

Research Paper

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Outnumbered, locked up and over-looked? The use of penal custody for girls in England and Wales

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Abstract

The numbers of girls entering the youth justice system and the secure estate in England and Wales have fallen rapidly over the past decade. The sharp decline in numbers is very welcome, but girls have become increasingly overlooked by the penal system and their diminishing minority in custody has exacerbated the marginalisation of their needs. While the youth justice system has been under a great deal of scrutiny in recent years, there has evidently been a lack of specific attention given to girls. Extensive changes to youth custody and the broader youth and criminal justice systems have been recommended in a number of reviews, but these have not specifically addressed gender-specific needs or considered the implications for girls in custody. This is particularly pertinent due to the lack of available data about the nature of recent custodial sentencing, remand and placements for girls.

This study aimed to address this gap by analysing recent custody data, to investigate how penal detention is being used for girls from a gendered perspective. This research will analyse the offences and types and lengths of custodial sentences; examine patterns in the use of custodial remand; analyse patterns in the placements of girls into custodial establishments and measure the distances that girls were held from home. This report examines this new data and then considers the implications of the findings in light of existing knowledge.

Chapter 1: Introduction

Girls¹ involved in offending behaviour and their trajectories through the youth justice system represent a neglected area of research, policy and practice (Creaney, 2012). Girls ‘fall between two stools’, with the focus of youth justice being largely on boys, while a gendered focus on females concentrates on the adult majority (Burman and Batchelor, 2009). The evidence base about girls in the youth justice system is even more limited for those in custody (Clarke, 2007), who continue to be an ‘ignored constituency’ (Bateman and Hazel, 2014). While research into penal detention has tended to exclude girls and focus their male counterparts or the population of adult women, the limited available evidence has pointed to inadequate provision of gender-specific interventions in the youth secure estate (Bateman, 2008; HMI Probation, 2014). A lack of published data and research evidence means that very little is known about the use of custody for girls in England and Wales.

The distinct needs of girls can be overlooked in a youth justice system primarily designed to deal with boys. Just twelve per cent of youth court disposals involve girls (Ministry of Justice, 2019a). Girls consistently commit fewer and less serious offences than boys and are less likely to enter the youth justice system (Smith, 2006). Over the past decade the number of girls entering the youth justice system has been falling (Ministry of Justice, 2019a) and their visibility is particularly low in penal custody. In the year ending March 2018, of the 1359 children sentenced to custody only 39, or three per cent, were girls (Ministry of Justice, 2019a). A consistent finding about girls in contact with the criminal justice system is the link between their offending behaviour and experiences of victimisation, trauma, periods in the care system, school exclusion, drug or alcohol dependency and mental health problems (Arnull and Eagle, 2009; Jacobson et al, 2010; Sharpe, 2012). The Chief Inspector of Prisons for England and Wales asserted in his annual report in 2017 that “the number of girls in custody continues to fall, and because of this it is important that the specific needs of this group are not overlooked” (HM Inspectorate of Prisons, 2017, p.6).

¹ Throughout this paper, the term ‘girls’ is used to refer to females below the age of 18 years to distinguish them from older young women and to reflect their status as children under the United Nations Convention on the Rights of the Child (UNCRC, 1990).

The period since 2016 has seen the youth justice system under a great deal of scrutiny, but there has evidently been a lack of specific attention given to girls. In 2016, Charlie Taylor, who has since become Chair of the Youth Justice Board (YJB) for England and Wales, carried out a comprehensive review of the youth justice system (Taylor, 2016). In the same year, Lord Laming completed a review aimed at reducing the criminalisation of looked after children (Prison Reform Trust, 2016). David Lammy MP also published his review of the treatment of, and outcomes for, Black and Minority Ethnic (BAME) individuals in the criminal justice system in the following year (Lammy, 2017). Following a series of damning inspection reports, the Chief Inspector of Prisons concluded that for Young Offender Institutions (YOIs) and Secure Training Centres (STCs), “there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people” (HMI Prisons, 2017, p.9). In response to these concerns and rising levels of violence, a ‘Youth Custody Improvement Board’ was established and produced a report in 2017 making recommendations for change (Youth Custody Improvement Board, 2017). These reviews included recommendations for extensive changes to youth justice in England and Wales and the wider criminal justice system, which on the face of it provide a rationale for significant and radical reform. The limited attention paid to girls within each of these reviews represents missed opportunities either to improve systemic responses to their needs, or guard against future rises in levels of incarceration.

This study aims to explore how penal custody is being used for girls in England and Wales, in order to fill a gap in the existing research, policy and practice literature. This report will analyse case level data provided by the YJB Placements team (now in the Youth Custody Service) to critically examine the use of penal youth custody for girls in England and Wales from a gendered perspective. The data provides an overview of the legal basis for detention, placements into custody and assessment of key characteristics on admission to the secure estate, based on all females who were detained in youth custody during the period April 2014 to March 2016. This report will analyse the offences and types and lengths of custodial sentences; examine patterns in the use of custodial remand; analyse patterns in the placements of girls into custodial establishments and measure the distances that girls were held from home. This report aims to examine this new data and then consider the implications of the findings in light of existing knowledge.

Chapter 2: Literature review

The use of penal custody for children has been wholeheartedly condemned in debates about ‘child friendly’ or ‘child first’ approaches to youth justice (Bateman, 2016; Goldson, 2015; Goodfellow, 2018; Haines and Case, 2015; Hart, 2018). A large and growing body of evidence exists that demonstrates the harms of imprisonment for *all* children (Goldson, 2002; HMI Prisons, 2017; Willow, 2015) and underlines the pressing case for change. While this evidence has directly influenced the motivation for this study, the scope of this project was to specifically focus on the use of custody for girls in England and Wales, which has recently been a strangely neglected topic. Consequently, the literature review in this section has concentrated on the research, policy and practice evidence about females, through an intentionally gendered lens.

2.1 What is known about girls in custody?

Girls tend to commit less serious offences than their male counterparts, which are generally low-level violence and theft offences (Arnull and Eagle, 2009 and Ministry of Justice, 2014), these making up a higher proportion due to their non-participation in other types of crime (Sharpe and Gelsthorpe, 2009). Females grow out of crime at a lower age and at a faster rate than males (Ministry of Justice, 2012). There are no official published data on the type of offences for which girls are sentenced to custody, but a comprehensive analysis in 2008 found that the most common offence types were violence against the person (28%) and breach of a statutory order (27%) (Jacobson et al, 2010).

Girls in custody have frequently experienced abuse, exploitation and a lack of care from those responsible for their wellbeing. Female offending is often associated with distressing familial experiences of rejection, neglect, bereavement and loss (Burman and Batchelor, 2009; Howard League 2004; Sharpe, 2012), or a response to problems of emotional well-being and issues concerning relationships with parents, partners and friends (Bateman and Hazel, 2014). Girls in custody have a higher rate of exposure than boys to various forms of abuse (Chesney-Lind and Shelden, 2004; Goodkind, Ng and Sarri, 2006; Vaswani, 2018). Sexual and physical abuse are often perpetrated by

adults in positions of trust, including family members and friends (Greene, Peters and Associates, 1998) with serious and long-term consequences for girls' emotional, mental and physical wellbeing.

Family breakdown is common amongst girls in custody (Howard League, 2004; Jacobson et al, 2010). Research into the health needs of imprisoned girls found that they had frequently experienced "home environments lacking warmth, affection and attention which had left many emotionally vulnerable, needing care, comfort and respect from adults they could trust" (Douglas and Plugge, 2008, p.71, see also Longfield and Casey, 2018). A very high proportion of incarcerated girls have previously been subject to intervention from children's services and many have been 'looked after' (Carlen, 1987; Douglas and Plugge, 2006; Howard League, 1997; Jacobson et al, 2010). Of the female admissions to youth custody in 2014-16, 64 per cent had current or previous 'looked after' status and 46 per cent had been subject to a child protection plan (Ministry of Justice, 2017).

Girls in the youth justice system are also known to have disrupted engagement with school and poor educational outcomes, including high levels of exclusion and persistent non-attendance (HMI Probation, 2014; Howard League, 1997; Summerfield, 2011). Fifty-seven per cent of girls who entered custody between 2014-16 were assessed as not engaging in education (Ministry of Justice, 2017).

Adverse personal circumstances and backgrounds of girls in the youth justice system are even more pronounced and concentrated in the population in custody (Bateman, Melrose and Brodie, 2013). Youth Offending Team (YOT) assessments of vulnerabilities on admission to youth custody (Ministry of Justice, 2017) have highlighted that twice as many females are assessed as having concerns around suicide or self-harm as males (63% compared to 30%) and 41 per cent have concerns around their mental health compared to a third of boys. In recent years there has been significant and growing concern about the links between child sexual exploitation (CSE) and criminalisation (Cockbain and Brayley, 2012; Phoenix, 2012). Vulnerable girls have been drawn into offending behaviour in the context of exploitation, often at the hands of adult males and through coercion and control. Indeed, 60 per cent of girls admitted to custody (compared to 6% of boys) were assessed as having sexual exploitation concerns (Ministry of Justice, 2017).

This evidence demonstrates the importance of particular attention being given to respond to girls' gender-specific needs, focused on building trust, addressing relationships and past trauma, with empowerment as a central focus to promote resilience and self-esteem (Bateman and Hazel, 2014a; Liddle et al, 2016).

2.2 Responding to girls' offending

The seminal Corston Review of vulnerable women in the criminal justice system advocated for “a distinct, radically different, visibly-led, strategic, proportionate, holistic, women-centred, integrated approach” for women in the criminal justice system (Corston, 2007, cover page). However, a joint thematic inspection found that progress in finding alternatives to custody for adult women had not been replicated in the youth justice system, and the lack of a nationally coordinated strategy meant that practice was inconsistent and relied on dedicated individuals (HMI Probation, 2011). The All Party Parliamentary Group on Women in the Penal System (2012, p.5) has since evidenced the need for gender-sensitive approaches to meet the distinctive needs of girls in the youth justice system, emphasising that:

“A gender-neutral youth justice system based on the risk of offending has the potential to discriminate against girls, particularly when welfare needs are confused with risk. There is a lack of understanding about the different needs of girls who end up in the criminal justice system, little evidence of what works for girls and few programmes designed specifically for girls.”

Criminal justice responses may compound girls' problematic behaviour, as it is their vulnerability rather than the severity of their offending that commonly brings them to the attention of the criminal justice system. A focus on risk through the 'Scaled Approach'² has been widely criticised as an inappropriate mechanism for responding to *all* children (Bateman, 2011; Haines and Case, 2015; Pitts, 2001, Pitts et al, 2007), but arguably this is more problematic for girls (Worrall, 2004). Because of the tendency to overpredict risk in females and the propensity for them to be more vulnerable, the more prominent welfare needs of girls are conflated with 'criminogenic risk factors', leading to a more intensive and punitive response (Bateman, 2011). Particular difficulties have been highlighted for girls in attending intensive, and sometimes inappropriate appointments, which can be viewed as non-compliance, resulting in breach proceedings leading to possible custodial sentences (Bateman, 2011; Sharpe, 2012). Concerns about the overuse of custody for breach have been raised in previous research (Bateman, 2011; Hart, 2010).

² For further details see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682536/Youth_Justice_the_Scaled_Approach_-_A_framework_for_assessment_and_interventions.pdf

This process of criminalising girls is likely to negatively impact on their self-perceptions and subsequent behaviour (Pitts, 2005) and contact with the youth justice system to have a compounding criminogenic effect (McAra and McVie, 2007). Girls who have been criminalised with histories of ‘welfare inaction’ (Myers, 2013) might reasonably feel a sense of injustice for being penalised for their behaviour in the absence of support to which they should be entitled. Sharpe (2016) argues that girls suffer a ‘double injustice’ when those who have been let down by welfare and education services are met with a punitive systemic response.

Gender-neutral models of service delivery in the youth justice system have consistently failed to meet the gender-specific needs of the female minority (Burman and Batchelor, 2009; Kendall, 2013; Sharpe, 2016). One thematic inspection found that assessment and intervention that recognised that girls had different needs to boys was not consistently applied and sometimes did not take gender differences into account; responses to victims of CSE were highly variable in quality and effectiveness; work to address complex welfare needs was not sufficiently coordinated to ensure that girls were properly protected; and more work was needed to evidence effectiveness (HMI Probation, 2014).

2.3 Remanding girls to custody

Girls awaiting trial or, having been convicted, awaiting sentencing, can either be granted bail or placed on remand. The youth remand provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force in December 2012, making significant changes to the remand framework for children. Where the court refuses bail it should then consider whether to either remand to local authority accommodation or, if the child is aged 12-17, whether the conditions for a remand to youth detention accommodation are met. Children can only be remanded to custody if they meet one of two sets of conditions: the first are based on the type of offending and the second are based on the history of absconding or offending together with whether there is a real prospect of a custodial sentence.³ In England and Wales, approximately one fifth of all children (both genders) in custody are on remand at any given time. In the year ending March 2018, the average female youth remand population was six, compared to 35 a decade earlier, and compared to an average of 211 for males (Ministry of Justice, 2019a). There is no official data about alleged offences or court outcomes following detention on remand that is disaggregated by gender. It may be of significance to the population of

³ For further details see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219974/circular-06-12-youth-remand-adult-bail.pdf

remanded girls that 63% of the total population (both genders) remanded to youth custody do not go on to receive a custodial sentence, with 27% being acquitted and 36% receiving a non-custodial sentence.

Time on remand can have a severely negative impact on children, seen as a punishment with damaging effects that go beyond the loss of their liberty (Gibbs & Hickson, 2009; Seymour & Butler, 2008).

Emotional distress is exacerbated due to the ambiguity of their status (Freeman & Seymour, 2010; Gibbs & Hickson, 2009). Additionally, planning for release from remand is made challenging by its uncertainty, meaning that “even a relatively short period in custody can result in homelessness, increased debt, family breakdown, loss of employment, and social stigma” (Gibbs & Hickson, 2009, p.2), with a frequent lack of follow-up support in the community if children are acquitted (Freeman, 2008).

2.4 Sentencing girls to custody

Children aged 12 to 17 who receive a custodial sentence can be given a Detention and Training Order (DTO) in the Youth Court or Crown Court. This is a custodial sentence with a length of between four months and two years, with the first half of the sentence spent in custody and the second half in the community under the supervision of a youth offending team. Longer term detention is available for more serious offences in the Crown Court for children aged 10 to 17 years old. Under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, longer term detention is available for specified serious offences (other than murder) up to the adult maximum sentence length – including life. Under Section 90 of the Powers of the Criminal Courts (Sentencing) Act 2000, is a mandatory life sentence for those convicted of murder, with a minimum term to be served in custody, after which they can only be released at the discretion of the Parole Board. If a young person is convicted of a specified offence and the Crown Court considers that there is a significant risk of serious harm to members of the public from the young person committing further specified offences, then the court may pass a sentence of detention for life or an extended sentence of detention under Section 226 or Section 228 of the Criminal Justice Act 2005.

Research has suggested that women and girls who offend are less likely to find their way into the courts, but that when they do, they receive differential treatment to their male counterparts (Hedderman and Gelsthorpe, 2007). On the one hand, women can be treated more harshly when they display behaviour that transgresses ‘feminine’ gender expectations (Gelsthorpe and Sharpe, 2006), such as those charged with violent offences. On the other hand, sentencers can treat women more leniently due to their relatively infrequent appearance in the courtroom generating concern, understanding and a more tolerant response (Worrall, 1990; Sharpe, 2012). It has been suggested that attempts to protect and

help women can produce a harsher ‘therapeutic’ response (Carlen, 2002; Carlen and Tombs, 2006), whereby the penal system assumes responsibility for dealing with girls’ welfare needs through the imposition of a longer sentence than is warranted by the nature of their offending.

According to Article 37 of the United Nations Convention on the Rights of the Child (1990) the use of penal custody for children should only be used “as a measure of last resort and for the shortest appropriate period of time”. The need to give priority to applying non-custodial measures to females in conflict with the law, in consideration of their gender-specific needs, is emphasised in the Bangkok Rules (United Nations General Assembly, 2010). Research by the Prison Reform Trust based on the custodial population in 2008 (Jacobson et al, 2010) found that the custody threshold was not being appropriately applied and that girls were treated more punitively by courts than boys, as they tended to receive custody for less serious offences. They recommended that the Sentencing Council should formulate guidelines to further restrict the use of imprisonment for children and that monitoring of sentencing practice should be undertaken to ensure that the custody threshold is consistently applied. In 2017 the Sentencing Council for England and Wales published a new guideline for sentencing children and young people which places an increased focus on the background, circumstances and vulnerability of children, concentrates attention on welfare considerations, gives a stronger emphasis to children’s rights, and inserts a new requirement to consider the over-representation of Black and Minority Ethnic (BAME) young people and the issues facing looked after children.

2.5 Recent trends in the use of penal custody for girls

The numbers of young people in custody in England and Wales have seen dramatic fluctuations in recent years. The 1990s to mid-2000s was a period in which the criminalisation and incarceration of children grew significantly, with these shifts being more pronounced for girls than boys. From 1993 to 2002 the number of girls sentenced to custody increased by 365 per cent in percentage terms, compared to 68 per cent for boys (Gelsthorpe and Sharpe, 2006, p.57), rising by a further 25 per cent from 498 to 621 from 2003 to 2007, while numbers of admissions for boys remained stable (Sharpe and Gelsthorpe, 2009, p.199). An increase in four-month Detention and Training Orders (DTOs) accounted entirely for this sharp rise between 2002 and 2009 (Sharpe, 2012).

Since 2007 the number of children entering the youth justice system each year has fallen and at a sharper rate for girls than for boys. Between 2008 and 2018 there was an 89 per cent reduction in the number of girls sentenced to custody, compared to 70 per cent for boys (Ministry of Justice, 2019a). The

average number of girls held in youth custody each month has also fallen by 85 per cent between 2008 and 2018, compared to 68 per cent for boys. In December 2018 there were 28 girls detained in custody, compared to 811 boys, representing just three per cent of young people in custody overall (Ministry of Justice, 2019b).

The Probation Inspectorate made reference to the welcome reduction in numbers of girls in custody, noting in 2014 that “whilst there has been no specific gender-based approach, other strategies aimed at reducing the use of custody for all children and young people have been implemented” (HMI Probation, 2014, p.13). They found that most YOTs had implemented strategies to keep girls out of custody, but inspectors provided neither any details of what these diversionary strategies involved, nor evidence of their effectiveness.

As the number of incarcerated children has declined, many of those with less complex problems who might previously have been sent to custody have been diverted into community-based alternatives, leaving a higher proportion of children in custody with complex needs. Bateman (2016, p.2) notes that the children “left behind” in youth custody are a more complex cohort as “an inevitable consequence of the fact that children who commit less serious offences or have less extensive criminal histories are now, rightly, being filtered out of the custodial population”. There are no regularly published data on the offence types or length of sentences for which girls are sent to custody, but a report published by the Office of the Children’s Commissioner (Longfield and Casey, 2018, p.3) stated that 30 per cent of offences were of violence against the person, 20 per cent for both drug offences and theft, and marginally fewer for robbery.

2.6 Where are girls detained?

There are three types of custodial establishments for children in England and Wales: Young Offender Institutions (YOIs); Secure Children’s Homes (SCHs) and Secure Training Centres (STCs). All but one of the eight SCHs are run by local authority children’s services departments and they are overseen by the Department of Health and the Department for Education in England, and in Wales, Social Services for Wales. Of the three types of establishment, SCHs have the highest ratio of staff to children, and are generally smaller, ranging in size from 6 to 40 beds. They can hold children between 10 to 18 years old and are usually used to accommodating younger and more vulnerable children who are assessed as needing extra care. STCs are purpose-built centres for children between 12 to 18 years old. There are

three STCs in England of which two are run by private operators. The typical ratio in an STC is three staff to eight children.

In 2012, a plan to develop the secure estate was published (Youth Justice Board, 2012) which recognised the specific needs of girls, their past experiences of violence and abuse and greater levels of depression and mental health issues. The plan's stated focus was on ensuring that the commissioning of services met specific needs. Girls are no longer sent to YOIs and instead are all placed in SCHs or two of the three STCs, Rainsbrook and Medway. Rainsbrook STC also houses Chadlington, a purpose-built mother and baby unit to care for detained young mothers and their babies, as well as those in the final stages of pregnancy. The estimated cost of a place is £215,000 per year in a Secure Children's home and £160,000 per year in a Secure Training Centre.⁴

The Youth Custody Service makes the decision about which secure place a child will go to, based on a variety of factors including suitability for their age, gender and background, the youth offending team's placement recommendation, proximity to their home and the available accommodation (HM Government, 2018). Whilst official guidance states that "placements are made with the aim of promoting the child's safety and ensuring decisions are made with the child's best interests as a primary consideration" (HM Government, 2018, p.8), these decisions are inevitably resource-led and significantly influenced by the availability of placements.

All of the custodial establishments in which girls are currently placed are mixed-gender establishments and although girls can be accommodated in their own units, they all mix with boys during education and some other activities. The appropriateness of mixed gender establishments for girls in custody is also an issue that remains largely unquestioned, despite the likelihood that vulnerable young females will be marginalised alongside the male majority. In her gendered exploration of secure accommodation, Teresa O'Neill (2001) found that attempts to 'normalise' experience on the units were actually met with "high level surveillance to control the sexuality of residents and prevent the development of sexual relationships" (p158). There were contrary views between staff, with some arguing that mixed-gender environments were advantageous in providing a setting which helped girls to develop skills to tackle sexist behaviour, but the opposing view which the majority of girls themselves agreed with was that it was not their responsibility as vulnerable females to "provide teaching material" (p.156) for the boys on the units. A recent national scoping exercise of secure settings (Warner et al, 2018) found that all STCs had separate gender living units feeding into shared education, while the majority of SCHs had at least

⁴ See: <https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/339we08.htm>

part of their unit where both male and female young people were accommodated in the same living area and with bedrooms on the same corridor.

Recent reports and reviews have failed to provide a comprehensive analysis of the gender-specific needs of girls in custody and the extent to which they are being met by the different regimes. The Youth Custody Improvement Board (2017) highlighted the need for a comprehensive needs analysis of all children in custody, to assess the appropriateness of current provision and inform future commissioning. This is particularly pertinent to the needs of girls as the Probation Inspectorate (2014) found a lack of strategic direction or policies specific to girls and difficulties assessing how gender-sensitive work was promoted, supported or evaluated. Custody staff told inspectors that all work with young people was tailored to individual needs so felt “gender needs would be picked up and met that way” (p.40). Comparisons were not made between the different establishment types, which may have drawn out differences in the delivery of individualised, gender-specific support between STCs and SCHs. Joint inspections of both types of establishment do not routinely produce findings broken down by gender or with a discrete focus on girls.

Grave and longstanding concerns remain over the safety and welfare for all children in STCs following numerous critical inspection reports and reviews. A BBC Panorama programme aired in January 2015 exposed the abuse of children by custody staff following an undercover investigation at Medway STC, prompting a period of scrutiny and a series of inspections and reviews. The Chief Inspector of Prisons’ assessment in 2017 was that all YOIs and STCs were “dangerous, counter-productive and will inevitably end in tragedy unless urgent corrective action is taken” (HMI Prisons, 2017, p.10). The Serious Case Review into Medway STC (Medway Safeguarding Children Board, 2019) recently reported its findings, highlighting systemic failures in keeping children safe from maltreatment. A number of STC inspections in 2018 demonstrated that the centres are still falling short of the required standards of safety and care. A joint inspection conducted in December 2018 reported that Medway ‘requires improvement to be good’ to improve the overall experiences and progress of children and young people and specifically around how well children and young people are helped and protected. An earlier inspection of Medway (Ofsted, 2018a) – conducted after the time-frame of the Serious Case Review – found that it ‘requires improvement’ in seven of the eight inspection categories, including the safety and care of children. A joint inspection last year of Rainsbrook STC (Ofsted, 2018b) found it ‘requires improvement’ in six of the eight inspection categories, also including the safety and care of children.

Conversely, SCHs are characterised by a child-care ethos and higher levels of personalised care and education to meet all developmental needs (Bateman, 2016; Hart, 2016). The National Association for

Youth Justice (Bateman, 2016, p.12) argues that this safer and more child-appropriate provision should be the model of secure accommodation for all children in trouble with the law:

“...the performance of SCHs, at their best, demonstrates that a model of secure accommodation based on a child care ethos can provide a safe environment that has the potential to minimise the damage caused by custody while preparing children for a positive future on release.”

Despite the general consensus over the quality of provision, there is currently a crisis in the availability of placements in SCHs (Hart, 2018; Howard League, 2012; NAYJ, 2016). A national review of all secure settings for children (Warner et al, 2018) identified a particular paucity of SCHs in the South of England with placements available for children entering on criminal justice grounds.

2.7 The impact of custody on girls

Girls enter custody with a variety of complex pre-existing emotional problems, sometimes manifesting in volatile and challenging behaviour that is difficult to manage (Clarke, 2007). Inspections have repeatedly reported concerns about the experiences and treatment of girls in custody. The latest Ministry of Justice figures suggest significant problems for how girls experience custody and for those managing their behaviour (Ministry of Justice, 2019a). In the year ending March 2018, in England and Wales, each month girls were responsible for an average of 37 assaults against other young people, staff members and visitors. Attempts to manage behaviour through physical restraint, use of force and putting girls in isolation have been deployed at an increasing rate (Ministry of Justice, 2019a). These behaviour management techniques are all used on a higher proportion of females to males and at a significantly more frequent rate. Recent research from the Office of the Children’s Commissioner (Apland et al, 2017) has also highlighted concerns over the frequency of use of force by staff in custody, with girls, many of whom have past experiences of sexual violence and rape, reporting feelings of violation and being re-traumatised by these experiences.

Self-harm is a significant problem for many girls in custody, with an average of 55 self-harm incidents per month, involving 26 per cent of the girls, this being five times the proportion of boys (5%) (Ministry of Justice, 2019a). Research has indicated that it is common for girls to use self-harm as a way of coping prior to imprisonment, triggered by a range of situations including physical and sexual abuse, bereavement, bullying and feelings of rejection. These are often intensified in custody by feelings of shame and guilt for being incarcerated, to feelings of powerlessness and frustration (Hutson and Myers,

2006; Howard League, 2001). The use of prescribed drugs to temporarily ease these problems has been criticised as it “does nothing to solve the wider problems that young women face prior to custody and that they will continue to face upon their release” (Sharpe and Gelsthorpe, 2009, p.199).

The Prisons Inspectorate recently published a report (2019) on the perceptions of children in custody in the year ending March 2018, which found that 80 per cent of girls in STCs have felt unsafe whilst detained in the establishment (compared with 29% of boys); and were also more likely than boys to have experienced insulting remarks from other young people (80% compared with 24%). A joint inspection with Ofsted in December 2018 raised concerns that staff continue to deliberately use techniques that inflict pain on children in order to deal with passive non-compliance, compromising their safety and welfare (Ofsted, 2019). Conversely, the thematic inspection into girls in the youth justice system found that most girls felt safe and “reported good relationships with staff and found the work of key workers in custody helpful” (HMI Probation, 2014, p.37). However, the inspection did not report on any differences between the experiences of girls in SCHs and STCs, which may have produced a more nuanced, comparative analysis of girls’ experiences in the different types of establishment. A report by the Children’s Commissioner on the experiences of girls in Rainsbrook STC (Longfield and Casey, 2018) found that most girls saw their placement as beneficial, due to a sense of relief and escape from the many pressures they experienced in their everyday lives. However, Clarke (2007, p.39) concluded that if periods in penal custody provide girls with a phase of relative safety and stability that was “a very sad indictment” of their experiences of care and support in the community.

These reflections emphasise the critical need for systemic responses to focus on previous experiences of adversity and social exclusion, but custody can be detrimental to longer term outcomes and desistance from crime (Goodfellow and Liddle, 2017). Nacro has argued that the fundamental problem is the inability of penal establishments to deliver a service that addresses the welfare needs of the children they hold (Bateman, 2008, p.18). The Laming Review concluded that “looked after children can be particularly vulnerable while in custody and often have a particularly poor experience” (Prison Reform Trust, 2016, p.19).

A sharper proportional decline in the custodial population of girls compared to boys, and the decreasing number of establishments in which they are placed, has given rise to suggestion that distances from home for females may be greater (Bateman and Hazel, 2014). A lack of secure accommodation in Wales (where Hillside SCH is the only secure placement option) means that Welsh girls are frequently ‘exported’ to England to serve their sentences, experiencing feelings of isolation, loneliness and finding ongoing contact with family particularly difficult (Hughes, Dubberley and Buchanan, 2012). A thematic

report by HM Inspectorate of Prisons (2016) found that further distances caused difficulties in maintaining contact with families, carers and professionals, as well as creating additional challenges for professionals to put a suitable support plan in place for their transition into the community.

Many of the experiences during their period of incarceration create additional challenges for girls following their release, meaning that a key task for resettlement services is mitigating the effect of custody itself (Goodfellow, 2018). Reoffending rates after custody are consistently high, with 68 per cent of children released from custody reoffending within a year of release (Ministry of Justice, 2018b). Research has also found that the experience of custody increases their likelihood of reoffending (McAra and McVie, 2007). A review of provision for girls in custody to reduce reoffending found that custody was associated with higher levels of recidivism than other disposals, although rates of reconviction were still significantly lower than for boys (Bateman, 2008).

HM Inspectorate of Probation (2015, foreword) notes that the above statistics are “shocking because we have known for at least a decade what helps children leaving custody to stop offending; and shocking because too few of these children are being provided with what they need to lead crime-free lives”. There is a ‘window of opportunity’ following release when young people are enthusiastic to change but also at their most vulnerable (Bateman, Hazel and Wright, 2013; Hazel et al, 2002; Hazel and Liddle, 2012). Any progress made in custody is frequently undermined because support does not continue into the community (HMI Probation, 2014). A lack of suitable, settled and supported accommodation, a deficiency in services to meet mental health and substance misuse issues and an absence of education, training and employment mean that children miss opportunities during their transition (HMI Probation, 2015).

Chapter 3: The current policy context

A recent joint thematic inspection highlighted the lack of strategic direction in the youth secure estate to meet the needs of girls, finding that where positive practice was identified, this was because of personal commitment to gender-sensitive practice, rather than overarching policies:

“There was no strategic direction or policies specific to girls in the establishments we visited. Some equality impact assessments had been conducted on policies which included consideration of gender. It is difficult to assess how gender-sensitive work with girls was promoted, supported or evaluated without a policy framework.”

(HMI Probation, 2014, p.37)

The secure estate and the youth justice system more broadly have subsequently been under significant scrutiny and strategic focus, providing an opportunity for significant and radical change. The future for penal custody for girls, however, remains neglected by policy and the future direction of travel remains unclear.

In September 2015 Charlie Taylor was asked to lead a departmental review of the youth justice system for the Ministry of Justice. In his final report (Taylor, 2016) he acknowledged that, while the number of young people cautioned or convicted has fallen dramatically since 2007, the needs of those children and young people remaining in the youth justice system are likely to be far more complex and their offending more serious. He made many far-reaching recommendations for reform, proposing significant changes to the ways children and young people are dealt with in police stations, courts, custodial settings and on release. Taylor recommended that the Government should remove or substantially restrict the availability of short custodial sentences, suggesting a minimum 12-month DTO, whilst cautioning the need for close monitoring to ensure that this does not result in longer sentences. Perhaps most radically, he recommended the replacement of the current youth custodial estate by a network of Secure Schools, regional establishments of 60-70 places, governed and inspected as schools. He also recommended that local authorities should retain the same social worker while a child is in custody and on release to maintain continuity of this important relationship and ensure that all children know where they are going to live at least two weeks before release. He stated that the Ministry of Justice should consider whether further changes could be made to the conditions for a remand to youth detention

accommodation to make sure that custody is always used as a last resort. Taylor suggested that girls should be held in Secure Schools in a mixed gender environment, whilst acknowledging that commissioning, governance and inspection arrangements will need to pay particular attention to how the needs of girls are met in a setting in which boys are in the overwhelming majority. He acknowledged that their needs are often very different to boys' but believes that the co-educational model proposed for Secure Schools is capable of meeting these needs. He considered that creation of girls-only Secure Schools would likely result in girls being placed a very long way from home, compromising their relationships with family and carers and making resettlement more difficult.

In May 2016 the then Justice Secretary Michael Gove asked a Youth Custody Improvement Board (YCIB) to explore and report on the state of the youth custodial estate (YOIs and STCs) and recommend how the system could be improved, particularly focusing on any current risks to safety and wellbeing. The Board reported in February 2017 that an overarching problem was a lack of national vision for the youth secure estate. They found that "the current arrangements and their quality of provision are not anywhere near good enough; without significant change they will not become so" (YCIB, 2017, p.1). Each of the establishments the Board visited showed "significant fragility and reported the same challenges of poor behaviour management of young people, lack of skilled staff and a sense of not being able to meet the needs of a number of their young people" (ibid, p.1). The YCIB recognised that the very small number of girls in custody (around 25 at the time of their report, around 10 of whom were held in STCs) causes significant difficulties for their management. They cite the example that girls are sometimes transferred to another institution to avoid a girl being held in an establishment alone. The YCIB recommend that the needs of girls are considered within a major reassessment of the women's adult secure estate, but do not make specific recommendations for what this might look like in practice, nor do they indicate whether this might involve a return to girls being placed in adult women's prisons. Furthermore, they urged the need for thoughtful consideration to how provision could be made for girls within plans to pilot Secure Schools.

In response to the YCIB findings and the Taylor review, the then Secretary of State, Liz Truss, announced that she had appointed Charlie Taylor as the new Chair of the Youth Justice Board and introduced a range of significant measures outlined in the Government's response to his review (Ministry of Justice, 2016). The Government set out its intention to pilot two Secure Schools, one in the North and one in the South-East of England. The exact locations, size and regimes are currently unclear, as is the proposed rollout of the model beyond the pilot stage. In parallel to the Secure Schools pilots, the government response set out proposals to improve youth custody provision, suggesting that, in the short to medium-

term, most young people will continue to be held in the existing institutions. Efforts to improve the existing regime would focus on strengthening health and educational provision, establishing specialist units to meet the most complex needs within existing establishments, boosting staff numbers, developing the workforce and improving resettlement support. The government response made no reference to the treatment of girls, however, other than in police custody. Observations have been made by many organisations and commentators that this represents a missed opportunity to ensure that reform of the youth justice system takes full account of the distinctive needs of girls and delivers appropriate services (Clinks, 2016).

The government has since reinforced its commitment to the development of Secure Schools and stated that “any boy or girl aged 12 to 17 who is remanded or sentenced into youth detention accommodation could be placed into a secure school” (HM Government, 2018, p.8). Publication of the draft ‘How to apply guide’ for Secure Schools in June 2018 stated that applications must “show how an understanding of the lives and diverse needs of the expected student cohort, including girls and Black, Asian and Minority Ethnic children, will inform the interventions at your school” (HM Government, 2018, p.15). As the programme develops and as details emerge, the question of how to meet the needs of girls remains unanswered.

The lack of proposals for gender-sensitive reform of custody and clarity on how (and indeed whether) the distinct needs of girls will be met by the proposed Secure Schools model remains unaddressed. Notably absent from the debate is any discussion around the use of mixed-gender establishments, as the co-educational model of Secure Schools mirrors the mixed-gender provision that currently exists in SCHs and STCs. Due to the small numbers of girls this is most likely a result of pragmatism but given that the Taylor review presented an opportunity to entirely redesign custodial provision, consideration of gender has apparently been lost altogether from the discussion. Each of the proposed Secure Schools will have a capacity of 60-70 children at any one time, but it has not been confirmed how many places will be reserved for girls and across how many female units. It is also unclear whether Secure Schools would potentially be able to hold some of the girls who, on account of their vulnerabilities, are currently placed in a SCH. It is uncertain whether girls will be eligible to be placed in all of these establishments, thus spreading them even more thinly and into a diminishing minority within each mixed-gender institution.

The Youth Justice Board (2018) recently published its strategic plan for 2018-21 which details the priority programmes of work, including safety in custody, the Secure Schools programme and resettlement. The strategy does not make any specific reference to girls or outline a gender-specific

approach to custody. In June 2018 the Ministry of Justice published its *Female Offender Strategy*, which sets out the government’s commitment to a new programme of work for women in contact with the criminal justice system, stating that “the way forward is through shifting our focus from custody to the community” (Ministry of Justice, 2018a, p.4). This ambitious vision for adult women in the criminal justice system across England and Wales did not include under 18-year-old girls. Amid these deliberations, a specific focus on juvenile girls in detention has been overlooked and the future of penal custody for girls remains unaddressed.



Chapter 4: Research aims, objectives and methods

4.1 Background

Until September 2017 the Youth Justice Board for England and Wales (YJB) had responsibility for the placement of children (under the age of 18) remanded or sentenced to custody. The Placement Information Form (PIF) was used from 2014 to 2016 by the YJB Placement Service, secure establishments and transport providers, to assist with highlighting the risks and needs of children entering custody and to determine the most suitable placement for a child entering the secure estate. The PIF was not consistently used after this period due to the rollout of a new assessment framework, AssetPlus.⁵ The original aim of the research was to explore the characteristics and needs of girls in custody through a comprehensive analysis of data from the PIFs, collected centrally upon admission to custody by the YJB.

This data was originally received following a request to the YJB in the Autumn of 2016. Shortly thereafter, the YJB published a 'Supplementary Analytical Paper' (Ministry of Justice, 2017) focused on analysis of the key characteristics data. This paper provided the most comprehensive quantified picture to date of young people entering custody, including a thorough analysis of the characteristics and needs of girls specifically. To avoid duplication, research objectives were consequently revised to broaden the scope of the research to analyse data relating to offences, legal basis for detention and placements into custody. These changes caused some delays to the project but enabled the pursuit of another necessary focus on a neglected area of knowledge about girls in custody in England and Wales.

4.2 Research aims and objectives

This study aims to explore how penal custody is being used for girls, in order to fill a gap in the existing research, policy and practice literature and published data, from a gendered perspective. The research question and objectives are distinct in their inquiry into the use of penal youth custody for females, because both the gendered focus on girls and the period of time under examination have not been within the scope of previous research.

⁵ For further details see: <https://www.gov.uk/government/publications/assetplus-assessment-and-planning-in-the-youth-justice-system>

The primary aim of this research project is to critically examine the use of penal youth custody for girls in England and Wales. I set out to pursue the following objectives:

- Analysis of the offences for which girls are sentenced to custody
- Analysis of the types and length of sentences for which girls are sentenced to custody
- Examination of patterns in the use of custodial remand for girls
- Analysis of patterns in the placements of girls into custodial establishments
- Measurement of the distances that girls were held from home

In the design of this research project, two inherent assumptions are adopted that should be made explicit:

- The presumption that penal custody for children, in accordance with the United Nations Convention on the Rights of the Child, should be used only “as a measure of last resort and for the shortest appropriate period of time” (United Nations, 1990).
- The need to give priority to applying non-custodial measures to females in conflict with the law, in consideration of their gender-specific needs, as set out in the Bangkok Rules (United Nations General Assembly, 2010).

4.3 Methodology and methods

My gender-oriented approach originates from a feminist perspective, as my personal motivation for the inquiry into this subject is consistent with an important feature of feminist research identified by Sandra Harding, because the purpose of the pursuit of knowledge is “*for women*” (1987, p.8). Feminism is not connected to a specific epistemology (Gelsthorpe, 1992) and adoption of quantitative methods reflects a pragmatic approach to answering the research question and broad methodological interests, rather than taking a particular, philosophical stance (Payne and Payne, 2004). The nature of the inquiry into national patterns of systemic responses has dictated the techniques adopted for this study, as the quantitative approach is suited to the topic under investigation. In order to explain identified patterns, consideration will be given to the need for further research and the most appropriate methods, building on the strengths of all available approaches, including qualitative techniques.

Empirical research comprised analysis of case level data provided by the YJB Placements Team. The admissions data provided are for girls who were detained in custody on 1st April 2014 from a 'snapshot' on this date, as well as girls entering custody during the period April 2014 to March 2016. The data provides an overview of the legal basis for detention and key characteristics of children placed in the secure estate, based on all females who were detained in youth custody during the period April 2014 to March 2016. The census of a full population of girls in custody has the methodological advantage that the data analysis is highly reliable. Study of a dataset covering the full population maintains a high level of confidence in the findings and minimises sampling errors to missing and potentially mis-recorded data.

4.4 Data collection and analysis

The data presented refer to the number of admissions rather than the number of individual girls; the same girls will be counted more than once if they were admitted to custody more than once within the time period. Some of the admissions entered custody for the first time while others had had previous periods in custody, some prior to this dataset. It should be noted that these figures will differ from those published by the Ministry of Justice in the monthly Youth Custody Statistics⁶ and the Youth Justice Annual Statistics⁷ which refer to a snapshot of the custody population on a particular day each month.

The dataset contains:

- Key demographic information on girls admitted to custody, including age group, ethnic group, establishment type, specific establishment and whether it was their first time in custody.
- Offence details for all admissions to custody, including in cases of multiple sentences and secure remand. Where sentence details are specified, they relate to the primary custodial order.
- Key characteristics of admissions to custody that have been derived from Key Placement Factors (KPFs) and give an indication of the areas in which children present with risks and needs on entry to custody, rather than their socio-demographic characteristics. The PIF was developed by the YJB, with support from a range of relevant external agencies, to provide the YJB Placement Service with the key information necessary to make an appropriate

⁶ Available at: www.gov.uk/government/publications/youth-custody-data

⁷ Available at www.gov.uk/government/collections/youth-justicestatistics

allocation, including assessments around health, learning, family background, protection issues and risk to others.

The PIF was completed by an officer from the YOT prior to the young person entering custody and those completing this form were required to include all relevant and current information regarding the risk and needs of a young person. Responses within the PIF will be based on the best judgement of the YOT officer with the information that they have at the time, but do not necessarily represent formal diagnoses or assessments if these are not available.

The analysis in this report is based on data about females detained in the youth secure estate during the period April 2014 to March 2016. The data have been grouped over the two-year period as trends are not meaningful and therefore not provided. A limitation of the dataset is that the census is not of the most recent population, as published data (Ministry of Justice 2019a) shows that there has been a slight reduction in the number of girls in custody in the period since 2016. The recent absence of policy specifically focused on girls in custody further suggests that the systemic dynamics have not changed in such a way that would question the relevance of these findings to current practice.

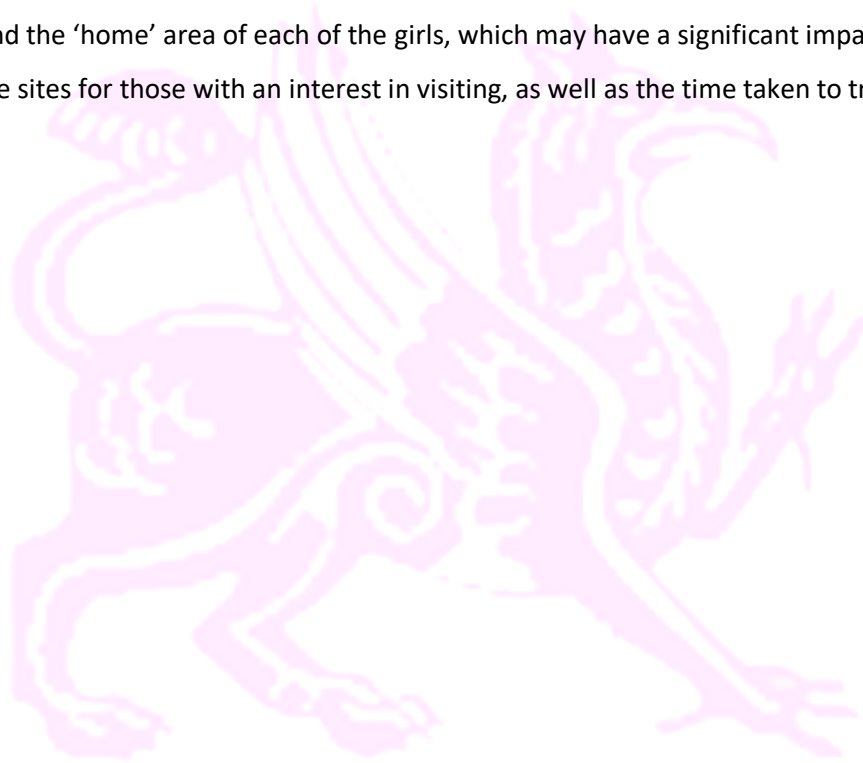
Data was provided in a Microsoft Excel spreadsheet, with each row of data representing a 'custodial episode' and the associated fields of information relating to that admission to custody. In order to ensure that the information contained in the case level data did not identify the individual girls, all identifiable fields were removed from the dataset including names and dates of birth. To provide further assurance that the relatively small number of girls who are sent to penal custody would not be identifiable and their confidentiality maintained, ages were grouped into either '13–15 years old' or '16–17 years old' and ethnic groups into either 'white' or 'BAME'. A unique identifier was allocated to each girl to enable the identification of multiple admissions. Password protected files were transferred electronically via the secure Criminal Justice System eMail (CJSM) system. Confidentiality of data collected was also upheld; all files were electronically saved onto an encrypted and password protected computer, and written notes were stored in a locked drawer accessible only to the researcher.

Data was analysed using Microsoft Excel, using PivotTables to cross tabulate various fields of data, and calculate totals and percentages. When all possible categories in each field of data are considered, the proportions sum to 100%, but some fields of data are marked as missing or incomplete. Data are shown for the positive responses unless otherwise stated indicating the reported presence rather than absence of a particular characteristic. The unknown ('don't know' or 'missing') category has not been

disregarded as it highlights the uncertainty in the data (and the assessment process itself).

Operationally, it shows the information that is not known about a young person when placing them in custody. Analytically, the unknown information could change the yes/no proportions considerably so the proportions stated may be underestimates.

Distance from home was calculated for each individual girl using the postcode of the establishment where they were detained and of their home YOT office. Distances were measured 'as the crow flies' using 'ARC GIS' mapping software. This approach is consistent with that undertaken by the Inspectorates (HMI Prisons, 2016), allowing for comparisons to be made. A limitation of this approach is that it does not consider the accessibility of the custodial establishments and transport options available between there and the 'home' area of each of the girls, which may have a significant impact on the accessibility of the sites for those with an interest in visiting, as well as the time taken to travel.



Chapter 5: Findings from admissions to custody data

This chapter presents findings from analysis of the admissions data to examine offences and types and lengths of custodial sentences; patterns in the use of custodial remand; patterns in the placements of girls into custodial establishments and measurement of the distances that girls were held from home.

There were 325 episodes of penal custody for girls during April 2014 – March 2016, comprising 266 individual girls, some of whom had multiple admissions. The analysis in this report is based on the 325 episodes, so individual girls will be counted more than once if they were admitted to custody multiple times within the period. If a girl was remanded to custody and then subsequently received a custodial sentence, this counts as one custodial episode. In order to examine remands and sentences comprehensively, those 51 girls who were remanded and then sentenced to custody in this dataset were included in the analysis of both groups.

5.1 Custodial remand

The only published data about the use of custodial remand for children that is broken down by gender is the average monthly population. Little is known about the extent of the use of custodial remand for girls, the profile of girls on remand, the circumstances around remand decisions (including alleged offence types) and the length of time girls spend on remand. This section analyses the available data to provide some information about the use of remand for girls specifically.

During the period from April 2014 to March 2016, there were 129 episodes of girls being remanded to custody, made up of 108 individual girls. The analysis in this section is based upon these remand cases, rather than the individual girls.

The remanded population of girls breaks down as follows:

- 70% were aged 16-17 and 30% were under 16 years old
- 62% were white and 36% were BAME, 2% were of unknown ethnicity
- 64% had no previous experience of custody

Alleged offence types for which girls are remanded to custody are broadly consistent with offences for the overall child remand population (Ministry of Justice, 2019a), where slightly more than two thirds of offences involve violence (violence against the person and robbery). The notable exception to the

offence types for girls was the absence of sexual offences, which made up 6% of the overall alleged offences of the remand population of all children in the year ending March 2018 (Ministry of Justice, 2019a).

Table 1: Primary alleged offences for which girls remanded to custody

<i>Offence Type</i>	<i>n</i>	<i>%</i>
Violence Against the Person	63	49%
Robbery	24	19%
Domestic Burglary	10	8%
Drugs	9	7%
Arson	8	6%
Other	5	4%
Breach of Statutory Order	4	3%
Public Order	3	2%
Theft and Handling Stolen Goods	2	2%
Fraud and Forgery	1	<1%
Total	129	100%

Nearly one third (32%) of girls were remanded to custody for non-violent offences. Nearly half of the remand admissions were for alleged offences of violence against the person, ranging in their seriousness from a small number of murder offences to less serious assaults (common assaults and assaulting a constable) and a further fifth of the alleged offences were for robbery.

Following their period of remand:

- 72 (56%) were released to the community. It is not possible to establish from the data available whether these girls were acquitted at trial, or whether they received a community sentence
- 51 (40%) subsequently received a custodial sentence
- Six of the remand cases had been transferred to adult custody at the time of my data collection and the subsequent outcome of their trial at court is therefore unknown

Over half of girls who are imprisoned on remand do not subsequently receive a custodial sentence. Published data reveals that two thirds of children overall are not given an immediate custodial outcome following remand (Ministry of Justice, 2019a), 29% are acquitted and 36% receive a non-custodial sentence. Although these datasets are not directly comparable, there is an indication that a slightly higher proportion of girls than boys receive a custodial sentence following a period of remand.

Remanded girls who did not receive a custodial sentence at trial were imprisoned on remand for an average of 40 days (including those who were acquitted), ranging from 1 day to 206 days. More than half of these remands were for less than three weeks and three quarters of these remands were for less than two months. Girls who are convicted at court and given a community sentence or other disposal are, in effect, serving short custodial sentences prior to their trial. In their research, Gibbs and Ratcliffe (2018, p.9) found that this signifies “a misuse” of custodial remand which should only be used in circumstances where it is either necessary to protect the public or to prevent further serious offences.

One of the possible conditions for custodial remand of a child is if they have been charged with a violent offence, which can be applied to a broad spectrum of offences, ranging vastly in seriousness from common assault to murder. Offences involving violence represent a significant proportion of girls’ offending, leaving them open to a justification for imprisonment on remand on interpretation of these criteria. Violent offences accounted for two thirds of the remands which did not subsequently receive a custodial sentence, made up of violence against the Person (43%) and robbery (23%).

The admissions data reveals that BAME girls made up a higher proportion of girls on remand (36%) than in the sentenced population (28%). This finding is consistent with published statistics on children in custody which show that ethnic disproportionality of children on remand is significantly higher (54%) than in the sentenced population (45%) (Ministry of Justice, 2019a). Previous research has found that Asian and black children are significantly more likely to be given a custodial remand than white children

(May et al, 2010). The Lammy Review (2018) found that BAME children are over represented at every stage of the criminal justice system and suggested that the offences of which BAME children are accused, which may be related to knife crime or considered to be gang related, are particularly likely to lead to a request for refusal of bail. Some other suggested causal factors are that BAME children are less likely to have trust in the criminal justice system and consequently plead not guilty, increasing their chance of remand. Research is needed to investigate why the disproportionality of children on remand is so high, with specific consideration given to BAME girls and how gender intersects with their ethnicity to influence these outcomes.

Recently published research on the use of custodial remands for children (Gibbs and Ratcliffe, 2018) found that too many children (both genders) are imprisoned on remand pre-trial and are not treated with a distinct approach to reflect the fact that they are children. Youth Offending Teams quoted in the report believed that the rise in remand may be due to “a more punitive and risk-adverse” reaction to dealing with knife crime and those accused of “gang” related offences (p.8). Consideration should be given to the comprehensive recommendations about how to reduce remands to the secure estate in this report, and in previously published guidance (Prison Reform Trust/NAYJ, 2015) and their particular potential impact on girls.

This research has found that the majority of girls held on remand in custody do not subsequently receive a custodial sentence and nearly one third were remanded for non-violent alleged offences. More than half of remanded girls who were not given a custodial sentence were detained for less than three weeks and three quarters of these remands were for periods of less than two months. These findings suggest that for many girls they are experiencing the equivalent of serving a short custodial sentence prior to receiving a community-based disposal at court. Ethnic disproportionality of children on remand is significantly higher than in the sentenced population. The Ministry of Justice should consider whether further changes could be made to the conditions for a remand to youth detention accommodation to make sure that custody is always used as a last resort (Taylor, 2016) and consideration should be given to recently published recommendations for how this might be achieved for girls specifically (Gibbs and Ratcliffe, 2018; Prison Reform Trust/NAYJ, 2015).

5.2 Custodial sentencing

Published sentencing data for children is not broken down by gender combined with other variables and therefore little is known about the use of custodial sentences for girls in England Wales. The comprehensive analysis in the *Punishing Disadvantage* report (Jacobson et al, 2010) provided a profile

of the sentencing of girls to custody, based on data from 2008, but little is known about how this picture may have changed since the subsequent rapid decline in the numbers of girls in custody. This section aims to provide an updated analysis of the types of offences for which girls are sentenced to custody and the types and length of their sentences.

Between April 2014 and March 2016, a total of 210 girls were detained in penal custody under sentence. The majority of the girls received just one sentence within the two-year period, while eight received two custodial sentences, two received three and one girl received four – making a total of 225 sentences. The analysis in this section is based upon the 225 admissions, rather than the individual girls. The sentenced population breaks down as follows:

- 74% were aged 16-17 and 26% were under 16 years old
- 72% were white and 28% were BAME
- 67% were sentenced in a Magistrates'/Youth Court and 33% in Crown Court
- 70% had no previous experience of custody

The profile of girls sentenced to custody has changed, in comparison to the 2008 population scrutinised in the *Punishing Disadvantage* report (Jacobson et al, 2010). The data reveals that the age profile of sentenced girls is rising, as the proportion of 16-17-year-old girls increased from 67% in 2008 to 74% in 2014-16. The proportion of sentenced girls who are BAME also increased from 21% to 28% during the same period.

5.2.1 Types of offences

During the period April 2014 to March 2016, girls in custody served 225 sentences for a total of 276 offences. Two thirds (67%) of the sentences were for a single offence, 22% were for two offences and 11% were for three or more offences. The analysis in this section is based on the most serious offence for which each girl was sentenced, outlined below in *Table 2*.

One third (34%) of all crimes for which girls were sentenced to custody were non-violent and included offences of theft, drug related offences, public order and breach of a statutory order. Nearly half of the offences for which girls were sentenced to custody were for violence against the person (VAP), covering a wide spectrum of offences and diverse levels of seriousness, ranging from common assault to murder.

Robbery was the second most common offence group, accounting for one fifth of the total, adding to the proportion of crimes which involve using or threatening force.

Table 2: Offences for which girls sentenced to custody by offence group

<i>Offence Group (primary sentence type)</i>	<i>n</i>	<i>%</i>
Violence Against the Person	109	48%
Robbery	40	18%
Burglary	16	7%
Theft and Handling Stolen Goods	15	7%
Drugs	11	5%
Public Order	11	5%
Breach of Statutory Order	8	4%
Arson	7	3%
Other	4	2%
Vehicle Theft/ Unauthorised Taking	2	1%
Death or Injury by Dangerous Driving	1	<1%
Racially Aggravated	1	<1%
Total	225	100%

Less serious types of assaults (common assaults, assaulting a constable or assaulting a person acting in the execution of their duty) accounted for one fifth of the offences for which girls were sentenced. These were the most common VAP offences, accounting for 42% of the total in this category. Offences of possession of weapons accounted for 10% of the VAP offences. Among the most serious offences were four offences involving loss of life and 22 offences of grievous bodily harm.

Table 3: Violence against the person offences for which girls sentenced to custody by offence type

<i>Offence (primary sentence type)</i>	<i>Total</i>	<i>% of VAP offences</i>
Common assault	32	29%
Assault occasioning actual bodily harm	18	17%
Wounding with intent to do grievous bodily harm	18	17%
Assaulting a constable	12	11%
Having blade/article which was sharply pointed in public place	7	6%
Wounding/inflicting grievous bodily harm	4	4%
Assaulting a person acting in the execution of their duty	2	2%
Having offensive weapon in public	2	2%
Manslaughter	2	2%
Murder	2	2%
Threatening to harm witness/juror	2	2%
Attempting to cause grievous bodily harm with intent	2	2%
Possessing firearm with intent to cause fear of violence	1	<1%
Possessing firearm with intent to endanger life	1	<1%
Resisting or obstructing a constable	1	<1%
Using a noxious substance	1	<1%
Missing/Unknown	2	2%
Total	109	100%

5.2.2 Seriousness of offences

Gravity scores for offences are a useful way of understanding the seriousness of crimes committed by the girls in this sample, in addition to considering the offence description. Since 2003 the YJB has categorised offences and assigned each sub-group with a score on an eight-point scale of seriousness from 1-8; 1 denotes the lowest and 8 the highest. The seriousness, or 'gravity' scores are outlined in the YOT Data Recording Requirements (Youth Justice Board, 2016). Offences which score between 1 and 5 predominantly receive first-tier or community disposals for example, drunk and disorderly has a score of 1, common assault has a score of 3 and assault occasioning actual bodily harm has a score of 5. Offences such as robbery and domestic burglary have a seriousness score of 6 and are equally likely to receive non-custodial and custodial sentences. The most serious offences expected to receive predominantly custodial sentences score 7 or 8.

Table 4: Offence gravity scores for which girls sentenced to custody

<i>Gravity Score (Primary offence)</i>	<i>n</i>	<i>% of offences</i>	<i>Cumulative %</i>
1	0	0%	0%
2	2	1%	1%
3	76	34%	35%
4	37	16%	51%
5	15	7%	58%
6	64	28%	86%
7	27	12%	98%
8	4	2%	100%
Total	225	100%	100%

Analysis of the data reveals that for nearly three fifths (58%) of the girls serving custodial sentences, their primary offence scored 5 or less on the seriousness scale, including common assaults, theft and public order offences. Twenty-eight per cent of offences were in the transitional band with a score of 6, comprising mostly robberies and burglaries. Only 14% of offences were at the serious end of the scale, scoring between 7 and 8 (the majority of which were grievous bodily harm scoring 7).

The gravity scores and violence/non-violence of primary offences have been cross-tabulated, in order to explore this further. As shown below in *Table 5*, the offences in the non-violent, less serious category amount to one fifth (22%) of all 225 primary offences. Contrastingly, only 31% of all primary offences are both violent and more serious.

Table 5: Offence gravity and violence/non-violence

	<i>Non-violent offences</i>	<i>Violent offences</i>	<i>Total</i>
Less serious: 1-5 gravity scores	22% (50)	36% (80)	58% (130)
More serious: 6-8 gravity scores	12% (26)	31% (69)	42% (95)
Total	33% (76)	67% (149)	100% (225)

The 50 'non-violent, less serious' offences break down into the following offence types:

- Theft and Handling Stolen Goods: 30%
- Public Order: 22%
- Breach of Statutory Order: 16%
- Arson (not endangering life): 10%
- Other: 6%
- Drugs: 4%
- Non-Domestic Burglary: 4%
- Vehicle Theft/ Unauthorised Taking: 4%
- Injury by Dangerous Driving: 2%
- Racially Aggravated: 2%

A major question arising is why the majority of girls were sentenced to custody for offences that, according to YJB guidelines, should typically attract community-based disposals. As previously noted, a key limitation of the available YJB admissions data is the lack of information regarding the offending histories of the girls and their previous convictions, which may be illuminating. It is likely that persistent histories of offending have influenced decisions to sentence some girls to custody for less serious offences, particularly as the data shows that 30% of the sentenced girls had previously been in custody.

Previous research (Glover and Hibbert, 2009; Jacobson et al, 2010) into custody thresholds for children has found that the use of custody as a last resort is not reflected in current sentencing practice.

Although the number of girls sentenced to custody has reduced significantly since these previous studies, this census of a more recent population has indicated that these concerns have not abated.

5.2.3 Type and length of sentences

This section provides a breakdown of the legal basis for detention for the population of sentenced girls in custody, as well as the length of their sentences. Data about custodial sentencing types and lengths for children is not regularly published in such a way that it is possible to disaggregate by gender.

Detention and Training Orders accounted for 90% of the total sentences, with the first half served in custody and the second half served in the community. The remaining 10% comprised Section 91 sentences ranging in length from 15 months to eight years, one detention for public protection and two 15-year mandatory life sentences for murder.

Table 6: Type of sentences for girls sentenced to custody

<i>Sentence Type</i>	<i>n</i>	<i>% of cases</i>
Detention and Training Order	202	90%
Section 91 sentence	20	9%
Mandatory life sentence	2	1%
Detention for public protection	1	<1%
Total	225	100%

Overall, 90% of girls were sentenced to a period of 12 months or less in custody and 75% for 6 months or less. As shown below in *Table 7*, the majority of girls sentenced to custody were serving short DTOs. More than one third of all DTOs were for just four-months in length, with a custodial element of two months. The majority of the four-month DTOs were for less serious types of assaults (mainly common assaults, assaulting a constable) and theft offences. The significance of the sharp rise in the use of four-month DTOs between 2002 and 2009 (Sharpe, 2012) has clearly not abated. Eighty-four per cent of DTO sentences were for 12 months or less, with a period of six months or less served in custody. Ninety per cent of four-month DTOs and 83% of DTOs of 12 months or less were given in a magistrates court or youth court.

Table 7: Length of DTOs for girls sentenced to custody

<i>DTO length</i>	<i>n</i>	<i>% DTOs</i>
4 months	75	37%
6 months	31	15%
8 months	28	14%
10 months	6	3%
12 months	29	14%
18 months	17	8%
24 months	16	8%
Total	202	100%

Where the custody threshold is met and girls have no previous convictions and offer a guilty plea at court, the sentencing options are limited to either a Referral Order or a custodial sentence. In these Referral Order ‘cusp of custody’ cases, if courts are not presented with ‘packages of intervention’ that give them confidence in sentencing young people to the non-custodial option as a ‘robust’ alternative to custody, this may help to explain the frequent use of short custodial sentences as a result of sentence

inflation. In these circumstances, Referral Order guidance⁸ states that where custody is an option for consideration, the Pre-Sentence Report (PSR) should involve an intensive Referral Order contract. This intensive version of the order involves a timetable of structured activity each week and may include activities such as restorative processes, family support and work to support the factors which increase resilience and desistance. There can also be a curfew included, although under legislation this cannot be electronically monitored. It is good practice for the YOT to convene a preparatory 'pre-sentence panel' meeting involving the child, their parents or carers and panel members. They can consider the likely content of an Intensive Referral Order contract with the child's prior agreement, which can then inform the Pre-Sentence Report proposal for presentation at court as a credible sentencing option.

Incarceration, even for short periods, can have long lasting detrimental impacts upon young people and impact on their future behaviour and decision making. Additionally, interruption to practical support from support services, as well as lost or disrupted accommodation, employment, education and training placements, can create significant disruption to the resettlement process and can be counterproductive to moving on from offending (Goodfellow & Liddle, 2017; HMI Probation, 2015). Existing research has found short custodial sentences to be comparatively ineffective for young people. Previous analysis has found that children incarcerated for six months or less are significantly more likely to reoffend than those on an intensive community sentence (Ministry of Justice, 2012). Published data also consistently shows that reoffending rates for children released from custodial sentences of less than 12 months are higher than for longer sentences (Ministry of Justice, 2018b).

In his review of the youth justice system Charlie Taylor (2016) recommended that the Government should remove or substantially restrict the availability of short custodial sentences, to a minimum of six months in detention (equivalent to the current 12-month DTO). In January 2019 the Justice Minister Rory Stewart revealed that the Government is considering proposals to limit the use of prison sentences of 6 months or less (with the exception of violent or sexual offences), recognising the damaging effects of short periods in custody as "long enough to damage them, but not long enough to heal them" (Fletcher, 2018). It is not clear whether the proposals include a presumption against short sentences for children. Under the proposed arrangements (assuming that the policy did not have the unintended consequence of sentence inflation) for the 2014-16 population, 75% of custodial sentences for girls would have been diverted, 27% when excluding violent offences.

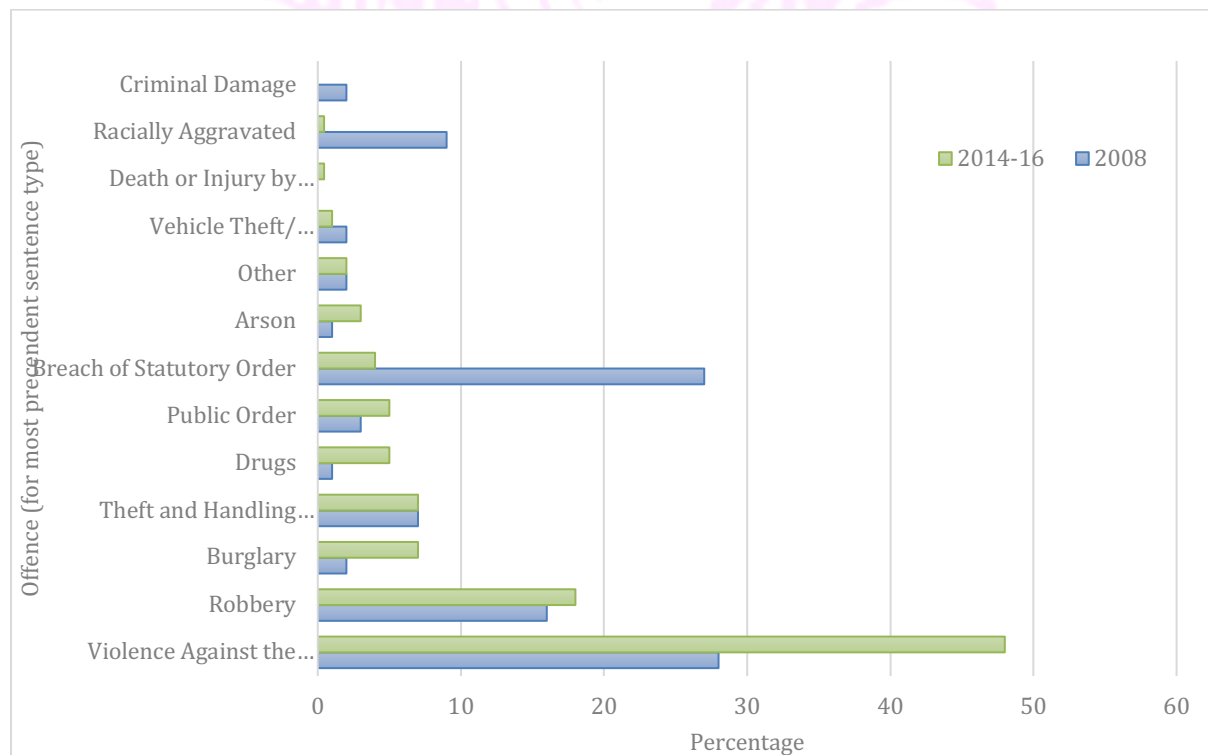
⁸ For further details see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746365/referral-order-guidance-9-october-2018.pdf

5.2.4 A changing profile of offences?

The data indicates that there have been some significant changes in the profile of offences for which girls are being sentenced to custody in recent years. Comparison of the census of children who received custody in the second half of 2008 ((Jacobson et al, 2010) finds that between 2008 and 2014-16 the proportion of custodial sentences girls received for breach of a statutory order fell from 27% to 4% and the proportion of violence against the person offences rose from 28% to 48% (Jacobson et al, 2010). Comparison of offence seriousness scores also indicates that the offences for which girls are sentenced to custody have become more serious - the proportion of offences scoring 6 or more on the seriousness scale increased from 27% in 2008 to 42% in 2014-16.

Graph 1: Offences for which girls sentenced to custody by offence group: 2008 and 2014-16



2008 figures derived from *Punishing Disadvantage* (Jacobson et al, 2010, p.96)

However, a change in data recording between different administrative systems may go some way to explaining this, due to the way in which breaches of DTOs are recorded. In 2008 breaches of DTO were recorded as ‘breach of statutory order’ in the offence type figures (along with breaches of anti-social behaviour orders and breaches of community sentences), but since 2012 the original offence of the DTO is recorded on the database. Due to this change in recording practices it is unclear how many girls are

still being sentenced to custody for breach and although the numbers appear to have reduced significantly according to published data, things may have changed little in practice. Further investigation is required to establish which custodial sentences currently recorded as a different offence type are in fact representative of a breach of conditions of a statutory order. This would enable further clarity in understanding how sentencing patterns for all offence types have changed over time, including the level of custody for breach, and whether the rise in violence against the person offences represents a real increase as a proportion of the total.

Particular difficulties have been highlighted for girls in attending intensive, and sometimes inappropriate, appointments which can be viewed as non-compliance, resulting in breach proceedings leading to possible custodial sentences (Bateman, 2011; Sharpe, 2012). Concerns about the overuse of custody for breach have been raised in previous research (Bateman, 2011; Hart, 2010) and the lack of clarity over the extent to which this continues to be a problem is an area of concern.

5.2.5 Sentencing and the custody threshold in summary

The findings in this section raise important questions over the necessity of incarceration on the basis of public protection or retribution and have significant implications for the legitimacy of the current use of custody for girls in England and Wales. Analysis of sentencing data has revealed that one third (34%) of girls were sentenced to custody for non-violent offences and three fifths were sentenced to custody for offences that were at the less serious end of the spectrum of offending (according to YJB guidelines). One fifth of girls were sentenced to custody for primary offences that were neither violent nor in the more serious gravity range. This research also highlights the prevalence of short sentences imposed, with three quarters of girls being sentenced to a custodial period of six months or less and 90% of girls sentenced to a custodial period of 12 months or less. More than one third (37%) of all DTOs were for just four months in length, with a custodial element of two months. Concerningly, the number of girls passing through the secure estate for very brief periods on short sentences, means that a larger number of girls are experiencing custody than a 'snapshot' at a static point in time might suggest.

5.3 Placements into custody

Following the court's decision to sentence or remand a child to custody, the second crucial decision is the choice of secure placement. The choice between an STC or an SCH is critically important, given the

contrasting custodial environments. The small number of girls can be placed in a number of establishments across the country and therefore the placement decision can also have a significant impact on the distance that they are held from home.

5.3.1 Placement decisions

Case level custody data included information about the initial placements of girls upon admission to custody. A breakdown of placements is provided below⁹.

Table 8: Placements into custody by establishment

Type	Establishment	Location	Total	%
SCH	Aycliffe	County Durham	39	12%
	Vinney Green	South Gloucestershire	27	8%
	Lincolnshire Secure Unit	Lincolnshire	18	6%
	Clayfields	Nottingham	16	5%
	Hillside	South Wales	11	3%
	Adel Beck	Leeds	7	2%
	Aldine House	Sheffield	7	2%
	Red Bank	Merseyside	2	1%
	Swanwick Lodge	Southampton	2	1%
SCH Total			129	40%
STC	Rainsbrook	Warwickshire	92	28%
	Medway	Kent	67	21%
	Hassockfield	County Durham	35	11%
	Rainsbrook - Mother & Baby Unit	Warwickshire	1	<1%
	Unknown		1	<1%
STC Total			196	60%
Total			325	100%

⁹ Hassockfield STC and Red Bank SCH have been decommissioned since the period under analysis.

Of the total population of girls detained in custody from 2014-16, 60% were placed in STCs and 40% in SCHs. The proportion was the same for both sentenced and remanded girls.

A higher proportion of BAME girls (67%) were placed in an STC compared to white girls (58%). For 13 to 15-year olds, the proportion of white and BAME girls in each establishment type was nearly the same; whereas for 16-17-year-olds 75% of BAME girls were placed into an STC compared to 63% of white girls. A possible factor influencing placement decisions could be that a higher proportion of BAME girls (73%) than white girls (64%) were sentenced for violent primary offences, including a wide range of VAP offences and robberies. The proportion of remands for alleged violent offences was also higher for BAME girls (72%) than white girls (64%). However, it is not possible to establish the reasons for this from the available data and further research is necessary to explore the explanations behind the disparity and the possibility that BAME girls are assessed as being less vulnerable.

Assessments on admission to custody indicate that there were wide-ranging concerns for a high proportion of girls entering both types of establishments, as outlined in *Table 9*.

Table 9: Percentage of admissions with known concerns by establishment type

Assessed concerns	Establishment Type	
	STC	SCH
Not engaging in education	61%	51%
Known suicide or self-harm concerns	60%	64%
Currently or previously looked after	60%	67%
Never previously been in custody	58%	73%
Sexual exploitation concerns	51%	59%
Substance misuse concerns	48%	51%
Current or previous child protection plan	42%	52%
Mental health concerns	39%	41%
Physical health concerns	39%	38%
Not engaging with parents or carers	18%	19%
Learning disability or difficulty concerns	16%	26%
Gang concerns	6%	5%
Number	196	129

The proportion of older girls being placed in STCs was a lot higher than in SCHs, as may be expected on the grounds of their age, but it is notable that one third of all 16 to 17-year old girls were placed in SCHs, reflecting high levels of complex support needs. Twenty-two of the girls were known to be mothers on admission to custody, the majority of whom (16) were placed into STCs, but only one girl was placed directly into the dedicated mother and baby unit at Rainsbrook STC. Nearly three quarters (n16) of the girls who had their own children were either currently or previously had been in local authority care.

Consistent with previous research (Greene, Peters and Associates, 1998; Ministry of Justice, 2017; Vaswani, 2018), girls entering custody were assessed as being extremely vulnerable, with high levels of concerns over sexual abuse and exploitation, as well as serious issues around emotional, mental and physical wellbeing. Findings from the admissions data reinforce Teresa O'Neill's assertion (2001, p.156) that:

“Girls who have been victimised, frequently sexually, and whose self-esteem is very poor should not be exposed to further abuse by young men in the very environment to which they have been admitted for protection from abuse”.

Girls who have experienced adversity need appropriate support to identify and address their needs to ensure that responses do not compound their existing problems, but serious questions remain over how these needs are being met by the different custodial regimes. Findings from the latest inspection reports (Ofsted, 2018a; Ofsted 2018b; Ofsted, 2019) have reinforced previous concerns regarding the safety and treatment of *all* children detained within these institutions. Additionally, there are indications that girls' gender-specific needs are being marginalised in STCs marred with problems. For example, difficulties with recruitment and staff sickness at Rainsbrook STC have led to an under resourced healthcare team, whose focus is reduced to “essential work” while a planned girls' well-being group has been put on hold (Ofsted, 2018b, p,20). The Serious Case Review into Medway STC (Medway Safeguarding Children Board, 2019) found that “staff were not prepared or trained to offer a supportive or caring environment for the girls, some of whom were severely traumatised or exploited” (p.25).

The sharp fall in the number of girls being admitted to custody over the past decade has seen female places in YOIs decommissioned but has not resulted in all girls being transferred into welfare-based and child-centred forms of provision. The majority (60%) of girls are initially placed in STCs, but it is likely that transfers from SCHs to STCs throughout the period of detention in custody may mean that the presence of girls in STCs is even greater. While the option remains for girls with challenging behaviour to be transferred to penal establishments, this will undoubtedly continue to happen. A higher proportion

of BAME girls were placed in STCs compared to white girls, potentially indicating that they are being assessed as less vulnerable.

The findings in this report demonstrate that girls being placed in both types of establishment have high levels of assessed concerns over multiple vulnerabilities and problems. Girls in secure settings held under both justice and welfare legislation have been found by previous research to have overlapping characteristics and needs, and to share many adverse childhood experiences and family problems (Goldson, 2002; Andow and Byrne, 2018; Warner et al, 2018). The populations of girls detained in custody on welfare or justice-based grounds are not two distinct groups. Hence, there is no clear justification for the arbitrary separation of a very small number of girls into penal institutions that fail to meet their needs and keep them safe. Strong arguments have been made that all children deprived of their liberty should be placed in SCHs, establishments with a child-care ethos that are demonstrably fit for purpose (Bateman, 2016; NAYJ, 2016; Andow and Byrne, 2018; Hart, 2018). There is no legitimate reason why any of the small number of girls in custody on justice grounds must be held in separate custodial environments and this is a timely opportunity to transfer all girls out of penal detention into more appropriate and safe environments.

5.3.2 Distance from home

As the number of girls in custody has fallen, places have been decommissioned and the available placements are now more thinly spread across the country. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty state that “detention facilities for juveniles should be decentralised and of such size as to facilitate access and contact between the juveniles and their families” (United Nations, 1990).

Analysis of the YJB admissions data of all custodial episodes during 2014-16 finds that the distance that girls were located from home is significantly greater than for boys. The average (mean) distance from home for girls was 72 miles, compared to 49 miles for all children as reported in 2016 (HMI Prisons, 2016). Over half of girls (56%) were held more than 50 miles away from home and nearly a quarter (24%) held over 100 miles from home. Nearly 10% of girls were held over 150 miles from home, the largest distance being 255 miles.

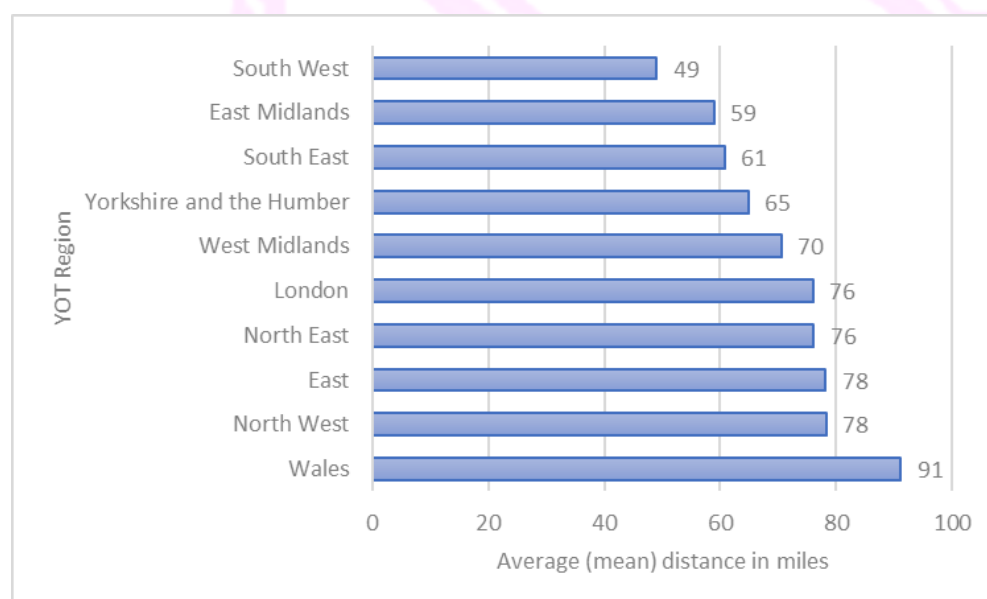
Table 10: Distance from home for female admissions to custody

Distance	n	% of cases
50 miles or less	142	44%
More than 50 miles	183	56%
More than 100 miles	78	24%
More than 150 miles	31	10%
Total	325	100%

The average distance was further for girls on remand (77 miles) compared to sentenced girls (71 miles). The average distance from home for girls in both Secure Training Centres and Secure Children’s Homes was nearly exactly the same, at 72 miles and 71 miles respectively.

Longer distances from home were an issue for girls across England and Wales, with girls from every region detained on average more than 50 miles from home (other than the South West which fell just short with an average distance of 49 miles). Distances were particularly long for girls from Wales, where Hillside SCH is the only secure placement option.

Graph 2: Distance from home for female admissions to custody by YOT area



Previous research has recommended that to effectively prepare for their release into the community, interventions for girls should provide personal and practical support which is explicitly gender responsive through consideration of three relational aspects of girls' lives: interpersonal relationships, relationships with agencies and relationships with wider society (Wright, Factor, & Goodfellow, 2014). The HMIP thematic inspection into the impact of distance from home (2016) identified that children held further away from home were disadvantaged with regard to each of these areas.

The Prisons Inspectorate found that longer distances from home are associated with significantly fewer visits from family members and friends, with each additional 25-mile interval associated with one less visit. Additionally, difficulties in delivering family mediation work for children held further distances from home were reported (HMI Prisons, 2016), which is of concern given the important role of family engagement and support in enabling effective resettlement (Hazel et al, 2016). A previous inspection (HMI Probation, 2015) also noted difficulties for parents and carers maintaining involvement in the lives of the children and their sentence planning, and the emotional impact of this on children not being fully considered by either custodial or YOT staff in YOIs and STCs.

Inspectors also found that children who were further away from home received significantly fewer visits from professionals; each 26-mile interval that a child was held from their home area was associated with one less visit from a professional. Particular problems were found with social workers' attendance for statutory visits and reviews for looked after children, including meeting their responsibilities to secure accommodation placements post-release. Greater distances were also associated with difficulties in resettlement planning and the delivery of 'through the gate work', which research has consistently shown to be a fundamental feature of effective resettlement support (Hazel and Liddle, 2012; Bateman, Hazel and Wright, 2013; Hazel et al, 2017).

Longer distances from home have been found to cause problems for emotional wellbeing during the period of incarceration, with children experiencing remoteness and separation from their families, professionals and community resources, as well as impeding efforts to plan and deliver effective resettlement support (HMI Prisons, 2016; HMI Probation, 2015; Taylor, 2016). Any future reforms to the use of custody for girls should seek to address the issue of distance from home and how to minimise the negative consequences of girls being incarcerated further from their families, professionals and communities. Reducing the distances that girls are held from home is problematic, particularly in the event that levels of detention decrease even further, so a specific focus on minimising the impact of distance from home and maintaining links with important connections in the community should be a clear priority.

5.4 Moving on from youth custody

Of the 325 cases of girls who entered custody during the period April 2014 to March 2016, at the time of data collection:

- 6 remained in detention in youth custody
- 294 had been released from custody into the community
- 25 were transferred to adult prison, 6 of whom were still on remand at the time of transfer

The data confirms that the vast majority of girls are released into the community from youth custody, highlighting the importance of effective resettlement planning. A comprehensive review focused on the resettlement of girls and young women (Bateman and Hazel, 2014) found that existing principles of effective resettlement practice identified in research evidence (Hazel and Liddle, 2012; Bateman, Hazel and Wright, 2013) are still valid for girls in England and Wales. Resettlement with girls should, as a consequence, aim to ensure a smooth transition from custody to community, through close coordination of partnership agencies to engage young people and meet their individual needs. Particular attention should adapt and refine support respond to girls' gender-specific needs, focused on building trust, addressing relationships and past trauma, with empowerment as a central focus to promote resilience and self-esteem.

Relationships with professionals are of critical importance through the resettlement process to provide consistency and personal support (Bateman and Hazel, 2014; Goodfellow and Liddle, 2017) and the importance of relationship-based practice is of particular significance for females (Bateman and Hazel, 2014a; Wright, Factor and Goodfellow, 2014; Hazel et al., 2016). But the impact of imprisonment on relationships, both personal and with professionals, including breakdown of placements for looked after children, often compounds challenges around resettlement (Bateman and Hazel, 2015). Problems with maintaining links with YOT workers were reported by the Probation Inspectorate in 2014, who also emphasised that many local authorities were failing to meet their statutory duties towards 'looked after' girls in custody when relationships with social workers weakened and support was withdrawn (HMI Probation, 2014).

The adverse experiences of many girls before, during and following periods in custody require resettlement work to focus on rebuilding or strengthening resilience by identifying and responding to their needs including pre-existing trauma, mental ill-health and emotional difficulties (Goodfellow and Liddle, 2017; Liddle et al., 2016). Sexual exploitation is a feature of the lives of many incarcerated girls, with 60 per cent of females entering custody having assessed CSE concerns (Ministry of Justice, 2017), so the lack of follow-up support provided on release from custody is an issue of significant concern. This is especially critical to girls who are vulnerable to exploitation, as inspectors have found that responses to victims of CSE, both in custody and in the community, are highly variable in quality and effectiveness (HMI Probation, 2014). Given how abuse and exploitation manifest for this age group and the interrelationship with offending, this represents a highly concerning issue from a resettlement perspective, especially given the importance of responding to issues around child protection and safeguarding in this context (Clarke, 2007, p.37-38).

There can also be substantial structural challenges to contend with upon release from custody, including the significant barriers faced because of criminal records (Bateman, Melrose and Brodie, 2013; Clarke, 2007; Sands, 2016). Difficulties in accessing suitable and stable accommodation have been identified as a fundamental barrier to resettlement (Clarke, 2007; HM Inspectorate of Probation, 2016). Consequently, plans for other aspects of girls' resettlement including education, training or employment are made more difficult or impossible. HM Inspectorate of Probation found in their resettlement thematic inspection (2015) that a lack of suitable, settled and supported accommodation, as well as a deficiency in services to meet mental health and substance misuse issues and an absence of education, training and employment meant children missed opportunities during their transition. However, neither of these thematic inspections considered accommodation needs or identified issues around provision from a gendered perspective.

There are further difficulties in planning for release for girls on remand due to the uncertainty whilst awaiting the outcome at court (Gibbs & Hickson, 2009). Girls acquitted at court may also experience a paucity of support in the community to help counter the disruption and distress caused by a period of incarceration (Freeman, 2008).

The transition of females from the youth justice system to the adult justice system further impacts on the quality of support provided. Statutory responsibility for resettlement transfers from youth offending services to adult probation services if a young person turns 18 during their sentence. Transition arrangements should start when the girl is aged 17 years and 8 months and should be complete by their 18th birthday. This transition has been found to create significant inconsistency of support (Wright et al,

2012) and can also create considerable barriers in terms of accessing other services, when many young people report that much of the support they had received up to that point is withdrawn (Clinks, 2016).

Research commissioned by the Transition to Adulthood Alliance has argued that specific attention is required to meet the needs of young women who transfer from the youth estate into the adult prison system (Allen, 2011). The Prisons Inspectorate has also noted that the small number of young women entering adult prison from the youth estate need support to integrate this “vulnerable and needy group” (HMI Prisons, 2014, p.59) into the main population. Careful and individualised transition planning is critical because all girls will be experiencing a stark difference in regimes, transitioning from an SCH or STC to an adult women’s prison.

Issues highlighted in this report exacerbate the challenges faced by girls upon their release from custody and attempts by professionals to effectively support their transition. Very small numbers of girls sent to custody from each geographical area mean that there is a need for distinct support and guidance for YOTs and their partners to support the resettlement of young females in the community. Existing research finds that many girls’ needs continue to be overlooked on release from custody, where they have acquired additional challenges, often compounded by the transition to adult probation services and the withdrawal of other support if they turn 18 during their sentence. For the small number of girls who are transferred to adult women’s prisons, careful and individualised planning and support is critical through a significant transition where they will be particularly vulnerable.

Chapter 6: Conclusions

The overall numbers of girls in the youth justice system and in the secure estate have fallen rapidly over the past decade. The recent decline in the use of custody is very welcome but poses significant challenges for the commissioning of placements, custodial establishments and resettlement services. Girls have become increasingly overlooked by the penal system at both a policy and a practice level and their diminishing minority in custody has exacerbated the marginalisation of their needs. Relative to boys the numbers of girls in the system and in custody are low, but the aetiology of their offending and particular vulnerabilities they display provide the justification for the need to consider them from a gendered perspective.

Analysis of the existing literature has identified a lack of policy focus on the female population in the youth secure estate and a paucity of available data about the nature of recent custodial sentencing, remand and placements for girls. This study aimed to address this gap by analysing recent custody data, to investigate how penal detention is being used for girls from a gendered perspective. This research has analysed the offences and types and lengths of custodial sentences; examined patterns in the use of custodial remand; analysed patterns in the placements of girls into custodial establishments and measured the distances that girls are held from home. Findings from this analysis of custody data in this report have significant implications in light of existing knowledge.

Concerns have been highlighted over the possible overuse of custodial sentencing and remand and emphasised the opportunity to further reduce the use of custody to an absolute minimum. Many girls are being sent to custody for offences that are either non-violent, less serious, or both. This report also reveals the difference between a static and a dynamic picture of the custodial population. The small number of girls in custody at any one time (recently less than thirty) disguises the true picture of the number detained over a longer period, caused by a frequent flow of girls through custody for brief periods on short custodial sentences and periods of remand. In the context of what is known about the impact of custody on girls, these short periods in detention are likely to be causing huge damage and disruption to girls' lives and negatively impacting their self-esteem and wellbeing.

A recent review of the youth justice system (Taylor, 2016) recommended that the Government should remove or substantially restrict the availability of short custodial sentences, to a minimum amount of six

months in detention (equivalent to the current 12-month DTO) and the Prisons Minister has recently revealed that the Government is considering proposals to limit the use of prison sentences of 6 months or less. Given the vast amount of evidence about the harms of child imprisonment and particular impacts for girls, this review should consider a presumption against sentencing them to short periods in custody, alongside measures to guard against sentence inflation in such a situation.

Assessments of high levels of vulnerabilities and victimisation of girls on admission to the secure estate signify a failure of those in positions of responsibility to meet their needs. These findings add weight to existing arguments against the appropriateness of penal detention where systemic failures of welfare services to support vulnerable girls have directly contributed to their pathways into offending, the youth justice system and trajectories into penal custody (Myers, 2013; Sharpe, 2016). Negative self-perceptions are reinforced throughout the youth justice system (Howard League, 2011) and the detrimental effect of stigma may have become worse due to the very low number of girls who now go to custody. Because girls are incarcerated so rarely, the few that are can experience exacerbated perceptions of 'othering' and detachment from society, advancing feelings of marginalisation and hopelessness. Many girls leave custody with additional vulnerabilities and problems to contend with, when failure to provide adequate support in their transition to the community and into adulthood represents continued and compounded failures of the state to protect and care for them.

Rapid decommissioning of custodial places has not resulted in all girls being transferred into more child-centred forms of provision and the majority remain in penal institutions with serious concerns over their safety and welfare. The thin geographical spread of available placements means that girls from every region are being held long distances from home and significantly further away than boys. All of these issues pose problems for resettlement services in mitigating the effects of incarceration, particularly where the custodial environment causes additional damage to girls and their future prospects. The small numbers provide an opportunity to restrict custodial placements for girls to SCHs and end their inappropriate, unjustified and arbitrary imprisonment in penal institutions lacking adequate protection and care. A rethink of custodial provision for girls should also consider designation of alternative places as approved places of detention for girls that meet their specific needs, such as intensive fostering placements. These provisions already exist within current legislation for most girls in custody (who are on DTOs¹⁰ or Section 90/91¹¹) but are not currently utilised. Such an approach could fit within broader proposals for more gender-specific provision in the community for adult women, including residential

¹⁰ See: <http://www.legislation.gov.uk/ukpga/1998/37/part/IV/chapter/I/crossheading/young-offenders-detention-and-training-orders/1998-12-01?view=plain>

¹¹ See: <https://www.legislation.gov.uk/ukpga/2000/6/section/92>

women's centres (Ministry of Justice, 2018a). This could also provide extended opportunities for placements as diversionary alternatives to custodial sentences, recognising that those at risk of custody will also have complex needs (Gray et al. 2018; Hampson 2016) requiring specialist support.

The current focus on reform clearly provides an important opportunity to address identified problems, but Secure Schools do not provide all of the solutions for girls. As the programme develops and details of plans emerge, the question requiring "serious consideration" (YCIB, 2017, p.9) of how they will provide appropriate support for girls remains largely unaddressed. These proposals, along with previous reviews with a different or broader focus, have not adequately considered the implications of their recommendations for girls in custody. Proposed changes that are envisioned as gender-neutral may have unintended, gendered impacts for girls and inadvertently bring about counterproductive consequences.

In recent years, girls in custody appear to have paled into insignificance from a policy perspective, with the small numbers providing the justification for this oversight. Instead, the very small population of girls currently in custody should be seen as presenting a timely opportunity to develop more innovative and appropriate responses to their needs. A distinct, critical and imaginative review is required to carefully deliberate how to maximise this opportunity; to ensure that detention is restricted to an absolute last resort, in gender-sensitive and age-appropriate placements, and to guard against future rises. Policy recommendations should be compared with those of previous reviews and current proposals, with considerable attention given to the implications of any planned changes for girls. While it may seem inevitable that girls will continue to be outnumbered by boys in the youth justice system, the issues highlighted in this report should be instructive in determining improved systemic responses that significantly minimise the extent to which girls are locked up and ensure that they are no longer overlooked.

Chapter 7: Recommendations

The absence of a specific focus on girls in previous reviews, along with findings in this report, strongly point to the need for a discrete and strategic focus on the use of penal custody for girls at a national policy level. Consideration should be given to a range of problematic and unaddressed dynamics, building on the key findings from this report, and decisive action should be taken with regard to the following recommendations:

7.1 Policy recommendations

1. A strategic review of the use of custody for girls should be actioned without delay, that is fundamentally guided by:
 - Priority given to the application of non-custodial measures to girls in conflict with the law, in consideration of their age and gender-specific needs;
 - Commitment to the application of deprivation of liberty as an absolute last resort;
 - Explicit recognition of the gendered harms of child imprisonment and the failure of penal institutions to meet girls' needs;
 - Provision of child welfare-based, human rights compliant and gender-appropriate secure placements for the very small number of girls who cannot be safely supported in the community;
 - Commitment to deliver holistic, individualised and gender-sensitive support, that addresses the root causes of girls' problems, minimises the damage caused by custody and prepares them for a positive future.
2. The review should bring forward a policy to end the imprisonment of girls in all penal detention facilities including STCs:
 - Under current arrangements, all girls should be placed in Secure Children's Homes. More SCHs would need to be mandated to provide spaces for girls in custody, which would need to be geographically modelled and consider how to address gaps in current provision and the impact on distances from home;

- There should be a presumption against the placement of girls in Secure Schools unless it is clearly demonstrated that a) they will be able to meet girls' gender-specific needs and; b) that there is a justifiable reason for doing so (in accordance with recommendation 1).
3. A review of custodial provision for girls should consider designation of alternative places as approved places of detention for girls that meet their individual needs. These might include specialist placements for girls with concerns over specific issues requiring specialist support, such as CSE and self-harm;
 4. The Ministry of Justice should consider a presumption against sentencing girls to short periods in custody, alongside measures to guard against the potential for sentence inflation;
 5. Her Majesty's Courts and Tribunals Service and the Ministry of Justice should record and review data regarding gender, ethnicity and age, and the decisions to sentence and remand girls to custody;
 6. The Youth Custody Service and the Youth Justice Board should jointly undertake work with a specific focus on minimising the impact of distance from home and maintaining links with important connections in the community as a priority for girls, including the extended and assumed use of temporary release;
 7. The Youth Justice Board should put in place arrangements to facilitate training, good practice guidance and sharing of expertise between individuals and agencies around the country who are responsible for the resettlement of girls. This should include both Youth Offending Services and voluntary sector organisations involved in supporting their transition into the community;
 8. The Ministry of Justice should publish official data on children in custody (the monthly custody report and annual youth justice statistics) in a format that allows for disaggregation by gender combined with other variables, including age, ethnicity and sentence type and length;
 9. The Joint Inspectorates should regularly carry out inspections with a discrete focus on girls in the youth justice system and in custody, and the extent to which their gender-specific needs are being met.

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