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# scottish justice matters

# LIVING IT

**CHILDREN, YOUNG PEOPLE AND JUSTICE**

**Edited by Claire Lightowler, Susie Cameron and Brian Rogers**



# MAXIMUM DIVERSION MINIMUM INTERVENTION

An evidence base for Kilbrandon by **Lesley McAra** and **Susan McVie**

**THE YEAR 2014** marks the fiftieth anniversary of the publication of the Kilbrandon Report. This foundational document has given a distinctly Scottish imprimatur to our institutions of juvenile justice, involving active participation of the community (via the children's panel) and predicated on a social educational model of care. Kilbrandon posited that the underlying situation of children who offended was no different from those in need of care and protection: both sets were affected by problems in the normal upbringing process. A core aim was to avoid criminalisation and stigmatisation, by ensuring that interventions were put in place at an early stage and in a parsimonious way (based on the principle of minimal necessary intervention to ensure the child's well-being).

**The cultural practices of key agencies that come within the ambit of juvenile justice, result in the recycling of a group of young people who might readily be termed the 'usual suspects'**

In this article we set out key findings from the Edinburgh Study of Youth Transitions and Crime which are strongly supportive of the Kilbrandon ethos. However, we argue that the children's hearing system, as implemented, does not always live up to the original Kilbrandon aims. The cultural practices of key agencies that come within the ambit of juvenile justice, result in the recycling of a group of young people who might readily be termed the 'usual suspects'. Being caught has deleterious consequences for youngsters, serving to diminish rather than enhance their life-chances. We argue that we best celebrate Kilbrandon's half century by re-embracing a maximum diversion, minimum intervention approach to children who come into conflict with the law.

## **The Edinburgh Study**

The Edinburgh Study is a longitudinal programme of research on pathways into and out of offending for a cohort of around 4,300 young people who started secondary school in Edinburgh in 1998. We have multiple data sources including self-report questionnaires, semi-structured interviews at ages 13 and 18, data from official records such as schools, social work, children's hearings, and criminal conviction data. Finally we have built a geographic information system based on police recorded crime and census data to enable us to understand the dynamics of the neighbourhoods in which young people live.

## **Findings supportive of Kilbrandon**

Our findings show that offending is a normal part of the growing up process, but that those who become involved in a sustained pattern of serious and persistent offending are the most vulnerable groups of young people in society as a whole. We have found a strong and consistent relationship between needs and deeds.

An overwhelming majority (95%) of the cohort admitted to ever being involved in one or more of the offending behaviours included in the Study over the first six waves of data collection. However, most offending was petty in nature (such as minor forms of graffiti, stealing money from home), with only 28% of the cohort admitting to involvement in violence at the peak age of offending.

Our analysis has shown that those involved in violence were significantly more likely than others to be: victims of crime and adult harassment; engaged in self-harming behaviours; exhibiting a range of problematic health risk behaviours including drug use, disordered patterns of eating, symptoms of depression and early sexualised behaviour; having experience of family crises or breakup; and coming from a socially deprived background (McAra and McVie, 2010). The intensity of these adversities meant that involvement in offending became the principal means of attaining a sense of self-esteem and identity for these young people (McAra and McVie, 2012).

Importantly our findings show that only a very small proportion of those involved in serious offending were known to juvenile justice agencies (for example 76% of those involved in violence at age 17 were unknown to social work or the children's hearing system). The vast majority of young people desisted from offending without any form of agency intervention: 80% of those followed up at age 24 who reported early involvement in violence by age 12 but who had no agency contact, stopped offending by their early twenties, (McAra, 2014).

### The usual suspects

Turning to our findings which highlight implementation problems, here we show the ways in which the young people who were caught for offending became subject to a repeat cycle of intervention (no matter whether their offending had diminished in seriousness or persistence), forms of intervention which were damaging in the longer term.

Selection effects operated at three crucial decision-making stages of the juvenile justice process: police decisions to charge; to refer a case to the Reporter; and Reporter decisions to bring a case to a hearing (McAra and McVie, 2010). The key factor driving these selection effects was 'previous form'. For example, youngsters who had been charged by the police in previous years were 7 times more likely to be charged by the police at age 15 even when controlling for volume of police contact in the current year and involvement in serious offending. Those who had a history of early referral to a hearing were almost three times as likely to be brought to a hearing at age 15 than those referred to the Reporter with no such history, even when controlling for volume of needs and volume of charges.

Young people were aware of these labelling processes and the stigmatising effect that they could have, reporting in interview that troublemaker status arose because of police perception of the reputation of the areas in which they hung out, their family and their appearance:

"Well the police tend to check up on us a lot ... for no reason ... they just drive in and look at who's there ... just because they think things happen there". (Boy aged 13)

"... but if I do get stopped or anything like that, sometimes my name, 'cause like my dad and my uncle have been in trouble and stuff like that. So I can get a bit of hassle." (Boy aged 18)

"My friends had a car, and we got pulled at the top of road. Five minutes later we got pulled half way down the road [by different officers]. Five minutes later got pulled at the bottom of the road [by a further set of police officers]. [The police think] they're young, they're wearing hats, they're in an old banging car, oh that car's stolen". (Boy aged 18)

Results revealed that the deeper a young person penetrated the system the more likely their pattern of desistance from offending was inhibited (McAra and McVie, 2010). Moreover, being caught and processed manifested itself in repeated and more intensive forms of intervention. For example, a high proportion (56%) of those who had been referred to the Reporter on offence grounds at some point had a conviction in the adult criminal justice system by age 22. Youngsters who made the transition into adult criminal justice system were generally assessed by agencies as having a high volume of needs at the point of transition. Such youngsters were up-tariffed relatively quickly, with disproportionate numbers being placed in custody by their 19<sup>th</sup> birthdays (19% as contrasted with just 3% of those with convictions who had no hearings history) (McAra and McVie, 2010). Of those with experience of custody by age 19, 70% were sentenced to a further period of custody by age 22, with a very high percentage having been excluded from school by age 12 and experience of multiple and complex modes of labelling and stigmatisation from a young age.

Whilst acknowledging that there is always a need to maintain a secure estate for the very small number of young people who are a danger to others, our findings indicate that, for the vast majority of young people who become involved in offending, maximum diversion and minimal intervention is the most effective course of action. The intersection of needs and deeds suggests that targeted universal services for communities beset by multiple forms of adversity would have a strong pay-off in terms of crime reduction as would policies predicated on the sustaining and enhancing educational inclusion.

The Kilbrandon report stated: "If society's present concern is to find practical expression in a more discriminating machinery for intervention, it must be recognised that society's own responsibilities toward the children concerned will be correspondingly increased, and that this will make commensurate demands on the nations resources". If we wish to build a society in which all of our young people can flourish, then it behoves us to tackle persistent institutional cultural practices which undermine the capacity of the children's hearing system to deliver justice, to divert resources into building cohesive communities which nurture young people, and to place social justice not criminal justice at the heart of our ambition.

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[McAra, L. \(2014\), \*Crime and Justice: A Vision for Modern Scotland\*, Apex Annual Lecture](#)

[McAra, L. and McVie, S., \(2010\), \*Youth Crime and Justice: Key messages from the Edinburgh Study of Youth Transitions and Crime\*, \*Criminology and Criminal Justice\*, 10\(2\): 179-209](#)

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# UK Justice Policy Review:

Volume 2

6 May 2011 to 5 May 2012

# UK Justice Policy Review:

Volume 3

6 May 2012 to 5 May 2013

By Richard Garside, Arianna Silvestri  
and Helen Mills

# UK Justice Policy Review:

Volume 1

6 May 2010 to 5 May 2011

By Richard Garside and Helen Mills

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