Being arrested before age 14  
- Belonging to delinquent or violent peer groups  
- Abusing alcohol or other drugs  
- Engaging in anti-social behaviour, such as setting fires and treating animals cruelly  

An important indicator to the kind of neighbourhoods where children and young people who offend live is often the type of housing occupied by their families, in particular public authority housing. Studies examining data about patterns of offending, social composition of neighbourhoods, and mechanisms of informal social control suggest that large neighbourhood differences in crime rates may be explained, in part, by differences in the functioning and composition of communities. Relatively little is documented about the capacity of such neighbourhood communities to regulate themselves according to shared values and about the factors which most influence variation in a community’s capacity to control their social environment by informal methods.  

Educational problems have long been identified as an important component in a cluster of disadvantage experienced by children and young people who offend. Links between disaffection at school and delinquency are well established although it is less clear whether young people who dislike school are more likely to offend or simply that children and young people who offend come to dislike school. Poor school performance, low intelligence and being seen as ‘troublesome’ in school at a young age are major crime-risk factors identified both by British and American studies which suggest that attitudes and weak attachment to school and poor school performance are often linked to adolescent delinquency. Less is known at what age these behaviours begin.
to predict offending at later ages.\textsuperscript{16} Studies have found that girls who report disliking school and boys who report regular truanting or school exclusion are more likely to offend than others. The odds of ever committing an offence for those who play truant have been reported to be more than three times those who have not truanted; those skipping school once a week or more are more likely to admit to offending.\textsuperscript{17} Similarly features of schooling itself such as relationships with teachers, rewards and sanctions, and systems of pupil support are thought to play a part in sustaining or reducing difficult behaviour. School practices, then, not just the characteristics of the intake, are considered to encourage or inhibit offending.

There is evidence\textsuperscript{18} to show that having relationships with criminal others is associated with criminal behaviour and the nature of peer relationships has long been identified as an independent predictor of future offending.\textsuperscript{19} Studies\textsuperscript{20} have suggested that boys identified as anti-social in childhood show poor-quality friendships at age 13-14 and that boys with poor-quality friendships and a high level of delinquency at age 13-14 are at risk of delinquent behaviour over the following 2 years. There is debate about the mechanisms through which offending associates influence one another and how they acquire networks which support criminal pathways.

A recent study of young people in custody in Scotland\textsuperscript{21} revealed the background characteristics, lifestyles, adjustment to custody and the likelihood of re-offending of 348 young offenders aged 16-22 years, drawn from five HM institutions for young offenders including 42 females. Information on their characteristics revealed that predisposing factors associated with offending behaviour discussed above were highly prevalent. The young people were characterised by a history of disruptive and offending behaviour from an early age; poor school attendance and achievement; lack of stable employment; familial histories of offending; alcohol and drug abuse; and in many cases neglectful parenting. Links were shown between neglectful parenting styles and offending behaviour. The report noted that since 20\% of the offenders already had children of their own, the potential existed for such patterns to continue into the next generation. The report identified clear links between alcohol/drug misuse and offending patterns. The researchers suggested that those seeking to challenge offending behaviour should address the fact that for many persistent offenders, offending behaviour is exciting and enjoyable. Offending occurs in a social context which provides peer approval and leads to enhanced
self-esteem, albeit of a negative nature, for the offender. The researchers suggest that since many of the young people have conventional aspirations, intervention must offer opportunities for equally rewarding behaviour that provides opportunities to realise these aspirations in the community.

*Three groupings of young people who offend*

Children and young people who offend can be characterised as belonging to three broad groups on the basis of the number and duration of their offences, which are closely associated with different patterns of risk factors: 22

**Low-risk or minor offenders** will not commit many offences, their offending is generally a part of the normal maturation process, and they are likely to stop offending of their own accord. They are likely to show few risk factors and have a number of protective factors such as positive relationships or achievement in school.

**Medium-risk offenders** tend to start offending in their teens and are likely to grow out of their offending by their mid-twenties. Although late starters, they may offend at the same seriousness and frequency as high-risk offenders. Some may begin and end their offending careers quite abruptly. They may also behave anti-socially in some environments (such as with friends) and not in others (such as school). This group tends to exhibit two particular risk factors: substance abuse and anti-social peers. They will often have a number of protective factors such as family stability and will succeed in some parts of their lives e.g. in education.

**High-risk offenders** (or serious young offenders) may comprise less than 5% of under 17 year olds, but will account for disproportionate number of offences committed by children and young people. They are likely to begin offending early (before age 14 and as early as 10), offend at high rates and often very seriously, and are likely to keep offending into adulthood. They start their anti-social behaviour with minor problems in early childhood, move onto more serious problem behaviours, and then begin serious and/or repeat offending. These young people are characterised by major personal, social and family disorder.
These groups are not mutually exclusive and there can be movement between children and young people in each group, particularly if their offending is not adequately tackled. In other cases, child and young offenders may enter the youth justice system at a medium or high level of risk. There is potential to exit from the youth justice system at any time, irrespective of the level of risk.
3. Balancing welfare and justice in decision making about youth crime

3.1 Introduction

The widespread development of specialised legal mechanisms for dealing with children and young people in difficulty separately from adults occurred in many countries in the late 19th and early 20th centuries. Key elements were the focus on the welfare of the child and a belief in state intervention in the name of child reform.

It is common for systems dealing with young people who offend to be differentiated along the broad dimensions of ‘justice’ and ‘welfare’. As with all ideal-types, models are seldom found in a pure form as in practice, most jurisdictions combine elements of both approaches. ‘The "welfare model" is often associated with change and development through social and educational intervention rather than punishment. In contrast, the ‘justice model’ assumes that children and young people (above a certain age that varies from one country to another) should be held accountable before the law for their actions, the degree of culpability should be assessed and punishment apportioned in accordance with the seriousness of the offending behaviour. For this reason the child or young person must be accorded full rights to due process to ensure that state powers are predictable and determinate. Issues of maturity and capacity of criminal intent are factored into systems’ responses. In general, welfare approaches focus on what are thought to be the underlying causes or needs that lead to crime, while justice approaches concentrate more closely on the offence and immediately associated ‘criminogenic need’ (See chapter 7).

3.2 What are the characteristics of a balanced system?

Many countries have retreated from welfare toward a justice approach with a greater emphasis on individual responsibility, punishment which is proportional and determinate along with the requirement for access to formal justice. These developments can be traced to the USA in the late 1960s, particularly the cases of Kent versus United States and Gault together with a concern for the greater protection of the rights of young people in juvenile justice and child welfare systems. Following the Children Act 1989, England and Wales introduced separate youth and family courts for dealing with offences and care and protection issues respectively. Partly influenced by similar thinking, numerous reports in Scotland have concentrated upon how to make the system more effective in reducing youth crime. The shift towards a
more ‘justice’ oriented system has been particularly strong in England & Wales, USA and Canada but is also apparent across Europe. However, it should be noted that, in relation to youth offending, ‘….The philosophy of child protection continues to hold sway in most mainland European countries’. The recent reforms in Swiss law related to youth offending for example, emphasised that courts should consider all the personal and family circumstances of the child or young person and give priority to protective measures over punishment. A further qualification of the trend away from the welfare approach to offending by children and young people is that this has not applied to younger children, even up to their mid-teens in some countries. According to the experts who assisted with this review in Finland and Sweden, children under the age of 15 who commit crimes continue to be dealt with by the child welfare system not youth courts and even in Canada, with its strong justice focus, this is true for those under 12. However because the peak age for offending is typically in the mid to late teens the majority of young people who offend in these countries, notwithstanding diversionary measures, will be dealt with by youth courts with a justice and criminal orientation.

What are the characteristics of a balanced approach to youth crime and what kind of balance should there be are questions each jurisdiction has to answer. Walgrave’s analysis of the different systems in Europe suggests that key considerations should include:

- The age category to which the special regime of judicial interventions apply
- The agencies imposing coercive measures to minor delinquents
- Possible special procedures for the prosecution of minor delinquents with special attention to educational concerns
- Specific (educative or punitive) measures taken against minors who commit an offence.

Walgrave states that in a justice model an offence demands a coercive and curbing approach. Penal law is attributed several functions; to restore by retribution, the juridico-moral order that was disturbed by the offence; to keep possible offenders from committing a crime by deterrence; and if possible reform the offender. On the other hand in a welfare model a minor is not yet an adult which implies s/he is not yet capable of full responsibility and that s/he is still subject to socialising. He concludes that all countries have tried to construct a kind of synthesis or compromise between two basic approaches that are difficult to reconcile.
Indeed it is for this reason that many western countries are again reviewing and modifying their system in one direction or another. For instance Canada having retreated from a welfare approach in the 1980s has recently made a serious attempt to create a better balance between welfare and justice. It has attempted to meet the requirements of UNCRC; recognised the research on ‘what works?’ in youth justice; and provided dedicated resources before introducing new youth justice legislation in 2003. The objectives set for Canadian reforms are:

- Prevention and meaningful alternatives: this involves community based crime prevention and addressing the social conditions associated with the root causes of delinquency
- Meaningful consequences for youth crime. Young people will be held responsible and accountable for their actions. The consequences for the crimes will depend on the seriousness of the offence and on the particular circumstances of the offender.
- Rehabilitation and reintegration. Effective programmes that guide and assist a young person’s return to the community. Sentences which instil a sense of responsibility and encourage the participation of youth in constructive measures that involve the victim, the family and the community.

Canada’s strategy acknowledges that different approaches are required for different levels of risk especially for the small number of young people who commit very violent crime.

The following brief overview of youth justice and child welfare systems in selected countries considers the extent to which they may be considered balanced by reference to the four criteria in Walgrave’s analysis above. As a matter of necessity, we rely upon information from research some conducted earlier than ideally we would have wished. We have, however, sought to fill the gaps by contacting a number of respected colleagues in each country.

3.3 Australia

In Australia, police, juvenile justice and child welfare are the responsibility of each of the six states and two territories. As a result criminal law, courts, police, juvenile justice legislation and crime statistics vary from state to state. However juvenile justice legislation has since the 1980’s been re-written to accord with justice model principles in response to familiar critiques of the welfare approach namely, lack of due process rights, the application of coercive penalties for non criminal matters, net widening, failure of rehabilitation and the injustices meted out to children for ‘status crimes’. The result is all jurisdictions now provide for diversion and determinate sentencing alongside welfare
considerations. Legislation in two states, South Australia and Queensland (the Young Offenders Act 1993 and the Juvenile Justice Act 1992) was constructed to strike a balance between protecting the community, punishing the offender and recognising the developmental needs of children and young people. In both cases, while the welfare of the child is framed as ‘a’ primary consideration, the main (in effect ‘the’ primary) concern of both Acts is with protecting the community and holding young people accountable.

Children can only be prosecuted for the same crimes as adults. In South Australia where for the purposes of criminal proceedings a child is 10-17 years and in Queensland is 10-16 years, police are responsible for investigating offences and have some discretion in how a matter should be dealt with. Children have the same legal rights and protection as adults:

- To be accompanied by an independent adult
- To have legal advice before deciding to accept a diversionary alternative.
- To have parents notified

The legislation in South Australia provides for three forms of diversion and official statistics for 1995/96 show that nearly 30% of cases were dealt with by informal cautions, 22% formal cautions and 10% referred to a family conference. A young person must admit guilt before a conference is convened by a Youth Justice Co-ordinator who is an officer of the Youth Court. The legislation encourages attendance by victims, parents and others invited by the co-ordinator. The sanctions which can be imposed include apologies, undertakings or conditions, community service (up to 300 hours) and restitution (up to $25,000). Failure to adhere to a sanction can result in the matter being returned to court.

In Queensland the police operate a cautioning service for first and minor offenders. Research shows that offences such as shoplifting are more likely to result in a cautioning than motor vehicle theft and breaking and entry. There is also provision for conferencing. Where children are referred to court rather than diverted, they can be summoned, arrested and released on bail or arrested, charged and kept in custody alongside adults. The specialised courts (the Youth Court in South Australia and Queensland Children’s Court) have two tiers with the second tier being reserved for more
serious cases in terms of the nature of the offence and the sentence which can be imposed. These courts are presided over by a professional judge. The five types of dispositions or sentences in the two states are:

- Unsupervised release orders
- Fines and other orders
- Restorative measures
- Supervised orders e.g. obligations are imposed that the young person attend a project or treatment programme
- Custodial orders (which can be suspended for the child to undertake an intensely supervised programme of activities

In South Australia custodial and community corrections are administered by the Department of Family and Community Services with family conferences organised by Youth Justice Co-ordinators. In Queensland, juvenile corrections are administered by the same department as child welfare matters. The main crime of young people is primarily property and other crime a category which includes public order offences. Data on the apprehension of aboriginal youth (only available in the case of South Australia) indicates that they constituted 2.3% of the state’s population and 11.7% of apprehensions.

Little research is available on the effectiveness of these systems to allow comparison of the impact of different dispositions on outcome. However, one study of South Australian offenders revealed that around 8% of young people, who came to the attention of the system, had five or more contacts in the eighteen months after the introduction of the Act. The same study also found that one half of Aboriginal youth had multiple apprehensions as compared to around a third of non Aboriginal youth. In Queensland a cohort study found that 1.2% of offenders were responsible for 7.3% of appearances and that 18.8% of offenders were responsible for nearly half of the cohort’s appearances.

3.3.1 Has Australia achieved a balance?

The main focus of the system is on ‘gate keeping’ and the administration of court ordered penalties. Australia is criticised for spending a considerable amount on crime control and ignoring primary crime prevention in the face of the prevalence of child poverty, homelessness, abuse and exploitation and the over representation of poor, working class and Aboriginal children. In consequence programmes that meet the needs of young people have not been developed. Thus the balance is firmly towards criminal process with welfare aspects neglected.
Commentators have pointed out that the police, the main agents of diversion, do not generally have good relations with young people which must create difficulties in achieving successful outcomes. Moreover despite the stated intention of the legislative changes, conferencing operates as a low tariff pre-court diversion programme in South Australia and in other states the eligibility criteria for this option is restricted to young people who are first or early offenders. Although an early review of conferencing concluded that they were perceived as fair and participants satisfied with the process and outcomes, many issues remained unresolved, such as whether punishments were proportionate and due process considerations met.

Research on the youth courts in Queensland which deal with 34% of cases concluded even this forum enhanced the potential for injustice as children often ‘misunderstood and misconstrued’ much of what occurred and were in ‘awe’ of the court precinct, unable to communicate or participate directly other than through their lawyer. The fact that serious violent offenders are dealt with as a distinct group by a ‘second tier’ court, with little recognition of their status as children and with few specialist interventions, suggests the balance has yet to be achieved.

### 3.4 Canada

Canada is a federal state. The federal government is responsible for legislation on criminal law including youth justice. However provincial governments are responsible for the administration of youth justice and for child welfare and protection legislation and its administration. Youths under the age of criminal responsibility (12) can be dealt with under child welfare legislation for their offending which can include removal from home. Canada’s Juvenile Delinquent Act 1908 had an ‘exclusively welfare-orientated philosophy but was considered to have resulted in considerable abuses especially of youth confined to custodial facilities. The Young Offender’s Act 1984 was the key statute prior to 2003. The Act maintained the principle that offending behaviour should be dealt with, where possible, either by voluntary measures or under provincial child welfare laws, but it moved away in large measure from welfare principles towards criminal law and provided for the establishment of youth courts to deal with criminal offences committed by those aged from 12-17. It ended the ability of the court to turn a criminal matter into a child welfare matter and to divert a child to supervision of a children’s aid
society. The principles placed in the Act reflected the tensions between a welfare and justice orientation:

- Accountability but less than adults
- Protection of society including recognition of the importance of rehabilitation and crime prevention
- Recognition of the special needs of youth
- Protection of the legal rights of youth
- Involvement of parents
- Use of least possible interference including diversion from court.

Young people dealt with by the youth courts have a right to legal counsel and in many places there are specifically designated youth police and probation officers. The youth court process is ‘summary’ meaning there is no preliminary inquiry and no jury trial. In practice most cases are resolved by a guilty plea. A judge can order a pre-disposition report before sentencing. In serious cases a psychological or psychiatric assessment may be prepared and youth courts are provided with the facility to transfer youths to adult criminal proceedings for more serious offences.

The range of sentencing options included fines, community service, restorative approaches including mediation and restitution to victims and custody. The most common disposal was probation which typically involved the youth remaining at home and subject to conditions of behaviour (e.g. refraining from contact with other offenders) and supervision by a youth worker or probation officer. Courts could also require that youth attend counselling or receive treatment as a condition of probation but there was often a lack of community based resources for young offenders with significant problems. Disposals were subject to review annually by a judge. If a youth was placed in custody (the maximum sentence for all but murder was three years) the judge specified the level i.e. open or secure. Facilities varied greatly in the extent to which programmes were offered; some were boot camps; and there were also wilderness camps mainly for aboriginal youth. Concern over the number of minor offences being dealt with in court and the number of youth custodies led to amendments in the mid 1990s which suggested a readjustment of the welfare and justice balance within the system. The amendment required that an ‘order of custody shall not be used as a substitute for appropriate child protection, health and other social measures’ (s24 [1.1]) came into effect in 1996. Despite these changes a review of the system showed that in 1998-99, approximately one third of youth convictions resulted in a disposition to open or secure custody, the majority for
terms of three months or less. Of the remaining convicted youth, 48% received probation and 5% a fine, restitution or discharge and 7% a community service order. A later survey revealed that more than a third of all youth court cases resulting in convictions involved repeat offenders.

Calls for reform were based on growing evidence that the great majority of serious and repeat offenders were troubled youth from troubled families; that many young offenders demonstrated a clear pattern of disruptive behaviour before they actually committed crimes; that only a small number of young people committed very violent crimes; that indigenous minorities were overrepresented in criminal processes; and that more effective policing could reduce the incidence of certain types of crime. A white paper *Strategy for the Renewal of Youth Justice* set out the case for change recognising it is easier to be ‘tough on crime’ than to be ‘smart about crime’. The strategy had three complementary elements – prevention through the development of a National Children’s Agenda to support families in difficulty; proportionate consequences for crime; and re-integration for serious and violent offenders. Diversion from court processes was stressed as was re-integration as an effective strategy for protecting the public.

The Young Offenders Act 2003 states that all young people are to be tried in youth courts separate from adults and that all the protections suitable to their age are put in place. In cases where a young person is charged with a serious offence, he/she will no longer be transferred to an adult court as previously but will be dealt with by a youth court. However, an adult sentence can be imposed by the youth court and there is no requirement to separate youths from adults in custody. The key principles enshrined within the Act include:

- Citizen and community participation in the system
- Public confidence in the system
- Public protection by the reduction of youth crime
- The use of measures outside the formal court process and a reduction of the over reliance on custody
- Rehabilitation and reintegration of young offenders
- Measures for violent offenders.
The main objectives as described in section 3.1 are prevention, meaningful alternatives, meaningful consequences and opportunities for rehabilitation and reintegration. Courts can again refer a young person to a child welfare agency for assessment of need. However the Federal government has no power to require provincial governments to provide community based services.

3.4.1 Has Canada achieved a balance?
It is too early to answer this question. However Canada has put in place mechanisms which will monitor and evaluate the operation of the 2003 Act. A Youth Justice Renewal Initiative\(^5^5\) provides funding for crime prevention and early intervention; and supports projects (see Section 5 for an example) which aim to achieve the objectives of the strategy. The new Youth Justice Strategy has strong links to the National Children's Agenda and the National Strategy on Community Safety and Crime Prevention as part of a broader federal commitment to improve the health, safety and well-being of Canada's children and youth. The approach reflects the need for a broader, more comprehensive and integrated approach to youth justice that looks beyond the justice system for long term solutions to youth crime in such areas as crime prevention, child welfare, mental health, education, social services and employment.

3.5 Finland
The basic Penal Code in Finland of 1889 has been amended extensively especially in the 1950s when it was recognised that the prison population was four times that of other Nordic countries. While new polices were introduced to reduce this population, no special youth criminal system was developed in the sense that the concept is understood in continental legal systems.\(^5^6\) Finland’s age of criminal responsibility of 15, is typical of Scandinavian countries and when a crime is suspected the police contact a local social welfare board comprising two teams of social workers, one for those under age 15, the other for 15-17 year olds. In the case of the former, the criteria for child welfare measures is *the best interests of the child* but if community-based measures are considered insufficient e.g. because the young person is abusing substances, removal from home can be the recommended. Children under 15 may be subject to civil liability by a local civil court and required to pay compensation to a victim, forfeit property to the state, or be involved in victim mediation with their parents.
Young people age 15-20 are subject to the Young Offenders Act 1940 with special provisions applying to those age 15-17 years, who are subject to both the criminal justice system and the child welfare system.57 Social services are involved in police interrogations, (parents must be present), counselling, personal investigations and if the case goes to court represent the local social welfare board. The prosecutor may divert or waive charges on the following grounds:

- Pettiness- the expected sanction may be a fine
- Equity- if trial and punishment are deemed unreasonable in view of attempts to prevent or eliminate the consequences of the offence
- Procedural economy- due to the accumulation of offences and an individual offence would not affect the over-all disposal.

If charges are waived, the victim must be informed and has a right to instigate a prosecution him or herself. Where a young person is sent to court with the expectation of a more severe disposal than a fine, a social investigation is conducted by social welfare officials or the Probation Association. A similar investigation can be requested for 18-20 year olds, the objective being to establish the motive for the crime and the suspect’s personality and living conditions. Concern over the quality of assessments presented to the courts, has led to the piloting of BARO (Basic Council Examination Device) a ‘screening instrument’ to establish the care/health needs of young people.58

Until recently, young people appearing in criminal proceedings were subject to fines, conditional (in effect suspended) prison sentences (community supervision for 1-3 years) and custody. Community service (20-200 hours) was introduced on an experimental basis in 1991 and replaced unconditional custodial sentences of up to 8 months. Custody for under 18’s is now rarely used with the daily population reported to be between 7-10 young people in 2003. These young people may be released on parole after they have served one third of their sentence.

A new intermediate sanction, Youth Service and Probation was introduced in 1997 specifically for young people aged 15 but not yet 18 where

- The offence is serious
- The young person is considered likely to commit new offences, there is potential for change and there is a need for rehabilitation
- The young person is in a ‘crime intensive period’
The objective is to reduce further the use of custody and the goals are to:\(^59\)

- Incorporate measures which would promote the young person’s ability to function in society and promote a sense of responsibility
- Help the young person establish relationships with his/her community
- Enable the young person make better use of social services
- Promote the young person’s integration into society

The Probation Service and the social welfare board, prepare a ‘preliminary enforcement plan’, the key document providing information to the court prior to sentencing. The Service is responsible for enforcing the sanction which includes youth service, i.e. regular unpaid work carried out under supervision and tasks that ‘promote social adjustment’. Supervision under this disposal ranges from 4 months to 1 year, involves regular contact with the young person and, where necessary, parents. There are detailed provisions in the legislation if a young person neglects or fails to adhere to the conditions of the enforcement plan:

- For minor violations - a written reprimand from the Probation Service
- For more serious violations - a report to the prosecutor
- For more serious violations - the prosecutor takes the matter to court resulting in a return to the Probation Service or a new sanction e.g. extending the period of supervision or another sentence corresponding to the portion of supervision not yet completed.

Initial evaluation suggests that the youth sanction has been used mainly for cases of assault and theft and has required on average around 33 hours of youth service spread over a supervision period of 8 months. Almost two thirds of the young people were serious and persistent offenders with at least one prior conditional sentence of imprisonment and on average 2-3 prior sentences. Many have been the focus of child welfare and social measures as a consequence of problems with substance abuse. More than a third had interrupted their enforcement plan because of drug or alcohol problems and in some cases serious mental health problems. The rate of recidivism was high and during the twelve month follow-up period, at least 57% had committed further offences for which they received at least a conditional prison sentence. \(^60\) Official statistics show that in the period 1991-2000 there was a reduction in prison and conditional prison sentences, an expansion of the use of fines and of the ‘youth sanction’. However the use of the latter is small at around 2-3% as compared to the fine at around 65%.
As in many jurisdictions including Scotland, there has also been considerable attention to speeding up the youth justice process often judged to be too lengthy to be effective.

**3.5.1 Has Finland achieved a balance?**

Although Finland diverts all young people under 15 from criminal process, it cannot be considered to have a balanced system for those over 15. Formal options of diversion from prosecution are limited to the discretion of prosecutors and there is no specialist youth court. Rehabilitative programmes are offered mainly through the courts and then to young people whose offending is persistent and/or serious. Although reports are requested of social welfare services officials, service responses seem poorly documented. Additionally it has no formal strategy aimed at crime prevention or early intervention for those over 15 and has yet to recognise the high incidence of crime (and poverty) among the young immigrant population.

**3.6 The Netherlands**

The Netherlands has always drawn a distinction between children in need of care and protection and delinquent children. Early attempts to develop a fully-fledged child protection system resulted in neglected and abandoned children being placed in the care of private charities (predominantly the church) and criminal youth seen as the business of the state. The 1921 Act which led to the appointment of specialised juvenile judges retained the distinction and established the supervision order, a new measure which could be imposed both in civil proceedings and in penal matters ‘when a child for whatever cause is raised in such a way as to threaten him with moral or physical ruin.’ Social workers were appointed as family guardians and had considerable power. They had to assist and guide parents but could advise the juvenile judge to restrict or remove parental authority and to place the child in an institution. The revision of juvenile penal law which led to the Juvenile Justice Act 1995 retained an age of criminal responsibility at 12 but abandoned the longstanding traditions of its welfare approach to offending by young people, to some extent, because of the negative impact of treatment/institutions on children and because interventions applied to juvenile offenders were considered as having no solid scientific basis.
3.6.1 Youth justice
The current system has been described as a ‘hybrid’ between welfare and justice for it retains aspects of the welfare tradition and some features considered more punitive than before. In the case of child neglect, abuse or problem behaviour every effort is made to persuade parents to accept services voluntarily and so avoid the case going to court, so much so that social services are said to deal with more youth than the police. A proposal under consideration is to combine child welfare services, psycho-social services, child care, and probation into one central office in each geographical area to promote speedier and more effective services.

The police practice of dropping petty offence charges has been abandoned to be replaced by requirements that the offenders pay compensation to the victim or perform agreed tasks on a diversion programme (HALT). Admission to HALT, which deals with minor offences such as damage to property, simple theft (the main referral), fencing and disorderly conduct in public places, depends on admission of guilt and cannot occur on more than two occasions. HALT has now been adopted in law as an official sanction offered by police and HALT bureaux exist throughout the country. The target group is 12-18 year olds arrested by the police but offenders are generally 13-15 years of age. In 1999 the most common offences were shoplifting, vandalism, petty property crime and use of fireworks. The scheme’s objective is to provide a quick educational sanction to prevent an increase in offending.

A young person is referred to the local HALT bureau directly by the police who explain what the scheme does and what is expected of them. The young person can have the offence referred to the prosecution service but if he/she chooses to work with HALT the bureau informs the parents and contacts the victims to arrange for restitution. The young person is offered the opportunity to make amends through reparation or restitution and the duration of the work ranges from 2-80 hours with the average being 8 hours. All parties including the young person must sign up to an agreement. If the young person keeps the agreement, no further action will be taken and they do not acquire a criminal record.

The schemes, now well established as a result of evaluations which demonstrated reductions in recidivism and police formal warnings, are run by the local authorities in
co-operation with the Public Prosecutions Department which has overall responsibility. The Ministry of Justice finances the schemes but local authorities pay for preventative activities. National regulations are being formulated to guarantee uniformity and consistency of approach.

Under the 1995 Act, the prosecutor is responsible for investigating police activities and for the indictment and recommendation of a specific penalty if s/he refers the case to youth court. However, s/he can no longer adhere to the former principle of ‘dismiss unless’ but now must adhere to the principle of ‘do not dismiss unless….’. The Act has reduced the main sanctions to the fine and youth detention, (now doubled from a maximum of six months to twelve months for those aged 12-16 and quadrupled to 24 months for those aged 16-18). There are also three types of alternative sanction - community service, compensation or reparation of damage caused to the victim and a training order. The latter, based upon behavioural techniques, social skills and vocational training (following the English model of community service and Intermediate Treatment) accounted for about 70% of the sanctions imposed in 1998.

One major change following the 1995 Act is that juveniles are entitled to legal counsel where a proposed sanction is more than twenty hours; also changed are the conditions that have to be met before a youth aged 16-18 can be dealt with by the adult court. Previously there were three requirements, all of which had to be met, namely:

- The committed offences had to be serious,
- there had to be aggravating circumstances (e.g. commission of an offence with an adult)
- and the offender had to have an adult or mature personality,

Since the Act, any one of these conditions is sufficient for transfer the young person to adult court. Penal treatment measures in special institutions have been introduced for serious, violent and sexual offenders needing treatment; these may extend to six years. The outcome has been an increase of 16-18 year olds in adult prisons, an increase in average detention periods in juvenile institutions and an increase in the number of secure places. On the other hand statistics show that youth prosecutors are increasingly reluctant to transfer young delinquents to the adult court.
3.6.2 Child welfare and protection
Though children under 12 cannot be sanctioned for criminal behaviour, special projects called STOP have been introduced for those arrested by the police, with the aim of voluntary agreements for educative intervention by social workers. No outcomes are available from this initiative. For more serious infringements of the law, police may refer the child to the council for child protection.

Child welfare embraces child care and child protection and if parents are not able (or willing) to care appropriately for their children and voluntary intervention is not accepted, the court may become involved. Child care legislation (WJHV, Wet op de Jeugdhulpverlening) stipulates help provided to families should be short term, direct and relevant. Traditionally the Dutch welfare state has been based on plurality of state and non-governmental service providers and this has applied to child welfare provisions. There is the presupposition that users have a right to choose from a variety of services. The criticism that the interventions applied to juvenile offenders had no solid scientific basis has also been levelled at the response to child protection, given that the Netherlands has a great number of children over and under the age of twelve in child-care homes as a child protection measure. The numbers increased slightly in the period 1995-1999. In response the Dutch government undertook an international search for new and progressive ways of intervening, particularly important as there was little or nothing in the way of community based options being delivered. The Netherlands Institute for Care and Welfare (NIZW) informs the sector dealing with young people age 0-21 years and has responsibility for innovation. It established through its Support and Prevention Department, two centres of expertise for Parenting Support and Child Abuse with the intention of disseminating the relevant knowledge. Many preventive initiatives have, similarly, been introduced by the Ministry of Justice in collaboration with the ministries of welfare, education, and local government. These include parenting courses in child protection and in respect of persistent truancy; strategic community development initiatives such as Communities that Care; and pilot programmes to improve school achievement and the social competence of children from disadvantaged families.

There is now a strong emphasis upon co-operation with the users (families) of services who must be involved in the decision making process and demonstration projects have been established throughout the country which aims to strengthen families within their
own environment. These are not, however, part of a ‘grand strategy’ as is the case in New Zealand. The Netherlands still has residential homes which accommodate children placed on court orders and those placed by welfare, school or medical authorities, the latter are voluntary placements to which parents have agreed. So within the homes, there is no distinction between children with petty delinquent behaviour, children in need of protection, and children with other kinds of disturbances. The paradox is that the sentence of a youth judge can lead to a maximum of 6 months detention, but if a child protection measure, it can be extended to 2 years. As a consequence many youths prefer to be ‘punished’ rather than ‘treated’.

3.6.3 Have the Netherlands achieved a balance?

While there are attempts to divert young people from the formal justice system through participation in special community based programmes, the system as a whole appears somewhat regressive, especially with regard to the recent loosening of the threshold for 16-18 year olds to be dealt with by adult courts and be sent to prison. In the absence of relevant statistics, it is not possible to state categorically that the system offers disproportionate sanctions to juveniles (detention of up to 24 months for 16-18 year olds) but there clearly is dissatisfaction with the system. It has also been argued that little or no attempt has been made to address, effectively, the social conditions within Dutch society, poverty levels, access to labour markets and the integration of young ethnic minority members into society.

There have been major changes in youth justice practice in recent years including the introduction of restorative justice approaches; the development of youth specialists in the police, prosecution system and youth court; more preventative initiatives including parent training courses; a greater emphasis on effectiveness of community based and aftercare programmes through the introduction of an accreditation system; and more attention to the UNCRC and the recommendations of other international obligations by considering plans to co-locate child welfare, protection and probation agencies to improve speed and effectiveness of services. These have taken place in a rather piecemeal fashion and suggest a ‘tinkering’ with the system to achieve a better balance between welfare and justice. The fact that recognition of the link between truancy and crime led this year to an experiment whereby children who skip classes risk being sentenced to several weeks in a youth penitentiary suggests that the system lacks an overall coherent strategy.
3.7 New Zealand

The Children and Young Persons and their Families Act 1989 provided for jurisdictional separation between children and young people in need of care and protection and those who had committed offences. Offending by children (10-13 years) and young people (14-16 years) falls under these provisions but children of this age cannot be prosecuted for alleged offending other than murder or manslaughter.

3.7.1 Youth justice

Young people who offend are dealt with in a specialist Youth Court but the legislation seeks to minimise formal involvement in the youth justice system, while holding them accountable for their offending behaviour. Another key feature is that those most affected by the offending (including the young person, their family or whānau and victim) are involved in formulating an appropriate response through the use of family group conferences (FGC).

The Youth Court is separate from the adult criminal justice system and is strongly focused on rehabilitation. Young people are generally not convicted; instead, offences are either ‘proved’ or ‘not proved’. In most cases the Youth Court judge will try to give effect to the recommendations of FGC plans. Special youth disposals include a ‘supervision with activity’ order or a supervision with residence order. The latter is the only custodial option available to the Youth Court. The Youth Court can transfer very serious cases to the District Court for prosecution or sentencing, or in rare cases, to the High Court. Murder and manslaughter are automatically transferred from the Youth Court to the High Court.

The 1989 Act replaced a system rooted in the welfare tradition while still encouraging the resolution of youth crime problems outside of formal court systems, for example by police ‘street warnings’ for minor offences, as well as more elaborate warnings or alternative diversionary actions provided to youths and their parents at police stations by members of the specialist Youth Aid Section. Where these are unsuccessful or offending is more serious, the Youth Aid Section may refer young people to family group conferences which reflect some aspects of traditional Maori practice for resolving conflict through family and clan meetings.
Any young person arrested by the police (strict criteria apply here), may be referred
directly to the Youth Court. Legislation requires that the judge make no disposition until
a FGC has been held and any plan or recommendation put forward must be taken into
account. FCGs are intended to be offence focused but should also address welfare
considerations. In cases not referred directly to the youth court, an FGC must be
convened and if they can come up with a satisfactory outcome acceptable to all parties
this may be the end of the matter. A review of the system 70 noted that police
apprehensions of young people under 17 as a proportion of all apprehensions (equivalent
to an arrest) remained relatively stable between 1991-99 at between 21% and 23%.
Dishonesty offences (burglary, theft and motor vehicle conversion) are by far the most
common offences for which children and young people are apprehended. Young people
are most commonly prosecuted for property or violent offending and are mainly male.

Criticisms of the system in the late 1990s included the absence of national statistics and
the over-representation of aboriginal youth, the latter confirmed by a survey 71 which
showed that 48% of cleared up offences were attributed to Maori youth, who comprised
only 15% of the population. Others were the:

- Lack of research findings on the impact of family group conferences, a lack of
data on the impact of due process;
- Funding cuts affecting staffing levels, services for victims (information and
preparation), treatment programmes, education/employment courses, and training
for professionals;
- Lack of attention to early intervention measures;
- Lack of officials records on reconvictions to establish the extent of persistent
offending.

Early research found positive signs that FGCs were resulting in only a minority of young
people appearing in the youth court. However the capacity of FGCs to enhance the young
person’s welfare and development was criticised as often ‘nothing more than apologies
and purposeless community work’ 72. This reflected a lack of appropriate programmes
and child welfare services which new youth services strategies developed by Children,
Youth and Family services are attempting to correct. A follow up study of around 162
young people involved in offending who went to a family group conference in 1990/91 73
revealed that around a quarter were ‘persistent recidivists’ four years later and 28% some
six years later were found to have been ‘persistently reconvicted’.74
The Government responded to the research by establishing a Ministerial Taskforce on Youth Offending and its final report *Youth Offending Strategy* acknowledged both the strengths and weaknesses of the system and set out a range of recommendations. These addressed all of the criticisms but also included improvements in the delivery mechanism (agency practices and arrangements for a strategic overview), delivery and support of services and the development of new comprehensive and intensive interventions for serious young offenders. Central to the recommendations of the report are that the Strategy should link with:

- The Action for Child and Youth Development Strategy
- The Crime Reduction Strategy
- The Strategy to Reduce Offending by Maori and Pacific youth
- The Department of Corrections Youth Strategy

The Strategy recognises that children and young people who offend are not a homogenous group, that they differ both in the seriousness of their offending and the presence of risk and protective factors in their lives. It acknowledges that streaming children and young people into different groups based upon these characteristics can facilitate more effective and appropriate interventions. Consequently efforts to rehabilitate serious young offenders are recognised as requiring the most intensive and sophisticated interventions such as community and residential based rehabilitative programmes which can be attached to youth court orders or included in a plan formulated by a court directed FGC. Plans for high risk young people which emerge from FGC’s are to be monitored not as is normally the case by family/whanau members but by an officer of the Child, Youth and Family department.

### 3.7.2 Child welfare and protection

For those children under 14, legislation defines the range of situations in which children may be in need of care and protection and includes those who commit an offence. The type of intervention these children will experience are similar to those over 14, in that they may receive a police warning, diversion or referral to a family group conference. However the focus is intended to by primarily the child’s welfare rather than their accountability. If neglect or abuse is suspected it will be investigated by Children, Youth and Family Services (CYF) who may call a family meeting if the problem seems
relatively simple but if the case is more serious/complicated the child will be made safe and the case referred to a care and protection co-ordinator who will organise a FGC or in some cases the matter will go before the Family Court which will listen to the family and all involved and make a ruling.\textsuperscript{77}

Dissatisfaction with the system, primarily the lack of funds and the failure of agencies/departments to work together has been considerable and an earlier attempt through The Strengthening Families initiative\textsuperscript{78} effected some improvements. It established Local Co-ordination Groups (workers from health, education welfare, justice, housing and employment sectors and other government and community agencies and Iwi) to assist in the application of the collaborative case management process (a key feature of the initiative) and produced bulletins on progress towards specified targets such as a reduction in child abuse and out-of-family Care and Protection bednights.\textsuperscript{79} When the initiative was seen as deficient (targets were not met and the over-representation of the children of indigenous families in child abuse statistics persisted)\textsuperscript{80} a new strategy, the Care and Protection Blueprint\textsuperscript{81} emerged. Based upon a report\textsuperscript{82} which included within its many recommendations that improvements in practice and funding be effected within the CYF, the report’s main message was that child welfare and protection was the responsibility of society as a whole.

The Blueprint, which was developed in conjunction with community and individual service providers, includes a vision statement, principles to guide implementation, goals which address the issues facing the care and protection community and an Action Plan; is linked with the wide range of strategies aimed at improving services throughout New Zealand\textsuperscript{83, 84}; including working with the Youth Offending Strategy on preventative measures. The key objectives of the new approach are:

- Shared leadership (including recognition of the views of aboriginals, children and families)
- Outcome driven services (including the development of measures and evaluation)
- Support and recognition of good practice
- The provision of an integrated service

The latter goal includes a review of the role of the Care and Protection Resource Panels which were established under the CYP Act 1989\textsuperscript{85} with the objective of bringing a multi-disciplinary and community perspective to statutory care and protection processes.
Members (appointed by the Chief Executive of the Children, Youth and Family Services (CYF) have no decision making powers unlike the all professional Child Protection Teams which they replaced. Panels compose:

- Representatives of the medical, health, education and legal professions
- Police
- Maori/Iwi representatives
- Representatives of any other appropriate cultural group
- Community representatives

Their role is to

- Provide advice to professional social workers and the police in the exercise of their functions, powers and duties
- Promote the co-ordination of services by the community to children and young people in need of care and protection and their families.
- Advise the Chief Executive on the appointment of Care and Protection Co-ordinators
- Provide information more generally about services etc.

The review of the performance of Panels began with a series of workshops which identified the issues of concern followed by a formal consultation on their role, effectiveness and reporting lines. Table 1 below contains the responses to some of the questions within the summary report.

**Table 1: Response to consultation on Panels**

<table>
<thead>
<tr>
<th>QUESTION</th>
<th>RESPONSE</th>
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<tbody>
<tr>
<td>How important is it to bring a multi-disciplinary &amp; community perspective to the care and protection process?</td>
<td>94% essential or very important</td>
</tr>
<tr>
<td>Are resource panels the best way of ensuring this approach is applied to statutory social work?</td>
<td>80% yes but some scope for improvement</td>
</tr>
<tr>
<td>How satisfactory is the process whereby the Panel provides advice to social workers?</td>
<td>76% satisfactory or very satisfactory</td>
</tr>
<tr>
<td>Should the key role of Panels be to provide advice and information to staff?</td>
<td>89% agree. This could include suggestions on the approach in a specific case, a critique of the response proposed</td>
</tr>
</tbody>
</table>
At the same time another strategy *New Directions* focuses specifically upon the functioning of the CYF services. Simultaneously the Residential Services Strategy, an action plan to provide better facilities and targeted programmes for children and young people up to 17 years who for a variety of reasons need to be supervised in 24 hour residential care, is in the process of ensuring the availability of separate youth justice and care and protection facilities.

### 3.7.3 Has New Zealand achieved a balance?

New Zealand has clearly made considerable efforts to ensure positive outcomes for children and young people. It has recognised the necessity of creating a context in which young people start from a level playing field and regards early intervention initiatives such as child health, early childhood education, parenting programmes and child poverty reduction strategies as an investment. Resources have still to match these ambitions.

The youth justice system appears balanced in that every attempt is made to keep young people out of the formal justice system and out of custody through the four stages of diversion. This seems to have been successful for the majority of young people in trouble. Recent criticisms that outcomes from conferences were often ‘nothing more than apologies and purposeless community work’ have been responded to by the development of new service initiatives to ensure that the objectives and operation of the Youth Crime Strategy are understood and that the quality of services is improved. For example research on family conferences, the development of best practice models, and additional training for police and Youth Aid officers is underway.

In the specialist youth court, the balance is sought by the judge by taking account of the plan or recommendation from the FGC. New Zealand acknowledges that more intensive rehabilitative measures should replace or accompany incarceration in serious crime cases involving young people.

Efforts to ensure ‘justice’ for young people in the welfare and protection system have not concentrated on changing the context in which decisions are made. Instead efforts are being made to provide:
• Adequate funding for services
• Services based upon best practice

Equally important is the fact that the framework within which both youth justice and child protection occurs is one which acknowledges the importance of cultural diversity and involves communities in the decision making process. Above all the objective in New Zealand is to ensure that the various strategies do not operate in isolation. This is especially important given that the most recent report found that the young offenders in their study were distinguished by the extent of disruption in their lives, many care givers, the number of schools they had attended; the frequency of their experience of violence and abuse; and the number of adverse factors in their backgrounds. This report concluded that better outcomes for children would be achieved where services and strategies responded to early signs of childhood disadvantage. In other words there was a need for more effective action on the first occasion that a child came to the attention of the CYF services. There is as yet no data on the effectiveness of the recent youth services strategy

3.8 Sweden
As in other Scandinavian countries, children under 15 in Sweden who offend are not punishable under the law but social welfare committees may invoke compulsory measures if necessary under the Care of Young Persons (Special Provisions) Act 1982. Social welfare committees have an ambitious set of preventive and caring responsibilities for children and young people in partnership with parents. They have responsibility for the promotion of healthy child development, social and physical and for providing protection to those who are at risk of developing adversely. Their activities include for example setting up nursery provision and youth recreation centres in partnership with parents, compulsory intervention in the community and the provision of home placements.

A Social Welfare Committee is a small board of members appointed by the municipality and staffed for example by social workers, day care attendants, pre-schools teachers. Social Welfare Committees, though primarily concerned with child welfare, neglect and abuse, have responsibility for young people under age 15 who offend. They also have responsibility for non offending problems behaviours for young people aged between 15
and 20 and have some jurisdiction over offenders in this age group referred by courts. A strong emphasis is placed on protecting children who offend and they may be assigned a contact person or family to provide support as well as offered structured community based programmes.

Although the age of criminal responsibility is 15, special rules in regards to sanctioning apply until the age of 21. Young people aged 15-18 who offend are normally dealt with by courts (by a fine combined with community service and/or ‘care’) or, alternatively, handed over to social welfare committee who deal with them on the basis of ‘the best interests of the child’. The court which consists of a professional judge and five lay assessors (nominated by local political parties and elected by the municipality) is intended to be an inquisitorial rather than adversarial process. The judge and panel decide on disposal.

The Social Welfare Committee in some municipalities have an option of intermediate care where a young person can remain at home but is required to attend some form of structured activity involving work/study and organised leisure activity but if removal from home is considered necessary, then under the Care of Young Persons Act 1998, a young person can be cared for in a special approved home. Normal reasons for placement tend to be offending, substance abuse and/or absconding from another placement. These homes also deal with young people with severe mental health problems and young people, mainly boys, who have a pronounced antisocial personality disorders and whose problems include severe criminality. The homes are run by the National Board of Institutional Care and the purpose of treatment is to help the young person achieve developmental maturity and equip him/her for a life without violence, crime or drugs. The emphasis on the latter arises from awareness of the increase in the percentage of young people involved in drugs in the recent years. If a young person’s life is in serious danger due to drug or alcohol addiction and they do not agree to treatment, application can be made to the County Administrative Court for compulsory measures of care under the Care of Alcohol and Drug Abusers Special Programme.

Prison is rarely a sanction handed out by the courts for young people even in the case of serious offending. Those aged 18 but not yet 21 may only be sentenced to imprisonment if there are special grounds regarding the culpability of the crime or other special reasons. The prison population in Sweden has been reduced in recent years mainly due to use of
intensive supervision with electronic monitoring as an alternative way of serving prison sentences of up to three months.

The nature of the crime determines the length of sentence but before coming to a decision the youth court request a care plan describing available treatment from Social Services. The National Board of Institutional Care is responsible for enforcing fixed term sentences (14 days-4 years with the average being 17 months). One example, the Sundbo Youth Home for boys age 15-21 years has 36 beds, 26 of which are reserved for serious violent offenders who are offered a long-term cognitive behavioural treatment programme. The facility retains 5 beds for assessments of adolescents with serious psycho-social problems and 5 beds for the treatment of young people with drug-addictive problems.

The adoption of UNCRC has resulted in amendments to Swedish legislation. Young people now have a right to express their views and have them recorded and have improved rights to public defence council. Victim mediation for 15-18 year olds on voluntary or compulsory basis can be included in the plan which social services send to the youth court. This can be requested by anyone but in practice most requests come from the police. The conditions which apply are:

- The police investigation is finished
- The young person regrets the crime
- The young person agrees to meeting the victim and apologise

When mediation is completed, a certificate is sent to the social worker and the prosecutor if it was the decision of the court. Additional programmes (‘Ungdomsprogrammet’) can be imposed (possibly with a fine) as part of a legal order. For example one programme in Vasteras involves the young person, parents and the social worker attending 10 meetings which cover the impact of violence upon victims (with visuals provided by medical professionals), a visit to a prison and information regarding the consequences of an unpaid fine. Next the parents attend a seminar followed by a presentation by the young person on the activities in which he/she has taken part after which a certificate and statement concerning the young person is sent to the social worker and the prosecutor. Community programmes involving unpaid work between 20-100 hours (‘Ungdomstjans’) can be imposed by the youth court for very serious crimes and again a certificate is sent to the social worker and the prosecutor on completion.
Efforts have been made to shorten the decision making process, improve recording practices, data gathering and monitoring and evaluation. Other issues, partnership working, early intervention, work with young people in non-secure institutions are not yet resolved or how best to attend to the needs, problems and challenges presented by young immigrant youth at risk. For example of the 22,000 young people aged 12-20 years in one town, 43% are immigrants, which mean social workers must deal with 30 different spoken languages.

The Swedish Ministry of Justice established a national programme for crime prevention, *Our Collective Responsibility* in 1999. (Ds 1996:59) and currently there are around 270 local crime prevention councils or similar organisations in the country's municipalities and urban districts. Different stakeholders, such as the police service, schools, social services and the business sector cooperate to prevent crime and increase security. For several years, the National Council for Crime Prevention has allocated special funds to encourage local crime-prevention efforts. ‘Plattformen’, a joint project between the Government, relevant agencies, central business sector organisations and other stakeholders, implemented in the autumn of 2002 as part of this cooperation, aims to reduce vehicle crime. The project will take three years and a final report will be presented in June 2006. It is less clear if the national crime prevention or early intervention strategies are targeted at young immigrant people, a high risk group.

**3.8.1 Has Sweden achieved a balance?**

For young people under 15 the system is one of child welfare and protection for those involved in criminal activity. The system does not appear well balanced at face value for those over 15, in that diversion opportunities seem available in a piecemeal and potentially unfair fashion; young people aged 15-18 can be removed from their community by social services ‘in their best interests’, sent to prison or placed in institutions by the courts. The focus on ‘treatment’ and ‘personality’ reflects a rehabilitative approach but the average time spent in secure institutions of 17 months with no opportunities for parole or aftercare support on release, raises issues of rights and proportionality. In practice, however, removal from the community is relatively rare except in very serious cases which in other jurisdiction may result in lengthy prison sentences.
3.9 Youth Justice and Child Welfare: Overview and Conclusions

Dissatisfaction with the outcome of welfare approaches to youth crime in the second half of the twentieth century has resulted in most countries making attempts to separate their mechanisms for dealing with offences by children and young people on an age-related basis. Youth courts and youth justice systems have been set up separately from child welfare decision-making and services for young people in their teens or in some countries from the mid teens onwards. The precise age of demarcation ranges from 12 to 15 depending on the country. These youth justice systems have been directed by principles of proportionality and accountability. In the last decade, particularly following adoption of UNCRC, most western countries are attempting to find a new balance between justice and welfare for their youth justice systems dealing with teen crime. Countries like Sweden and the Netherlands have attempted this in a rather piecemeal fashion whereas others like Canada and New Zealand entered into extensive consultation, took account of the literature on what works, set out a comprehensive strategy, and allocated funds to support and evaluate change. In attempting to achieve a balance

- They have taken a holistic approach to the problem of youth crime and have in place strategies directed at crime prevention and early intervention. They also recognise the need to work in concert with other strategies.
- They recognise that offending is normal among young people and that the majority rarely commit more than one or two offences and therefore make provision for diversion from the formal system of juvenile justice.
- They recognise that the formal system of justice for young people should be one which specialises in young people and provide training for those who are involved.
- They are prepared to carry out the necessary monitoring and evaluation of the system and any initiatives.
- They accept research findings which show that the young people most at risk of persistent and or serious crimes are those who experience social disadvantage and put in place specialist interventions to effect the rehabilitation of serious/violent offenders.
- They recognise that good statistical data is necessary in considering and directing a strategy and have made arrangements for improvements in data collection.

The examination of child welfare and protection issues in this review has been deliberately limited, but is sufficient to demonstrate that all countries remain uncomfortable with a rigid distinction between youth justice and child welfare and protection. All countries allow for some overlap, even those with a high threshold age of criminal responsibility. The illustrations above from Netherlands and New Zealand show on one hand overlaps as the result of a piecemeal approach to modify and change the
balance of welfare and justice, while the other represents a planned and more coherent strategy. New Zealand’s efforts to ensure ‘justice’ for young people in the care and protection system have not, however, concentrated on changing the context in which decisions are made. Instead efforts are being made to provide:

- Funding for services to ensure an appropriate and adequate response, and
- Services based upon best practice to ensure that intervention is effective

Equally important is the fact that the framework within which both youth justice and child protection occurs is one which acknowledges the importance of cultural diversity and increasingly involves communities in the decision making process. Overlaps in systems of child welfare, protection and youth justice highlight a number of shared challenges for all jurisdictions when dealing with troubled and troublesome children and young people. All states have a responsibility towards children in need and for those who present risks to themselves or to others. Article 3 of the UNCRC requires that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be ‘a’ primary consideration. In practice, however, criminal policy and legislation relating to youth, tends to place greatest emphasis (in effect primary consideration) on victims and public protection, with decision makers left to reconcile these with the welfare interests of the child or young person.

As with practice in relation to young people who offend, child welfare and protection practice has undergone major changes in the last decade, yet these measures have been the focus of limited comparative research on effectiveness. Scotland’s review of child protection suggested that confidence in child welfare system is low and that it does not always work well for those children and adults who become involved in it. Equally there are many children and young people in need and at risk who do not formally enter the system and as a result do not receive any help, preventive or otherwise. The review findings suggest that assessments of need were characterised by failure to consider the pattern of previous events; insufficient use of interagency information, especially health and education information; lack of focus on the child and inadequate assessment of parents’ ability to make use of the support on offer and to change quickly and sufficiently enough to offer children an acceptable level of care. The review provided a broad international comparison (below)
### Differences between systems

<table>
<thead>
<tr>
<th>BROAD TYPE</th>
<th>UK-N. American-Australian</th>
<th>Continental West European</th>
</tr>
</thead>
<tbody>
<tr>
<td>COUNTRIES</td>
<td>Australia, Canada, England, Scotland</td>
<td>Belgium, Sweden, France, Germany</td>
</tr>
<tr>
<td>TYPE OF WELFARE STATE</td>
<td>Tendency to residual and selective provision</td>
<td>Tendency to comprehensive and universal provision</td>
</tr>
<tr>
<td>PLACE OF CHILD PROTECTION</td>
<td>Separated from family support services</td>
<td>Embedded within and normalised by broad child welfare or public health services</td>
</tr>
<tr>
<td>TYPE OF SYSTEM</td>
<td>Legal, bureaucratic, investigative, adversarial</td>
<td>Voluntary, flexible, solution-focused, collaborative</td>
</tr>
<tr>
<td>ORIENTATION TO CHILDREN AND FAMILIES</td>
<td>Emphasis on individual children’s rights. Professionals' primary responsibility is for the child’s welfare</td>
<td>Emphasis on family unity. Professionals usually work with the family as a whole</td>
</tr>
<tr>
<td>BASIS OF THE SERVICE</td>
<td>Investigating risk in order to formulate child safety</td>
<td>Supportive or therapeutic plans responses to meeting needs or resolving problems</td>
</tr>
<tr>
<td>COVERAGE</td>
<td>Resources are concentrated on families where risks of (re-) abuse are immediate and high</td>
<td>Resources are available to more families at an earlier stage</td>
</tr>
</tbody>
</table>

In some states, child protection measures are based specifically on social welfare law (public law), in others on civil and family law. Comparisons suggest that despite the systematic difference between for example, common law and continental law, European child welfare and protection issues do not differ greatly. In all states national legislation provides for a wide range of measures, which allow for intervention, restriction and ultimately the removal of children and young people whether for welfare or behavioural difficulties. A great deal of discretion is granted to courts and decision making bodies in selecting the suitable measures. An important international difference in child welfare provision is that between inquisitorial and adversarial systems. Despite the general separation of systems dealing with young people who offend from those in need of care and protection, many countries in continental Europe retain unified jurisdictions. One review provided a summary of the key legal characteristics of child welfare and protections systems.
### Key Legal characteristics of Child Welfare and Protection Systems

<table>
<thead>
<tr>
<th></th>
<th>Belgium</th>
<th>France</th>
<th>Germany</th>
<th>Italy</th>
<th>Netherlands</th>
<th>Scotland</th>
<th>England</th>
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<tr>
<td>Professional Judge</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Y&amp;N</td>
<td>Y&amp;N</td>
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<tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Possibility of</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<td>informal dialogue with</td>
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<td>legal team</td>
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<tr>
<td>Judge remains with</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Sometimes</td>
<td>Not</td>
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<td>case</td>
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<td></td>
<td></td>
<td>usually</td>
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<tr>
<td>Legal representation for</td>
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<td>No</td>
<td>No</td>
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<td>parents usual</td>
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<td>No</td>
<td>No</td>
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<td>Yes</td>
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<td>children usual</td>
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<tr>
<td>Entry to legal sphere</td>
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<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>discouraged</td>
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<tr>
<td>Children’s judges</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>work with both</td>
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<td>child protection</td>
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<tr>
<td>Child welfare</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Harm and parental</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>responsibility as only</td>
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<td>grounds for intervention</td>
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</table>

Adversarial systems often attract the general criticism that they provide limited opportunity for parental involvement in decision making. The use of inquisitorial processes in continental Europe and the widespread introduction of approaches like family group conferences into child welfare and youth justice practice represent mechanisms thought to better geared to involving parents, families and victims directly in decision making and in problem resolution for children and young people.

A major issue subject to debate in the literature is the leading role of local authorities in child welfare and youth justice cases. The scope of activities of local authorities encompasses investigation into cases, making applications to the court or other decision making bodies, proposing adequate measures, care planning, placement of children and young people, support of and co-operation with the family (parents), and the control of the implementation of legal orders. In many cases, the local authority has been in contact
with the child and family in question for a considerable amount of time before formal proceedings begin and has been responsible for offering voluntary help. Consequently the position of the local authorities in some countries, particularly in the UK and Scandinavian countries could be described as a *de facto* child welfare monopoly\textsuperscript{100}, although even in these countries voluntary agencies play an important role in service provision. Nonetheless inadequacies in welfare and child provision often associated with youth crime can create conflicts of interests when the main service provider is also responsible for ensuring children’s ‘best interests’ and needs are met. In many countries such conflicts of interest are dealt with by the appointment of independent ‘instruments’ to safeguard the child’s interests through courts or welfare hearings. The same tension exists in relation to youth justice provision particularly in relation to early intervention and diversionary provision. When decisions are taken by a court or independent hearing, local authorities can, in principle, be held to account for the nature and effectiveness of provision. Netherlands provides a similar model for child welfare and protection proceedings, where investigation and application for intervention lie within a National Child Protection Agency, while the execution of legal orders and service provision lies within the local authority child welfare services.

A further general challenge arising in the literature is the participation of children in decision making which covers their role in legal proceedings as well as the situation after the implementation of formal measures. Article 12 of the UNCRC gives children the right to be heard in judicial and administrative proceedings affecting their interests. Most legal systems provide mechanisms for this and the position of children in judicial proceedings has been strengthened within recent decades. The issue of participation of children in decision making processes is complex and a detailed discussion is beyond the scope of this review. Nonetheless there are still deficits to be noticed.

Like parents trying to work out how best to raise their children, states wrestle with the question of how best to respond to troubled and troublesome children and young people. Many different models exist; few completely satisfactory; compromises abound.\textsuperscript{101} The manner in which each country has responded cannot be understood in isolation from their historical development, which makes comparisons problematic. At face value it is difficult to find similarities between England’s criminal and punitive system, Scotland’s Children’s Hearings, New Zealand’s conferences and the juvenile courts in the
Netherlands. Most are searching for new and better ways. Few are comfortable with the distinction or separation between justice and welfare which results in variations in the balance of the shared ‘ingredients’ of prevention, early intervention, diversion, social treatments and sanctions or punishments, particularly those equally required for effective child welfare and protection systems.

While these core features vary greatly, systems in all western jurisdictions reflect a belief that children and young people should be treated differently from adult offenders and in many circumstances require protection of some sort. What constitutes youth equally varies between jurisdictions and with this the demarcations between a child who is not criminally responsible and one who is. Little systematic comparative data exists across jurisdictions on the relative use of justice and welfare or protection systems. While evidence suggests that youths who are heavily involved in crime often have substantial welfare needs, little is known about the decisions that are made which determine when justice systems or welfare protection systems are invoked when both could be seen as relevant. What is clear is the western jurisdictions have not arrived at a consensus on how best to respond to troubled and troublesome children and young people, though there are trends and changes that are widely shared, such as recent interest in reparation and victim mediation.
4. Entry and exit criteria to and from youth justice systems

4.1 Introduction
Given the lessons from studies of offending by young people, it is clear that this behaviour is a normal part of growing up with the vast majority of those who come to the attention of authorities on account of their offending in any given country rarely appearing again. Research indicates that crime is committed disproportionately by people aged between 15-25 years. Generally, the likelihood of having contact with the criminal justice system reaches a peak between 15-18 and decreases from the mid 20s. In Scotland, the peak age of criminal conviction is between 18 and 19. However as noted in Section 2, young people who become involved in crime before they are 14 are more likely to become persistent offenders, with longer criminal careers compared to those whose onset is later. They, generally, tend to be well known to public care authorities for welfare concerns having experienced neglect, physical, sexual or emotional abuse and other forms of victimisation. Consequently it is not simply the formal exit and entry criteria to the system which are important in respect of youth justice but also the wider provisions in society which (succeed or fail) to compensate and ameliorate the social circumstances less conducive to positive outcomes for children. Many countries have attempted to take steps to create a more ‘level playing field’ by putting in place crime prevention, early intervention and social inclusion measures alongside criminal processes.

4.2 Entry and Exit criteria
Age thresholds represent the most significant formal entry criterion to youth justice systems in western societies, although also important are the legal grounds for intervention and the circumstances in which discretion may be used not to invoke formal procedures.

The clearest advice given by international human rights standards regarding entry to youth justice systems relates to the “Beijing Rules” guidance on the age of criminal responsibility (United Nations Standard Minimum Rules for the Administration of Juvenile Justice). Rule 4.1 states that:
“In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”

The Commentary to the Rules states that efforts should be made to agree a reasonable and lowest age limit that would be internationally applicable. However, this has not yet been achieved. The Rules advise that in general there should be a close relationship between the notion of criminal responsibility and other social rights and responsibilities (such as marital status or civil majority). The UNCRC calls for states to establish a minimum age “below which children shall be presumed not to have the capacity to infringe the penal law.” (Article 40, 3(a)).

In practice the age of criminal responsibility continues to differ widely according to history and culture and can range from 7 to 18 according to the political, social and economic arrangements of the particular state. Table 2 below gives the age thresholds in the countries we looked at. It also shows whether diversion from the formal youth justice processes is a common feature of their system.

**Table 2**

<table>
<thead>
<tr>
<th>Country</th>
<th>Minimum age enter</th>
<th>Maximum age exit</th>
<th>Diversion from formal court process</th>
<th>Special measures in cases of violent crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queensland / South</td>
<td>10</td>
<td>17 and 16</td>
<td>yes</td>
<td>dealt with by the second tier of court</td>
</tr>
<tr>
<td>Australia</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>12</td>
<td>17</td>
<td>yes</td>
<td>automatic court</td>
</tr>
<tr>
<td>Finland</td>
<td>15</td>
<td>17</td>
<td>yes</td>
<td>special sanctions</td>
</tr>
<tr>
<td>Netherlands</td>
<td>12</td>
<td>18</td>
<td>yes</td>
<td>a condition leading to transfer to adult court</td>
</tr>
<tr>
<td>New Zealand</td>
<td>10</td>
<td>16</td>
<td>yes</td>
<td>Sophisticated interventions</td>
</tr>
<tr>
<td>Sweden</td>
<td>15</td>
<td>18</td>
<td>yes</td>
<td>special sanction</td>
</tr>
</tbody>
</table>
Despite the international recommendations that age thresholds for criminal responsibility should relate to maturity, they vary greatly from country to country. In principle for children below a designated age threshold, behaviour which in adults would otherwise be deemed criminal, is generally dealt with under care proceedings. For children above the entry threshold the same behaviour is deemed criminal and may be dealt with through non criminal diversionary or welfare means, through modified criminal proceedings, normally in youth courts, or dealt with by adult criminal processes. Some behaviour, unique to children, is also deemed criminal. These so called ‘status’ offences such as truancy are subject to similar systemic entry criteria as with other criminal activity.

Since the introduction of UNCRC, the worldwide trend has been to raise the age threshold for entry to formal criminal systems, generally to around the age of 14 or 15. United Kingdom countries have among the lowest ages of criminal responsibility of any of the continental European States. Those countries with an age threshold of less than 14 tend to be British Commonwealth countries or countries that have an early association with the British legal system – for example Scotland (8), Australia (10), New Zealand (10), England (10) N. Ireland (10), Canada (12). Scandinavian countries, on the other hand, have a much older entry threshold of age 15, for example Finland (15), Sweden (15), Denmark (15), and Norway (15). Other European countries cluster on either side of this norm, for example Greece and Netherlands (12), France (13), Austria, Germany, Italy (14), Portugal, Spain (16), Belgium and Luxembourg (18).

While not recommending a specific age, the UNCRC Committee has tended to criticise jurisdictions in which the minimum age is 12 or less (Justice 1996:7). Specifically it has urged the UK government to give serious consideration to raising the age of criminal responsibility. In the cases of T v UK and V v UK (2000), involving the boys convicted of murdering, toddler James Bulger, the European Court held that the minimum age of criminal responsibility did not in itself deviate so far from European practices as to violate human rights standards. However, the Court found that the boys’ right to fair trial had been compromised in various ways because of their inability to adequately understand and participate in legal proceedings. If the age of criminal responsibility is to be set at an age lower than 18 it is clear from the decision that account needs to be taken
of the developmental level of each individual child, and a professional assessment of their level of understanding before any prosecution could commence.

Adolescents under the age of 18 tend to be dealt in these countries through a modified youth system of justice geared mainly towards compulsory intervention through social services, with incarceration only as the last resort.

4.2.1 Offence criteria
In addition to age, differences in the behaviour classified as an offence also leads to children entering the justice system. For example in the Netherlands as in many European countries so called status offences such as truancy, running away, incorrigibility or under-age alcohol use are not recognised but may be considered as problem behaviours that could eventually lead to a child protection measure. Pathways to entry and exit are influenced by the concepts of ‘persistence’ and ‘seriousness’ of offences and attempts to compare youth crime trends are extremely difficult. The availability of different types of data, differences in age and crime categories used, make good comparisons between countries almost impossible. However we considered it worthwhile making an attempt at comparing the main types of crimes of juveniles.

The five top crimes in Canada which led to an involvement in the youth justice system were:  

- Theft under $5,000 -24.7%
- Break and enter – 14.5%
- Assault -12.9%
- Motor vehicle theft – 5.4 %
- Possession of stolen goods -5%

Vandalism and offences against public order are rare in Canada and the Netherlands where, property offences form the bulk of delinquent acts for both sexes as is the case elsewhere in Europe. In New Zealand the ‘dishonesty offence category’ (burglary, theft, vehicle taking, receiving stolen property and fraud) accounted for over half the apprehensions of offenders age 16 or under in 1999. In South Australia and Queensland the main crime of juveniles was property related (51% & 71% of apprehensions). In Finland where the increase in organised and violent crime much of it drug related is associated with the collapse of the Soviet Union and the growth in the immigrant population, statistics show that numbers of 15-17 year olds involved in drugs offences increased between 1991-2000 as did 15-17 year olds involved in assaults.
These profiles are somewhat different to those revealed by audits of youth crime in six Scottish authorities in the period 2001-2004. Scottish police forces group crimes according to the system established by the Scottish Executive. Group 1 and Group 2 are considered serious crimes by the police. Details of those within each group are provided below.

1. Murder, Attempted Murder, Culpable Homicide, Serious Assault, Robber and Abduction
2. Rape, Assault with intent to ravish, Indecent Assault, Lewd & Libidinous Practices and Prostitution
3. Housebreaking –including attempts, Theft of a motor vehicle, Theft (includes shoplifting & fraud)
4. Fireraising, Vandalism
5. Possession of an offensive weapon, Carrying knife, Supply of drugs, Possession of drugs, Other crimes
6. Petty Assault, Breach of the Peace, Urinating, Racially aggravated conduct, Drunk & Incapable, Consumption of alcohol in designated places
7. Dangerous driving offences, Driving carelessly, Drink driving, Speeding offences, Seat belt offences.

Table 3 shows the population of age 8-15 years in each authority (three rural and three urban), the percentage of crimes perpetrated by males where known, the number of offences involving young people and the percentage of crime in Groups 3-7.

### Table 3: Population of 8-15 year olds and number of offences

<table>
<thead>
<tr>
<th>Rural authorities</th>
<th>Population of 8-15 year olds</th>
<th>Perpetrated by males</th>
<th>Number of offences</th>
<th>% Crime Groups 3-7</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1</td>
<td>9044 (10%)</td>
<td>NK</td>
<td>409</td>
<td>96%</td>
</tr>
<tr>
<td>R2</td>
<td>15,082 (10%)</td>
<td>76%</td>
<td>1003</td>
<td>96%</td>
</tr>
<tr>
<td>R3</td>
<td>11,101 (10%)</td>
<td>NK</td>
<td>2748</td>
<td>97%</td>
</tr>
<tr>
<td>Urban authorities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U1</td>
<td>13,845 (9.5%)</td>
<td>84%</td>
<td>2609</td>
<td>98%</td>
</tr>
<tr>
<td>U2</td>
<td>39,288 (9%)</td>
<td>80%</td>
<td>5271</td>
<td>97%</td>
</tr>
<tr>
<td>U3</td>
<td>12,084 (11%)</td>
<td>NK</td>
<td>424</td>
<td>97%</td>
</tr>
</tbody>
</table>

As Group 3-7 crimes ranged from 96-98% of all offending by this age group we can conclude that serious crime as defined by police is rare. Table 4 reveals the five main
crimes (all group 3-7) in each authority where apart from U2 (a city with major shopping areas) the pattern is remarkably similar with Breach of the Peace, Minor Assault and Vandalism being the three most common and accounting for well over 50%. With the exception of U2, property crimes only emerge when we look at the 4th and 5th top crimes with R1 the only authority in which drug related crime featured among them.

Table 4: Five main crimes of 8-15 year olds in each authority.

<table>
<thead>
<tr>
<th>Rural authorities</th>
<th>Main crime (1)</th>
<th>Main crime (2)</th>
<th>Main crime (3)</th>
<th>Main crime (4)</th>
<th>Main crime (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R1</td>
<td>Assault (21%)</td>
<td>BOP (20%)</td>
<td>Vandalism (14%)</td>
<td>Theft (10%)</td>
<td>Drugs (4%)</td>
</tr>
<tr>
<td>R2</td>
<td>Assault (33%)</td>
<td>Vandalism (30%)</td>
<td>BOP (22%)</td>
<td>Vehicle (6%)</td>
<td>Housebreaking 3%</td>
</tr>
<tr>
<td>R3</td>
<td>BOP (22%)</td>
<td>Assault (20%)</td>
<td>Vandalism (20%)</td>
<td>Theft (11%)</td>
<td>Car theft (6%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Urban authorities</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>U1</td>
<td>BOP (25%)</td>
<td>Vandalism 18%</td>
<td>Assault (15%)</td>
<td>Driving offences 12%</td>
<td>Theft 7%</td>
</tr>
<tr>
<td>U2</td>
<td>Theft (25%)</td>
<td>Vandalism 18%</td>
<td>BOP 18%</td>
<td>Car theft (11%)</td>
<td>Housebreaking (8.5%)</td>
</tr>
<tr>
<td>U3</td>
<td>BOP (29%)</td>
<td>Assault (15%)</td>
<td>Vandalism (14%)</td>
<td>Alcohol (11%)</td>
<td>Theft (5%)</td>
</tr>
</tbody>
</table>

The comparative data may reflect different patterns of activities in different social contexts or may reflect different entry thresholds to formal processes. An intriguing question arises as to whether the crime profile of offending by young people entering formal systems in Scotland would be different if the age of criminal responsibility was higher. We explored this by looking at a profile of the crimes of young people in R2 and U2 where we had access to data on their age.
Chart 1 shows there are some differences in R2 but that the general pattern remains the same for all age groups. The picture in U1, is somewhat similar with the exception that car related crime is the second biggest crime of those age 15-17 years. The data also reveals the incidence of house breaking, theft and car related crimes involving young people of all ages is greater in the urban authority compared to the rural authority. However even allowing for discrepancies in the data, the level of property crime does not approach that found in the other countries we looked at. The possible implications are worthy of further discussion.

**Chart 1: Youth crime by age in R2**

<table>
<thead>
<tr>
<th>Crime</th>
<th>8-15 years</th>
<th>15-17 years</th>
<th>8-14 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>21</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>Vandalism</td>
<td>30</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Breach of the Peace</td>
<td>22</td>
<td>20</td>
<td>19</td>
</tr>
<tr>
<td>Car related</td>
<td>16</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Housebreaking</td>
<td>1.5</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Drugs</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

**Chart 2: Youth crime by age in U1**

<table>
<thead>
<tr>
<th>Crime</th>
<th>8-15 year olds</th>
<th>15-17 year olds</th>
<th>8-14 year olds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft</td>
<td>7</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Housebreaking</td>
<td>8</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Car related</td>
<td>12</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Assault</td>
<td>10</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Vandalism</td>
<td>11</td>
<td>18</td>
<td>20</td>
</tr>
<tr>
<td>Breach of the Peace</td>
<td>19</td>
<td>21</td>
<td>26</td>
</tr>
</tbody>
</table>
4.3 Exit points
Despite common basic assumptions, there are major differences in the way countries elaborate their own systems and manage entry and exits to and from youth justice systems. Most struggle with the very difficult combination of trying to achieve a welfare approach within judicial and criminal structures and few have found a very satisfactory solution. Practice everywhere shows that the systems are constantly undergoing a great deal of political ‘adjustment’ to managing the ‘mix’ between protective measures and punitive responses.

Table 5 below \(^{109}\) depicts the age thresholds adopted in a number of European countries identifying 5 intervention approaches distinguished by age. Although now a little dated, this material illustrates differing responses between countries and their different usage of a ‘mix’ of welfare and punishment, which, in effect, represent the boundaries set for entry and exit from the elements of the systems. The table illustrates that in each country the age of ‘penal majority’ generally corresponds with the age of civil majority, i.e. 18. Slight exceptions to this classification exist and elements of social-education approaches continue with regards to some young adults up to 21. The most far-reaching exception exists in Germany, where the ‘Heranwachsenden’ (young adults of 18 up to 20 years of age) are placed under the jurisdiction of the youth court and may be prosecuted according to the ‘Jugengerichtsgesetz’ (the Juvenile Court Law).

Variations in the age of criminal responsibility do not always reflect actual practice. For example although Scotland maintains access to criminal proceedings for children from age 8, this is strictly controlled by the Lord Advocate’s guidance and few children under age 13 ever appear in criminal proceedings and only 80 young people under age 16 were dealt with in criminal proceedings in 2002. \(^{110}\) By contrast in Belgium, although young persons can only be prosecuted beyond the age of 16, so-called protective measures are often imposed with punitive overtones.

Most jurisdictions have dual or parallel pathways through which more serious and persistent offenders aged above the minimum entry threshold but below the normal exit age are ‘transferred’ and dealt with in adult criminal processes. The rationale for
‘passing’ up a child normally relates to issues of deterrence, public protection and the fact that punishments and sanctions available to adult proceedings are usually greater.

**Table 5 Age categories in youth justice systems in selected European countries**

<table>
<thead>
<tr>
<th>Age</th>
<th>Belgium</th>
<th>Denmark</th>
<th>Germany</th>
<th>England</th>
<th>France</th>
<th>Italy</th>
<th>Rep of Ire</th>
<th>Netherlands</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>20</td>
<td>P</td>
<td>P</td>
<td>Pw</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>19</td>
<td>P</td>
<td>P</td>
<td>Pw</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>18</td>
<td>P</td>
<td>P</td>
<td>Pw</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>17</td>
<td>Wp</td>
<td>Wp</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>P</td>
<td>JPL</td>
<td>Pw</td>
</tr>
<tr>
<td>16</td>
<td>Wp</td>
<td>Wp</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>Wp</td>
</tr>
<tr>
<td>15</td>
<td>W</td>
<td>Wp</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>Wp</td>
</tr>
<tr>
<td>14</td>
<td>W</td>
<td>W</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>JPL</td>
<td>Wp</td>
<td>JPL</td>
<td>Wp</td>
</tr>
<tr>
<td>13</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>JPL</td>
<td>JPL</td>
<td>W</td>
<td>Wp</td>
<td>JPL</td>
<td>Wp</td>
</tr>
<tr>
<td>12</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>JPL</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>JPL</td>
<td>Wp</td>
</tr>
<tr>
<td>11</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>JPL</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>W</td>
<td>Wp</td>
</tr>
<tr>
<td>10</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>JPL</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>W</td>
<td>Wp</td>
</tr>
<tr>
<td>9</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>W</td>
<td>Wp</td>
</tr>
<tr>
<td>8</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>W</td>
<td>Wp</td>
</tr>
<tr>
<td>7</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>Wp</td>
<td>W</td>
<td>W</td>
</tr>
<tr>
<td>6</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
<td>W</td>
</tr>
</tbody>
</table>

**W =** Welfare;  
**Wp =** Welfare with penal exceptions;  
**JPL =** Juvenile penal law;  
**Pw =** Penal law with welfare exceptions;  
**P =** Penal law

Comparative studies reveal that those entering youth justice systems often share common features. They are more likely to be male, from a minority background, socially disadvantaged and have a history of public care. Most commit minor offences but a small proportion account for a disproportionate amount of crime, minor and serious.
5. The role of parents in decision making processes and implementing activities to address issues/problems

5.1 Introduction
The literature on risk and protective factors identifies that parents and families are central both to an understanding of why some young people persist in their offending while others do not and to the resolution of young people’s difficulties. Young people involved in persistent offending are more likely to come from vulnerable, disadvantaged and ‘risky’ families. Parents may be part of the problem of youth offending but are generally required to be part of the solution if effective outcomes are to be achieved in the long term. The range of roles which parents play in decision making processes may be voluntary or compulsory and usually include a right (in some circumstances a duty) to be present during interviews or court appearances; be involved in decision making; and act as crucial agents of change in respect of their own behaviour and that of their children. While there has been some research on parental involvement in child protection case conferences and also in family group conferences for child in need and children who offend, there is little documented information on parents having a structured role in the decision making in formal processes in youth justice systems.

5.2 Parental involvement in legal decision making processes
Children and young people below the age of criminal responsibility and involved in criminal activity are, generally, dealt with by welfare committees or social services departments. It is reasonable to assume, given that social workers ‘investigate’ the circumstances of these children, that parents play an important part in proceedings, in decision making and in any resulting action programme. There is little documented research on the effectiveness of parental participation in decision making or on outcomes on offending for these children.

For young people involved in youth courts, the position of parents in Canada is fairly typical. Parents must be notified of the detention of their child, have the right to attend formal proceedings and make submissions or representation prior to sentencing. Research shows that they are more likely to attend if their child is younger and does not have a significant prior record. In recognition of research which indicated that the absence of collaboration with parents tended to have a negative impact on the success rate of
supervision/probation orders, Section 26 of the Youth Offenders 2003 Act was included in order to allow youth courts to order that parents attend court if their presence is considered ‘necessary or in the best interests’ of the youth. However in practice orders to compel parental attendance are rarely made as coercing parents to become involved in the court process is considered rarely likely to help their children.  

A general criticism of adversarial approaches, used in countries like the USA and England (see page 43), is that they provide limited opportunity for parental involvement in decision making processes.

5.3 Restorative Justice and parental involvement
The introduction of restorative justice approaches, in particular family group conferences (FGC’s) into youth justice practice has resulted in the development of new mechanisms for involving parents, families and victims directly in decision making and in problem resolution for young people. Restorative justice methods now operate in most western countries across the continuum from early police warnings and cautions, to forms of diversion from formal action, to pre-court or hearing preparatory work, to post disposal interventions. In some jurisdictions restorative requirements are enshrined in law, as, for example, in Canada, New Zealand, some Australian states, and N. Ireland. In others, as in Scandinavian countries and in Scotland, restorative approaches are incorporated as part of existing practices.

An FGC provides a mechanism for making decisions about how best to deal with a young person's criminal behaviour by involving them, his/her victim, and supporters of both, typically brought together with a trained facilitator to discuss the incident and the harm it has brought to the victim and to the group of supporters. The conference provides an opportunity for participants to consider the facts of what happened; for victims to explain how they have been harmed and to question the offender. Supporters, in particular parents and carers, have an opportunity to examine the consequences, to describe how they have been affected by the incident and how they can contribute to some resolution. At the end of the conference, the participants can look to the future by trying to reach an agreement on how the person can make amends.
Restorative approaches tend to operate both as an alternative to court processing and as a mechanism for making recommendations to judges or decision makers prior to disposal. Conferencing may be managed by the police, the courts, social welfare agencies, or by voluntary organisations. A Youth Justice Coordinator is, typically, responsible for organising conferences referred from police and the courts. Models of FGCs adopted in parts of Australia (specifically in Wagga Wagga and Canberra) are based on the theory of ‘re-integrative shaming’ which argues that people are generally deterred from committing crime by two informal processes of social control: fear of social disapproval and conscience. In this process the person responsible for an offence is made powerfully aware of the disapproval of their actions by significant others in their lives, while offered positive support to make amends. The Australian Wagga Wagga model closely resembles approaches adopted by Balanced and Restorative Justice approach (BARJ) in North America. One review of the evidence reached encouraging, though cautious, conclusions about the efficacy of restorative justice. Only one of more than thirty studies examined could be interpreted as showing an increase in re-offending for any type of offender involved in restorative justice programmes and many showed reduced offending. Longitudinal data from the Canberra Re-integrative Shaming Experiments (RISE) suggest positive outcomes for those involved in violent offences, particularly where victims are involved directly. Outcomes for non violent offences were counterproductive. Similarly outcomes for the most disadvantaged aboriginal people proved disappointing.

In New Zealand the objective of introducing family conferences was to prevent graduation into the Youth Court system and for families/whanau to take greater responsibility for youth offending. The number of young people appearing in youth court has reduced by over 70% in 10 years. There has been some uncertainty regarding the impact of restorative justice conferences on future offending but the most recent report is fairly positive that the objectives and principles of the 1989 Act are being met. Accountability for young people is being achieved; some form of restorative response was normally part of the plan when there was a victim and restrictive sanctions included in plans for nearly three fifths of young people. The use of diversionary practices had increased and incarceration had decreased. The data suggested that re-offending was not increasing and may have declined. The report notes the limited success of FGCs in enhancing well being which the reports’ authors attribute to under funding for
they found deficiencies in the availability of drug and alcohol, anger-management and mental health programmes, a shortage of suitable educational and training arrangements and inadequate resources in response the need for family support and care and protection.

Commentators on restorative justice are at pains to point out, however, that reducing offending is only one goal of many and the one least likely to show benefits because of the limited capacity to impact on other social factors which sustain and support offending behaviour. In many ways the greatest achievement of restorative approaches, to date, is in creating non adversarial arenas where parents and young people can participate meaningfully, accept responsibility and have a say, along with victims, on the decision making outcomes.

Although a core principle of FGCs is parental participation in decision making, a study of around 200 FGCs relating to young people who offended in New Zealand found that this did not always occur in practice. Parents were often unfamiliar with the options, resources, programmes and facilities available in the formulation of any plan with the result that professional’s suggestions were often the likely ones followed. Parental and family control over decision making was considered further diminished by the fact that conferences were often attended by a social worker and although parents have a right to withdraw to discuss in private how best they feel they might respond to their child’s offending, in practice, professionals only withdrew in 58% of the conferences. The scheduling of conferences during working hours to meet professional requirements and poor accommodation were also considered limiting factors. Some family group conferences made recommendations which tried to make the young person accountable and also addressed their needs. Shortages of resources meant that often welfare needs were not adequately met by recommendations and, in some instances were not even explored. Nonetheless more than half the parents felt that they had been involved in what happened at the conferences and over two thirds of the parents considered that they had been the decision makers.

Restorative approaches have not replaced adversarial criminal proceedings for very persistent or serious offenders, although many jurisdictions have incorporated restorative elements into court processes. In New Zealand, for example, all young people up to age 17 appearing in the youth court will participate in a family group conference prior to
disposal. A plan summarising the restorative actions to be taken is discussed and if approved by the judge will be implemented thus avoiding formal conviction of the young person.  

The particular elements of family group conferences that seem important are that the process seems fair to parents, involves them and young people in decisions arising from it, and that neither the young person or parents are made to feel like a bad person.  

5.4 Programmes working with parents as agents of change

One recent controversial innovation in England and Wales has been the introduction of compulsory measures on parents, the Parenting Order, for parents of young people who are at risk of or known to be engaged in offending, or who are failing to attend school. Under the terms of a Parenting Order, parents must engage with a parenting support and education service in a form directed by their local multi-agency Youth Offending Team (YOT). Failure to comply with the terms of the Order can result in criminal ‘breach’ proceedings, a return to court, and potentially a fine or a further Order being made. The work with parents typically addressed:

- Dealing with conflict and challenging behaviour by young people
- Constructive supervision and monitoring of young people
- Setting and maintaining boundaries and ground rules for young people
- Communication and negotiation skills
- Family conflict in general

The evaluation of the Youth Justice Board’s Parenting Programme covered 34 parenting projects and a total of nearly 3,000 parents, two thirds of whom came on a voluntary basis. Most of the parents were white British and 81% were female with half the group lone parents. Almost all of the children were over the age of 11 and most were aged between 14 and 15. The children were described as a high need, difficult group with three quarters having behavioural and emotional difficulties. In the year prior to the parents’ involvement in the programme, 89% of the children had been convicted of an offence. On average each had committed 4.4 recorded offences. Subsequent to the programme completion, one year later, 61.5% had been convicted of an offence with an average of 2.1 recorded offences.

There was no difference in reported benefits between those whose parents were on compulsory statutory orders and those referred on a voluntary basis. Parents’ attendance
rates at programmes, in general, were high, although those on statutory orders had a higher rate of attendance on average than those who came on a voluntary basis. The difference was not large. Parents reported many positive changes in their parenting skills included.\textsuperscript{128}

- Improved communication with their child
- Improved supervision and monitoring of young people’s activities
- Reduction in the frequency of conflict with young people, and better approaches to handling
- Conflict when it arose
- Better relationships, including more praise and approval of their child, and less criticism and loss of temper
- Feeling better able to influence young people’s behaviour
- Feeling better able to cope with parenting in general

Project workers were, on the whole, less optimistic than parents themselves about the benefits of the programme. Nonetheless they reported that nearly half (49\%) of the parents they worked with had benefited substantially, and that only one in eight (12\%) of parents had derived no benefit at all. While the results were encouraging, the researchers noted that though the Parenting Programme may have been a contributor to positive changes, it is unlikely that the Programme alone was responsible for them, because programmes only aimed their work at parents, not young people. Indeed few succeeded in doing any direct work with young people or other family members, despite initial intentions to do so.

General conclusions from this initial evaluation were that short-term programmes aimed at parents may be thought unlikely to have much immediate impact on young people’s behaviour. Nonetheless there were encouraging signs for young people associated with the Parenting Programme. The greatest challenge reported at the practice level was the very high level of need of parents and families involved. By any standards, these were the families that services always regard as hard-to-reach: desperately needy, often distressed and chaotic, with long histories of unsatisfactory contact with helping agencies, and on top of all this, with a child (and sometimes more than one) displaying challenging conduct problems. The researchers concluded that there was a role for parenting programmes in ensuring that vulnerable and needy parents get the necessary support. Parenting programmes, like other preventive or early interventions, may be best provided universally to families deemed to be at risk or to families in which problem behaviour has
already been manifested Examples cited include the Parents and Children Videotape Series, Parenting Positively, Handling Children’s Behaviour (each of which is appropriate for children between the ages of three and ten years), the Parent Network (which is suitable for all ages of children) and Strengthening families programme for young people age 10-14.¹²⁹
6. Participation of lay individuals in processes and procedures

6.1 Introduction: Involvement of lay people in youth courts or their equivalents

Generally in the context of criminal and youth justice a lay person refers to someone who is not legally trained. The term is also usually confined to people who have not had a direct personal involvement in the crime. Therefore victim mediation schemes and family group conferences are usually seen as separate from lay involvement. There is a long tradition in many jurisdictions of involving lay people in decision making both in adult and youth criminal processes. Depending on the country, these have included non-legal professionals, local politicians, or ‘ordinary’ or ‘elite’ members of the public. Also lay people sometimes act with judges or other legal persons, sometimes act instead of them. In the UK lay magistrates have operated as judges in lower courts and youth courts for many generations. Youth courts in some jurisdiction such as N. Ireland and Finland consist of a tribunal of a professional judge accompanied by two lay people. For example the first of three levels of court in Finland, the local court which deals with juvenile cases, is comprised of one legally trained judge and three lay judges. If the case is complicated a second legally trained judge and fourth lay judged may be added. In this example as in many, jurisdictions involving lay people, the decision making processes tend to operate primarily through adversarial and criminal decision making bodies, where the ‘lay’ element is not stressed as a distinctive quality influencing the process or decision making. Given that the percentage of 15-18 year olds who received a youth sanction in Finland (which includes youth service or community service) in 2000 is minute lay/community involvement is not a major feature of their system of youth justice. Throughout the 1990s, in most countries the search for better outcomes with young people has generally concentrated on improving professional practice including risk/need assessment and processes rather than bringing in lay people, parents or the community.

Lay involvement in pre-court or alternative to court arrangements

Lay people who are involved in the projects we discuss in this section include those who are involved in the prevention of crime and those involved in the processes and procedures for young people who have come to the attention of the police. In many cases there is a regrettable absence of information on the characteristics or training of members
of the public who are involved but hopefully the references provided will enable the pursuit of additional information for those who require it.

In the US development of restorative practices and new developments in community justice such as ‘Balanced and Restorative Justice (BARJ) are organised around principles of ‘localism’ and ‘lay participation’ increasing the focus on neighbourhood initiatives to create more accessible and less formal justice provisions aimed at shifting intervention decisions to the locality affected directly by the crime. The goal of community justice is to empower citizens, local voluntary groups and neighbourhood associations as partners in the justice process. This has resulted in the growth and development of a more distinctive lay involvement in early and preventive intervention and decision making arenas aimed at preventing prosecution, de-criminalisation, and reducing the associated negative amplification effects of criminal processes for minor offenders through neighbourhood courts, volunteer crime panels and peer courts.

Individual American states and cities have developed neighbourhood programmes to support lay participation and strengthen neighbourhoods and their moral order to prevent crime. Youth Aid Panels, for example in Philadelphia, have been developed as community based diversion programmes for first time and minor offenders. A panel is made up of community volunteers who are trained by the District Attorney's Office. Twenty seven panels operate in neighbourhoods throughout in the city of Philadelphia. Two key elements of the Youth Aid Panel programme are to give first-time offenders a second chance to avoid a criminal record and to make the young person understand the seriousness of his/her actions as well as the effect their crimes have on their victims and the neighbourhood as a whole. The programme is open to first-time juvenile offenders charged with misdemeanours or minor felonies that would otherwise be heard by a judge in youth court. The young person must first admit guilt and then is required to enter into a contract with the Panel. The contract can include traditional requirements such as a year-long community service project or innovative measures like restitution or writing an essay. An important element of the approach is community review. One panel member is assigned to monitor each juvenile's progress and adherence to the contract until all terms of the contract have been fulfilled. Successful outcome results in the young person’s record being expunged. Failure of the contract is likely to result in youth court hearing
and a criminal conviction. To date limited data is available on the impact of such developments.

In the US a number of states have established Peer or Teen Courts as an alternative court within the criminal justice system for young people up to age 17 who commit misdemeanours or violations for the first or second time. A young person can be referred to the peer court by police officers, the Department of Youth Services, Municipal Court, or the local schools. The Peer Court Coordinator will interview the young person and with the agreement of their parent or guardian determine if referral is appropriate. If, after admitting guilt, the referral is accepted by the Peer Court, the case is heard by a residing Judge, a local attorney, who will ensure that all legal requirements are met. Students act as Case Presenters, to summarize the case and present any circumstances that may have an effect on sentence. Finally, a jury composed of other student volunteers and former offenders will decide the appropriate sentence in the case. Sentencing will normally involve community service, restitution when appropriate, and will always include future service as a peer court juror. At any point during the process, an offender who fails to carry out sentencing is automatically turned over to the youth courts for prosecution. After sentencing, the Peer Court Coordinator monitors each case to assure that the defendant complies with the sentence. Once the sentence has been completed, all record of the infraction is destroyed. Students who fail to comply with the sentencing are referred to the Department of Youth Services.

A Peer court in Oregon in operation since 1997 and which had heard over 800 cases to date claims a recidivism rate of 10%. An evaluation of Kentucky's Teen Court found recidivism rate after two years of 37 percent. Compliance with teen court sentences was found to be associated with a reduced likelihood of recidivism. These outcomes though very positive have to be set general evidence that most first offenders when detected do not re-offend following diversion from any formal processes.

Some critics claim that community justice initiatives in the US are state driven and have not ‘emerged’ from community movements as such and to that extent represent an extension of existing criminal justice approaches – new names for unchanged programmes - rather than a new paradigm and approach to justice. Others argue that because most BARJ leadership is local and practitioner based, individuals are free to
devise their own interpretations of their own state and local reforms. Equally where restorative approaches tend to relate to interpersonal practice involving meaningful social relationships with the capacity to hold to account and support reparative action, many community initiatives simple transfer powers to community ‘strangers’.

Similar developments have occurred in England and Canada. The youth offender panels introduced in England in 2002 were partly influenced by Scottish children’s hearings, but also have many similarities to American community panels. The English panels are made up of at least 2 trained volunteers from the local community (Community Panel Members), and a member of the Youth Offending Team. Panels are held at various venues throughout the local area. The Youth court can make a referral order for between 3 and 12 months on a young person aged between 10 and 17 appearing for the first time and pleading guilty. The young person is then referred to the panel and is expected to agree a "contract" with the panel and, if appropriate, the victim. If the young person is under 16, parents or carers are required to attend. Victims are also invited to attend and take part. If the young offender fails to agree a contract or fails to comply during the term of the order, the case is referred back to the court for re-sentencing. Although the Panel has the backing of the court, it is not a court of law. The stated intention is that panels should be less formal than courts to encourage effective communication between young offenders, their family and their victims, that community panel members will have a particular understanding of the effects of crime in their community and that the local nature of panels will bring home the real effects of crime to the young offender by requiring them to consider the effects of their actions on the victims and the rest of the community.

Referral orders to the panels were implemented nationwide in April 2002 and accounted for nearly 30% of all sentences passed on 10 to 17 year old offenders by the following year. Evaluations of the pilot schemes were reported as a success. 88% of panel members agreed that referral order panels helped make offenders accountable for their crimes; 82% agreed that panels encouraged young offenders to repair the harm they caused and 82% agreed that the panels addressed the causes of the young person's offending behaviour. Despite this optimism, the evaluation of the first year highlighted a degree of net-widening with a number of magistrates, youth offending teams and community panel members arguing that the compulsory conditions were operating too widely, leading to
compulsory referral orders where the offending was of low seriousness and where a less intrusive disposal would have sufficed. Changes are underway to confine compulsory orders to more serious and imprisonable offences.\textsuperscript{137}

In Canada, recent legislation has similarly supported the involvement and participation of victims, families, volunteer groups, teachers, psychologists and the wider community in many different ways in the youth justice system. It also led to the development of Youth Justice Committees, which are groups of citizens who can help administer the law or participate in intervention programmes or services for young people. For example in the Yukon Health and Social Services Community Youth Justice Partnership two members from the Youth Justice Committee serving the local community take part in a panel with professionals in order to decide how a charge against a young person should be processed.\textsuperscript{138} It is too early to report on outcomes from this development.
7. Delivering specific improvements in outcomes for children/young people who commit offences

7.1 Introduction

One similarity between the countries examined and Scotland is the long and shared tradition of welfare approaches to troubled and troublesome young people broadly the result of philanthropic beginnings. This began to change in the 1970s following the realisation that welfare approaches frequently had the unintended consequence of being unfair and unjust together with the realisation that most interventions had no evidential basis for their claims and often had negative consequences or outcomes. The main ‘drivers for change’ were pressure for a better response to the problem of crime, greater demand for punishment, and for due process to address the perceived inequalities in the justice system. As one author put it there was a general belief that the introduction of due process rights would constrain the (mis)behaviour of the child welfare authorities and the police and at the same time that harsher less welfare orientated sanctions would produce better outcomes in terms of a reduction in recidivism. The influence of UNCRC in the latter part of the twentieth century is challenging many jurisdictions to re-examine the balance in their approach to the welfare and justice need and rights of children. Alongside this are associated changes aimed at establishing evidence of what is effective; of what seems to work. This is summed up by one review as ‘tough is not enough -it is important to get SMART’ (specific, measurable, achievable, relevant, time limited) about youth crime.

There is much promising evidence from recent and rigorous research that well structured social interventions can help young people persistent in their offending build the necessary motivation and personal and social skills to resist and desist from crime. However personal change in young people is unlikely to be sustained without social resources, social opportunities and social relationships (‘social capital’) to facilitate or support social participation and inclusion vital in maintaining desistance from offending over time. Research reviews do not point to any single outstanding approach that by itself is guaranteed to work as a means of reducing offending by children and young people. However there is a consistency in the direction of research findings to support
the position that there is promising evidence of social interventions which can have a direct and positive outcome effect on young people who offend and on their behaviour.

7.2 Risk factors
Research concerned with the backgrounds, circumstances and attitudes of future offenders has identified many factors that point to an increased risk that children and young people will become criminally involved in the future. The major risk factors for juvenile offending are: 142

- **Prenatal and perinatal**: early child-bearing increases the risks of such undesirable outcomes for children as low school attainment, antisocial behaviour, substance use and early sexual activity. An increased risk of offending among children of teenage mothers is associated with low income, poor housing, absent fathers and poor child-rearing methods.
- **Personality**: impulsiveness, hyperactivity, restlessness and limited ability to concentrate are associated with low attainment in school and a poor ability to foresee the consequences of offending.
- **Intelligence and attainment**: low intelligence and poor performance in school, although important statistical predictors of offending, are difficult to disentangle from each other and from the influence of socio-economic circumstances. One plausible explanation of the link between low intelligence and crime is its association with a poor ability to manipulate abstract concepts and to appreciate the feelings of victims.
- **Parental care, supervision and discipline**: harsh or erratic parental discipline and cold or rejecting parental attitudes have been linked to delinquency and are associated with children’s lack of internal inhibitions against offending. Limited or inconsistent monitoring of children’s activities may also contribute to youth crime in areas with high offending rates. Physical abuse by parents has been associated with an increased risk of the children themselves becoming violent offenders in later life.
- **Parental conflict and separation**: living in a home affected by separation or divorce is more strongly related to delinquency than when the disruption has been caused by the death of one parent. However, it may not be a ‘broken home’ that creates an increased risk of offending so much as the parental conflict that lead to the separation.
- **Socio-economic status**: social and economic deprivation are important predictors of antisocial behaviour and crime, but low family income and poor housing are better measurements than the status of parents’ occupations.
- **Delinquent friends**: delinquents tend to have delinquent friends. But it is not certain whether membership of a delinquent peer group leads to offending or whether delinquents simply gravitate towards each other’s company (or both). Breaking up with delinquent friends often coincides with desisting from crime.
- **School influences**: the prevalence of offending by pupils varies widely between secondary schools. It is not clear how far schools themselves have an effect on delinquency (for example, by paying insufficient attention to bullying or
providing too much punishment and too little praise), although substantial school differences occur even when the nature of the intake is allowed for.

- **Community influences**: the risks of becoming criminally involved are higher for young people raised in disorganised inner city areas, characterized by physical deterioration, overcrowded households, publicly-subsidised renting and high residential mobility. It is not clear, however, whether this is due to a direct influence on children, or whether environmental stress causes family adversities which in turn cause delinquency.

- **Gender** As noted earlier in the report, much higher proportions of boys than girls commit crimes and persistently offend, a pattern which is found in most parts of the world.

Risk factors for delinquency and other problem behaviours are now recognised as being cumulative in effect; the more that are present, the greater the risk of involvement in problem behaviours. It is noteworthy that the risk factors for youth crime are very similar to those for child abuse and also for children who are looked after and accommodated. This corresponds with the fact that disproportionate numbers of young people who commit crimes have been subject to abuse and neglect and/or looked after in public care, either earlier in their lives or concurrently.

### 7.3 Protective factors

While children exposed to multiple risk factors are disproportionately likely to end up as serious or persistent offenders, research evidence is not sufficient to predict with real accuracy which individuals are likely to become offenders on the basis of the level of risk to which they are exposed. Not all children and young people exposed to multiple risk factors become offenders, nor do all children and young people who offend grow up in socio-economic difficulty. Research highlights the important aspects of young people’s lives that can protect them against risk in the same way that some personal and social factors are strongly associated with the likelihood of offending. Studies suggest that many children appear to survive even serious risk experiences with no major developmental disruptions. Individual characteristics, such as having a resilient temperament or a positive social orientation, positive and warm relationships that promote close bonds with family members, teachers, and adults who encourage and recognise a young person’s competence, as well as close friendships with peers, are recognised as operating as protective factors that can reduce the impact of risks or change the way a child responds to them. One review summarises the protective factors as:
• The adoption of healthy behaviour;
• Having clear standards and positive social bonding though opportunities for involvement;
• The acquisition of social and learning skills; and
• The receipt of recognition and praise.

There is a growing body of literature on outcomes in relation to child care, protection and educational experience that is beyond the scope and scale of this review to be drawn from.\textsuperscript{149}

7.4 Implications for intervention

There is now a broad consensus in criminological literature about predictors of offending such as age, gender, criminal history, early family factors, schooling and criminal associates. However there has been much debate about how to apply understanding of risk factors and about which factors are changeable (dynamic) and which predict re-offending. Those involved in anti-social or criminal behaviour at an early age and experiencing multiple social adversities are more likely to become persistent offenders.\textsuperscript{150} As this combination of factors is generally part of a childhood pattern\textsuperscript{151} which differs little from those associated with youthful deviant behaviour\textsuperscript{152} it is argued that programmes to prevent or reduce crime should be part of wider programmes to address difficulties such as school failure, substance misuse and social exclusion. Commentators\textsuperscript{153} suggest that prevention and social inclusion programmes can be cost effective with results extending beyond reductions in crime. Available evidence supports approaches which consider children and young people at risk of persistent offending as a category or subset of children in need.

There is no single or simple way of helping an individual change their behaviour and precise knowledge about which methods seem to work best with specific kinds of offences remains limited. Cognitive behavioural and social learning methods are central to effectiveness but many questions remain unanswered and many ideas are still to be tested through local innovation.\textsuperscript{154} Considering the enormous number of offenders who pass through youth justice systems in many jurisdictions, there are a comparatively small number of evaluations of interventions that focus specifically on children and young people who offend. Most of the reviews have been carried out in North America. The emerging principles and findings have tended to be formulated in regard to adult and young adult offenders.
The findings of reviews have been sufficiently consistent to allow some basic principles to be established which seem to be applicable to intervention with children and young people as well as with adults. Many interventions are based neither on existing knowledge of causes of crime or on evidence of programmes that show positive change but often simply on good ideas or professional interests e.g. art, drama, music, horticultural and outdoor experience, relaxation therapies, diet, – all may be positive and good things for general development but research shows little evidence that in themselves they reduce crime and so should not be a centre piece but only ancillary aspect of service provision.

Below we consider evidence about firstly interventions that have been shown to be ineffective and then those that do work.

7.5 What interventions do not work?

The growth in deterrent and ‘tough’ interventions has been widespread in the last two decades particularly in US ‘correctional’ practice. The largest existing systematic review of findings in relation to young people found that the common characteristic of intervention programmes that did not work was an emphasis on punishment and deterrence alone where no attempt was made to resolve the social life problems of young people. The data demonstrated that deterrent sentences, while intuitively appealing and popular, tended to result in a 25% increase in offending on average. This applied particularly to ‘scared straight’ programmes - visiting correctional facilities and introducing young people to hardened criminals to convey how harrowing these responses can be. Similar types of programmes have been run in Scotland at the beginning of the twenty first century without built in evaluation to establish their likely impact. These include

- Ongoing surveillance,
- Use of ‘move on’ powers and name checks by police
- Closed circuit television of public places
- Shaming practice and legislation

Coercive approaches detached from human service rarely show positive outcomes. Chart 3 below reveals the measured outcomes from 374 control studies comparing the use of sanctions alone (101) and interventions involving human service (273) and confirms that, despite the popularity of innovative legal sanctions, these will have little or no positive
impact on offending and on average sanctions alone are associated with increased offending.

**Chart 3: Service or Sanction**

The conditions for ‘effective punishment’ are almost impossible to recreate with any consistency in a ‘real world’ situation. Evidence suggests that punishment and deterrent sanctions work best with well socialised, non impulsive, ‘future oriented’ (‘stop and think’) children with average and above IQ who are cautious and have low arousal thresholds. Evidence indicates that where punishment is most effective it is with those with minimal punishment experience and history; it tends to fail with young people with multiple problems persistent in their offending whose personal characteristics tend to be the opposite of those described. Existing evidence suggest legal sanctions consistently fail to address criminogenic needs/risks and are insufficient, in themselves to offset the immediacy, frequency and magnitude of rewards from criminal activity which have to be replaced with pro-social alternatives. Similarly studies have compared community based versus institutional approaches, in particular locked or incapacitation facilities. 103 published studies involving 267,804 subjects compared the outcomes of these two approaches and showed an average 7% increase in re-offending associated with
institutional approaches. Thus there is no evidence that simply being kept in a locked institution will reduce offending. However some young people present such risks to themselves and others that incarceration may be inevitable. It is clearly important to limit the use of such approaches for those who commit serious offences and ensure approaches within institutions apply appropriate service interventions. When human services are included in institutional or community based approaches the outcomes are more likely to be positive. One review showed modest effects, on average 9% reduction in re-offending for institutional provision and 14% for community based provision.

These data present above represent average effects. The same studies showed that the range of outcomes varied greatly from 32% increase in re-offending to 22% reduction in institutional provision to 43 increase in re-offending to 83% reduction in community based approaches. The conclusion is that even human services in themselves do not necessarily result in positive outcomes. Controlled studies show a wide range of variability. It is important to identify the characteristics of those that show consistent positive direction in their outcomes and that conform to key directing principles.

7.6 Effectiveness Principles

Research findings are consistent enough to establish directing principles for effective practice. Intervention programmes must target those who are at sufficient risk of re-offending so that any reduction is meaningful (risk). Programmes that provide intensive services for individuals at low risk of future re-offending are likely to use scarce resources on young people unlikely to re-offend anyway. Intervention aimed at general offending with young people must directly address characteristics that can be changed (dynamic) and that are directly associated with the individual's criminal behaviour (criminogenic need). Evidence suggests that the larger the number of relevant targets a programme is aimed at, using a range of appropriate methods (multi-modal), the more successful it is likely to be. Similarly changes achieved in the community seem to result in better and longer lasting outcomes (community based) than those achieved in institutional settings. The integrity of the programme - the need for the programme to be delivered as planned and designed – is important. Poorly implemented programmes, delivered by poorly trained personnel, where participants spend only a minimal amount of time in the programme, can hardly be expected successfully to reduce re-offending. A further core principle emerging from the research is the need to deliver intervention in a
way that addresses the learning styles and abilities of young people (general responsibility). Programmes that use cognitive behavioural and social learning approaches rather than non-directive relationship-oriented counselling or psycho-dynamic, insight-oriented counselling seem to be more effective, though some may require a minimum intellectual capacity. Programmes for specific groups of young people e.g. females or ethnic groups or those involved in specific offences need to be adapted appropriately to the particular characteristics of these young people (specific responsivity). Recent re-examination of reviews suggest that the directing principles themselves have an accumulated effect that notes caution for any single or one dimensional approach. Table 6 (below) indicates that it is only the comprehensive application of all these directing principles that demonstrates very positive outcomes on offending. This combination effect is found in community based and in residential provision. The data stress that ‘how’ interventions are implemented is equally as important as ‘what’ is done.

**Table 6 Adherence to Effective Principles by Setting**

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# = Number of essential treatment conditions (as derived from systematic research reviews) that are present in the intervention.

**7.7 Programme Integrity**

There is a growing consensus that programme integrity - delivering a service as intended - has to be achieved if re-integrative intervention is to be effective. This, however, is simpler to define than it is to achieve. Research reviews consistently demonstrate that the quality of delivery is critical to the successful reduction of re-offending. Programme integrity can be undermined is a variety of ways.
- Programme drift – where aims and objectives of the programme are changed unsystematically over time
- Programme reversal – where the goals are directly undermined by staff who, for example, fail to model positive behaviour, or who do not operate within the theoretical frame set, or who simply are not convinced that the programme is worthwhile
- Programme non-compliance – when changes are made to the content/targets of the programme without reference to theoretical principles or the original objectives of the exercise

Problems of programme integrity can occur even for the best of motives, for example, as practitioners try and adapt material – particularly from other cultural contexts - to the learning style and to the pace of learning of individual young people (responsivity). As a result programme accreditation systems, such as adopted in Scotland, demand evidence of a coherent theoretical framework for programmes; documentation in the form of programme manuals; the proper facilities to delivery the programme as intended; the appointment of specialist programme leaders to provide support and supervision for staff, to ensure that staff are adequately trained to carry out the task, and to operate contingency planning.

Reviews of research show that effectiveness is associated with the level of involvement of the leader in all stages of programme delivery, in overseeing implementation, in a high level of organisational commitment to ensuring adequate resources, in the availability of skilled staff, interventions directed by well structured plans and explicit procedures for monitoring and evaluation.

The skills of those delivering the intervention are crucially important. Successful outcomes are strongly influenced by skilled effective workers who are warm, optimistic and enthusiastic, creative and imaginative and who use their personal influence through the quality of interaction directly with young people. Key practitioner skills associated with positive outcomes include social modelling, positive reinforcement and effective disapproval, providing structured learning to develop problem-solving skills and providing opportunities for restoration and making amends as part of examining.

Most studies classified as 'effective' tend to be behavioural in nature but not exclusively so. Interventions based on deterrence (e.g. ‘scared straight’ programmes), non directive approaches, non-behavioural milieu or and group approaches tend to be ineffective.
In summary, there is promising research evidence that community based social intervention can be effective in reducing the criminal behaviour of persistent offenders. The evidence from reviews suggests that effective programmes appear to have common characteristics that distinguish them from unsuccessful approaches:

- Carefully designed to target the crime related characteristics that can be changed (dynamic characteristics) by the intervention and those that are predictive of the individual's future criminal activities
- Implemented in a way that is appropriate for the participant using techniques that are known to work and which require participants to spend a reasonable length of time in the programme considering the changes desired (sufficiency)
- Designed, delivered and evaluated by knowledgeable skilled individuals, appropriately educated and experienced
- Give the most intensive programmes to those at the highest risk of re-offending
- Use cognitive and behavioural methods based on theoretical models such as social learning or cognitive behavioural theories of change, emphasise positive reinforcement, provide contingencies for positive social behaviour and are individualised as much as possible.

Overall, the results of the major systematic review on young people indicated that more effective programmes were

- Longer in duration and provided larger amounts of meaningful contact
- Provided by the researcher or in situations where the researcher was influential in the intervention setting
- Behavioural, skill-oriented and multi-modal
- Provided in community settings

The issue of the duration, sequencing and intensity of a programme seems important although less is known about these factors. Evidence even of good outcomes suggests that without actively maintaining positive change over time, the benefits can ‘wash out’ and disappear.  

7.8 Family based initiatives

Family experiences play a critical role in causing, promoting, or reinforcing delinquent behaviour by children and adolescents. Therefore, it is important to develop interventions targeted to parents, siblings, or the entire family unit. For young people who do not pose an immediate threat to others or themselves, most of the successful strategies work with
young people in their own homes and communities, rather than in institutions, and focus heavily on the family environment. Effective interventions that involve the family often complement interventions carried out simultaneously in schools or other parts of the community. Three broad categories of family based interventions are associated with effective outcomes with children and young people:

1. Early home visitation provision and Pre-school education programmes,
2. Parent training
3. Structured family work.

The first two are mainly directed at early interventions with families who have young children in order to reduce the likelihood of future offending by the children. The third refers to work with families where a young person has been recently offending.

**Home visiting** provided by skilled and committed professionals aimed at helping and training parents of young children in adversity have consistently shown positive effects in reducing later criminal activity by the children.\(^{165}\) Of the 18 evaluations in one study, two - the Syracuse Family Development Programme and the Perry Pre-school Programme (High/scope) measured long term impact of home visitation on offending. In the Syracuse study only 6% of the programme group had a conviction by age 15 compared to 22% of the control group. The programme group showed 73% reduction in statutory supervision (probation) by age 15.\(^{166}\) The Perry programme targeted both parents and children and combined early childhood instruction (taught by masters-level teachers) with parenting assistance and weekly home visits. The programme group performed better at school and in employment than the control group. Arrest rates were dramatically reduced during adolescence and young adulthood at 40% lower by age 19 than for the control group. By age 27, only 7% of Perry youth had been arrested five or more times, compared with 35% of youth in a randomly-assigned control group. A cost benefit analysis indicated a long term saving of $7 for every $1 spent\(^{167}\)

Ten other evaluations in this review showed reductions in crime risk factors and produced positive outcomes in terms of later reductions in anti-social behaviour and improvements in cognitive skills, parental attachment and parenting skills. A summary of the benefits of home visiting programmes\(^{168}\) as providing an opportunity for professionals to provide advice on child care, development and parenting and help families to make use of health and social services so that early assistance with their
problems may be provided. One concerning trend is the use of centre based programmes which ‘water’ down’ the defining element of these programmes namely work in the home.

Reviews of direct family work and parent training show promising outcomes. Overall parent training courses do seem to help parents respond more constructively, use discipline less harshly and more consistently, and manage conflict situations better than control groups. The effectiveness of family and parenting interventions seems to increase exponentially when children are very young, before anti-social, aggressive or criminal behaviours are fully developed. By the time a child reaches adolescence, both the child and the parents are following well-established patterns and are more resistant to long-term change. The most promising parent and family-based interventions combine training in parenting skills, child development and the factors that predispose children to criminal behaviour with other approaches such as social and problem-solving skills for children, pro-active classroom management, and peer related programmes for older children. Programmes typically include exercises to help parents develop skills for communicating with their children and for resolving conflict in non violent ways.

Multi-dimensional and structured family work has shown a positive impact in reversing negative behaviours among troubled youth, particularly those with substance abuse problems when carried out by well trained practitioners that are associated with positive outcomes. In a study of drug-abusing adolescents, structured family work improved parenting skills in 69% of the participating families. In addition, 71% of participating young people significantly reduced problem behaviours and 79% significantly reduced their substance use. Functional Family Therapy (FFT) focuses on the multiple domains and systems within which adolescents and their families live. It targets both the family and the individual behaviour of the young person employing intensive and research-driven techniques aimed at identifying and reversing negative family dynamics that produce problem behaviours. FFT has been shown to reduce the re-offending rates of youth by 25 to 80 percent in repeated trials. In one trial FFT with serious and persistent offenders showed that participants were almost six times as likely to avoid arrest (40% vs. 7%) as the control group. Multi-systemic Family Therapy (MST) has been used by trained staff successfully in work with persistent delinquent youth and their families. Eight scientific studies showed very positive results when
compared to individual counselling. With violent and chronic offenders living in a rural context, MST decreased incarceration by almost half (47%) at 1.7 year follow up. Evaluations of MST have shown reductions in re-offending rates of persistent young offenders by 25 to 70 percent in a series of rigorous clinical trials. All forms of structured family work approaches, though expensive, cost less than a quarter of institutional care.

Designed for parents of middle-school students at risk for substance use, academic failure, and anti-social behaviour, the Adolescent Transition Programme proved effective for families with older children. This intervention sought to improve seven classic parenting skills: making neutral requests, using rewards, monitoring, making rules, providing reasonable consequences for rule violations, problem-solving, and active listening. Classes were conducted weekly for 12 weeks in groups of 8-16 parents and followed a skill-based curriculum. In a randomised control trial involving 303 families over a four-year period, parents in the programme reported a lower tendency to overreact to their child’s behaviour, greater diligence in dealing with problem behaviour, and less depression than the control group. There was also some indication of lower levels of daily antisocial behaviour from the young person. The more sessions a parent attended (many did not complete the 12-week program), the greater the reported improvements in behaviour. This evaluation is limited because it was based on the parents’ assessment and interpretation of behaviour rather than on objective measures. In a rural context another self-directed intervention reporting positive outcomes is Parenting Adolescents Wisely, a CD-ROM-based programme. It was successfully implemented in Appalachia, where participants had little or no prior computer literacy.

Parents have a key role as ‘agents of change’ (see Section 5.2) since research has shown that interventions are effective when they help parents form stronger bonds with their children, and encourage them to hold clearly-stated expectations for their children’s behaviour. The main skills focus of such programmes include:

- Understanding child development and developing age-appropriate expectations of their children
- Effective supervision and monitoring of their child’s behaviour
- Setting clear expectations, boundaries and ground rules for behaviour
- Providing praise and recognition for appropriate behaviour
- Identifying clear consequences for unacceptable behaviour and enforcing them
consistently, using non-physical sanctions

• Encouraging positive relationships and bonding within the family
• Effective listening, communication and problem-solving.

The **Strengthening Families Program: For Parents and Youth**[^179] is a 7-week curriculum designed to bring parents together with their 10- to 14-year-old children, with the goal of reducing substance abuse and other problem behaviours. A controlled study demonstrated that both parents and youth who attended the programme showed significant positive changes. Youth who participated in the study had less substance use, fewer conduct problems, and better resistance to peer pressure. These positive changes were indicated by both delayed onset of problem behaviours and relatively more gradual increases in these behaviours compared with the control group during the 4 years following the study pretest. Results indicated that parents were better able to show affection and support and set appropriate limits for their children. According to program theory, these parenting skills help parents protect youth from becoming involved in substance abuse and other problem behaviours.

A US study[^180] of **Treatment Foster Care** (TFC) for serious and persistent young offenders aged 12-18, as an alternative to secure care found that those allocated TFC had fewer arrests and had spent less time in custody and more time at home over the subsequent two years than controls. A good relationship with an adult care-taker was viewed as an important protective factor against continued involvement in a criminal peer group. A number of similar schemes have been developed in the UK which suggest that a high proportion of serious or repeat offenders placed with foster parents succeed in staying out of trouble during their placement[^181]

### 7.9 School-Based Approaches

A cluster of risk factors for offending by young people relate to schooling, including early and persistent anti-social behaviour, academic failure and truancy. Few school based programmes aimed at reducing offending, violent behaviour, or substance abuse have been subject to meaningful outcome evaluation. The evidence available indicates that most programmes currently offered by schools, particularly quick, one-dimensional programmes implemented without strong planning or special staff training make little or no long-term difference on youth behaviour including offending. This lack of impact by
school-based programmes is not due to a shortage of effective models. Research consistently finds that school-based programmes can produce sustained behaviour changes when they are carefully implemented, developmentally appropriate, sustained over time and focused, at least in part, on building social competence. Several school-based approaches have demonstrated the power to reduce either delinquency or known precursors to delinquency such as substance abuse and anti-social behaviour.

A wide range of school-related programmes are relevant to the discouragement of offending. The focus varies, with some seeking to affect directly young people who offend, others engaging parents and the family, while yet others adopt a whole school approach. The main types of programme are as follows:

**Pre-school interventions in the early years** Family literacy programmes and reading schemes aimed at parents and children between three and six from disadvantaged areas with a view to improving the skills of both provide a positive form of early prevention. Children who start school with limited language skills and with little exposure to reading material in the home are at risk of experiencing low educational achievement. Pre-school education can assist children’s educational and social development and prepare them for formal education. In the longer term, this may contribute to the prevention of educational failure, drug misuse and crime, particularly for children from socially disadvantaged backgrounds. Effective early years education programmes are characterised by the following:

- Use of a curriculum that supports active learning
- Encouragement to children to plan their play activities and demonstrate a commitment to their choices
- A focus on the development of language and social skills
- Enhancing children’s sense of co-operation, commitment to task completion, social skills and sense of self-efficacy
- Non-violent discipline based upon clear rules and their consistent enforcement
- The involvement of parents in reinforcing their children’s learning.

**Pupil skills projects** A multi-component Social Development programme in Seattle offered school children six years (grades 1-6) of social competence training, parenting skills training, and training for teachers in classroom management and interactive instructional techniques. Researchers followed the students to age 18 and found that, compared with a control group; they committed fewer delinquent or violent acts, did less
heavy drinking, misbehaved less in school and were more committed and attached to school.

**Whole school initiatives** The PATHE Project\(^{185}\) combined organisational changes in a high school with initiatives aimed at improving educational attainment and reducing offending. The organisational changes seemed to have only marginal effects on delinquency after one year. The most dramatic improvement occurred in official recording of suspensions which dropped by 14% in one year compared to a 10% increase in a control school. The individual focused initiatives seemed to have no effect on delinquency but did improve commitment of ‘at risk’ pupils to education resulting in improved attendance and attainment.

**Family-school partnerships** Evidence suggests that to be effective, early intervention needs to improve both the parenting and the education of children at risk throughout childhood. This can only be achieved by forging partnerships with parents and schools. The Fast Track programme\(^{186}\) is one of the most promising family-school initiatives aimed at reducing anti-social behaviour, increased academic achievement and social/cognitive development by improving parent-child and family-school relationships. The approach involves parent training, bi-weekly home visits, social skills training, academic tutoring and teacher-based academic interventions to improve behavioural management. Early findings suggest that after one year the programme group were showing signs of better parental involvement in school, increased cognitive skills and reduced problem behaviour compared to controls.\(^{187}\)

One project in England involved social workers and teachers providing counselling and groupwork, consultation and support in dealing with problematic children and families and the development of community and school networks to facilitate mutual family support and inter-agency collaboration. Among the outcomes was a marked reduction in truancy levels, improved behaviour by pupils, a reduction in family problems and an increase in educational achievement.\(^{188}\)

**Specific issue programmes** Most commonly these are directed at bullying, school exclusion or truancy. School bullies are at significant risk of becoming serious violent offenders. A bullying prevention project pioneered in Norway in 42 schools found that by
engaging the entire school community (students, teachers, and parents), setting and enforcing clear rules about bullying behaviour, and supporting and protecting the victims of bullying that the incidence of bullying was cut in half. Rates of vandalism, truancy, and theft in participating schools declined also over a twenty month period. A similar initiative in 23 schools in Sheffield was successful in reducing bullying in primary schools but had only small effects in secondary schools. The link between bullying and crime is recognised in Melbourne Australia with a national campaign to target bullies. On the whole research studies show that schools which are characterised by high quality classroom management, good leadership and organisation and where children feel emotionally and educationally supported are best placed to impact on children’s offending.

Programmes aimed at reducing school exclusion and truancy are viewed as effective although, as yet, limited outcome data is available. An audit of truancy prevention initiatives undertaken for the Department of Education and Employment in England identified key factors in reducing levels of truancy from school:

- improved registration procedures (including the use of computerised systems)
- action following the first unauthorised absence from school
- pastoral support and social skills training, including praise and positive reinforcement for children whose attendance improves
- vocational training and work experience for persistent truants from secondary school
- the re-integration of persistent truants and excluded pupils into mainstream education through the provision of mentoring and tutorial support
- the provision of behaviour management training for teachers and other school staff (for example, playground supervisors)
- the encouragement of parental involvement in school life and activities, including the provision of courses in parenting skills.

**After-school schemes** Reducing offending has not typically been a primary goal of after-school activities and other positive youth development programmes. Consequently few studies have measured the direct impact of such work on delinquency and crime. Yet logic suggests their potential to curb delinquent activity. In Ottawa, Canada, an after-school recreation programme targeting all children in a local public housing project led to a 75% drop in the number of arrests for youth residing in the targeted project, compared to a 67% rise for a comparison group. A Columbia University study compared public housing complexes with and without an on-site club for boys and girls. Complexes with a
club that also delivered a social skills training curriculum for youth suffered significantly less vandalism, drug trafficking, and juvenile crime. 192

**Programmes encouraging young people to stay on at school or in further education**

The Audit Commission report cites as an example of an effective school-based programme the Quantum Opportunities Programme in the USA whose evaluation by the Rand organisation suggested that it was a cost-effective approach to enhancing educational and vocational opportunities and reducing youth crime. The programme targets teenagers from deprived areas and provides incentives for them to stay on at school. An evaluation of a pilot project in Philadelphia which provided intensive supplementary education to children from one of the most deprived schools in the city centre, with hourly incentive payments for time spent at the project, found that it resulted in improved school grades, employment, earnings and time spent in voluntary work. The project also appeared to have contributed to lower unemployment levels, school dropouts and arrest rate. 193 Further education colleges can provide young people with educational opportunities and a learning environment to which they find it easier to relate. 194

**7.10 Community Approaches**

Commentators 195 suggest that when community members are asked to help plan and become involved in an intervention, they develop a sense of ownership. Involving the community can also make it easier to obtain resources and volunteers to carry out interventions.

A system of ‘youth’ cafes 196 initially established in Helsinki but now across Finland open from 9pm until 2am on Friday nights. These are staffed by volunteers and the objective is to provide a secure and comfortable arena for young people to interact with each other and adults who show a genuine interest in them and hence prevent antisocial behaviour. Young people are allowed to enter the cafes if they are drunk but the use of intoxicants on the premises is forbidden and they are searched on entry to ensure that intoxicants or weapons are not brought in. There has as yet been no evaluation of the impact of these initiatives.

Mentoring programmes appear, at face value, to be a promising approach to reducing youth offending and involve community members yet one of the least studied and for
which there is as yet little positive outcome data to demonstrate whether, and under what circumstances, it is effective. More rigorous and systematic evaluations are still needed. A study of a Big Brothers/Big Sisters mentoring project revealed that youth assigned a mentor were 46% less likely to take drugs, 27% less likely to drink alcohol, and almost one-third less likely to strike another person than a control group. However earlier reviews of ten US schemes found few positive outcomes with the exception of a Buddy System in Hawaii for 11-17s with behaviour management problems.

Mentoring programmes in the UK have not been extensively evaluated using control or comparison groups. One comparative study found that mentoring led to improvements in education and employment compared with a control group, but the reductions in offending in the two groups were similar. It was concluded that frequent contact over an extended period was vital to have much impact. Another English study targeting young people aged 11 and 14 at risk of school failure and offending, combined mentoring with a residential activity centre and an educational component (six hours of after-school tuition per week) and parent/guardian support. The programme had high completion rates and was judged successful with just under half of the young people. Factors most associated with positive outcomes included participation in the educational component combined with a positive relationship with a mentor. Mentoring programmes are also used as a way of offering maintenance support through frequent contact with a socially positive adult or older peer. Like restorative justice approaches for young people, positive mentoring may provide a vehicle or lever for change but is unlikely in itself to be enough to impact significantly on the behaviour of a persistent young offender with multiple difficulties.

In Canada where rehabilitation and reintegration of young people who offend is a key objective of recent legislation, funds have been made available for several projects with the aim of involving lay people. One such is the Reintegration Support Program in Calgary, Alberta which provides a service to young girls from the commencement of their involvement in custody through to their release and community reintegration. A volunteer or mentor works alongside professionals to support the young person. Association with criminal peers in the community is a well established factor in subsequent criminality. Influencing this is difficult and there are few good examples of effective interventions. One very promising model, the South Baltimore Youth Centre
project, was based on building a contracted social network between young people and workers who acted as mentors and advocates. Peer pressure was used to exercise discipline and control. Participants were taught to manage anger and to develop personal skills. Serious delinquent behaviour decreased by a third for the programme group compared to a slight increase for the control group over a 19 month period. Group work and peer work can have unintended consequences and some commentators warn that bringing together young people involved in persistent offending can make them worse without the skilled workers and the appropriate models of practice to challenge their criminal attitudes and to assist them change positively.

A community approach to risk and protection focused prevention is at the heart of the Communities that Care projects developed in the USA and Europe and more recently in Scotland. Using a public health model it operates on the assumption that action to tackle priority risk factors for children across a whole neighbourhood will in due course reduce the levels of youth crime. There is currently no published data available on the impact of the initiative on levels of offending and other problem behaviours.

Given the association between substance and abuse and offending, schemes which address the former have an important role to play in the reduction of youth offending. The Health Department of Westfalen-Lippe in Germany believes that peer education is the most effective way of getting information about drug use to young people, as they give more credibility to information that they get from people of their own age. It set up two projects in the late 90’s one in schools (the Euro Peers Project) and one outside school (the Euro Net Project). Evaluation of the projects showed positive attitude change among pupils who took part, with significant increases in self-confidence, conflict resolution skills and more knowledge about addiction. However the effect of the projects on actual behaviour was less clear. Nevertheless guidelines for the replication of the projects have been produced.

7.11 Youth work

In the Danish SSP (School, Social Agency, Police) crime prevention schemes, police cooperate with schools and social authorities to prevent crime among young people. The schemes employ trained outreach workers to make contact with young people identified at weekly multi-disciplinary crime prevention meetings as ‘at risk’ of offending. As part
of the programme each youth club is funded to provide a numbers of hours outreach work to support access and street work. One interesting element in this preventive strategy is that it seems less concerned to remove young people from the streets and more to engage them in ‘owning’ the streets as safe places for all members of the community. It is suggested 205 that in contrast to other open access youth work, which generally tends to attract low risk young people rather than those who are at higher risk, the SSP programmes in Denmark are successful in making contact with the latter because they focus on those ‘hanging around’ on the streets. No published outcome data is available.

7.12 Employment and education initiatives
Research findings 206 from the US on vocational training and employment programmes aimed to help young people become employable and find work, suggest that programmes of this type are unlikely to have a substantial impact upon delinquency and upon the risk factors that contribute to it unless they also have a significant educational component and offer young people access to a range of other support services.

In 2000, Summer Splash schemes were introduced in various sites across England and Wales under the auspices of the Youth Justice Board. The schemes targeted 13- to 17-year olds living in deprived estates and aimed to reduce offending in the areas concerned by engaging young people in constructive and relevant activities. In an evaluation of the schemes crime data was available for three. IN only one of these three was attendance at the scheme associated with a reduction in daytime reporting of incidents to the police. The researchers concluded that this project was more effective than the others because it was the only area in which there had been little existing summer youth provision and a relatively high rate of reporting of incidents to the police. 207

7.13 Sport, Leisure and Adventure
Intuitively, sport, leisure and outdoor challenge pursuits seem both an obvious and attractive means of diverting young people from crime and a means of preventing crime. There is evidence that participation in outdoor recreation programmes can contribute to increased self-esteem, perceptions of mastery and control and increased social skills. However, there is no guaranteed linear relationship between participation and outcome. Many programmes have low completion rates, raising the possibility of 'self-selection', with those most positively affected being those least likely to re-offend. Further,
returning participants to their original peer environment after short periods of time inevitably means that for some there will be a return to criminal or anti-social behaviour.208

The debate about the relationship between sports participation and crime divides broadly into theories of prevention (or diversion) and theories about the re-integration of offenders. The former tends to express itself in relatively large-scale sports programmes targeted at specific areas, or during specific time periods (e.g. summer sports programmes). The re-integrative approach is often based on an intensive counselling approach, in which the individual needs of offenders are identified and programmes adapted to suit their needs which it is hoped will transfer to the wider social context and reduce offending behaviour. One review 209 suggests that location and personnel are important factors in successful outcomes. Traditional facility-based programmes provided by professional recreation and sport staff seem unlikely to have the desired impact. The evidence suggests that people with excellent coaching skills are not necessarily good with difficult young people or those who are skilled in working with difficult young people necessarily good sports or PE instructors. The New Opportunities Fund’s Active Steps programme intends to develop sport and physical education programmes across Scotland aimed at preventing crime among young people. The Venture Trust provides adventure and wilderness programmes for males and female offenders aged 16-21 in Scotland.

There is a shortage of independent evaluation providing dependable evidence on effectiveness of such programmes. Researchers report 210 a few examples of sports and adventure programmes that achieve at least short-term reductions in re-offending and one meta-analysis 211 identified ‘wilderness’ and outdoor challenge programmes among the least effective types of intervention for serious and violent young offenders whether in institutional or community settings, while a review 212 of US programmes cites some reduction in the frequency and severity of offending. Little research was concerned with longer term outcomes. The limited evidence suggests that merely introducing young offenders to sport, leisure, or adventure activities is unlikely in itself to reduce criminality, unless it is combined or integrated with other measures associated with effective outcomes.
A more recent review specifically on wilderness challenge programmes found moderately positive overall results which suggest, on balance, that these kinds of programmes can be effective for delinquent youth up to age 21. Programmes involving relatively intense physical activities and therapeutic enhancements such as individual counselling, family therapy, and therapeutic group sessions appear to be especially effective. The results suggest that a therapeutic component enhances the delinquency effects of challenge programmes. The results described seemed to apply primarily to Caucasian males already ‘in the criminal justice system’.

One important area of uncertainty raised by this review is an apparent counter-intuitive relationship between programme duration and outcome. The analysis showed that programme length was not related to the size of the effect on re-offending for programmes up to 6 weeks long. Programmes beyond this length, however, showed marked decrease in effectiveness. The information reported in the available studies, unfortunately, is not sufficient to identify which characteristics are most influential and this topic warrants further investigation. Proponents of wilderness programmes suggest the importance of having certain ‘defining’ experiences that result from the challenges a participant must meet and that these experiences are presumed to trigger changes in a participant's self-esteem and anti-social behaviour. The question is whether these ‘defining’ moments are influenced negatively by the other components of a youth's overall intervention programme in longer programmes.

The commonly argued rationale for including sport and outdoor activities is as a catalyst within a multi-modal programme with young offenders. A Home Office study highlighted the problem of finding qualitative evaluation techniques which adequately monitor the complex outcomes which most of the programmes aspire to. It concluded that “all programmes agree that physical activities do not by themselves reduce offending…. All agree that there are personal and social development objectives which form part of a matrix of outcomes. These developments may, sooner or later, improve offending behaviour, but their impact is unpredictable in scale and timing. To expect anything more tangible is unrealistic” (p.50). It remains unclear which aspects of leisure, sport and outdoor adventure programmes are most valuable. There is limited information on whether certain activities and ways of organising them are more effective than others and
whether they work better with certain types of young offenders than others. Without this there are serious risks of programmes attracting inappropriate referrals.

7.14 Restorative Approaches

Restorative approaches have provided promising though modest outcomes in relation to adults but limited results when applied specifically to children and young people. Among more than thirty studies on restorative justice programmes dealing with a range of offenders, many have shown reduced offending and only one evaluation could be interpreted as showing an increase in re-offending. The Canberra Re-integrative Shaming Experiments (RISE) specifically focused on two types of juvenile property offences - shoplifting apprehended by store security officers and offences against personal victims. The study found no differences in offending rates between court and conference groups on the basis of one-year before-after changes. The Indianapolis Restorative Justice Conferencing Experiment replicated the Canberra RISE experiments with very minor first offenders under the age of 14. Re-arrest rates at 12 months for those who successfully completed a programme, found only 23.2% had been rearrested at 12 months, compared with 29% of controls. This result was not statistically significant and suggests restorative measures are not best suited to minor first offenders. In a Scottish context, 60% - 70% of minor first offenders who are detected do not re-appear within a 12 month period. Finding from a three year follow up of the RISE project found that gains in reduced offending sustained for violent offenders but not for property offenders, where increased re-offending was found. The programme had negative long term effects on indigenous minorities who suffer greatest disadvantage and social inclusion.

7.15 Institutional Containment

In most jurisdictions the bulk of expenditure on young people involved in criminal behaviour is invested in ‘live-in’ interventions, in particular residential schools, secure units and young offenders’ institutions. One commentator summed up research findings to date:

- a century of experience with training schools and youth prisons demonstrates that they are the one extensively evaluated and clearly ineffective method to ‘treat’ delinquents …
Despite these consistent research findings, political leaders and correctional administrators rely on institutional controls and penal confinement with ever greater vengeance”. A systematic review similarly concluded: 219

If there is one clear finding to be gleaned from the research on youth justice programming in recent decades, it is that removing youthful offenders from the homes is often not a winning strategy for reducing long-term offending. Most… facilities… suffer very high recidivism rates…..Intensive community based supervision programmes typically produce recidivism rates as low or lower than out-of-home placement ( at a fraction of the cost), while intensive family-focused or multi-dimensional intervention programs have produced the lowest recidivism rates of all

Existing evidence suggests that re-offending from large training schools is uniformly high. Virtually every study examining re-offending among youth sent to training schools in the past three decades has found that at least 50 to 70 percent of offenders are arrested within one or two years after release. While most recent published findings are American they are consistent with British research over many years 220 A follow-up study on youth released from Minnesota’s two training schools in 1991 found that 91 percent were arrested within five years of release. In Maryland, a study of 947 youths found that 82 % were referred to juvenile or criminal courts within two and one-half years after release. 221

Some reviews conclude that training schools increase re-offending in comparison to community-based provision.222 Youthful offenders sent to training schools in Ohio were re-arrested far faster (average 4.8 months) than youthful offenders supervised in the community (average 12 months), even after controlling for seriousness of offence and other variables. 223 A South Carolina study 224 found that 82% of males born in 1967 who spent time in a juvenile residential institution had adult criminal records by age 27, compared to 40% of non institutionalised control groups.

The state of Missouri, US, closed all its residential training schools in the early 1980s and replaced them with unlocked regional residential centres and with a comprehensive series of non residential programmes including day centre’s providing intensive education, life skills training and structured family work, intensive monitoring by pairing delinquent
youth with college students who offered mentoring support and close tracking progress. This matrix of programmes and services produced relatively positive long term results. A follow-up study of nearly 5,000 Missouri youthful offenders released from residential schools as part of the closure programme in the 1980s found that only 15 percent went on to collect adult criminal records. 225

More specialised secure training facilities often referred to as ‘Boot camps’ show consistently poor outcomes. Recidivism rates range from 64 to 75 percent in US reviews. Despite the overwhelming direction of the evidence, most continue to operate as usual confirming the view that policy and planning of expenditure and provision can ignore even good evidence. While there is evidence 226 to suggest that ‘effective methodologies’ applied in some institutional settings can result in positive outcomes with serious offenders, existing studies on large residential training schools have consistently failed to show effective outcomes in rehabilitating youthful offenders or steering them from crime.

There has been little research on the impact of custody and residential intervention upon young people in continental Europe. It has been suggested that this is due to the prison service working in a vacuum where work has been driven by considerations other than long-term effectiveness. 227 Several English studies have examined secure accommodation and young offender institutions. They have drawn mainly negative conclusions about the impact on young people’s well-being and behaviour 228. Little outcome data is available in the public domain from institutional school based programmes in Scotland. Young people placed in residential schools and secure accommodation in two studies did well in comparison with other forms of care, but the sub-samples were relatively small and, in one case, not matched 229. The paucity of data makes it difficult to make comparisons with experience elsewhere.

Clearly there are young people who present such risks to others and to themselves that containment is required. Containment will prevent the crimes that these young people would otherwise commit on the street. However the findings stress that containment is a high risk strategy and that the ‘last resort’ principle should be applied in a rigorous way to ensure containment only for the most ‘risky’. The research equally challenges service providers to develop effective evidence based methodologies and human service
interventions that can reassure the community that these ‘risky’ young people are less likely to offend than when admitted to these expensive resources.

7.16 Aftercare and Maintenance

The importance of maintaining change over time and of providing support to young people returning to the community is well documented and in Canada the rehabilitation and reintegration of young offenders is a key objective of recent legislation. Funds are available for projects with this goal. The Building Bridges Project in Nova Scotia uses trained volunteers, parents and youth support groups pre and post custody to support the young person and his/her family. Another project Second Chance in Toronto, Ontario is a multi-disciplinary community based programme which provides youth with life skills as part of discharge planning. It also assists youth in finding employment and provides youth with the opportunity to volunteer with community members on a variety of tasks including building dams, clearing river beds and dead trees.
8 Summary

Many jurisdictions moved away from ‘welfare’ towards ‘justice’ approaches to dealing with youth crime in the 1970s, in respect to young people from 12-15 upwards. Following ratification of the UNCRC by nearly all countries, though with the USA as a notable exception, most have also sought to readjust the ‘balance’ of their approach to youth justice in view of the Convention’s requirement that ‘the best interests of the child shall be a primary consideration’. Canada, New Zealand and Australia all have a low age of criminal responsibility (12 to 13 years), whereas in Scandinavian countries the threshold for criminal proceedings is 15 years. Younger children continue to be dealt with mainly under child welfare auspices unless their offences are very serious. In all of these countries young people over the age threshold are dealt with in criminal processes that are modified from adult procedures to recognise their youthfulness, but adhere broadly to principles of due process, proportionality and accountability. The balance of justice and welfare achieved for this age group seems to be a constant source of tension within jurisdictions reflecting political imperatives for public safety and evidence on what is likely to be effective. No countries examined have adopted the UNCRC recommendation of removing all young people up to the age of 18 from criminal processes, but most have facilities to divert young people in this age group either from fully from criminal processes or from conviction through youth justice processes. Most jurisdictions retain pathways to full criminalisation and punishment for some young people.

There is a long tradition in many jurisdictions of involving lay people in decision making both in formal adult and youth criminal processes. There has been a significant growth and development of a more distinctive lay involvement, in recent years, in early intervention and decision making arenas aimed at preventing prosecution, de-criminalisation, and reducing the associated negative amplification effects of criminal processes for minor offenders through neighbourhood courts, volunteer crime panels and peer courts. However in many cases there is a regrettable absence of information on the characteristics or training of members of the public who are involved. Some critics claim that community justice initiatives are overly state driven and have not ‘emerged’ from community movements as such and to that extent represent an extension of existing criminal justice approaches rather than a new paradigm and approach to justice.
Research suggests that combinations of criminal justice processes and appropriate re-integrative services, particularly community-based, are likely to be more effective than criminal processes or sanctions on their own or than any intervention not directed by principles of effective intervention. There is no evidence that punishment-based and institutional sanctions in themselves have any positive impact on improving young people’s behaviour unless they provide effective services. The introduction of a victim perspective and direct involvement of victims can have positive effects on more serious violent offenders. For others it can act as a positive lever to change if opportunities and assistance are readily available.

Custody and institutional measures more generally show a continued risk of high rates of re-offending. Live-in regimes have to work much harder to succeed and equally required well-designed and very well implemented regimes where effective service programmes can be delivered as intended. More innovative after-care and maintenance and relapse prevention programmes are required to support young people maintain gains on their return to the community. New social opportunities are essential to re-integration.

Young people involved in persistent offending are more likely to come from vulnerable, disadvantaged and ‘risky’ families. Studies suggest that the absence of collaboration with parents tends to have a negative impact on the success rate of interventions involving children and young people. While there has been some research on parental involvement in decision making in child protection case conferences and also in family group conferences for child in need and children who offend, there is little documented information on parents having a structured role in the decision making in formal processes in youth justice systems. Indeed a general criticism of adversarial approaches is that they provide limited opportunity for parental involvement in decision making processes. The introduction of restorative justice approaches into youth justice practice has resulted in the development of new mechanisms for involving parents, families and victims directly in decision making and in problem resolution for young people.

Few countries in continental Europe attempt to coerce parents to become involved in decision making processes or subsequent intervention on the assumption that this is rarely likely to help their children. Programmes which promote the development of parental responsibility and skills are available in a number of countries often as early intervention
measures for ‘at risk’ families. Attendance at programmes may be voluntary or compulsory. The greatest challenge reported at the practice level is often the very high level of need of parents and families involved.

The following evidence-based conclusions about methods that are effective with young people who offend is adapted from a recent literature review²³⁰

- It is important to identify and reduce key risk factors which sustain and support offending e.g. antisocial peers, substance abuse, family functioning, school failure.
- The greater the number of risk factors addressed by an intervention, the greater its impact.
- Structured and focused interventions aimed at changing offending are particularly effective.
- Programmes should target young people with a high predicted risk of further offending, particularly those with prior offences and both property and serious/violent histories.
- The level and nature of intervention should vary according to the assessed levels of risk/need. High risk young people require more intensive interventions (more time, programme components, frequency of contact);
- Working across multiple systems within which young people operate – family school/work, peer group and neighbourhood – is a desirable way to work, as is the deployment of multiple methods;
- It is helpful to use behavioural skill-based approaches and ‘contracts’ to train young people in new skills, highlight un/desirable behaviour, responding positively and negatively as appropriate;
- Similarly, the use of cognitive techniques has been shown to produce good results. These teach positive social attitudes and values, develop problem solving skills and change thinking that supports criminal activity and harm to victims;
- Other components of successful programmes include: assisting young people take their share of responsibility and make good if possible; use of family networks to support effective parental supervision and contribute to positive change; helping young people build new positive relationships;
- Services that increase educational skills and achievements, employment skills and experience, and general life skills not only tend to reduce criminal activity but also promote a long term stake in society;
- It is essential to ensure programmes do what they intend to do.

² For a detailed discussion on Council of Europe policies see van der Laan 2004
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