

# A devolved youth justice?

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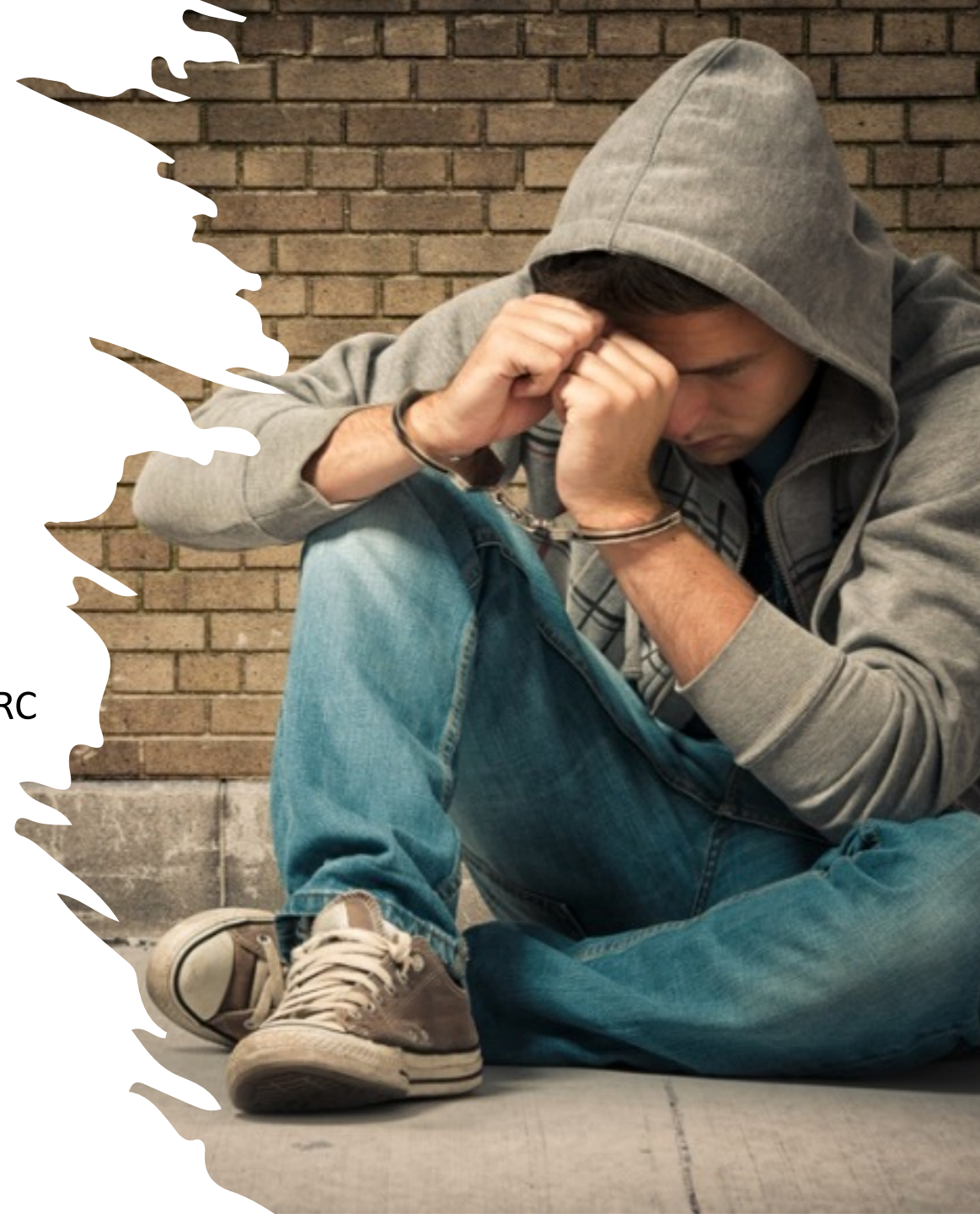
# Current situation in youth justice

- Justice is a non-devolved area – England and Wales
- Youth Justice Board, Youth Offending Teams, HMIP, MoJ
- Youth justice statutorily comprises health, education, social services, police and probation
- Mixture of devolved and non-devolved areas – confused mess!
- Wales shackled to Westminster for macro youth justice policy but has carved out a Welsh approach ('dragonisation')
- ...which has now been adopted by England!



# Issues for *non*-devolved youth justice

- Difference in approach, esp potentially with new Labour Government
  - MoJ never talks about Child First Justice – easy to reverse (Kier Starmer rhetoric)!
- Children’s Rights – incorporated into Welsh legislation/policy (2011) but NOT in England
- Minimum age of criminal responsibility – conflicts with the UNCRC
- Conflict *within* youth justice as some of the constituents *are* devolved
- Diverging approach to children in custody – Wales aim for zero custody
- Stuck with the ‘New Labour’ ‘new youth justice’ design (issues raised cannot be addressed)



# Commission on Justice in Wales

(Thomas Commission, 2019)



- Justice should be at the heart of Govt
- At the mercy of Westminster justice cuts!
- Needs to align to distinctive Welsh principles
- Significant concerns with the way Westminster is dealing with (criminal) justice
  - Victims
  - Legal aid
  - Policing
  - Mental health/self-harm
  - Emphasis on prison
  - Disproportionality
  - Women
- Difficulties caused by mixed devolution – devolution light *disadvantages* us!



# Commission on Justice in Wales

(Thomas Commission, 2019)

Need for:

- **Full legislative devolution, combined with executive powers**
- **Full transfer of the funding for the justice system**
- **The 'law applicable in Wales' becomes the 'law of Wales'**

Allowing:

- Closer liaison between WG and judiciary on legislation and developments
- Welsh-centric justice development

Covering:

- Courts/tribunals, police, prisons, probation, youth justice...



Y Comisiwn Annibynnol ar  
Ddyfodol Cyfansoddiadol Cymru  

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The Independent Commission on  
the Constitutional Future of Wales

# Independent Commission on the Constitutional Future of Wales

(Final Report, Jan 2024)

- Not viable to retain the status quo OR *'unwinding'* devolution
- Viable options:
  - Entrenched devolution – devolution expansion, including justice and policing
  - Federal approach – includes separation of UK Parliament and Government's responsibility for England from their responsibility for the UK
  - Independence – Wales as a sovereign country, eligible to join the EU!



Y Comisiwn Annibynnol ar  
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# Independent Commission on the Constitutional Future of Wales

(Final Report, Jan 2024)

- Suggests: full (legislative and executive) devolution (over 10 yrs!) starting with policing, youth justice, probation
- Scotland and N Ireland have (virtually) total devolved responsibility for justice (inc. courts, prisons, probation and legal aid)
- Currently: *'The powers devolved to Wales are broadly the same as Scotland, with the exception of justice and policing'* (p51)....Why the exception?
- *'With devolution, there would be scope for innovation and reform'* (p68)

# Commission on the UK's Future

(Brown Report, Dec 2022)

*'devolution to Wales should be constrained only by reserving those matters which are necessary to discharge the purposes of the UK as a union'* (p112)

- Trajectory towards full devolution of justice?

**BUT**





# Commission on the UK's Future

(Brown Report, Dec 2022)

*'new powers over youth justice and the probation service'* (p113)

Therefore, *not* including (amongst other aspects):

- Police
- Courts
- Prisons (*unclear* what is included)

**So, youth justice would remain a hybrid of devolved/non-devolved!**



# Likely near future?

## Power to change...?:

- MACR (?)
- Youth justice policies, system/s and agencies
- Criminal records (?)
- Closer ties with children's rights (duty to pay due regard)

## No power to change:

- Courts – types, sentencing (inc. use of custody)
- Policing – still challenging despite '*Child Friendly Policing*' (NPCC, 2015)
- Prisons – types, nature

**Why is Wales so different to Scotland?!**



# The possible future?

**Complete devolution of justice gives Wales the power to properly treat children as 'children first'... down to whether they should be criminalised at all!**

# References

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