



University
of Exeter



PSYCHOLOGY, DATA SCIENCE AND LAW

At the University of Exeter Law School

RESEARCH PROJECT BRIEFING:

Incentivised admissions in children

WHO ARE WE?

We are an interdisciplinary research group at the University of Exeter, led by Professor Rebecca Helm. We specialise in conducting research in behavioural and data science that can help understand how legal procedures operate in practice, and how that operation can be improved.

WHAT ARE WE DOING?

We collect data and draw on research and techniques from behavioural science to better understand how defendants in the criminal justice system decide whether to formally “admit” guilt. Our work shows that current legal procedure can lead to pressure to “admit” guilt in both innocent and guilty defendants, and that this pressure is likely to be particularly significant in child defendants.

Our work in this area has been funded by the American Psychology and Law Society and the Economic and Social Research Council and has been supported by Transform Justice and a range of Youth Offending Teams.

In our work with children, we have employed a variety of techniques to understand how children are making decisions as to whether to “admit” guilt, both in the context of cautions and in the context of guilty pleas. These techniques have included:

- (1) Reviewing current legal procedure and literature based on research and theory in developmental psychology and cognitive science.
- (2) Conducting experimental work in which we ask children about the decisions they would make if offered certain incentives to plead guilty, in-order to test predictions based on psychological theory in a controlled environment,
- (3) Interviewing and / or surveying children who have made decisions relating to guilty pleas or cautions, and adults who had to make these decisions when they were children.
- (4) Interviewing lawyers who have experience representing children.
- (5) Interviewing appropriate adults.
- (6) Surveying police personnel.

In conducting this work, we have examined the reasons why children who have not committed crimes are admitting guilt either when they can receive a caution by doing so or by pleading guilty in court. We have also explored whether children are getting sufficient support when making decisions.

WHY ARE WE DOING IT?

When anyone admits to committing a criminal offence there are significant personal implications for them. When they do so despite not being guilty or not knowing whether they are guilty, they can be wrongfully convicted. When they do so as a result of pressure, the right to a fair trial is compromised. The potential for wrongful conviction and pressurised admissions is particularly strong in children as a result of developmental vulnerabilities.

We hope that by building an understanding of children's motivations for admitting guilt and identifying the support which would help them to make better-informed decisions and to withstand pressures to admit guilt in appropriate circumstances, we can help those working in the criminal justice system to create policies and practical interventions which will improve the system and the lives of children within it.

WHAT WE'VE FOUND SO FAR

1. General

Our work has provided strong evidence that children who have not committed crimes are admitting guilt to obtain cautions and pleading guilty in court. In one study, legal professionals with experience working with children estimated (on average) that 15% of children who plead guilty are actually innocent.

Our research highlights pressures that children face to plead guilty that are likely to underly admissions from innocent children, including admissions allowing children to avoid the possibility of detention, to eliminate or minimize time spent in court or custody, and to avoid risks of retaliation from peers.

Children have specific vulnerabilities which make them more susceptible to these types of incentive, even within the specialist confines of the youth justice system, such as:

- difficulties in understanding the offence they are accused of, whether they are legally guilty or not and the implications that pleading guilty may have for their future;
- developmentally immature decision-making systems;
- low responsiveness to meaningful concepts such as factual guilt due to a relatively superficial decision-making process;
- high responsiveness to short-term benefits; and
- susceptibility to pressure from a range of sources such as lawyers, family members, friends or the system itself.

Our work has also highlighted how current procedures surrounding guilty pleas in particular might create or exacerbate inequalities. For example, our work suggests that children with autism or attention deficit hyperactivity disorder (ADHD) may be more likely to plead guilty than other children due to the disproportionate stress involved in the criminal justice process for them.

2. Cautions

In order to receive a caution and avoid prosecution, defendants, including child defendants, must be willing to admit guilt. The advantages associated with receiving a caution, including avoiding a court hearing, being released from the police station, and avoiding the possibility of a criminal conviction create pressure for children to admit guilt to receive a caution, regardless of factual guilt.

In a set of interviews with 33 lawyers and 18 appropriate adults, the majority of both lawyers (55%) and appropriate adults (87%) suggested that children who had not committed crimes were admitting guilt and accepting criminal cautions. Problematically, respondents suggested that in at least some of these cases evidence was weak and charges against children would likely have been dropped entirely even if they had not accepted a caution. The study also evidenced clear inconsistencies in support with many

children not receiving legal advice, and some potential confusion about the appropriate delineation of the roles of lawyers and appropriate adults.

3. Cases going to court

There are several incentives for children to plead guilty regardless of factual guilt. These include the possibility of:

- a reduced sentence;
- receiving a different sentence type than would result if their case went to trial (e.g., a non-custodial rather than custodial sentence);
- reduced charges or having charges dropped; and
- removing the need for a child to participate in a full trial

These incentives can be extremely strong, and our research suggests that in some cases (particularly in cases involving Referral Orders) children are left with no realistic option but to plead guilty. Contesting guilt at trial would be a huge gamble that many cannot afford to take. All of the pressures faced are likely to be particularly impactful for children as a result of their developmental vulnerabilities, discussed above.

In line with existing research, our work has also found some evidence that the guilty plea system and associated discounts are exacerbating inequalities in the criminal justice system, through systematic differences in plea rates and differences in pressures to plead guilty or not guilty in children from different ethnic backgrounds and with and without certain disabilities.

RECOMMENDATIONS

General

Specialist training for lawyers working with children should be mandatory and include specific skills development about how to advise children who are considering admitting guilt.

Cautions

1. Legal representation should be mandatory for children.
2. Language surrounding cautions should be regulated and recorded.
3. Lawyers working with children should consistently assist with caution acceptance and receive appropriate remuneration.
4. Cautions should be clearly justified based on evidence.
5. Cautions should not have criminal records implications.

Cases going to court

1. 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.
2. More needs to be done to make trials accessible for children, particularly those with enhanced vulnerabilities such as behavioural or developmental disorders.
3. Children should not face a custodial sentence if convicted at trial but receive a community sentence if they plead guilty.
4. Lawyers should have more time with children prior to court hearings.

NEXT STEPS

- We would like to obtain more data about incentivised admissions in children, particularly on when and why children are pleading guilty.
- We are interested in examining child guilty pleas entered remotely, and the impact of the ability to plead guilty remotely on plea decision-making in children.
- We are keen to extend our research to incentivised admissions in other, related, contexts including:
 - Admissions required to enter diversion schemes.
 - Admissions in prison disciplinary hearings.
- We are seeking to engage with youth justice organisations to take forward the recommendations arising from our research, and to develop model guidelines and training materials for practitioners working with children making guilty plea decisions.

<https://evidencebasedjustice.exeter.ac.uk/current-research-data/incentivized-admission/@exeterebjl>

PUBLICATIONS FOR FURTHER READING

[Guilty pleas in children: legitimacy, vulnerability, and the need for increased protection](#) Journal of Law and Society. Rebecca K. Helm (2021)

[Too young to plead? Risk, rationality, and plea bargaining's innocence problem in adolescents.](#) ([apa.org](#)) Psychology, Public Policy, and Law. Helm, Rebecca K. Helm, Valerie F. Reyna, Allison A. Franz, and Rachel Z. Novic (2018).

[Incentivized Legal Admissions in Children Part 1: Cautions](#) Rebecca K. Helm (2021)

[Incentivized Legal Admissions in Children Part 2: Guilty Pleas](#) Rebecca K. Helm (2021)