

STATES OF JERSEY



YOUTH CUSTODY FOR PERSONS AGED 12 AND OVER (P.2/2004): COMMENTS

**Presented to the States on 2nd March 2004
by the Home Affairs Committee**

STATES GREFFE

COMMENTS

Legislative framework

1. The current legislative framework for dealing with those offenders under the age of eighteen is the Criminal Justice (Young Offenders) (Jersey) Law 1994 (hereinafter referred to as “the Law”). This is a relatively up to date law and one of its principal effects was to bring 17 year olds within the ambit of the Youth Court where previously they had been dealt with in the Police Court (now Magistrate’s Court). Given that this law is only 10 years old, an understanding of what was considered to be an appropriate way of dealing with young offenders is an important backdrop to the proposition before the States. At Article 16, the Law provides for children of school age to be remanded to a *remand centre* rather than simply *in custody* as Deputy Hill’s report suggests. Hitherto, the remand centre has been Greenfields (formerly known as Les Chênes Residential School). Children beyond school age may be remanded to the Young Offenders Institute (YOI) at La Moye. As regards sentencing, Article 4 provides that children of 15 years and above may be given a sentence of youth detention at the YOI. There is no provision to sentence children under the age of 15 to a period of youth detention: clearly, this was not considered necessary in 1994. However, Article 5 recognises that there will, from time to time, be a need for children who commit the most heinous of crimes to be deprived of their liberty “*in a place and under conditions which the Secretary of State may direct*”.

Roles performed by the Remand Centre

2. Until 2002, the Youth Court and Royal Court in particular were able to place those children whom the court felt warranted it, and who had been assessed as suitable, on probation with a condition that they reside at Les Chênes Residential School, and to live as directed by the Head Teacher. This enabled such children to be cared for and educated in a more secure environment. However, although this regime was successful for many children, it was problematic in several ways.
3. Firstly, Les Chênes had to manage a mixed population of child offenders and welfare referrals from the Child Psychologist. Inevitably, this involved the staff in managing up to 20 challenging children at the same time. Not only was this too many, but some had severe emotional and behavioural difficulties (SEBD) to be addressed whilst others had committed criminal offences, some were on remand and others sentenced, and those that had been sentenced required different levels of security. It is important to appreciate that the Bull Report was not a study of youth offending, but rather of children displaying SEBD – the two are not necessarily linked as Deputy Hill’s report implies.
4. Secondly, this regime succeeded for many years on the skill and dedication of successive head teachers and their staff. Consequently, the care, educational and control difficulties, which the staff confronted on a daily basis, would only be apparent to the public when things went wrong occasionally, more often than not through ‘escapes’ from Les Chênes reported by the media. Although Dr. Bull’s recent report was directed at dealing with children with SEBD rather than how children are dealt with by the criminal justice system, the report nevertheless highlighted the deficiencies in our ability to deal with children who had passed through the court process and she was critical of the multiplicity of roles that Les Chênes was tasked to perform. Consequently, Greenfields has virtually ceased accepting referrals from the Child Psychologist and has been operating almost exclusively as a remand centre in accordance with the Law. A recent development, however, has been the allocation of two welfare places to add to the 6 remand places.
5. Thirdly, as mentioned earlier, until 2002 magistrates had been using the ‘umbrella’ of a Probation Order in order to pass a sentence which required young offenders, some below the age of 15, to reside at Les Chênes. This was usually preceded by a 6 week period of assessment by the Head Teacher and a recommendation to the Youth Court. This practice has fallen into disuse, but those young offenders who the Court consider might merit a custodial sentence are often remanded into the care of Greenfields for a period of time prior to sentencing which, arguably, has a similar effect.

The issues to be decided

6. Deputy Hill's proposition highlights the fact that in Jersey we do not currently have, other than the provision given in Article 5 of the Law, a provision to incarcerate children under the age of 15. Whether such a provision is justified, what effect it is likely to have, how such facilities should be provided and under what circumstances this might serve a purpose, are the issues upon which members must decide.
7. In his report, Deputy Hill outlines the occasions upon which this has been considered by the Home Affairs Committee, past and present, and the Tri-Partite Committee overseeing the implementation of the Bull Report. He is correct to assert that, hitherto, Home Affairs Committees have taken the view that the incarceration of children under the age of 15 is "a step too far". However, it is incorrect to assert that the three Presidents wished to meet the Magistrate in order to indulge in "a game of pass the parcel". The Presidents wished to meet with the Magistrate principally because Dr. Bull had been unable to complete her action plan owing to the absence of any focus group work in developing a Tariff of Offending Behaviour. It was Dr. Bull's understanding that she had agreed with the Magistrate that he would take this work forward. Unbeknown to her, the Magistrate had not interpreted the task in the same way. Consequently, the notion of a Tariff remains undeveloped. Had this work been carried out in tandem with other focus group work, it would have certainly precipitated a debate between Committee members and the judiciary on the need for a wider custodial provision.
8. Deputy Hill's proposition asks members to approve an amendment to the Law that would allow the courts, under defined circumstances, to sentence children aged 12 to 14 to periods of youth detention. There is already some common ground in that Deputy Hill does not suggest that the YOI at La Moye would be able to provide the appropriate environment for children of this age. It must be borne in mind, however, that there is presently no Committee of the States charged with providing custodial facilities for children under the age of 15 who might be sentenced to youth detention should the proposition be adopted. Therefore, if such facilities are not to be provided at the YOI, thought must be given to where else they might be situated and which is the appropriate Committee to bear the responsibility. Greenfields is a remand centre and it is not simply a case of superimposing sentenced children of such a young age on its existing remit.
9. Implementing Deputy Hill's Proposition would run the risk of causing Jersey to be in contravention of the United Nations Rules concerning the administration of Juvenile Justice ("The Beijing Rules"); the United Nations Guidelines for the prevention of Juvenile Delinquency ("The Riyadh Guidelines") and "The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)". Whilst these rules and guidelines do not have the force of domestic law, they are considered by such bodies as the European Court when considering Youth Justice matters. Members may consider, having sought advice from the Attorney General, that any new legislation should be drafted and implemented in such a way as to be compliant with both the letter and spirit of these documents.
10. A decision on such an important matter as the incarceration of children should be evidence-based. To that end, and to help members develop an informed view, the Tri-Partite Committee is organising an evening seminar entitled "Child Offenders – What Works" which will take place on the 10th March to which all States members and members of the judiciary will be invited. This seminar will enable members to consider the issues in more detail and it would be sensible, therefore, for the debate on Deputy Hill's proposition to take place shortly afterwards. The Home Affairs seminar web site at <http://youthseminar.server101.com> contains further reference information on the subject.

Is a custodial option justified?

11. This section of the report contains a thorough examination of the pattern of youth offending in Jersey. This analysis forms part of the report for three main reasons. Firstly, in order to make an objective decision as to whether to introduce a power to incarcerate children under the age of 15, members ought to be able to consider the extent of youth offending based on reliable statistics. Secondly, Deputy Hill's

proposition contained only two references to statistics, both of which are wrong and capable of misleading members about the extent of youth offending. Therefore, this report contains factual information drawn from statistics available from the States of Jersey Police, Probation Service with regard to Parish Hall Enquiries (PHEs) and the Youth Court. Thirdly, the information contained in the Appendix will show the progress that the Home Affairs Committee has made since the criminal justice policy review report published by Professor Rutherford in October 2002. The second recommendation of that report was that, by 2005, the Island ought to be able to publish an annual set of reliable, robust and consistent criminal justice statistics. Although there is still much to be done on the integration and automation of data, we have succeeded in being able to extract important information from separate criminal justice sources. The following information can be extracted from the available data; however, it must be borne in mind that the numbers involved are sometimes small and that, consequently, percentage changes may be less significant than they would be for larger totals.

12. **States of Jersey Police Statistics.** Comprehensive data about recorded crime has only been available from the States of Jersey Police since 2002 owing to the introduction of the On-line Police Electronic Network (OPEN) database. Therefore, we should treat conclusions that are drawn with caution. Their statistics show that:

- Although there has been a 13% increase in the number of young offenders coming to the attention of the States of Jersey Police from 2002 to 2003 (Table 1), there has only been a 1.3% increase in the total number of recorded offences (Table 2). This could either be because offenders are less prolific or repeat offenders are committing fewer crimes.
- There has been a slight increase in the number of offences, from 192 to 215, committed by those below the age of 14 (Table 3).
- For the age group 14 to 17, there has been a slight reduction in the overall number of recorded offences (Table 4).
- Acquisitive crime is the most prevalent type of offending committed by those below the age of 14 and for 15 to 17 year olds (Table 5).

13. **Parish Hall Enquiry Statistics.** The following information can be drawn from the data available for attendance at PHEs by youths from 1996 to 2003:

- In general the number of youths attending PHEs has remained fairly stable over the period (Table 6).
- There appears to be a reduction in the number of young people attending PHE for public order offences, crimes against the person and crimes against property. The only discernable rise is an increase in motoring offences and larceny. (Table 7).
- The percentage of those youths dealt with by way of fines at PHEs has increased dramatically since 2001, probably reflecting the increase in motoring offences.
- Use of the deferred decision is becoming more popular and was used in 24% of PHEs with a 99% success rate.

14. **Youth Court Statistics.** The Home Affairs Department has built on the Youth Court data provided for the Rutherford Report by providing a continuous set of annual data for the 7 years from 1997 to 2003. This enables us to provide important longitudinal statistics which show the following:

- Up until 2000, the number of children appearing in the Youth Court was fairly stable, rising from 162 in 1997 to 189 in 2000. In 2001, there was a dramatic rise to 251 which was maintained in 2002 before a slight additional rise to 277 in 2003 (Table 8).

- The number of children under 14 appearing in the Youth Court has risen proportionately faster since 1999 than the 14-17 age group (Table 9).
 - Traffic offences are the most prevalent offences dealt with by the Youth Court (34% of all offences) with acquisitive crime the next prevalent (19%) (Table 10). However, Traffic offences have declined by 7% over the whole period.
 - Offences Against Property have risen by 425% since 1997, although the overall numbers are small, and breaches of Probation and Binding Over Orders have risen by 400%.
 - Historically, the most frequently used sentence has been a Binding Over Order, but this has started to decline over the last 3 years in favour of fines and Probation Orders reflecting a change in sentencing policy by the Youth Court (Table 11).
 - In the last 2 years there has been a dramatic increase in the number of offenders whose cases have been dismissed.
 - From 1997 to 1999, there were 21 sentences of youth detention compared with 32 for the period 2001 to 2003 representing a 52% increase overall. There has been a 22% decrease in the numbers being remanded to the Royal Court over the same periods, but this is probably due to an increase in the court's jurisdiction in 2001 (Table 11).
 - The average age of offenders attending Youth Court has fallen slightly from 15.4 to 15.1 years of age.
15. We must guard against drawing any firm conclusions from the above statistics when such small numbers and changes from year to year are involved. However, we can conclude that in the last 2 years, the States of Jersey Police has recorded offences against more offenders but for only a slight increase in the overall number of offences. The increasing use of fines, community service and probation rather than youth detention and remands to the Royal Court might suggest that the Youth Court is not dealing with significantly more serious offending generally. However, the lack of a secure sentencing option for persistent offenders under 15 has meant that the Youth Court has had to sentence to repeated Probation Orders. We know from records kept by the Magistrate that the problem is more one of persistent offending by a small number of young offenders. The number of children under the age of 14 committing offences is increasing year on year. The number of children appearing at PHEs remained fairly static over the period. However, bearing in mind that there has been a 16.2% increase in those under 17 in Jersey since 1991, there was only a 16.6% increase in numbers attending Youth Court between 1997 to 2000 but a 46% increase from 2000 to 2003. This bears out the fact that a greater proportion of children, particularly those identified by the Magistrate as being persistent offenders, are being warned for appearance before the Youth Court rather than appearing first before a PHE.

What effect is custody likely to have?

16. In attempting to assess what effect a custodial option for children as young as 12 years of age is likely to have, the United Kingdom (U.K.) experience bears examination. Information on the U.K. experience is drawn from two recent policy reports published by the National Association for the Care and Rehabilitation of Offenders (NACRO): 'Reducing Child Imprisonment – Counting the Cost' and 'A Failure of Justice'. According to these recent publications, which are a reputable source, despite a fall in recorded crime, there has been a dramatic rise in the number of children locked up in the U.K. in recent years, rising from 4,000 in 1992 to 7,600 in 2001. The reports describe this as a "rush to custody" which is characterised by:
- A reduced tolerance for child offending in comparison to adults with custody for young people

rising at a faster rate. Between 1992 to 2001 the use of adult custodial sentences rose by 82% and for under 18s by 90%.

- An increase in the length of sentence. The average length of a custodial sentence for boys aged 15 to 17 rose from 9.2 months in 1992 to 10.8 months in 2001.
- A tendency to incarcerate at ever younger ages. The number of children under 15 who were sentenced to detention rose by 800% between 1992 to 2001 (from 100 to 800).
- A disproportionate rise in the use of detention for girls. Whilst the level of youth custody has risen by 90% since 1992, the expansion for girls is around 400%.
- The table below gives the approximate under eighteen custodial population by country for 2002. The table shows that our current incarceration rate is by far the worst, being three times that of Germany (the second highest) and six times that of England and Wales.

Comparison with other European Countries

Approximate under 18 custodial population by country			
Country	Number in Custody (yr)	Under 18 population (millions)	Custody per 1,000 under 18 population
Germany	7,556 (00)	15.529	0.49
Greece	574 (01)	2.0	0.28
England/Wales	3,133 (02)	13.351	0.23
Scotland	160 (00)	1.097	0.15
Hungary	286 (00)	2.056	0.14
Austria	201 (98)	1.634	0.12
Czech Rep	213 (01)	2.084	0.1
Portugal	214 (99)	2.052	0.1
Slovakia	128 (00)	1.317	0.1
Slovenia	28 (00)	0.398	0.07
France	862 (02)	13.456	0.06
Belgium	96 (00)	2.137	0.05
Netherlands	120 (00)	3.455	0.034
Albania	34 (01)	1.110	0.03
Spain	152(00)	7.341	0.02
Norway	16(00)	1.042	0.015
Denmark	9(00)	1.134	0.008
Sweden	12 (98)	1.914	0.006
Finland	2 (02)	1.131	0.002
Jersey	26	0.017*	1.52

17. In terms of preventing offending, the reports make the following findings:

- In terms of re-offending rates following release from custody, the re-conviction rates of 14 to 17 year olds within 24 months of release is 80%. The equivalent figure for the YOI in Jersey is 88%.
- There is doubt as to whether custody is being used for public protection. The U.K. statistics reveal that 27 children were convicted of a murder, 46 for grave sexual offences, 13 for manslaughter and less than 14% for robbery. By far the largest proportion sent to prison were for theft or handling stolen goods (one in four).
- In terms of reducing crime by locking up hard core or persistent offenders, NACRO estimate that an additional 1,140 young offenders would need to be locked up in order to achieve a 1% reduction in crime. Persistent and serious juvenile offenders differ from adult offenders in that their offending is relatively transient and few go on to become serious and persistent adult offenders.
- As a deterrent, Home Office research suggests that increasing severity of penalties has a negligible impact on patterns of offending.

18. Until 1998, custodial sentences were not available for children under 15 other than those convicted of grave offences in U.K. Crown Courts. The secure training order (STO) brought in at that time provided a custodial penalty for children as young as 12, hence the 800% rise in detention between 1992 to 2001. NACRO consider that, for this younger age group, re-offending rates following custody may be higher than for older teenagers. For example, the Home Office evaluation of the Medway Secure Training Centre

records that, for children subject to an STO leaving the centre, 11% were arrested for an offence within one week, 52% within 7 weeks and 67% within 20 weeks. In April 2000, the detention and training order (DTO) replaced the STO (previously for children aged 12-14) and detention in a young offender institution (previously for those aged 15-17) with a single, uniform sentence. The DTO is served half in custody and half in the community with the potential for early or late release. The Youth Justice Board in England is currently evaluating the DTO.

How should custodial facilities be provided?

19. Creating a secure environment for children sentenced to custody is expensive. In the financial and manpower implications section of his report, Deputy Hill makes an assumption that Greenfields will be able to accept sentenced children as well as those on remand. If that were possible, it could have the desirable outcome of enabling 15 year olds who would currently serve youth detention at the YOI to be accommodated at Greenfields, and later, in a new secure unit. The Education, Sport and Culture (ESC) Committee are best placed to comment upon that proposal. However, Deputy Hill understates the current staffing requirement. As well as the 14 day care staff, Greenfields has a manager, 3 night staff and 4 domestic staff: a total complement of 22. In her report, Dr. Bull envisaged a secure care facility for 8 children requiring a care staff complement of 24 and additional domestic staff. A similar unit in the U.K. would typically have 2/3 managers, 20 care staff, 4/5 teaching staff, 2 night staff and 18 domestic staff – a total complement of around 48. To this must be added the capital cost of building appropriate custodial facilities. The ESC Committee have indicated that £2.5 million earmarked in the capital programme could be allocated for this latter purpose.
20. Hitherto, Guernsey have not provided secure criminal accommodation; neither do they intend to. They have, however, been making arrangements to send sentenced children to the U.K. on a Secure Care Order once they have put legislation in place. They are currently discussing transfer mechanisms with the U.K. authorities. They already send children to the U.K. on welfare and special needs placements and are thought to have around 30 children away at present. This is an expensive option; we know from the infrequent placements made by Jersey courts to special secure units in the U.K. that costs up to £70,000 per individual per annum can be incurred. In 2003, Guernsey sentenced only one 15 year old to youth detention and no child under that age. They also had one 16 year old on remand for a week. These terms were served in their YOI. They also maintain a temporary holding cell in one of their homes for children under the age of 15, but it was not used last year.
21. Whichever option might be opted for, there is no cheap solution. The States would need to accept the high revenue and capital costs involved. The Guernsey model also raises human rights considerations by sending children away to another jurisdiction.

Under what circumstances might custody serve a purpose?

22. The proposition is that a custodial option is required when there is a history of failure to respond to non-custodial penalties, to protect the public from serious harm or when serious offending is involved. To that end, members might decide that the courts need to be able to respond with a custodial sentence in some instances, and also be able to break the cycle of offending. Whether custody addresses the root causes of offending and turns young children away from their offending behaviour in the longer term is another matter; the evidence is that too often, though the case for a custodial sentence might be compelling, it remains a punitive measure with negligible rehabilitative value.

Conclusion

23. In conclusion, States members must weigh carefully the judicial, moral, social and financial arguments outlined in this paper for and against sentencing children aged 12 to 14 to youth detention. There may be legitimate judicial grounds, as outlined in the proposition, for requiring a secure provision. However, there are moral considerations by virtue of age and whether or not sentences should be served outside the Island; social considerations in terms of the stigmatisation of having served a period of custody, the effect on families and the desirability of longer term rehabilitation; and the financial burden on the tax payer in

an Island of increasingly limited resources. Furthermore, members also need to debate which of the three Committees should have responsibility for the secure facilities.

24. Whilst accepting that, for the reasons set out in paragraph (a), (i) to (iii) of the proposition, there will be occasions when secure provision for children aged 12 and over would be justified, the Home Affairs Committee believes that such a provision should be dependent upon appropriate and adequately funded secure care facilities being put in place in accordance with the provisions of the Bull Report. This would require the States to allocate sufficient capital and revenue funds for the purpose. It is not considered acceptable for either the YOI, which accommodates young offenders up to the age of 20, or Greenfields, which is a remand centre, to be required to provide custodial facilities for the age group in question in the interim. Furthermore, the Home Affairs Committee believes that the Tri-Partite Committee, of which the Deputy of St. Martin is a member, should be allowed to continue to develop proposals for the provision and management of a secure unit, together with other programmes necessary for children displaying emotional and behavioural difficulties, and to bring these proposals to the States as soon as possible. The proposition is therefore rejected on the above grounds.
25. This response should be considered alongside those of the Education, Sport and Culture Committee and the Health and Social Services Committee. The seminar, Child Offenders – What Works, scheduled for the 10th March, is designed to give States members a better understanding of the issues from both perspectives.

WHAT DO WE KNOW ABOUT CHILDREN WHO OFFEND?

States of Jersey Police:

Table 1. – No. of Offenders Charged aged under 18 yrs old.

	2002	2003
<10	0	4
10-13	89	81
14-17	222	267
Total	311	352

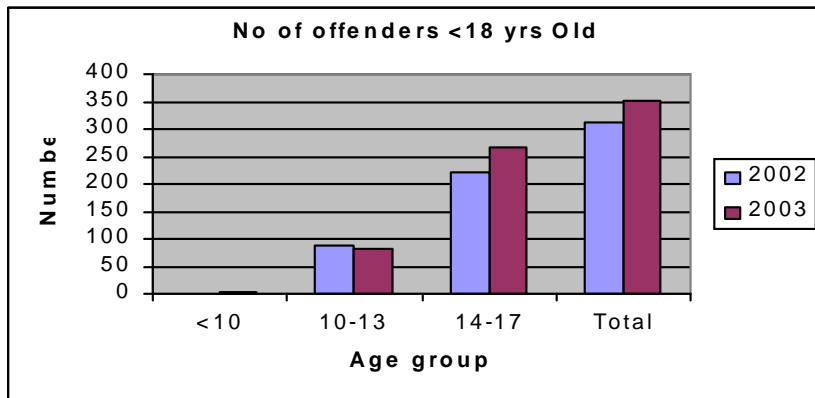


Table 2. – No. of Offences committed by under 18's

	2002	2003
<10	0	5
10-13	192	210
14-17	630	618
Total	822	833

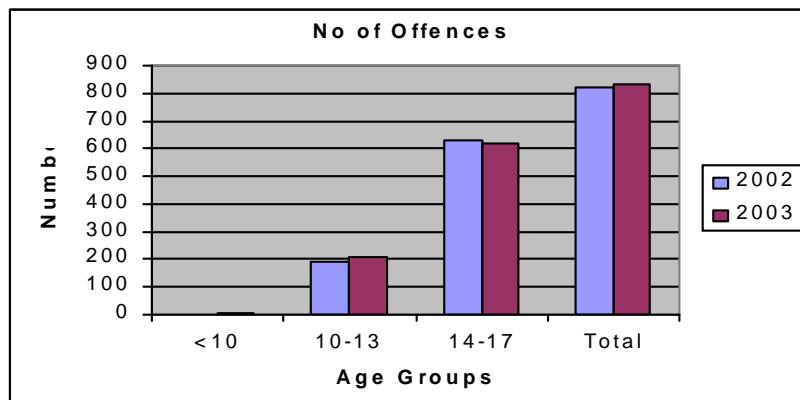


Table 3 – Types of crime <14 yrs old

	2002	2003
Acquisitive	116	81
Against the Person	25	63
Traffic	12	2
Against Property	26	38
Public Disorder	9	15
Financial	3	0
Drug Offences	1	3
Other	0	13
Total	192	215

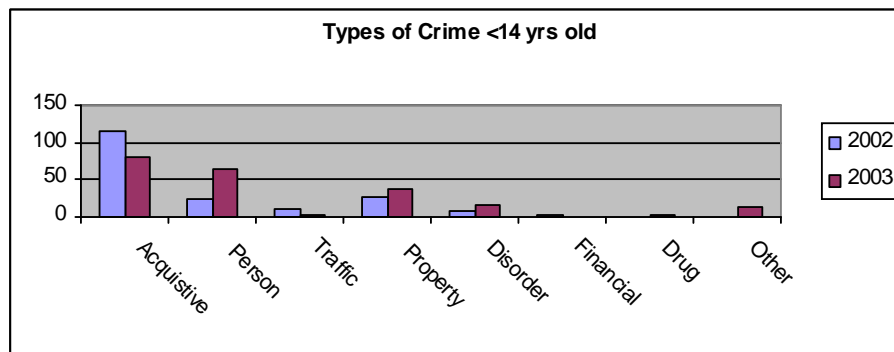


Table 4 – Types of Crime 14-17 yr olds

	2002	2003
Acquisitive	295	235
Against the Person	83	95
Traffic	69	65
Against Property	52	78
Public Disorder	62	81
Financial	32	1
Drug Offences	35	38
Other	2	25
Total	630	618

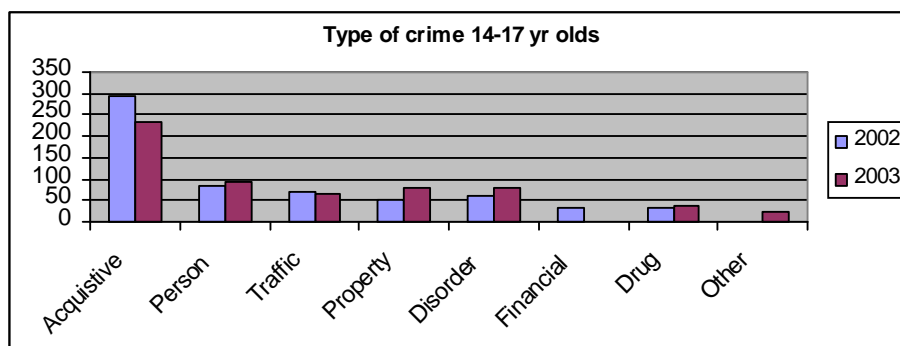
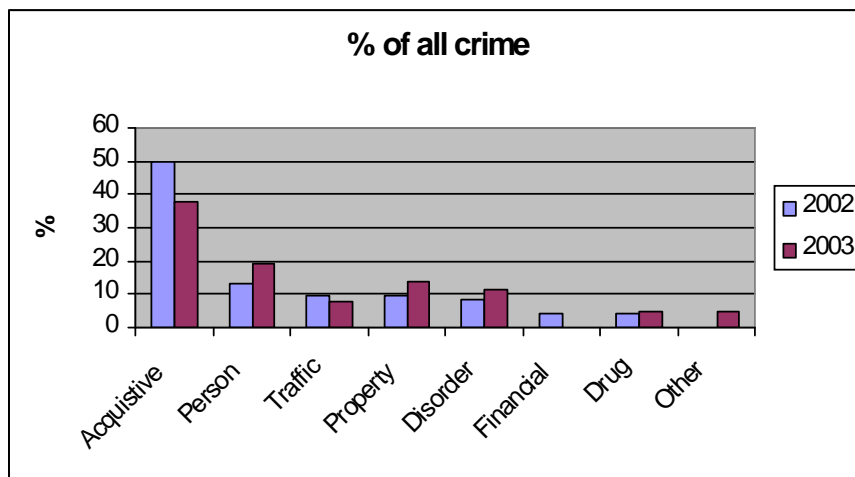


Table 5 – Crime type as % of all crime

	2002	2003
Acquisitive	50	38
Against the Person	13	19
Traffic	10	8
Against Property	9	14
Public Disorder	9	12
Financial	4	0
Drug Offences	4	5
Other	0	5



Parish Hall Enquiry

Table 6 – No. of PHEs for Children

	1996	1997	1998	1999	2000	2001	2002	2003
Number	374	400	381	384	381	358	348	367

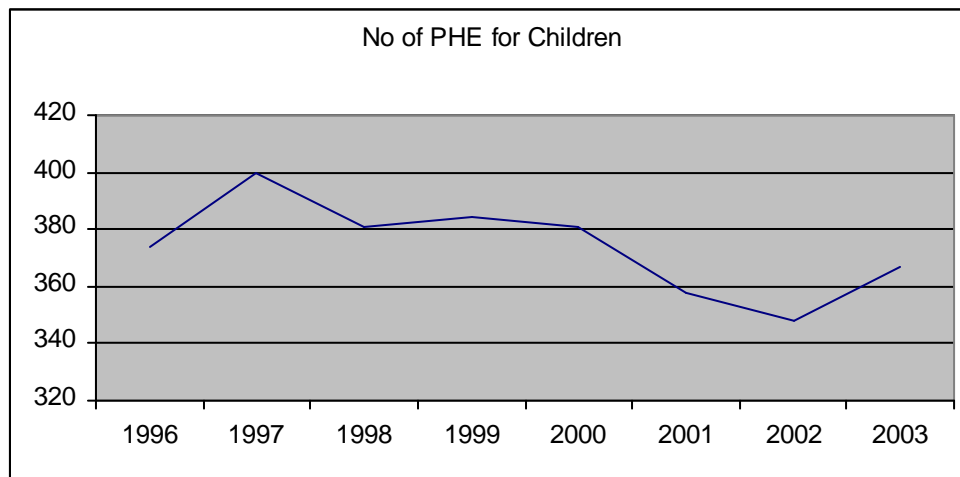


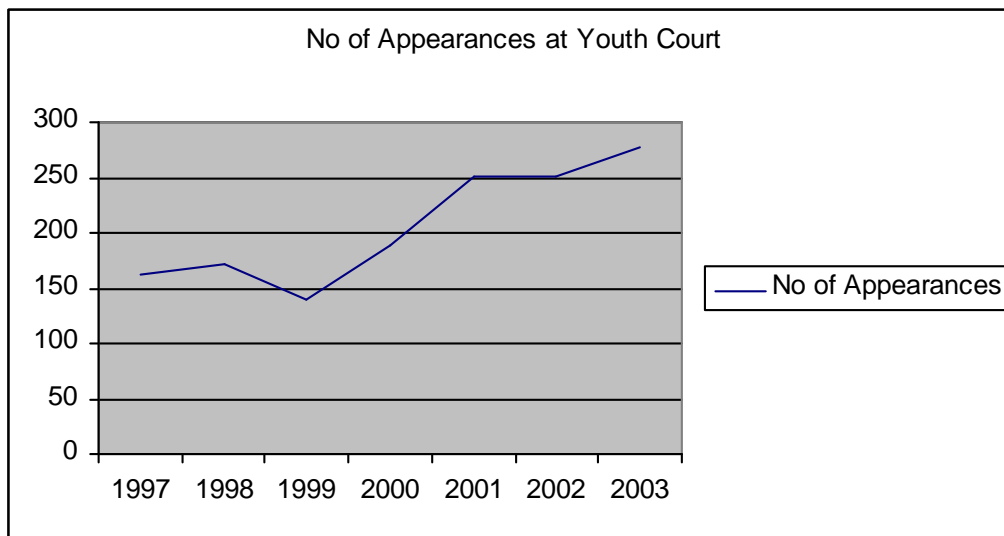
Table 7 – Main Offences committed by those ordered to attend PHE

	2000	1999	% Change
Motoring	111	64	73 +
Larceny	79	58	36 +
Assault	34	41	17 -
Public order	29	37	21-
Underage Drinking	28	27	
Damage to Property	27	38	30 -
Drunken Behaviour	20	24	17 -
Drugs	16	25	36 -
Breaking/Illegal Entry	9	22	60 -
Obstruct Police	4	10	60 -
Fraud/Forgery	4	8	50 -

Youth Court

Table 8 – Total number of appearances of persons at Youth Court

1997	1998	1999	2000	2001	2002	2003
182	172	140	189	251	251	277



NB: there is some double counting in these figures as a result of some children appearing more than once in the year.

Table 9 – Age of persons appearing at Youth Court

	1997	1998	1999	2000	2001	2002	2003
10-13	5	11	11	28	26	27	40
14-17	155	157	125	157	221	211	229

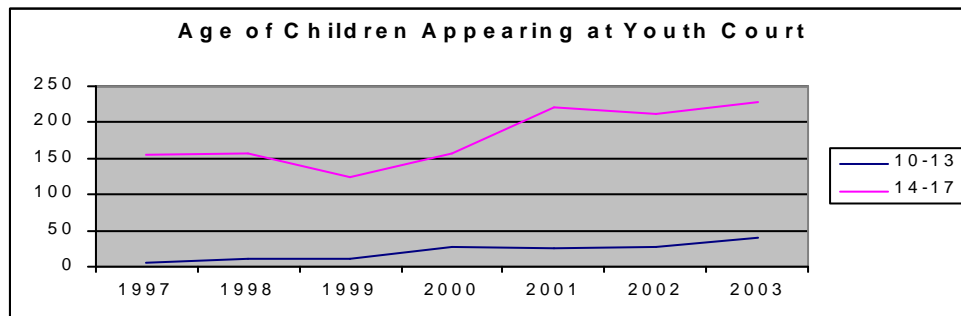


Table 10 – Offence Type

	1997	1998	1999	2000	2001	2002	2003	% Change 97-03
Acquisitive	28	31	23	40	37	55	57	104%
Against the Person	21	31	24	35	44	42	37	76%
Against Property	4	2	11	9	10	15	21	425%
Drug Offences	11	14	12	13	11	10	11	0%
Public Disorder	15	9	4	13	32	16	36	140%
Traffic	76	76	56	71	92	61	71	-7%
Financial	1	1	0	3	0	0	0	-100%
Other	0	0	1	1	5	6	14	140%
Breach	6	8	9	4	20	46	30	400%
Total	162	172	140	189	251	251	277	115%

Table 11 – Sentences

	1997	1998	1999	2000	2001	2002	2003	% Change 97-03
Fine	20	18	13	26	47	45	52	160%
B/Over	73	66	39	83	72	48	59	-19%
B/Over - Les Chenes	1	1	3	4	7	1	0	-100%
C/Service Order	9	16	20	14	35	28	20	122%
C/Service & Probation	1	0	0	1	1	8	10	900%
Royal Court	9	17	15	14	4	10	18	100%
Probation	26	35	23	37	67	69	84	223%
Attendance Centre	10	1	1	0	0	0	0	-100%
AC & Probation	2	0	0	0	0	0	0	-100%
Youth Detention	4	9	8	2	8	14	10	150%
BOTLI	1	1	5	0	3	2	2	100%
Probation – Les Chenes	5	5	7	4	6	6	0	-100%
Acquittal/Discharge/Dismiss	1	3	6	3	1	20	22	2100%
Other	0	0	0	1	0	0	0	-100%
Total	162	172	140	189	251	251	277	