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# Youth Crime briefing

## The detention and training order: current position and future developments

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### Background

The detention and training order (DTO) is the standard custodial sentence available for young people in the youth court.<sup>1</sup> Introduced by section 73 of the Crime and Disorder Act 1998, the order became available for offences sentenced on, or subsequent to, 1 April 2000. During 2005/06, 6,550 DTOs were imposed, accounting for more than 92% of all custodial penalties imposed on children and young people below the age of 18 years.<sup>2</sup>

Since implementation, the legislative provisions have remained largely unchanged.<sup>3</sup> Case law has however helped to clarify the legislation in certain respects and there have been a number of changes in the way that the DTO is administered. Moreover, the Offender Management Bill, before Parliament at the time of writing, contains a number of clauses that will, if passed in their current form, impact on its operation. In that context, this briefing paper seeks to provide an overview of the DTO as things currently stand and to outline the pending legislative developments.

### Introduction of the DTO

The DTO replaced the secure training order (previously available for children aged 12 – 14 years inclusive) and detention in a young offenders institution (previously available for those aged 15 – 17 years) with a single, uniform sentence involving a period in detention followed by a period subject to statutory supervision in the community. The order was intended to be 'a more constructive and flexible custodial sentence providing a clear focus on preventing offending'.<sup>4</sup> The DTO is currently available, in the youth court or crown court, for children and young people aged 12 to 17

years of age. There is provision in the legislation to extend the sentence to 10 – 11 year old children by order of the Secretary of State but, at the present time, the Government has given no indication that it intends to implement such an extension.

### Power to make the order

The DTO is a custodial sentence and the general restrictions on the imposition of custody accordingly apply.<sup>5</sup> More specifically, an order can only be made where:

- The young person is convicted of an offence that is imprisonable in the case of an adult; and
- The court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone, nor a community sentence, can be justified.

There is, in addition, a further circumstance in which a DTO can be imposed, even where the offending would not otherwise be sufficiently serious to warrant custody. The court can make a custodial order if the young person refuses to agree to a community penalty that requires consent. Consent is required in the case of:

- An action plan order with a drug treatment and testing requirement
- A supervision order with a requirement for drug treatment and testing<sup>6</sup> or treatment for a mental condition
- A community rehabilitation order with a requirement for treatment for a mental condition or drug or alcohol dependency
- A drug treatment and testing order.<sup>7</sup>

If any of the above criteria apply, a DTO is available in the case of a young person aged 15 – 17 years.

There are further pre-conditions that must be satisfied when the child is below the age of 15 years. In such cases, the court must also be of the opinion that the child is a ‘persistent offender’. Moreover (in the event of the order being extended to children aged 10 – 11) where the defendant is below the age of 12 years, the court cannot impose a DTO unless it also considers that only a custodial sentence ‘would be adequate to protect the public from further offending’ by that individual child.

### The question of persistence

There is no statutory definition of the term ‘persistent offender’. Home Office guidance makes it clear that it is a matter for the courts to determine what constitutes persistence; in particular, there is no requirement that sentencers should have regard to the definition of ‘a persistent young offender’ used for the purposes of ‘fast tracking’.<sup>8</sup>

Two judgements of the Court of Appeal in 2000, the year the DTO was implemented, suggested that there might be extremely wide discretion as to the interpretation of persistence. In the first case, the Court held, albeit in rather particular circumstances, that a 14 year old, with no previous convictions, who was sentenced at the same hearing for two similar offences of robbery, committed at separate times but within a period of 24 hours, might be regarded as persistent for the purposes of a DTO.<sup>9</sup> In the second case, a child of 14 years with no previous convictions who embarked on a series of burglaries and taking vehicles without the owner’s consent over a period of time was also held to have demonstrated a sufficient degree of persistence.<sup>10</sup>

Such a broad interpretation allowed the imposition of a DTO in a considerable number of cases where a custodial sentence would not previously have been available to the youth court for children of that age. The secure training order – the custodial penalty for children aged 12 – 14 years available prior to the DTO – could only be made if the child had been convicted of three or more offences and had breached a supervision order, or had been convicted of a further offence while subject to such an order. The decisions of the Appeal Court also implied that a custodial sentence might be available below the threshold at which an intensive supervision and surveillance programme could be offered to sentencers.<sup>11</sup>

More recent guidance from the Court of Appeal has, however, considerably restricted the scope of the term ‘persistent offender’. The case concerned a 14-year-old boy who had been sentenced to an 18 month DTO for two offences of possessing a prohibited firearm, two offences relating to possession of ammunition, and a single offence of possessing cannabis with intent to supply. The firearms, which were found in the boy’s bedroom, were replica handguns that had been converted to fire live ammunition. The appellant had two previous convictions, an offence of theft for which he was conditionally discharged; and an offence of aggravated vehicle taking for which a six month supervision order was imposed.<sup>12</sup>

The Court confirmed that the phrase ‘persistent offender’:

‘is an ordinary term of the English language and falls to be applied in its clearly understood meaning’.

While the offences were very serious ones for which a custodial sentence would clearly be merited even in the case of a young person, the Court was not satisfied that, in this case, the child ‘could properly be regarded as a persistent offender’, given the ordinary meaning of the term. Nor did the fact that he had offended towards the end of a period of supervision imposed for a previous offence satisfy the criterion. The DTO was quashed and a two year supervision order, with an intensive supervision and surveillance programme, made in its stead. As a consequence, it now appears that while there remains considerable scope for interpretation in individual cases, the requirement that a child should be considered a persistent offender before he or she becomes eligible for a DTO, provides a greater protection than hitherto.

### Determining the length of the order

The DTO is a determinate custodial sentence which must be made for a specified period of four, six, eight, ten, twelve, eighteen or twenty-four months. The sentence imposed must be for the ‘shortest term ... that in the opinion of the court is commensurate with the seriousness of the offence’.<sup>13</sup> On implementation, the maximum length of order represented a significant increase in the custodial powers available to the youth court, for young people aged 15 – 17 years, from six months for a single offence to two years.<sup>14</sup> It might be noted, in this context, that for adult defendants in the magistrates’ court, the equivalent maximum custodial sentence remains at six months.<sup>15</sup>

Conversely, the fact that the DTO – unlike custodial orders for adults – is subject to a statutory minimum, means that the order is not automatically available once the court has determined that the offence is so serious as to pass the custody threshold. The gravity of the offence must also warrant a sentence of at least four months. The Court of Appeal has, in this context, clarified that where the appropriate length of detention is less than the minimum permissible term for a young person below the age of 18 years, a custodial sentence would be wrong in principle, even if the custody threshold is clearly crossed.<sup>16</sup>

In determining the length of sentence, the court is also obliged to consider whether a discount should be given for a guilty plea.<sup>17</sup> In general terms, a defendant is entitled to such a discount, but the allowance might be much reduced or altogether nullified, where, for instance, he or she changes plea at a late stage, or enters a plea as a consequence of the strength of DNA evidence or being caught ‘red handed’. The discretion of the court as to the extent of discount is somewhat limited by the structure of the DTO, since the term of the order must be for a specified period. For instance, in *R v Kelly*, the Court of Appeal felt obliged to reduce a two year DTO to eighteen months in order to give credit for a guilty plea, because that was the next highest permitted length of sentence, even though the resulting term might have been considered too short to be commensurate with the seriousness of the offence.<sup>18</sup>

Finally, in coming to a decision as to the appropriate length of the order, any period spent ‘remanded to custody’ in relation to the current case is relevant. For these purposes, a remand to custody includes any period where the young person is:

- Detained in police detention
- Remanded or committed to custody
- Placed in local authority secure accommodation subject to a court ordered secure remand<sup>19</sup>
- Remanded to hospital under the Mental Health Act 1983.<sup>20</sup>

Periods of restricted liberty are not, as is the case for other custodial penalties, automatically discounted from the time to be served in detention, but must be taken into account by the court at the point of sentence. This inevitably poses difficulties given that the DTO must be made for one of the periods specified in the legislation. The Court of Appeal has consistently taken the view that ‘there is no requirement to make a precise reflection of the remand time when determining the length of the detention and training order’.<sup>21</sup> In particular, where the period of remand is a matter of days, it would not usually be appropriate to reduce the custodial sentence, since that would involve giving a minimum of two months credit. The length of the DTO would accordingly not be affected in such circumstances. Longer periods spent on remand – a matter of weeks or months – would usually lead to a shorter sentence, depending upon the length of the order the court would otherwise impose. For instance, if a young person had spend four weeks on remand, it would be reasonable for the court to conclude that no allowance could be made if the appropriate custodial sentence was for 24 months, since that would entail a reduction to 18 months.

By contrast, if the appropriate sentence was a DTO of four months, the court might legitimately take the view that a non-custodial sentence should be imposed.<sup>22</sup>

A further complication arises since, in the case of an adult, any allowance made for time already served on remand is deducted from the period to be served in custody, rather than from the whole of the determinate sentence. In effect, since only half the determinate sentence is served, this provision is the equivalent of the remand period counting as double if were deducted from the determinate sentence. The Court of Appeal has recently determined that it would be unjust if young people were to face a harsher sentencing regime than adults, and for this reason, courts should double the period spent on remand before taking it into account in deciding upon the total length of a DTO.[1] *R v Eagles* [2006] EWCA 2368.<sup>23</sup>

It is good practice, where a DTO is a likely outcome, for PSR authors to make reference to the exact period that the young person was remanded to custody to assist the court in making full allowance for that period.

**Structure of the order**

The DTO comprises of two distinct elements: a period of detention and training, served in the juvenile secure estate,<sup>24</sup> followed by a period in the community subject to statutory supervision. By

default, transfer to the community is at the halfway point,<sup>25</sup> but there is provision for early or delayed release – one or two months – depending on progress against the training plan, and the length of the order, as indicated in the table below.

<b>Detention and training order – early and delayed release</b>	
<b>Length of order</b>	<b>Release provisions</b>
Four or six months	Release at the halfway point Early or late release not available.
Eight, ten or twelve months	Release one month before or after the halfway point
Eighteen or twenty four months	Release one or two months before, or one or two months after, the half way point

Early release is determined by the governor where the sentence is served in a young offender institution (YOI), or by the YJB where the young person is placed in a secure training centre (STC) or secure children’s home (SCH), subject in both cases to recommendations of the youth offending team and secure establishment staff. Release later than the halfway stage requires an application to the youth court to extend the period of detention.

Since 2002, there has been a presumption of early release subject to an electronically monitored curfew, at the earliest point allowed by the legislation.<sup>26</sup> Young people who have committed certain violent or sexual offences are, however, not subject to the presumption and will only be released early if they have made exceptional progress in custody.<sup>27</sup> In addition, a young person may be denied early release depending upon his or her behaviour within the custodial establishment, or where he or she has made ‘exceptionally bad progress against his or her training plan because of a consistent failure to cooperate or failure to take responsibility for his / her behaviour’.<sup>28</sup>

**Placement**

Young people subject to a DTO must serve the custodial phase of the order in ‘secure accommodation’, defined in the legislation as

- STC
- YOI
- SCH
- Other accommodation ‘provided for the purpose of restricting liberty’ as directed by the Secretary of State.<sup>29</sup>

Allocation to the juvenile secure estate is determined by the YJB’s placement team. The decision is influenced by the following factors:

- Any assessment by the YOT that the young person is vulnerable and may be at risk of self harm or suicide
- Age and gender of the young person
- Offence type and previous offending history
- Proximity to the young person’s home community

- Availability of particular services within the establishment to meet assessed individual need.

More specifically, there is a presumption that all children below the age of 15 years, girls below the age of 17 years, and, subject to vacancies being available, vulnerable 15 – 16 year-old boys, should be placed in an SCH or an STC. Non-vulnerable 15- 16 year-old boys and 17-year-old males and females will generally be placed in prison service YOIs.<sup>30</sup>

In practice, however, the room for discretion is heavily constrained by the relatively small proportion of placements available outside of prison service accommodation. SCHs and STCs combined, account for just 15% of the available places within the juvenile secure estate as indicated in the following table.<sup>31</sup>

Type of establishment	Operational capacity at March 2007	Percentage of total secure estate placements
Young offender institutions	3,003	85%
Secure training centres	301	8.5%
Secure children's homes	235	6.6%
Total	3,539	100%

Inevitably, therefore, there is significant competition for available spaces outside of YOIs, and places are allocated on the basis of the following order of priority:

- Children below the age of 15 years
- Girls aged 15 – 16 years
- Boys aged 15 – 16 years who are assessed by the YOT as being at risk of suicide or self harm, or who have previously made a serious attempt at suicide or self-harm while in custody
- Boys aged 15 – 16 years, who are otherwise assessed as vulnerable with a high number of risk factors, other than those indicating a risk of suicide or self-harm
- Young people aged 17 years who are assessed by the YOT as being at risk of suicide or self harm, or who have previously made a serious attempt at suicide or self-harm while in custody.<sup>32</sup>

The YOT is responsible for notifying the YJB placements team, by secure email, of young people who may require a secure placement, no later than the day before the sentencing hearing, by completing a Placement Alert Form. In addition, the YOT is required to undertake a vulnerability assessment of every young person who is at risk of a custodial sentence using the relevant section of *Asset*.<sup>33</sup> Where the young person is considered to be vulnerable, supporting documentation must accompany the Placement Alert Form. The final decision as to placement is made by the YJB placement team, following consideration of the relevant documentation, in the light of available vacancies and the characteristics of other young people who need to be accommodated on the day in

question. The decision, and documentation authorising placement within the relevant establishment, will be relayed to the YOT once a custodial sentence has been imposed. In the event that a young person assessed as vulnerable is placed in a YOI, the Board will issue a 'serious vulnerability alert' to the establishment where there is a risk of suicide or self-harm, or a 'first night alert' where the vulnerability is of a different form.<sup>34</sup> The court duty officer should also ensure that a vulnerability alert accompanies the young person to the secure establishment.

### The custodial element of the order

The DTO is intended to be a 'seamless sentence' that addresses the underlying causes which have led to the young person's offending both during the custodial element of the order and subsequently during the period of community supervision. Sentence planning should begin as soon as possible and national standards require that an initial planning meeting, involving the YOT, secure establishment staff, the young person and his or her parents or carers, and other relevant persons should take place within ten working days of admission.<sup>35</sup> The purpose of the meeting is to agree a training plan that sets targets for the young person, both while he or she is within the secure establishment and on release to the community.<sup>36</sup>

The plan should:

- Be based on the *Asset* assessment
- Take account of the views of the YOT responsible officer and secure estate staff
- Ensure that issues of vulnerability and risk are fully addressed
- Include work to address the factors that contributed to the offending behaviour
- Address the young person's education, health, substance misuse and accommodation needs during the custodial phase of the sentence and on release to the community
- Clearly spell out the objectives to be achieved while the young person is in custody and on transfer to the community, indicating how they will be achieved
- Describe the contribution that each agency will make in meeting those objectives and timescales within which they will be delivered.

Delivery of the training plan is the responsibility of the secure establishment staff with the active support of the YOT responsible officer. Monitoring the young person's progress against the objectives set is considered an essential part of the planning process. Training plans should be reviewed within one month of the initial planning meeting, and every two months thereafter for orders of four, six or eight months, or every three months for longer orders.<sup>37</sup> The review process will also establish whether the young person should be released early subject to an electronically monitored curfew.

One month prior to release, a resettlement review meeting should be held to confirm arrangements for

transfer to the community. A final review meeting should be held ten days before the young person's release date to confirm that preparations to implement the training plan in the community are in place. Details for release should be agreed, including where the young person is to live, travel arrangements, initial reporting arrangements, and the requirements to be included in the young person's notice of supervision.

To ensure consistency of planning between the custodial and community elements of the sentence, national standards require that young people subject to DTOs of twelve months or less are visited at least once a month by the YOT. For longer orders, the frequency of visits should be agreed as part of the training plan, but must be no less than once every two months. It is good practice for such visits to be conducted by the member of staff who will be responsible for the young person's programme of supervision when he or she is released.<sup>38</sup>

### The period of community supervision

On release from custody, the young person will be subject to statutory supervision until the end of the order. The community element is regarded as an integral part of the overall sentence and is intended to build on work commenced during detention. The intention is that the DTO training plan will cover both phases of the sentence, and the final review meeting will already have identified objectives that the young person is expected to work towards during the community phase and determined the requirements that are to be included in the notice of supervision.

The supervision notice will contain standard conditions such as those obliging the young person to keep in touch with his or her supervising officer, to attend appointments and to receive home visits in accordance with instructions. The notice may also include additional requirements that are particular to the individual's circumstances.<sup>39</sup> Where the young person has been granted early release subject to an electronically monitored curfew, compliance with the terms of the curfew until the halfway stage of the order (at which date the young person would have been discharged from custody in any event) will be a constituent element of the terms of supervision. The default curfew hours for this purpose are from 7.00pm to 7.00am but may be varied in individual cases.<sup>40</sup>

In addition, young people, who satisfy the eligibility criteria, may be subject to an intensive supervision and surveillance programme (ISSP) as a condition of their supervision. YJB guidance suggests that a DTO ISSP may be appropriate where:

- There are concerns about managing the young person's risk in the community; or
- The structure of ISSP will help the transition from custody to the community.

National standards require that the young person must be seen on the day of release,<sup>41</sup> and as a matter of good practice, the supervising officer should ensure that he or she understands the requirements of the notice of supervision and the implications of non-compliance. The responsible officer must also make a home visit to

the young person within five working days and once a month thereafter.<sup>42</sup> Contact must be for a minimum of twice weekly for the first three months following transfer to the community, and then at least once every ten working days for the duration of the order.<sup>43</sup>

While the basis of the intervention plan will have been determined while the young person is in custody, the planning process should be informed by the *Asset* intervention planning documentation and guidance.<sup>44</sup> The plan must be reviewed within ten working days of release to ascertain that it is still relevant to the young person's circumstances and to address any difficulties at an early stage. Thereafter, it should be subject to review every three months or at the end of the order, whichever is sooner.<sup>45</sup> *Asset* should be updated as part of the review process.

The procedures for enforcing the community element of the DTO are similar to those for community sentences supervised by the YOT. The responsible officer should determine whether any apparent failure to comply with a condition of the notice of supervision is acceptable in the light of any explanation provided by the young person.<sup>46</sup> Breach action should be initiated, within five working days, where there is a further unacceptable episode of non-compliance if the young person has previously been issued with two formal warnings for unacceptable failures, unless the YOT manager gives written agreement to depart from national standards.

Where the youth court<sup>47</sup> is satisfied that there has been a failure to comply with a condition of the notice of supervision, it may:

- take no action and allow the order to continue
- impose a fine up to £1,000 (or £250 in the case of a child below the age of 14 years); or
- require that the young person be returned to detention for a period of up to three months or the remainder of the order, whichever is the lesser.<sup>48</sup>

### Reoffending during the currency of the order

Where the young person is convicted of a further imprisonable offence committed during the period of DTO community supervision, the court may order that he or she be recalled to custody for a period not greater than that from the date of the commission of the offence to the end of the order. Where the court elects to invoke this power, the period of detention is additional to any substantive penalty imposed for the new offence. If the new penalty is a custodial sentence, it may be made concurrent with, or consecutive to, the period of recall.<sup>49</sup>

### Proposed legislative amendments to the detention and training order

The Offender Management Bill, introduced to Parliament on 22 November 2006, contains two provisions that, if passed, will impact upon the operation of the DTO as described in the earlier sections of this briefing. In particular, changes are proposed to the arrangements for determining early

release, and to the forms of accommodation in which young people subject to DTOs can be held during the custodial element of the order.<sup>50</sup>

**Changes to early release**

At present, the legislation allows early release one or two months before the halfway point, depending upon the length of the DTO, as indicated in the earlier table. The framework is a rigid one: if early release is authorised, it must take place exactly one or two months before the midway date, as appropriate. The only exception is where the early release date would fall on a weekend or public holiday, in which case the young person should be discharged on the latest possible working day prior to that weekend or holiday.<sup>51</sup>

Clause 29 of the Bill<sup>52</sup> seeks to introduce an element of flexibility into the arrangements, permitting early release *up to* one or two months early, according to the length of order, as indicated in the following table.

Early release – changes proposed in the Offender Management Bill		
Length of order	Existing provisions	Proposed amended provisions
Four or six months	Early release not available	Early release not available
Eight, ten or twelve months	Presumption of early release, at <i>exactly</i> one month before midway point	Presumption of early release <i>at any date up to</i> one month before midway point
Eighteen or twenty four months	Presumption of early release, at <i>exactly</i> one month, or <i>exactly</i> two months, before midway point	Presumption of early release, <i>at any date up to</i> one month, <i>or at any date between</i> one and two months, before midway point

The amendment is intended to meet concerns that some young people are denied early release, even where it is agreed in principle, simply because arrangements for their transfer to the community are not fully in place on the relevant date. For instance, currently, if a young person did not have suitable accommodation that would facilitate electronic monitoring of a curfew one month prior to the midpoint of the order, he or she would be required to remain in custody until the midpoint, even if an appropriate address was found in the interim. The proposed legislative change would allow transfer to the community on any date that the accommodation became available.

The amendment would, if passed into statute, have the potential to avoid injustice in some individual cases such as that cited above, and on that basis most of those working in the youth justice system are likely to welcome it. One of the benefits of the existing provisions, however, is that it provides a clear deadline by which all the arrangements for the young person’s release must be in place. Practitioners will need to take

care that increased flexibility does not lead to slippage, and young people remaining in custody longer than is necessary, simply by virtue of the fact that there may not be the same focus on a particular date.

**Changes to the form of accommodation in which young people can be held**

At present, the legislation in relation to DTOs prescribes that young people must be held in secure accommodation during the custodial phase of the order. Secure accommodation includes any establishment within the juvenile secure estate or other accommodation ‘provided for the purpose of restricting liberty’ as directed by the Secretary of State.<sup>53</sup> By contrast, longer custodial sentences for children and young people – detention at her Majesty’s pleasure for those convicted of murder, long term detention for grave crimes and sentences for young people deemed to be ‘dangerous’ under the Criminal Justice Act 2003<sup>54</sup> – allow placement in any form of accommodation as directed by the Secretary of State.<sup>55</sup>

Clause 30<sup>56</sup> of the Offender Management Bill seeks to introduce a similar flexibility in relation to the placement of young people subject to DTOs. It does so by replacing all references to ‘secure accommodation’ with ‘youth detention’. The latter term is broader in scope and includes the secure estate and other forms of accommodation as authorised by the Secretary of State without any requirement that the purpose of such accommodation should be to restrict liberty. Any young person recalled to custody for breach of the community element of the DTO or consequent to further offending would also be liable for placement in youth detention.

The effect of the amendment, if passed, would be to allow placement of young people outside of the juvenile secure estate, in non-secure accommodation, during the custodial phase of the order. The Explanatory Notes to the Bill indicate that as a consequence, it would:

‘be possible to place a young person in other forms of local authority accommodation as well as in a secure children’s home’.

But this is intended to be indicative of just one possibility and other forms of accommodation might equally be approved by the Secretary of State in particular circumstances. Indeed it seems clear that the amendment reflects proposals developed by the YJB during 2005 in its strategy for the secure estate. In laying out future plans for reconfiguring accommodation used for young people in custody, the YJB argued that:

‘some children and young people do not require the relatively high level of security that currently applies to all those held in the secure estate ... For some children and young people, following careful assessment, open and less secure accommodation may be appropriate’.<sup>57</sup>

The strategy document goes on to specify some types of accommodation that might be considered appropriate. In addition to open children’s homes and open sections of secure children’s homes, residential special schools, therapeutic communities and mental

health settings are listed as possible options. Although details of implementation have yet to be clarified, it seems likely that most of those selected for an alternative form of placement would commence their sentence within the secure estate, for a period of assessment, prior to being allocated to open provision. Eligibility will presumably depend upon that assessment indicating low levels of risk as well as high levels of need that are unlikely to be met within the secure estate. The decision as to placement in open conditions will be taken by the YJB placement section.

The importance of having alternatives to prison service accommodation for young people is underlined by recent figures showing that, in February 2007, 39.9% of those held in the juvenile secure estate, a total of 1,148 young people, had been assessed as vulnerable by YOTs, a number far greater than can be accommodated outside of YOIs under the current arrangements.<sup>58</sup> Nonetheless, it is clear the provisions of the Offender Management Bill will not in themselves alleviate that situation. Jon Fayle, previously head of policy for the secure estate at the YJB, has noted that the number of children affected by the proposals would almost certainly be small, not least because of a shortage of suitable non-secure placements. He characterises the amendment as a ‘small step in the right direction’.<sup>59</sup>

There has been widespread support for the proposal as a development that could see a modest reduction in the numbers of children in custody, but some criticism has also been made. The Association of Directors of Social Services, for instance, has expressed concern about the potential impact of placing children who are subject to DTOs in children’s homes alongside residents who are there for reasons of welfare.<sup>60</sup> The Youth Courts Committee of the Magistrates Association has expressed similar reservations and is also concerned at the potential that an administrative process, subsequent to the sentencing hearing, might undermine the court’s decision that a particular young person should be placed in secure provision.<sup>61</sup>

## Conclusion

On implementation in April 2000, the DTO led to an initial sharp rise in custody, in part at least because it was presented as a more constructive disposal than those it had displaced: the population of the secure estate rose from 2,610 in April 2000 to 2,968 in August of that year.<sup>62</sup> In the event, reconvictions rates associated with the order have proved to be no better than those for previous custodial measures.<sup>63</sup> While there have been fluctuations in the intervening period, the level of child custody remains extremely high by historical standards. Increased flexibility in relation to early release dates and the type of accommodation in which young people subject to DTOs may result in a small number of young people being released earlier than they otherwise would have been, or being held in alternative forms of accommodation. Reducing the numbers held in prison service accommodation by any significant margin, however, will require a substantial fall in the overall custodial population which the amendments proposed in Offender Management Bill, will not, of themselves, deliver.

## References

- 1 Other custodial disposals are available for children and young people whose cases are heard in the crown court. For further details of these other orders, see Nacro (2004) *The grave crime provisions and long term detention*, Youth crime briefing, September 2004 and Nacro (2006) *The dangerousness provisions of the Criminal Justice Act 2003 and subsequent case law*, Youth crime briefing, December 2006
- 2 Derived from Youth Justice Board (2007) *Youth Justice Annual Statistics: 2005 / 06*, Youth Justice Board
- 3 The legislative provisions for the detention and training order are currently contained in sections 100 – 107 of the Powers of Criminal Courts (Sentencing) Act 2000, which in effect restate sections 75 – 79 of the Crime and Disorder Act 1998 with some minor drafting amendments
- 4 Home Office (1997) *No more excuses – a new approach to tackling youth crime in England and Wales*, Home Office
- 5 The restrictions on imposing custody are contained in section 152 of the Criminal Justice Act 2003
- 6 Drug treatment and testing requirements of action plan orders and supervision orders have been piloted in five youth offending team areas since December 2004. The pilots have been evaluated – Matrix Research and Consultancy and Institute for Criminal Policy Research, Kings College (2007) *Evaluation of drug interventions programme pilots for children and young people: arrest referral, drug testing and drug treatment and testing requirements*, Home Office Online Report 07/07. There is currently no date for national roll out
- 7 Section 161 of the Criminal Justice Act 2003 also provides for custody to be available where a young person refuses to provide a sample for pre-sentence drug testing where ordered to do so by the court. The provision empowering the court to order such testing, however, is yet to be implemented
- 8 The ‘fast tracking’ definition of a persistent young offender is ‘a young person aged 10-17 who has been sentenced by any criminal court in the UK on three or more separate occasions for one or more recordable offences, and within three years of the last sentencing occasion is subsequently arrested or has an information laid against them for a further recordable offence’
- 9 R v Smith [2000] Crim App R(S) 62
- 10 R v Charlton [2000] Justice of the Peace, Volume 164, 14 October 2000
- 11 Although ISSP is available through other routes, the ‘persistence criterion’ targets the programme to children who have been charged, warned or convicted of offences on four or more separate dates within the preceding 12 months and previously received at least one community or custodial penalty. For further details, see *ISSP management guidance*, Youth Justice Board, 2005
- 12 R v TTG [2004] EWCA Crim 3086
- 13 Section 153 of the Criminal Justice Act 2003. For an overview of the factors that courts must take into account in determining seriousness, see Nacro (2003) *The sentencing framework for children and young people*, Youth crime briefing, December 2003
- 14 Prior to April 2000, the maximum custodial sentence available in the youth court, for this age group, was six months detention in a young offender institution for a single offence, or twelve months for more than one offence. It was open to the youth court to commit the young person to the crown court for sentence, in which case the maximum penalty was two years detention in a young offender institution. The power to commit for sentence in these circumstances was repealed with the increase in the youth court’s powers
- 15 Section 154 of the Criminal Justice Act 2003 provides for an increase to 12 months in the adult magistrates’

- court's custodial powers in respect of a single offence. At the time of writing, the provision has not been implemented
- 16 R v Anthony and others [1999], Justice of the Peace, Vol 163, 18 September
- 17 Section 144 Criminal Justice Act 2003
- 18 R v Kelly [2001] Criminal Law Review 583
- 19 For an overview of court ordered secure remands, see Nacro (2003) *Remands to local authority accommodation*, Youth crime briefing, June 2003
- 20 For an overview of remands to hospital under these provisions, see Nacro (2005) *Mental health legislation and the youth justice system*, Youth crime briefing, December 2005
- 21 Ashford, M, Chard, A and Redhouse, N (2006) *Defending young people in the criminal justice system*, Legal Action Group
- 22 R v Fieldhouse and Watts [2000] cited in Ashford, M, Chard, A and Redhouse, N (2006), op cit
- 23 [1] R v Eagles [2006] EWCA 2368. <sup>23</sup>
- 24 The juvenile secure estate is comprised of secure children's homes, secure training centres and young offender institutions
- 25 Where the court imposes concurrent DTOs, the starting point for calculating transfer to the community is the halfway stage of the longest sentence. Where a court imposes consecutive DTOs, the relevant date is the halfway point of the later order
- 26 For further details, see Nacro (2003) *Detention and training order early release – the revised guidance and use of electronic monitoring*, Youth crime briefing, March 2003
- 27 For a list of the offences where there is a presumption against early release, see Home Office / Youth Justice Board (2003) *The detention and training order: revised guidance on electronically monitored early release*
- 28 Home Office / Youth Justice Board (2003) op cit
- 29 Section 107 of the Powers of Criminal Courts (Sentencing) Act 2000
- 30 Youth Justice Board (2004) *Youth Justice Board – Secure Facilities Placement Protocol*, YJB
- 31 Figures given by Gerry Sutcliffe, Under Secretary for Criminal Justice and Offender Management, in answer to a Parliamentary Question, *Hansard, House of Commons, Column 1314W, 26 March 2007*
- 32 Youth Justice Board (2004) op cit
- 33 *Asset* is the standard assessment form developed by the YJB for use with young people who come to the attention of the youth justice system
- 34 Youth Justice Board (2004) op cit
- 35 National Standards for Youth Justice Services (2004), Paragraph 11.5
- 36 A framework for assessment, sentence planning, and recording decisions, for young people subject to DTOs is provided in the form of a set of documentation, produced by the YJB, known collectively as the T – forms. The forms and guidance for their use are available on the Board's website at [www.yjb.gov.uk/en-gb/practitioners/Custody/TForms/](http://www.yjb.gov.uk/en-gb/practitioners/Custody/TForms/)
- 37 National Standards for Youth Justice Services (2004), Paragraphs 11.12 -11.13
- 38 National Standards for Youth Justice Services (2004), Paragraph 11.16. There are additional requirements on the local authority where the young person is looked after. An excellent model of good practice for looked after children is provided by Hart D (2006) *Tell them not to forget about us: a guide to practice with looked after children in custody*. National Children's Bureau
- 39 A list of standard supervision notice requirements is given in Youth Justice Board (2001) *Secure facilities placement guidance*, Appendix 7, YJB. The same document suggests that additional conditions might include requirements to take part in specified activities, to keep appointments with specified individuals, to refrain from particular activities, not to associate with particular individuals, and to comply with a curfew
- 40 Home Office / Youth Justice Board (2003) op cit
- 41 National Standards for Youth Justice Services (2004), Paragraph 11.17
- 42 National Standards for Youth Justice Services (2004), Paragraph 11.19
- 43 National Standards for Youth Justice Services (2004), Paragraph 11.20
- 44 For details of the *Asset* intervention planning process, see [www.yjb.gov.uk/en-gb/practitioners/Assessment/Asset.htm](http://www.yjb.gov.uk/en-gb/practitioners/Assessment/Asset.htm)
- 45 National Standards for Youth Justice Services (2004), Paragraph 11.18
- 46 For further details of what constitutes an acceptable explanation, see Nacro (2002) *Enforcement in the youth justice system*, Youth crime briefing, December 2002
- 47 There is no provision for breach of a DTO to be heard in the crown court, even if the original order was imposed by the crown court
- 48 In calculating the period that remains of the order, the relevant date is that of the court hearing rather than that of the commission of the offence. See 'Practical points – DTO breach' in *Justice of the Peace* V 166 (656), 7 August 2002. There is nothing to prevent the court from continuing to deal with the breach after the order has expired but, in such circumstances, there is no power of recall
- 49 Section 105 of the Powers of the Criminal Courts (Sentencing) Act 2000
- 50 The proposals described reflect those in the Bill as at the end of May 2007
- 51 Home Office / Youth Justice Board (2002), op cit. The guidance also acknowledges that if a young person is mistakenly held in custody for any reason beyond a properly early release date, he or she should be released immediately as soon as the error comes to light
- 52 Originally Clause 24 when the Bill was introduced
- 53 Section 107 of the Powers of Criminal Courts (Sentencing) Act 2000
- 54 For further details of these sentences, see Nacro (2004) op cit and Nacro (2006) op cit
- 55 The statutory provisions are contained in Section 92 of the Powers of Criminal Courts (Sentencing) Act 2000 and Section 235 of the Criminal Justice Act 2003
- 56 Originally Clause 25 when the Bill was introduced
- 57 Youth Justice Board (2005) *Strategy for the secure estate for children and young people: plans for 2005/06 and 2007/08*, YJB
- 58 Figures given by Gerry Sutcliffe, Under Secretary for Criminal Justice and Offender Management, in answer of a Parliamentary Question, *Hansard, House of Commons, Column 1652W, 28 March 2007*
- 59 Fayle, J (2007) 'The place to be', in *Community Care*, 15 February 2007
- 60 Ahmed, M and McCormack, H (2006) 'Home Office looks to children's homes to by pass prisons' in *Community Care*, 7 December 2006
- 61 Magistrates Association Youth Courts Committee (2006) *Briefing notes on the Offender Management Bill*, Magistrates Association
- 62 Figures available at [www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/](http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/)
- 63 See for instance, Nacro (2003) *Counting the cost: reducing child imprisonment*, Nacro