



Incentivized Legal Admissions in Children

Part 2: Guilty Pleas

About this research: This policy report presents findings and recommendations from a research project examining the pressures children face to plead guilty, the extent to which these pressures may be leading innocent children to plead guilty, and ways that the guilty plea process might be perpetuating inequalities.

Introductory Information

A project of:



The Evidence Based Justice Lab is an interdisciplinary research group at the University of Exeter Law School specialising in behavioural and data science research, and applying this research to the legal system and in legal arguments.

evidencebasedjustice.exeter.ac.uk
@exeterebjl

In collaboration with:



Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes.

transformjustice.org.uk
@TransformJust1

Principal Author:

Dr Rebecca K. Helm
Director, Evidence Based Justice Lab,
Senior Lecturer and Clinic Solicitor,
University of Exeter

Project Consultant:

Penelope Gibbs
Director, Transform Justice

Research Assistants:

Stephanie Hunt
Sarvenaz Ghattan
Maggie Fannon
Ellie Williams
Beth Mann

Administrative Support:

Rebecca Harwood

The production of this report has been supported by the Economic and Social Research Council.



Contact:

Dr Rebecca K. Helm
University of Exeter Law School
r.k.helm@exeter.ac.uk
+44 7961 164 729

For press queries please contact

Rebecca Harwood
Evidence Based Justice Lab Administrator
r.k.harwood@exeter.ac.uk

The full report is available to download from:
evidencebasedjustice.exeter.ac.uk/current-research-data/incentivized-admission

Executive Summary

When children are accused of a criminal offence and proceeded against in court, they must make the decision whether to plead guilty or to contest their guilt at a full trial. The criminal justice system in England & Wales incentivizes both adult and child defendants to plead guilty, both actively and through the presence of informal incentives. This incentivization creates a system in which both guilty and innocent defendants (including those who have a viable defence to a crime they would otherwise have committed) may choose to, or even feel pressured to, plead guilty. Children, who are recognised as being too immature to vote or gamble, are making complex decisions to self-incriminate that can influence the rest of their lives.

This report presents data collected from children who have made plea decisions and legal professionals who work with children, to provide insight into (1) pressures that children face when deciding whether to plead guilty, (2) the extent to which these pressures may be leading innocent children to plead guilty, and (3) the ways that the guilty plea process might be perpetuating inequalities.

Key findings:

- Pressures including from fear of detention, time limits, the desire to avoid trial, and peers and family are key influences in plea decisions.
- Partly as a result of these pressures, innocent children are very likely to be pleading guilty.
- There is a risk that the guilty plea system is exacerbating inequalities. Children with behavioural and developmental disorders may be systematically pleading guilty more often than their peers regardless of factual guilt, and children from minority ethnic backgrounds may be systematically pleading guilty less often than white peers.
- There are significant potential deficits in legal representation of children, both in terms of the time that lawyers are able to spend with children prior to a plea decision being made and in terms of the lack of specialist training or experience in some lawyers representing children.

Recommendations for reform:

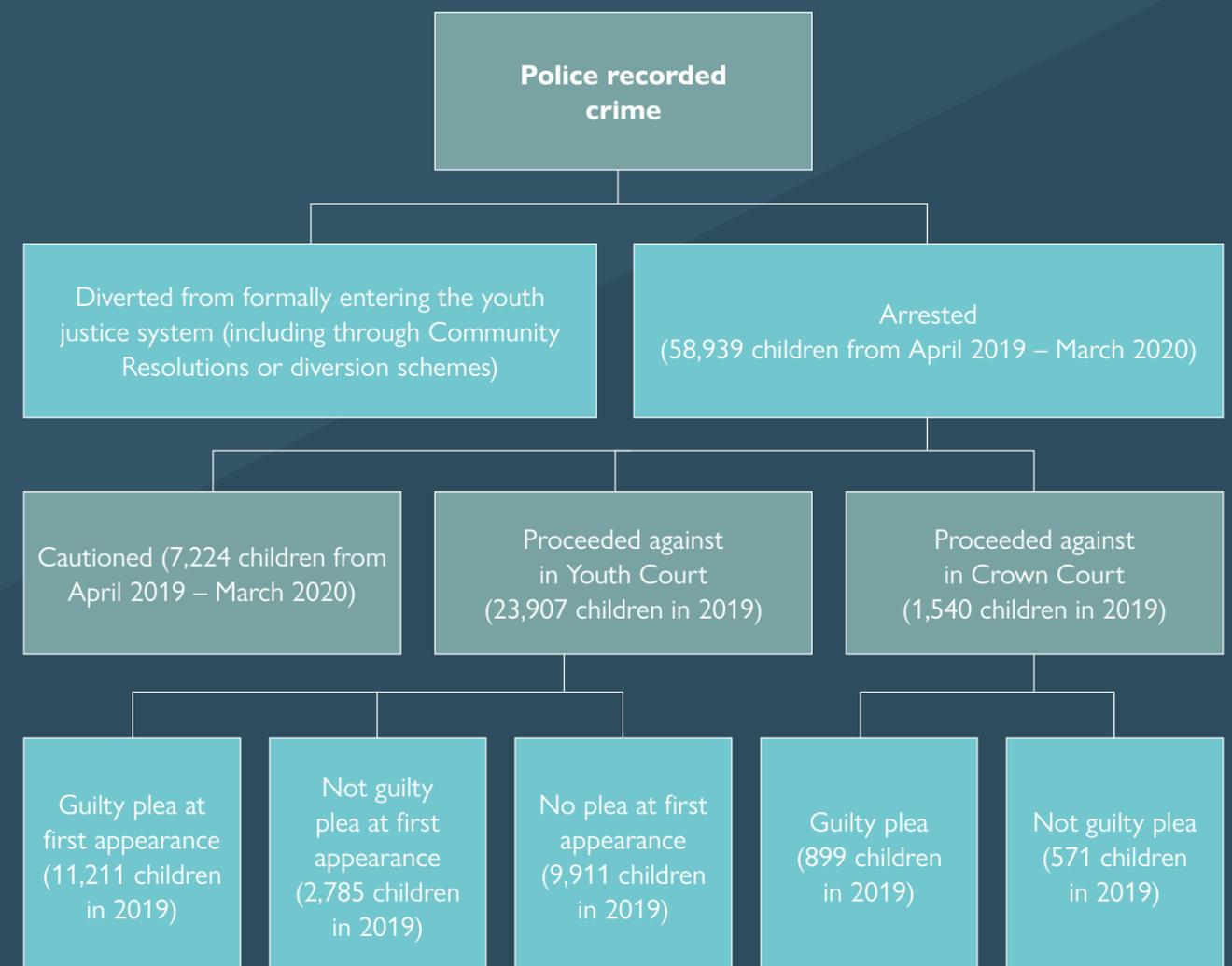
- Lawyers working with children should receive specialised training.
- The sliding scale of sentence reductions for those who plead guilty needs to be more flexible for child defendants, recognising they may not be able to understand evidence so easily or make decisions so quickly.
- More needs to be done to make trials accessible for children, particularly those with enhanced vulnerabilities such as behavioural or developmental disorders.
- Children should not face a custodial sentence if convicted at trial but receive a community sentence if they plead guilty.
- Lawyers should have more time with children prior to court hearings.

We are grateful to the organisations who helped us recruit participants to take part in this research, including Youth Offending Teams, The Alliance for Youth Justice, and the Law Society. Views expressed do not necessarily represent the views of these organisations, or of the ESRC, UKRI, or the University of Exeter. We are particularly grateful to the individuals who shared their thoughts with us as part of our consultation process.

Contents

Introductory Information	2
Executive Summary	3
Movement of Children Through the Criminal Justice System	5
System Background and Academic Work	6
Methodology	9
Results	10
1. Pressures to Plead	10
2. Innocent Children Pleading Guilty	16
3. Vulnerability and Equality in Plea Decisions	17
4. Do Children Have Sufficient Support?	21
Guilty Pleas in Children: Recommendations	24
Endnotes	25

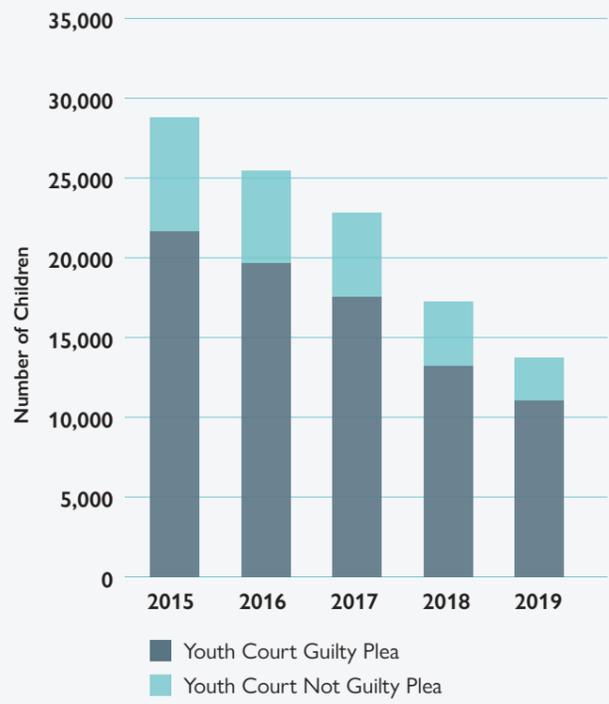
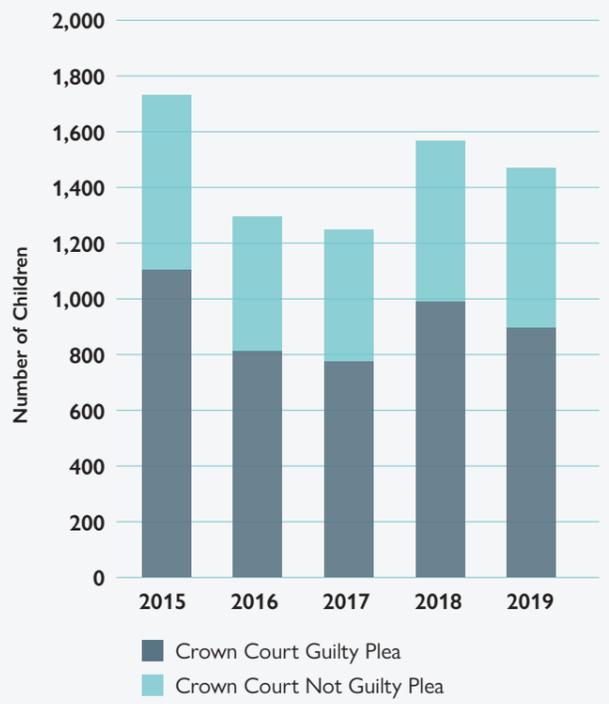
Movement of Children Through the Criminal Justice System¹



Figures presented are based on data available.

System Background and Academic Work

Our criminal justice system actively incentivizes both adult and child defendants to plead guilty. This incentivization creates a system in which both guilty and innocent defendants may choose to, or even feel pressured to, plead guilty. As with adults, in practice, many children do choose to plead guilty.²



Note Youth Court data is for plea entered at first appearance. Some defendants who pleaded not guilty at this appearance may have changed their plea at a later time. The data only includes those who entered a plea at their first appearance. This data is presented since it was the data available from the Ministry of Justice via a Freedom of Information Request.

What incentives to plead guilty do children face?

When children appear in court, they face incentives to plead guilty rather than to exercise their right to a full trial under Article 6 of the European Convention on Human Rights. As with adult defendants, when child defendants plead guilty it saves the criminal justice system time and money and saves victims and other witnesses from having to testify. Partly for this reason, defendants are incentivized to plead guilty.

First, **children can receive a reduced sentence in court if they plead guilty compared to the sentence they would receive if convicted at trial** under the Sentencing Council's Definitive Guideline for sentencing young people.³ Under this guideline, a child's sentence can be reduced by up to 1/3 when they plead guilty at the *first stage of proceedings*. This reduction gets smaller the later the plea is entered, up to a maximum discount of 1/10 for a child who pleads guilty on the first day of trial. The first stage of proceedings will normally be the first hearing in the magistrates' or youth court at which a plea is sought and recorded by the court.

Where circumstances significantly reduce the child's ability to understand what is alleged or make it unreasonable to expect them to indicate a guilty plea sooner than was done, they can still benefit from the 1/3 reduction even if the guilty plea was entered later than the first stage of proceedings.

Importantly, **the guilty plea discount can result in the child receiving a different type of sentence than they would be facing if convicted at trial**. So, a child could be given a community sentence (a referral order or a youth rehabilitation order) if they plead guilty but face custody (typically a detention and training order) if found guilty at trial. Referral orders in particular are only available to a child when they plead guilty.

The aim of the sentencing discount is said to be to: "*encourage those who are going to plead guilty to do so as early in the court process as possible.*" It is specifically noted that: "*Nothing in this section should be used to put pressure on a child or young person to plead guilty.*"⁴ However, academic research suggests that the discounts offered may, in practice, be pressuring children to plead guilty.⁵

Second, **children may be able to get charges against them reduced if they plead guilty, since prosecutors may be willing to drop or reduce charges against them.**

Finally, **pleading guilty avoids the need for the child to participate in a full trial, and makes resolving their case significantly quicker and easier.** This incentive to plead has the potential to be particularly important for children, who are often overly sensitive to short-term benefits, and who find the criminal justice environment particularly challenging.

How are children vulnerable?

Academic work in both the US and England and Wales context has identified key vulnerabilities of children when facing incentives to plead guilty.⁶ These vulnerabilities have the potential to undermine the accuracy of convictions resulting from guilty pleas in children and to lead to miscarriages of justice, and also to undermine the informed consent necessary to plead guilty and waive the right to a fair trial under Article 6 of the European Convention on Human Rights.⁷

These include:

- **Difficulties in comprehension and understanding⁸**

Children may not understand the specifics of the offence that they are accused of and any available defences, and therefore may not really know whether they are legally guilty or not. In addition, children may not understand the implications that pleading guilty may have for their future.

- **Reliance on superficial rather than meaningful considerations⁹**

Children have developmentally immature decision-making systems and are susceptible to the influence of superficial incentives to plead guilty such as short sentence discounts and to neglecting meaningful considerations such as guilt, innocence, and underlying values.

- **Low levels of inhibition and high responsiveness to short-term benefits¹⁰**

Children have low levels of inhibition and are very responsive to short-term benefits.¹¹ This short-term orientation combined with a lack of inhibition makes children susceptible to pleading guilty on the basis of short-term rewards such as getting to leave court quickly and go home. This problem is exacerbated by the fact that children are likely to find the trial process particularly stressful and difficult.

- **Susceptibility to pressure¹²**

Children may be pressured by the system itself (e.g. by being told they have to admit guilt at the earliest opportunity to benefit from the full sentence discount) and may also be pressured by lawyers, family or friends when making their decisions.

What are the existing protections?

Children are recognised as vulnerable in the criminal justice system, and are offered protection, primarily to address difficulties in comprehension and understanding.¹³ However, recent research suggests that children still struggle with understanding, even in the specialised youth courts.¹⁴

The other protection children have is the provision of a lawyer. Lawyers can provide important support for children. Questions have been raised about the quality of legal representation of children,¹⁵ and the Bar Standards Board have relatively recently introduced new competencies for those working with children.¹⁶ However, these competencies do not explicitly address decision-making vulnerability and incentivized admission.

The research underlying this policy report examines guilty pleas in children, and the sufficiency of protections in the current system.

Methodology

This report draws on data from interviews conducted in 2020/2021 with lawyers and other legal professionals with experience working with children, and with children who have pleaded guilty.

Lawyers and other legal professionals, including police station representatives (n=33) responded to an initial online survey and then took part in online roundtable discussions, guided by a research assistant.

Legal Professional Demographics

91% primarily defence-focused work
70% solicitors, 10% barristers, 20% other legal professionals
Average of 17 years experience (SD = 9.2)
Average age 42 (SD = 9.4)
58% female, 42% male

Child Demographics

100% pleaded guilty in court.
Average age when pleaded guilty 15 (SD = 1.06)
Average age when interviewed 16 (SD = 1.24)
84% male, 11% female, 5% undisclosed gender
74% White, 5% Mixed or Multiple Ethnicity, 5% Black, Black British, African, or Caribbean, 16% undisclosed ethnicity
26% disclosed special educational needs

Children who had made guilty plea decisions (n=19) were interviewed individually either in person or online, by a Youth Offending Team member or a member of our research team. These interviews utilised 'talking mats' to help children understand questions and organise and express their thoughts.

Full versions of each of our interview instruments are available at evidencebasedjustice.exeter.ac.uk/current-research-data/incentivized-admission

Results

1. Pressures to Plead

Existing research suggests that guilty plea decisions are much more complicated than decisions of guilty people to admit wrongdoing, and a wide variety of factors other than factual guilt or innocence can be important in guilty plea decision-making.¹⁷

Respondents in both of our response groups were asked to rate the importance of certain considerations in guilty plea decisions. Children rated the extent to which each consideration was important to them when deciding

whether to plead guilty. Legal professionals rated the extent to which they believed each consideration was typically important to children they work with when deciding whether to plead guilty.

These considerations included: the probability of conviction at trial, avoiding a worse sentence at trial, pressure or advice from friends, pressure or advice from family, whether you (they) were actually guilty, future consequences, money (financial considerations), and advice from a lawyer.

Lawyers rated the importance of these considerations on a scale from 0 (not at all important) – 100 (extremely important).

Children rated the importance of these considerations on a scale from 1 (not important) – 5 (very important) to maximise comprehension. Children's responses have been converted to a 0 – 100 scale in the graph below for illustrative purposes.

Rated Importance



Ranked Importance

Lawyers	Children
1. Advice from lawyer	1. Advice from lawyer
2. Avoiding a worse sentence at trial	2. Avoiding a worse sentence at trial
3. Getting trial over	3. Future consequences
4. Probability of conviction	4. Advice from family
5. Factual guilt	5. Getting trial over
6. Advice from family	6. Factual guilt
7. Advice from peers	7. Probability of conviction
8. Future consequences	8. Money (financial considerations)
9. Money (financial considerations)	9. Advice from peers

The range of factors rated as more important than factual guilt in decisions to plead guilty highlights the complex nature of plea decisions for children, and also the risk that the influence of factors other than factual guilt could lead innocent children to plead guilty. The Sentencing Council Guidelines for Sentencing Children and Young People specifically note that: "The purpose of this... guideline is to encourage those who are going to plead guilty to do so as early in the court process as possible. Nothing in this section should be used to put pressure on a child or young person to plead guilty."¹⁸ The data above suggests that children are pleading guilty to avoid the potential longer sentence they may face if they go to trial and that the discount is directly leading children to plead, rather than encouraging those who were going to do so anyway to plead early. Thus, the sentencing guidelines may not be operating as intended.

This conclusion is supported by free response answers given by lawyers when asked whether children faced pressure to plead guilty. Respondents identified two pressures primarily important in the Crown Court (fear of detention, and time pressure created by the fact that credit for pleading guilty decreases over time) and two pressures applicable more generally (wanting to avoid a full trial, and pressure from peers or family).

Fear of detention

Respondents noted that particularly in the Crown Court, some children plead guilty due to fear of custody, and the guarantee of a community order (typically a referral order) if they plead guilty.

“...for a lot of young defendants their fear is detention and therefore if they're in those types of cases where they are on the border where an early guilty plea will make the difference between detention and community disposal, they tend to just want to plead guilty. You know, will it keep me out?...The prospect of going into detention when being on bail and the panic that I think sets in... **Barrister**

It's difficult to advise against the guilty pleas when you're going to get a referral order in the bag as opposed to risking going further. **Barrister**

Referral is the same as with cautions, it seems like a get out of jail free card and they think there won't be repercussions. The referral order process is another incentive to plead guilty.

Defence Solicitor

Case Study

(Reported by Defence Solicitor, details removed)

I had a case involving children who did not accept that they had committed the offence that they were accused of. I advised them of the credit for guilty pleas, but they pled not guilty. The judge then asked me why they were pleading not guilty given that they were eligible for a referral order. I then went back and explained to the clients that they would be given a referral order if they pleaded guilty and that this was a nice sentence. They then decided to plead guilty.

Respondents also described concerns that children pleading guilty in order to receive a referral order do not always appreciate the implications of receiving a referral order.



I was once asked to advise a pupil barrister who had accepted a referral order and she didn't realise it would be a criminal conviction. Children are often poorly advised. I know of cases in the recent past where children were advised that referral orders weren't a conviction, as law is unclear... But what remains on your criminal record does count.

Barrister

This problem was seen as far less important in the youth courts, where respondents noted that the sentence would likely be non-custodial in any event.

Time pressure created by the fact that credit for pleading guilty declines over time

Respondents with experience in the Crown Court noted the pressure that children feel to plead guilty at the first opportunity in order to ensure the maximum sentence discount is awarded.



...you know if you're not cleared in the Magistrates or that first appearing, your credit starts declining. Now of course the guidelines give you an argument to say when that shouldn't apply, but increasingly defendants are aware that by the time they get to the court, their credit has, generally, will have decreased... if there's any change in their barrister for the first time and you think that they need a bit of time, again you're risking that decrease in their credit and I think they get quite anxious about that. **Barrister**

They also noted difficulties getting the information needed and getting to know the child well enough to be able to put the child in the position to enter a guilty plea at the first stage of proceedings, and uncertainty over exactly where full credit for the guilty plea will be awarded where a plea has not been entered at the first stage of proceedings (i.e. when a sentencing court will deem that circumstances significantly reduced the child's ability to understand what was alleged or made it unreasonable to expect them to indicate a guilty plea sooner than was done).



I don't think the reduction in credit should come into play where youths are concerned, if possible, because the Crown don't always provide you with the evidence that you need and children are quite reluctant to speak to you at that first occasion, you know. You have to build a rapport with them... you need to go back once or twice and you know? Get them to trust you and also be able to present them with the evidence... I frequently seek an adjournment and I'll fight really hard to get that adjournment without any loss of credit. **Defence Solicitor**

Some respondents noted a concern that judges may not award full credit for the guilty plea even where the plea was entered late as a result of late disclosures, on the basis that a defendant knows whether they have committed the offence and so does not need the disclosure. Respondents explained that they and even their clients do not always know whether they have committed an offence without more information being provided.



You can hear this in Crown Courts where judges and magistrates will say well he knows whether or she knows whether they've committed the offence or not and that's not really the issue that should be taken into account. **Defence Solicitor**

The defendant has perhaps even said look I've been supplying that's as far quite often as they can go. What they don't necessarily know is whether they are guilty of that particular conspiracy because that really is much more a matter of law. And the number of arguments I will have with judges about this, and I will now routinely ask the solicitor to just draft a short statement asking, you know, why at that stage, they felt unable to properly advise. **Barrister**

Case Study

(Reported by Defence Solicitor, details removed)

I had one case where I was dealing with a youth who was tied in with a number of other adults and was being charged with robbery. We were waiting for a specific statement which we asked for very early on in proceedings and which was relevant to a central issue in the case. That statement was needed for me to advise the client. There was a huge amount of delay in getting this statement and by the time he got the statement and pleaded guilty his credit had reduced significantly.

Respondents agreed that the situation was better in the youth courts, where credit for guilty pleas seemed to be given more flexibly.

Wanting to avoid full trial

Respondents described how children may be pressured to plead guilty, even when innocent, by the time involved in a full trial, and the desire to leave court as quickly as possible.

Case Study

(Reported by Defence Solicitor, details removed)

I had a 13-year-old charged with an offence. Now he was adamant, absolutely adamant, he was not involved. He suffers from autism and ADHD. So there was a real range of learning difficulties. But at the first appearance he said I want to plead guilty. 'Why do you want to plead guilty?', 'Cause I don't want to come back here. This is very stressful. This is very long.'



Yes you have adults who say oh I just want to plead guilty to get it over with but in reality, those adults tend more often than not to actually be guilty. Whereas with young people, it's more...I don't want to come back here, well I'm going to have to wait here all day and certainly I think the longer the day goes on, the closer someone will get to pleading guilty...as adults you just think I'm here for however long this takes. Children just don't think that way. **Barrister**

Quite often when you explain to a young person that the instructions they have given are not guilty, and it means they have to come back to court on another occasion and you've of course explained to them it's their first time in trouble so they can have a referral order which means they won't have a tag, they just say 'well I don't want to come back again' and you have to say '...the most important thing is not to get out of here' and that's a really bad reflection on how they feel about the courts.

Defence Solicitor

Pressure from peers or family members

Another issue that was raised by respondents was the pressures that are put on children to enter a certain plea by peers or family members.



I've had clients plead guilty because the gang that they're affiliated with sat outside the court waiting for them. You know what's going on. They know what's going on. And the prosecutor knows what's going on. They are sat outside waiting for them. They put in a guilty plea...and they're gone again...Again you can sit there go through the rigmarole: 'this is what you know, I'm advising you this, I'm advising you that' and they go 'Miss, I've got to plead. I've got to.' And it breaks your heart. **Defence Solicitor**

The parents say 'well, yeah you might have said that but don't have it', you know 'don't have anything', I've had that a great deal. Which can prove difficult as well because when you're trying to advise somebody as to the benefits of pleading guilty i.e. they've completely accepted the offence in its totality in the police interview, then running a not guilty plea based on a parents instructions or someone who's with them, an older sibling, it does happen. That can prove challenging. **Defence Solicitor**

The presence of these pressures to plead that are influencing guilty plea decisions, in addition to factual guilt, makes plea decisions very difficult and complicated for children.

How do you feel about your decision to plead guilty?

19 responses from children who pleaded guilty.



7
children



10
children



2
children

These pressures undermine the informed consent necessary to waive the right to a fair trial under Article 6 of the European Convention on Human

Rights. They also increase the risk that innocent children will plead guilty, and can potentially exacerbate vulnerabilities of particular groups of defendants.

2. Innocent Children Pleading Guilty

The importance of a number of pressures unrelated to factual guilt or innocence and potentially more important than factual guilt or innocence in the decision-making process creates an environment in which innocent children who may be unlikely to be convicted at trial are at risk of pleading guilty due to fear of detention, fear of losing a sentence discount, an inability to face a full trial, or pressure from others.

Our lawyers had mixed opinions on the number of children who plead guilty that are actually innocent. However, broadly, there was a consensus that some children who plead guilty are actually innocent. The average estimate among the 27 legal professionals who were willing to provide an estimate, was that 15% of children who plead guilty are actually innocent (including having a viable defence). However, there was a wide range of estimates, from 1% to 60%.



I think the issue... the problem with the current system is... youth will plead guilty... when they are not guilty at all. Defence Solicitor

Roughly what proportion of under 18s who plead guilty do you think are actually innocent?

27 Responses from Legal Professionals

Range 1% – 60% (SD 15.74)

Mean – 15%

This suggestion that innocent children are pleading guilty was also highlighted by feedback given by one of the nineteen children that were interviewed as part of this study. The child, who had entered a guilty plea in court, stated:



I still believe that I did not do the crime.

3. Vulnerability and Equality in Plea Decisions

Enhanced Vulnerability

Research considering guilty pleas more generally has noted that some defendants may be particularly vulnerable in systems that incentivize admissions of guilt.¹⁹

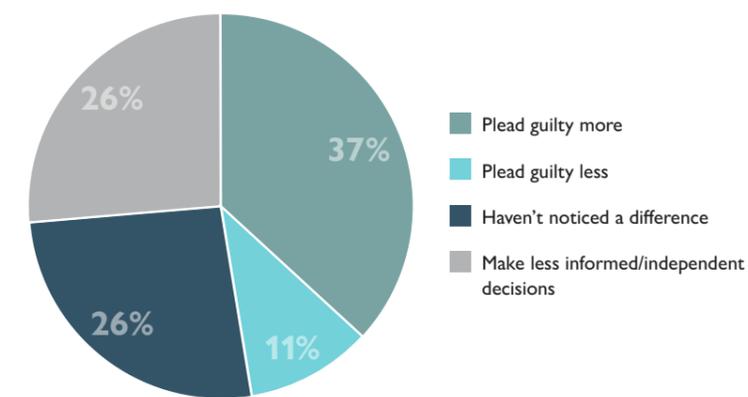
Legal Professionals in our study were asked to comment on enhanced vulnerabilities that may be faced by children with behavioural or developmental disorders, with a focus on two conditions that have been identified as being prevalent in the youth justice system, autism spectrum disorders (Autism) and Attention Deficit Hyperactivity Disorder (ADHD). Responses suggest that one pressure, specifically the pressure to plead guilty to avoid a full trial, is disproportionately affecting children with these disorders. As a result, children with these disorders may be more likely to plead guilty generally, and more likely to plead guilty when innocent.

Autism is a developmental disability which affects how people communicate and interact with the world.²⁰ Several characteristics of Autism make those with the disorder particularly vulnerable when deciding whether to plead guilty. People with autism have difficulties with social imagination and may not fully appreciate the implications of their behaviour or decisions. In addition, people with autism may find the

experience of being accused of a criminal offence particularly difficult. According to the National Autistic Society, the very presence of the police may cause great anxiety to an autistic person who has no comprehension of the crime they may have committed.²¹

ADHD is a condition that is characterized by a lack of attention, hyperactivity, and impulsiveness. Children with ADHD may struggle to pay attention when receiving legal information, and may find it hard to cope with criminal justice processes.²²

Have you noticed differences in plea decisions in children with Autism, ADHD, or other disorders when compared to other children? 19 responses from legal professionals



Although there are protections in the current system for children with behavioural and developmental disorders, including the availability of intermediaries to help with communication difficulties, our respondents confirmed that they are still particularly vulnerable when making plea decisions. Importantly, respondents frequently noted that defendants with these disorders are more likely to plead guilty purely to avoid trial.

I have found that defendants with ADHD are less willing or able to stand trial, and often it is the prospect of giving evidence that veers them away from a not guilty plea.
Defence Solicitor

Youths with disorders may be keen to avoid having a trial as they may find court proceedings stressful... they may also find it difficult to understand legal concepts when deciding how to plead.
Defence Solicitor

I think that they are more likely to plead guilty to avoid giving evidence at trial.
Defence Solicitor

One respondent explained how this problem can also affect other clients, is not solved through the use of an intermediary at the point of the plea decision, and could lead children who may be acquitted at trial to plead guilty.

Some clients struggle with the thought of giving evidence, which may make them more likely to plead guilty. This is not solved by an intermediary at the point of the plea decision as it is another delay and meeting with an intermediary is seen as another hurdle for them to deal with. Many defendants give the impression that they just want to get the case over as quickly as possible, even if a guilty plea is the only way to do it. There is no way of knowing to what extent that is the real concern or if it is a euphemistic way to phrase a desire to plead guilty, particularly with an appropriate adult there. There are defendants who will insist on this, even where they have a runnable trial.
Defence Solicitor

Respondents also noted how children with behavioural or developmental disorders may struggle to understand the guilty plea process, may feel set in their preferences regardless of advice or evidence, or may be overly reliant on parents or guardians.

Yes. It is harder for young people with disorders to make informed decisions and they are less likely to plead guilty because they don't understand the implications / reduction in sentence for early guilty plea.
Defence Solicitor

It is difficult when dealing with vulnerable young people and often they are accompanied by a parent or guardian who will have more input in any decision they make.
Defence Solicitor

Clients with ADHD or Autism need very careful advice because the nature of the disorders means that clients can be both entrenched and very suggestible. In my experience pleas have been mixed.
Defence Solicitor

Often they enter early guilty pleas and have not been properly assessed and given adequate measures to ensure effective participation.
Defence Solicitor

The evidence presented here suggests that children with behavioural and developmental disorders are likely to be systematically pleading guilty more often and in a less informed and independent way. As a result, they are likely to be at a greater risk of pleading guilty when innocent. These vulnerabilities and the failure of current procedure to address them has important implications for equality of outcomes in the criminal justice system.

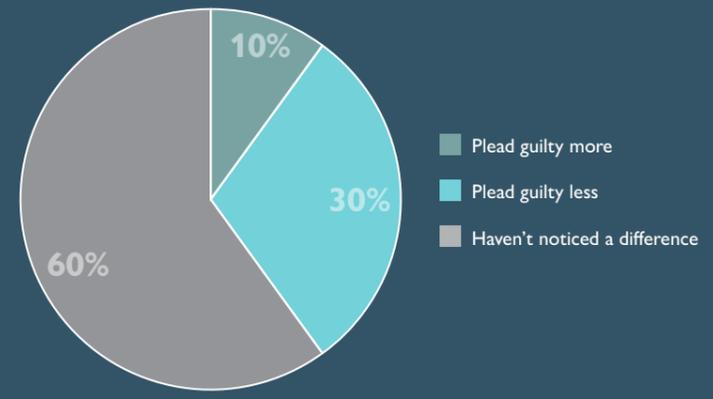
Ethnicity

Existing research suggests that defendants from ethnic minority backgrounds plead guilty less than white defendants, and as a result receive harsher sentences due to not benefiting from sentence reductions given to those who plead guilty.²³

Respondents in our interviews with lawyers were asked whether they had noticed any differences in the guilty plea decisions of those in minority ethnic groups when compared to white defendants.

The majority of participants stated that they had not noticed differences in guilty plea decision-making based on ethnicity. However, a sizable minority reported that, consistent with the previous research described above, they found that defendants from ethnic minority groups were less likely to plead guilty than their white counterparts.

Have you noticed differences in plea decisions in children from ethnic minorities when compared to white children?
20 responses from legal professionals



Respondents gave a number of reasons for this. Most commonly, they noted ethnic minority children were more likely than white children to feel targeted or alienated from the police and justice system, and therefore tended to feel less compelled to co-operate with it.

I've certainly found that certainly black defendants feel targeted like they've been marginalized by being picked on by the police. There's often that disconnect why should they accept what they say. That tends to happen quite a lot. **Defence Solicitor**

So I think... I think in terms of the experiences of minority and also low socio-economic status groups... young black boys are more likely to be excluded from school... I think they need to be fairly resistant, you know, the court...they're not going to feel that the court... particularly when they walk in and look at the magistrates, reflects anything in their lives, are they going to do anything to help them? **Defence Solicitor**

Children from minority groups often feel misunderstood or targeted so tend to plead not guilty. **Defence Solicitor**

Respondents also noted that the experience of ethnic minority clients may be different, because of the different crimes they are typically accused of.

What I see with BAME clients is they're more likely to be charged with joint enterprise or conspiracy cases, which can make life more difficult in terms of advising evidentially. They're much more likely in my experience, certainly in urban, in London, for a blanket to be thrown over a group of BAME suspects, and that generally is "well we'll let them all give evidence and we'll sort it out in court". And being slightly, you know, caricaturing it. But there's a tendency that they'll end up as co-defendants more so than non-BAME clients in my experience. And that can bring in other factors, that can bring in factors with co-defendants influencing them. It can bring in factors where they're overcharged on a conspiracy or a joint enterprise basis, and it's difficult to disentangle their involvement from a more serious charge the prosecution really want to pursue. So, yeah, I think certainly in an urban environment I see that being a factor. **Defence Solicitor**

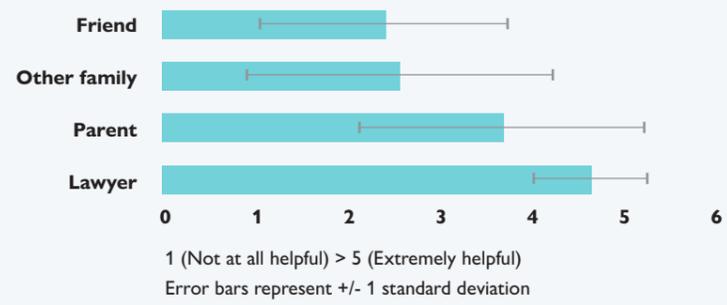
No but BAME children more likely to face joint enterprise/conspiracy charges that increase not guilty pleas. **Defence Solicitor**

The data collected do not conclusively show different outcomes for children from minority ethnic groups. However, responses provide support to existing research showing a risk that defendants from ethnic minority groups may plead guilty less often, and suggest that this may be due to a particular tension and disconnect between those groups and the criminal justice system. Although entering fewer guilty pleas has a protective effect against pleading guilty when innocent, it also means that children from minority ethnic groups may end up receiving longer sentences for the same crimes due to not benefiting from the sentence discounts associated with guilty pleas.

4. Do Children Have Sufficient Support?

The children surveyed generally felt that their lawyers were helpful in supporting them when deciding whether to plead guilty.

How helpful were each of the following when you were deciding whether to plead guilty?



However, lawyers highlighted difficulties in providing good representation to child clients deciding whether to plead guilty.



*Without being too flippant there's a lot of kids, depends what mood they're in... whether they'll talk to you or not and whether they're going to bother engaging with you. And if in doubt I'll try and... well if in doubt I have to try and get a not guilty plea in because I'm not going to be happy with a guilty plea if I'm not getting clear instructions that they're guilty or that they accept what's being said. But that can be...difficult and it depends on communication skills and also you can get a lot of unhelpful input from third parties in youth court. **Defence Solicitor***

*They've got their own agenda. Including mates of theirs, they often show up or are there for other charges. So there's a whole matrix of stuff that really affects whether or not they plead guilty. I think though, one overall theme I've got from practising with kids is they lack consequential thinking generally, so that's out of the equation- long term consequential thinking. Short-term consequential thinking is a big factor and that really comes into play with them. **Defence Solicitor***

Lawyers also noted the lack of time given to them to adequately address these difficulties and support child defendants, both in the context of reducing credit for pleading guilty and more generally.



*I don't think the reduction in credit should come into play where youths are concerned... children are quite reluctant to speak to you at that first occasion, you know. You have to build a rapport with them... you need to go back once or twice and you know? Get them to trust you and also be able to present them with the evidence... **Defence Solicitor***

*It's very, very difficult with children with behavioural or special educational needs. There is no point in saying to the usher "look, I have to have more time", because they just won't allow you. **Defence Solicitor***

In addition, lawyers noted important problems that arise where children are not represented by specialists in youth justice. Non-specialists in youth justice are likely to struggle in terms of communicating with their clients, identifying and addressing vulnerabilities, and taking account of intricacies of youth justice procedure.



*I think there's no denying there are difficulties with non-specialist youth court practitioners representing in youth courts, in my experience. **Defence Solicitor***

*Sometimes, lawyers who aren't so confident will automatically go down the route of 'oh look you can get a referral order. It doesn't stay on your record that long. It's done and dusted as soon as you completed X, Y and Z you know, it's just a slap on the hand', when actually again it's another mark on your record. **Defence Solicitor***

Case Study

(Reported by Defence Solicitor, details removed)

I went to court not that long ago and a kid had a firework on Halloween, and had pleaded guilty to theft and possession of a firework, represented by a duty solicitor. They were of good character, and they should never have pleaded guilty. The reason they pleaded guilty was because they were up for robbery, which was evidentially really poor, and of course that got dropped pre-trial, but we were left with a guilty plea to theft and possession of a firework. The child was obviously not guilty of theft. But I think the solicitor thought it was a good outcome as they had been up for robbery. I think the parent was telling the child to just plead guilty and get it over with. I managed to get the pleas set aside...it was only rectified because I'm a specialist doing youth court work and know this should have been diverted. Otherwise they would have had a referral order for possession of a firework and theft, and they weren't even guilty of theft.

Guilty Pleas in Children: Recommendations

Ultimately, a system of incentivized admissions may be inappropriate in children, who may benefit far more from a more flexible and adaptive approach. However, some less radical interventions may still be beneficial in improving children's experience in the criminal justice system and helping to minimise the extent to which children who are innocent are pleading guilty, and to maximise the extent to which children's plea decisions are sufficiently informed to constitute valid waivers of the right to a fair trial. The recommendations listed below are intended as non-comprehensive suggestions based on the data presented in this report.

■ **Lawyers working with children should receive specialised training.** This report adds to other evidence suggesting that legal representatives without specialist training or experience in youth justice are failing to provide appropriate representation to children. Specific training programmes for lawyers working with children have the potential to address these problems through educating lawyers in communicating with children, identifying behavioural or developmental vulnerabilities, and navigating youth justice procedures. This training is particularly important given the high degree of reliance placed on lawyers by child clients.

■ **The sliding scale of sentence reductions needs to be more flexible for child defendants, recognising they may not be able to understand evidence so easily or make decisions so quickly.** The majority of respondents in our survey agreed that the sliding scale of sentence reductions outlined in the sentencing guidelines for children and young people were not always problematic. However, problems were identified in the Crown Court where children sometimes feel pressure to plead early, before really understanding the offence of which they are accused and whether they're guilty, and where lawyers cannot guarantee that credit for pleading guilty will

not be reduced if they do not do so. This pressure heightens the risk that children will plead guilty when innocent or without sufficient comprehension. Relatedly, there must be greater recognition that while children may know what they did, they are likely to have difficulties with understanding how what they did relates to the criteria of legal offences, particularly where offences are complicated or inchoate, and defences, which a child may not realise could apply to their situation.

■ **More needs to be done to make trials accessible for children, particularly those with enhanced vulnerabilities such as behavioural or developmental disorders.** Evidence presented in this report suggests that trial is a stressful process for children, and that children find the delays involved in a full trial difficult. Pleading guilty provides a way for children to get out of court and to avoid the stresses of a full trial. This ability to avoid court by pleading guilty can pressure children to plead, even when innocent; this pressure being felt more strongly by children with behavioural or developmental disorders. More work clearly needs to be done to make trials accessible for children.

■ **Children should not face a custodial sentence if convicted at trial but receive a community sentence if they plead guilty.** Our data suggests that the fear of custody if convicted at trial that can be avoided by pleading guilty places pressure on children to plead guilty. A Referral Order is a significantly more lenient sentence than a custodial sentence, and children are likely to feel scared to face detention if convicted at trial where they know it can be avoided by pleading guilty. This report therefore adds to existing work arguing that a guilty plea should not make the difference between a custodial and non-custodial sentence.²⁴

■ **Lawyers should have more time with children prior to court hearings.** Our data shows that many children have communication difficulties and take time to build a rapport with lawyers, that children may be pressured to plead guilty by peers or family, and that children from minority ethnic groups may be less likely to plead guilty than white children, due to a distrust of or disconnect with the criminal justice system. Allowing lawyers more time with children prior to court, combined with lawyers receiving more specialist training, would allow lawyers to more consistently understand the child's case and reasoning, to build a relationship with the child, and to address any influence of pressures or misconceptions. In the case of children from minority ethnic groups, or other groups who may feel distrustful of or disconnected from the criminal justice system, lawyers may find it helpful to emphasise that pleading guilty can be a tactical decision in their own best interests, rather than a way to help the court.

Endnotes

- 1 Data on guilty plea rates is from freedom of information requests, and is available on request from the author. Remaining data from Ministry of Justice, 'Youth justice statistics' (2020), assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf accessed 24 June 2021.
- 2 Data from freedom of information requests, and is available on request from the author.
- 3 Sentencing Council, 'Sentencing children and young people: Definitive guideline' (2017) www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf accessed 8 July 2021.
- 4 Sentencing Council, 'Sentencing children and young people: Definitive guideline' (2017) www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf accessed 8 July 2021.
- 5 R. K. Helm. 'Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection' (2021) 48(2) *Journal of Law and Society* 179.
- 6 R. K. Helm. 'Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection' (2021) 48(2) *Journal of Law and Society* 179.
- 7 R. K. Helm, 'Constrained waiver of trial rights? Incentives to plead guilty and the right to a fair trial' (2019) 46(3) *Journal of Law and Society* 423.
- 8 T. Daftary-Kapur and T. M. Zottoli, 'A first look at the plea experiences of juveniles tried in adult court' (2014) 13(4) *International Journal of Forensic Mental Health* 323.
- 9 R. K. Helm. 'Too young to plead? Risk, rationality, and plea bargaining's innocence problem in adolescents' (2018) 24(2) *Psychology, Public Policy and Law* 180.
- 10 T. Daftary-Kapur and T. M. Zottoli, 'A first look at the plea experiences of juveniles tried in adult court' (2014) 13(4) *International Journal of Forensic Mental Health* 323.
- 11 L. H. Somerville et al., 'Frontostriatal maturation predicts cognitive control failure to appetitive cues in adolescents' (2011) 23 *Journal of Cognitive Neuroscience* 2123; L. Steinberg, 'A social neuroscience perspective on adolescent risk taking' 28 *Developmental Review* 78.
- 12 S. M. Kassin and K. L. Kiechel, 'The social psychology of false confessions: Compliance, internalization and confabulation' (1996) 7 *Psychological Science* 125.
- 13 See, for example, Children and Young Persons Act 1933.
- 14 Centre for Justice Innovation, 'Young people's voices on youth court' (2020) justiceinnovation.org/sites/default/files/media/documents/2020-05/20200512_young_peoples_voices_on_youth_court_final.pdf accessed 8 July 2021.
- 15 A. Wigzell et al., 'The youth proceedings advocacy review' (2015) 54–55, eprints.bbk.ac.uk/13577/1/ypar_final_report_-_for_publication_19.11.2015.pdf accessed 24 June 2021.
- 16 Bar Standards Board, 'Youth proceedings competences' (2017) www.barstandardsboard.org.uk/uploads/assets/197b7604-ac56-4175-b09476ec43ef188c/bsbyouthcompetencies2017forwebsite.pdf accessed 24 June 2021.
- 17 See, for example, R. K. Helm, 'Constrained waiver of trial rights? Incentives to plead guilty and the right to a fair trial' (2019) 46(3) *Journal of Law and Society* 423; J. Baldwin and M. McConville, *Negotiated Justice: Pressures to Plead Guilty* (Martin Robertson 1977).
- 18 Sentencing Council, 'Sentencing children and young people: Definitive guideline' (2017) www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf accessed 8 July 2021.
- 19 J. Peay and E. Player, 'Pleading guilty: Why vulnerability matters' (2018) 81 *Modern Law Review* 92.
- 20 National Autistic Society, 'What is Autism?' www.autism.org.uk/advice-and-guidance/what-is-autism accessed 24 June 2021.
- 21 National Autistic Society, 'Criminal justice' www.autism.org.uk/advice-and-guidance/topics/criminal-justice/criminal-justice/professionals accessed 24 June 2021.
- 22 S. Young, 'Attention-deficit hyperactivity disorder' In S. Young, M. Kopelman, and G. Gudjonsson (eds), *Forensic Neuropsychology in Practice: A guide to assessment and legal processes* (Oxford University Press 2009).
- 23 R. Hood, *Race and Sentencing* (Clarendon Press 1992); David Lammy MP, 'The Lammy review: An independent review into the treatment of, and outcomes for, Black, Asian, and Minority Ethnic individuals in the criminal justice system' (2017) assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf accessed 8 July 2021.
- 24 See, for example, R. K. Helm. 'Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection' (2021) 48(2) *Journal of Law and Society* 179; J. Roberts and L. Harris 'Reconceptualising the custody threshold in England and Wales' (2017) 28 *Criminal Law Forum* 477.



UNIVERSITY OF
EXETER



**EVIDENCE-BASED
JUSTICE LAB**