



INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CONDITIONS OF DETENTION IN WALES

NOVEMBER 2019

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EXECUTIVE SUMMARY

RIGHT TO LIFE & TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND CONDITIONS IN DETENTION

The latest Welsh-only data relating to conditions in detention reveal the existence of an entrenched and widespread set of problems. In the prison estate, all prisons in Wales (except HMP Berwyn) are currently operating at a level above their Certified Normal Accommodation. 2018 saw incidents of self-harm reach record levels while assaults on prison staff and prisoner-on-prisoner assaults have increased respectively by 375% and 435% since 2010. There have been 26 self-inflicted deaths recorded in Welsh prisons since 2010. On average, a prisoner in Wales takes their own life every four months. At a time when elderly prisoners have become the fastest growing demographic group in prison, inadequate prison healthcare and a rising number of 'natural' prison deaths are a cause of major concern. At HMP Usk, where 40% of prisoners are aged 50 and above, as many 'natural' recorded deaths have been recorded since 2013 than the previous 35 years combined.

The number of self-harm incidents recorded at female prisons in England has increased by 81% since 2013. On average, there were nine self-harm incidents a day recorded at HMP Eastwood Park and HMP Styal in 2018. There have been five self-inflicted deaths recorded at HMP Eastwood Park (3) and HMP Styal (2) since 2010.

Although the number of children held in custody has fallen steadily since 2010, the conditions inside the youth secure estate continue to be a source of major concern. In the year ending March 2018, self-harm incidents in the youth secure estate in England and Wales increased by 40% compared with the previous year. In 2017, HMYOI Parc in Bridgend recorded the highest self-harm rate amongst all Young Offender Institutions in England and Wales. In 2018, there were more children on children assaults per population recorded at HMYOI Parc than any other Young Offender Institution in England and Wales.

Health Inspectorate Wales (HIW) recently identified a number of problems with the use of restraint on mental health patients in Wales. This includes "oppressive and intimidating"

behaviour by staff as well as concerns about “excessive” use and duration of restraint by one facility. The data show that there were 48 uses of facedown restraint in Wales in 2017/18.

Despite a concerted effort to uncover the Welsh context to conditions of detention there remain many gaps in the available data and, subsequently, many ‘known unknowns’. For example, it remains unclear how many self-harm incidents have taken place in police custody in Wales. In addition, although there are no immigration detention facilities in Wales, it is unknown how many people previously domiciled in Wales are currently being held in Immigration Detention Centres. A request for this information was refused by the Home Office on the basis of financial cost, despite the suggestion that they do hold some information on their database.

Although a fairly clear and comprehensive picture of the conditions inside detention settings in Wales emerges from this report, gaps in the available information prevent us from telling the whole story. These shortcomings form a major part of our recommendations.

DEPRIVATION OF LIBERTY

Health and social care are devolved in Wales, which results in differences in implementation and data gathering. The Mental Health (Wales) Measure 2010 (of which there is no equivalent in England) imposes new duties on local health boards and local authorities to improve support to mental health service users living in the community. The review of the Measure, published in 2015, was broadly positive.

In 2018 there were 117 people with learning disabilities in NHS run mental health hospitals in Wales, however, this figure does not include people in independent hospitals or placed out of area in hospitals in England. There is also no official data on the length of hospital admission for people with learning disabilities in Wales, nor data on whether they are admitted informally or detained under the Mental Health Act (MHA) or the Mental Capacity Act (MCA) Deprivation of Liberty Safeguards (DoLS).

Wales has a higher proportion of informal admissions to NHS mental health hospitals when compared with England. A higher proportion of people with learning disabilities live with their families in Wales and a lower proportion live in supported accommodation in Wales, as

compared with England and Scotland. Figures from 2017-18 suggest fewer people with learning disabilities were in supported living accommodation than in 2015-6, suggesting the needed transformation towards independent living is not occurring. It has been recognised that there is a need for stronger leadership in care and support for people with learning disabilities across local authorities and local Health Boards.

Wales lacks a national programme of individualised review of people in assessment and treatment units. In contrast with England, the Welsh inspectorates have not adopted policies prohibiting the registration of new services that do not reflect best practice in supporting people with learning disabilities to live independently in the community.

Local authorities and Local Health Boards who act as supervisory bodies under the DoLS are struggling to keep up with the demand for assessments. Statutory timescales are widely breached with the result that many people are detained in hospitals and care homes without the safeguards required by law. Moreover, it is not known how many people in Wales may be deprived of their liberty in settings outside the DoLS. In Wales, as in England, appeals against detention under the DoLS are very low.

In 2020 the DoLS will be replaced by a new system for authorising deprivation of liberty: the Liberty Protection Safeguards (LPS). Whilst LPS are intended to be more flexible and 'proportionate' than the DoLS, there is concern that the LPS may fail to adequately protect human rights.

INTRODUCTION

This report provides an overview of Wales specific information on issues relating to the right to life, freedom from torture and ill-treatment and deprivation of liberty under the International Covenant on Civil and Political Rights (ICCPR).¹ This report will form part of the submission of the Equality and Human Rights Commission (EHRC) to the United Nations Human Rights Committee (HRC) to inform the preparation of their List of Issues Prior to Reporting (LOIPR) on the UK's compliance with the International Covenant on Civil and Political Rights (ICCPR).

The LOIPR is a list of key human rights issues of concern drawn up by the HRC, which the State Party is required to address in its report to the Committee. Influencing the LOIPR is therefore crucial for ensuring that it includes our key concerns. The HRC is the international committee of experts that oversees state compliance with the Covenant. The HRC has recently confirmed that the UK's LOIPR will be adopted in March 2020.

The ICCPR is an international human rights treaty that sets standards in relation to a wide range of aspects of civil and political life. It was adopted by the United Nations in 1966 and – along with the International Covenant on Economic, Social and Cultural Rights – forms part of the so-called International Bill of Rights, which gives legal force to the UN Declaration of Human Rights.

The UK ratified the ICCPR in 1976 and has since undergone a number of examinations by the UN Committee, most recently in 2015. Following this review, the HRC made over 50 recommendations on steps the UK should take to improve its implementation of the treaty. In addition, the UK was asked to submit a follow up report on specific priority issues in 2016 (concerning accountability for conflict-related violations in Northern Ireland and for violations committed by British military abroad). The HRC issued a progress grading of C in 2018, indicating that the UK's progress in addressing these priority issues was unsatisfactory.

Once the LOIPR is adopted by the HRC in March 2020, the UK Government will be required to submit its formal state report addressing the issues it raises. At that stage, the Commission will

¹ The data and information presented here are up to date as of November 2019.

need to produce an updated version of its report in order to inform the review of the UK by the HRC.

By accessing new sources of data through a number of different methods, this report provides the most comprehensive and up-to-date review of conditions in detention in Wales. In doing so, it is hoped that this report can contribute to existing and future debates in Wales on equality, human rights and conditions of detention. This includes helping to engage with academics and policy makers as well as Welsh politicians at the National Assembly for Wales and the UK Parliament.

1. SITES OF CONFINEMENT AND DETENTION IN WALES

1.1 In this opening chapter we provide an overview of the secure estate in Wales as well as other places of detention and confinement. This includes police custody, the adult prison estate, the secure estate for children, immigration detention facilities, and psychiatric institutions in Wales.

POLICE CUSTODY

1.2 There are four police forces in Wales that cover each of the four territorial policing areas: Dyfed-Powys, Gwent, North Wales and South Wales. There are 19 police custody suites in Wales which provide for 388 police cells. South Wales police has the highest number of available cells (169) followed by North Wales (98), Dyfed Powys (62) and Gwent (59) (see Figure 5).²

ADULT PRISON ESTATE

1.3 There are five male prisons in Wales that each hold a mixture of convicted, unconvicted, sentenced and unsentenced prisoners. These are HMP Berwyn, HMP Cardiff, HMP/ YOI Parc, HMP Swansea, and HMP Usk/Prescoed. HMP Berwyn in north Wales is currently the largest and is set to become the biggest prison in the United Kingdom once it reaches full capacity. The prison opened in February 2017 and is expected to hold sentenced category C adult males and category B adult males on remand.³ At the end of November 2019, the prison held a total of 1,645 prisoners.⁴

² Data obtained via the Freedom of Information Act 2000. A request for this information was sent to the Ministry of Justice by Dr Robert Jones in April 2017.

³ Adult male prisoners in England and Wales are categorised by security status. There are four different security categories: Category A, Category B, Category C and Category D. Category A - Prisoners whose escape would be highly dangerous to the public or the police or the security of the State and for whom the aim must be to make escape impossible. Category B - Prisoners for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult. Category C - Prisoners who cannot be trusted in open conditions but who do not have the resources and will to make a determined escape attempt. Category D - Prisoners who present a low risk; can reasonably be trusted in open conditions and for whom open conditions are appropriate (Grimwood, 2015).

⁴ All prison population figures presented here are taken from the Ministry of Justice's Prison Population Statistics – Monthly Bulletin (November 2019) <https://www.gov.uk/government/statistics/prison-population-figures-2019>

1.4 HMP Cardiff is a category B local resettlement prison that holds adult males served by courts in the local area. The prison holds a mixture of remanded, unsentenced, sentenced and recalled prisoners. At the end of November 2019, the population at HMP Cardiff was 737.

1.5 HMP/ YOI Parc is a category B local prison that holds convicted adult men, convicted young adults (18-20), and young people (16-17) remanded and convicted. Currently operating as Wales' only privately-run prison, HMP Parc is one of the largest prisons in England and Wales. In November 2019, there were a total of 1,652 prisoners being held there.⁵ This figure includes all adults as well as those being held in the Young Persons' Unit.

1.6 HMP Swansea is a category B local resettlement prison for adult males and serves local courts in south Wales. The prison population is a mixture of remanded, unsentenced, sentenced and recalled prisoners. At the end of November 2019, a total of 423 prisoners were being held there.

1.7 HMP Usk and HMP Prescoed are two separate prisons located on different sites that are managed as a "single entity" by HMPPS (HMI Prisons, 2013: 5). HMP Prescoed is an adult male open prison that manages category D prisoners. HMP Usk operates as a small category C training prison which largely deals with offenders convicted of offences under the Sex Offenders Act 1997. At the end of November 2019, HMP Usk and HMP Prescoed had a combined population of 520 prisoners.

1.8 The total prison population in Wales was 4,977 in November 2019. Information obtained from the Ministry of Justice via the Freedom of Information Act 2000 show that 37% of all Welsh prisoners were being held in English prisons in December 2018.⁶

YOUTH SECURE ESTATE

1.9 There are two custodial establishments for children in Wales – Hillside Secure Children's Home in Neath and HMYOI Parc in Bridgend. Hillside Secure Children's Home provides

⁵ This figure includes all prisoners held there, in both the adult units and the young people's units.

⁶ Data obtained from the Ministry of Justice via the Freedom of Information Act 2000. Four requests for this information were sent to the Ministry of Justice by Dr Robert Jones throughout 2018 and 2019..

accommodation for children aged 12 to 17. The Young Persons' Unit at HMYOI Parc is a facility managed by G4S on the same site as HMP Parc in Bridgend. The Unit holds boys under the age of 18 and has a Certified Normal Accommodation of 64. On average, the unit held 40 children in 2018.⁷

IMMIGRATION REMOVAL CENTRES

1.10 There are no immigration detention facilities in Wales. All current centres in the United Kingdom (UK) are located in England (7), Northern Ireland (1) and Scotland (1).

- Brook House, Gatwick
- Colnbrook, Middlesex
- Dungavel House, South Lanarkshire
- Harmondsworth, Middlesex
- Larne House short term holding facility, Antrim
- Morton Hall, Lincolnshire
- Manchester short term holding facility
- Tinsley House, Gatwick
- Yarl's Wood, Bedfordshire

Source: Home Office⁸

MENTAL HEALTH DETENTION

1.11 The majority of hospitals in Wales are formally designated to receive patients detained under the Mental Health Act 1983. Heath Inspectorate Wales' website lists 34 services under the heading 'Learning Disability, mental Health' in Wales.

⁷ Data obtained from the Ministry of Justice via the Freedom of Information Act 2000. The average population at HMYOI Parc was calculated using four population readings in March, June, September and December 2018.

⁸ <https://www.gov.uk/immigration-removal-centre>

1.12 Individuals can also be detained in police custody under the Mental Health Act 1983 s 136. In 2018/19, there were a total of 2,256 people detained in police custody under section 136 in Wales.

1.13 Of these 2,256, 270 were detained in Dyfed-Powys, 278 were detained in Gwent, 795 were detained in North Wales, and 913 were detained in South Wales. There were a total of 1,289 males detained, 865 females detained and 102 where the gender was not known (Figure 1).⁹ There were 117 individuals under the age of 18 detained, with the majority (2,053) being above the age of 18, with only 86 with age unknown (Figure 6)¹⁰. Most of those detained in police custody under s 136 were White European (1,346). In total, 13 of those detained were Black, 8 were Dark European, 8 were Asian, 6 were classed as Other, and 875 were Unknown (Figure 7).¹¹

Figure 1

Detentions in police custody under the Mental Health Act 1983 s 136: gender¹²

	Male	Female	Unknown	Total
Dyfed-Powys	163	107	-	270
Gwent	176	102	-	278
North Wales	406	304	85	795
South Wales	544	352	17	913
Total	1,289	865	102	2,256

⁹ Table MHA.01 – Number of detentions under section 136 of the Mental Health Act (1983), by gender, 2018/19. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

¹⁰ Table MHA.02 – Number of detentions under section 136 of the Mental Health Act (1983), by age group, 2018/19. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

¹¹ Table MHA.03 – Number of detentions under section 136 of the Mental Health Act (1983), by ethnicity, 2018/19. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

¹² Table MHA.01 – Number of detentions under section 136 of the Mental Health Act (1983), by gender, 2018/19. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

2. RIGHT TO LIFE & TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND CONDITIONS IN DETENTION

2.1 The College of Policing Authorised Professional Practice on Detention and Custody was introduced in 2013 to provide police with guidance on delivering 'safe' and 'decent' custodial settings in England and Wales. This includes guidance on the provision of health and social care, the use of force, staff training, and the authorisation of detention in police custody.

2.2 All deaths in police custody must be referred to the Independent Office for Police Conduct (IOPC). The IOPC is responsible for almost all investigations into deaths in police custody in England and Wales.

2.3 There has been one death in police custody recorded in Wales since 2015. This death was recorded by Dyfed-Powys in 2015.¹³

2.4 In 2018/19, there were no apparent suicides following police contact recorded in Wales (IOPC, 2019).

2.5 It is unknown how many self-harm incidents took place in police custody in Wales between 2015 and 2018. According to each of the four forces in Wales, the cost of providing the authors with this information would exceed the cost limit set out within the Freedom of Information Act 2000.¹⁴

ADULT PRISON ESTATE

2.6 Information on assaults, self-harm and deaths in the prison estate in Wales are routinely made available by the Ministry of Justice. HM Chief Inspector of Prisons' Annual Report for 2018-

¹³ Data were obtained from all police forces in Wales via the Freedom of Information Act 2000.

A request for this information was sent to all police forces in Wales by Dr Robert Jones in August 2019.

¹⁴ An effort was made to obtain data from all police forces in Wales via the Freedom of Information Act 2000. A request for this information was sent to all police forces in Wales by Dr Robert Jones in August 2019.

19 reported increases in the number of self-inflicted deaths as well as a “disturbingly high” level of self-harm in England and Wales (HMI Prisons, 2019:7).

2.7 Between 2010 and 2018, there were 26 self-inflicted deaths in Welsh prisons. The recorded figures show that, on average, a prisoner in Wales takes their own life every four months. There were two self-inflicted deaths recorded at Welsh prisons in 2018 (see Figure 2).

Figure 2

Self-inflicted deaths by establishment in Wales since 2010¹⁵

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Berwyn	-	-	-	-	-	-	-	0	0
Cardiff	1	0	4	1	1	1	1	1	0
Parc ¹⁶	1	0	0	0	2	0	3	0	1
Swansea	2	0	1	0	1	1	3	0	1
Usk/Prescoed	0	0	0	0	0	0	0	0	0
Total	4	0	5	1	4	2	7	1	2

2.8 All deaths in prison custody in Wales are subject to a clinical review by Health Inspectorate Wales. This review is completed on behalf of the Prisons and Probation Ombudsman as part of their investigations into deaths in Welsh prisons. At prisons in England, all reviews are singlehandedly carried out by the Prisons and Probation Ombudsman.

2.9 A number complaints have been made about the standard of reviews into deaths in prison custody in England and Wales. In its written evidence to the House of Commons Health and Social Care Committee’s inquiry into prison healthcare, INQUEST raised a number of concerns

¹⁵ Table 1.16 – Safety Statistics in Custody update to September 2018.

<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2018>

¹⁶ All data relating to ‘Safety Statistics in Custody’ at HMP Parc include incidents within the adult facility and the Young Persons’ Unit. The Ministry of Justice do not currently have a mechanism for “separating incidents involving under-18s from those involving adults” at the prison.

including a lack of transparency and accountability; inconsistent approaches by coroners; and a lack of analysis or dissemination of key findings from reports on narrative verdicts (INQUEST, 2018). To the best of the authors' knowledge, there has been no research carried out into the role played by Health Inspectorate Wales into reviews of deaths in prison custody.

2.10 A report published by the House of Commons Health and Social Care Committee (2018: 14) in 2018 identified 'natural cause' deaths as the "leading cause of mortality" in prisons in England and Wales. According to the Prison and Probation Ombudsman (2017), one explanation for the rising number of 'natural cause' deaths in England and Wales is the increasing older prisoner population. Evidence submitted by South Wales against Wrongful Conviction to the National Assembly's Health, Social Care and Sport Committee's inquiry into prison healthcare in Wales described the poor treatment of elderly prisoners as a "national scandal" that, in some cases, amounts to "inhumane and degrading treatment" (South Wales against Wrongful Conviction, 2019: 5).

2.11 At HMP Usk/Prescoed, there have been as many 'natural cause' deaths recorded at the prison (11) since 2013 as there have been during the previous 35 years. Alongside ongoing concerns about the treatment of elderly people in prison in England and Wales, Ministry of Justice data show that 40% of prisoners held at HMP Usk are aged 50 or above (Jones, 2019).

2.12 The number of self-harm incidents recorded at prisons in Wales has increased significantly in recent years. Since 2013, the number of self-harm incidents in prisons in Wales (excluding HMP Berwyn) increased from 517 to 2,985. On average, there were 8 self-harm incidents a day recorded at prisons in Wales in 2018 (see Figure 3).

Figure 3

The number of self-harm incidents in prisons in Wales between 2010 and 2018¹⁷

	2013	2014	2015	2016	2017	2018
Berwyn	-	-	-	-	231	542
Cardiff	43	41	116	201	243	459
Parc ¹⁸	440	534	890	1,452	1,576	1,517
Swansea	34	42	92	149	300	467
Usk/Prescoed	0	0	0	29	13	39
Total	517	617	1,098	1,831	2,363	3,024

2.13 A similar set of problems are to be found in the female prison estate in England. Since reaching its highest ever level in 2016 (13), the number of self-inflicted deaths in the female prison estate has fallen. In 2018, there were three self-inflicted deaths across 12 female prisons in England.

2.14 Due to the fact that there are no female prisons in Wales, all Welsh women in prison are held in prisons in England. Three-quarters (74%) of Welsh women in prison were being held at HMP Eastwood Park and HMP Styal in 2018.¹⁹ There have been five self-inflicted deaths recorded at HMP Eastwood Park (3) and HMP Styal (2) since 2010 (see Figure 8).²⁰

2.15 The number of self-harm incidents recorded at female prisons in England has increased from 5,164 in 2013 to 9,348 in 2018.

¹⁷ Table 2.13 – Safety Statistics in Custody update to December 2018.

<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2018>

¹⁸ All data relating to 'Safety Statistics in Custody' at HMP Parc include incidents within the adult facility and the Young Persons' Unit. The Ministry of Justice do not currently have a mechanism for "separating incidents involving under-18s from those involving adults" at the prison.

¹⁹ Data obtained from the Ministry of Justice via the Freedom of Information Act 2000

²⁰ Safety in Custody quarterly: update to September 2018 – Table 1.16 'Apparent self-inflicted deaths by prison since 1978, England and Wales'. <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2018>

2.16 A survey carried out by the Ministry of Justice found that just under half of female prisoners surveyed were assessed as suffering from anxiety and depression, compared to 23% of male prisoners. When considered separately, female prisoners were also more likely to suffer from anxiety (61% compared to 33%) and from depression (65% compared to 37%) (Light et al., 2013). In his annual report for 2018-2019, HM Chief Inspector of Prisons (2019: 48) observed that female prisoners reported a very high number of “problems” upon arrival to the three prisons HMI Prisons inspected.²¹ These included worries about money, housing, physical and mental health, and substance use. At HMP Styal, inspectors found that 95% of women surveyed had encountered problems when they arrived at the prison.

2.17 At the end of December 2018, 209 restricted patients were detained at hospitals in Wales. Throughout 2018, 26 people were transferred from Welsh prisons to hospitals as restricted patients. 11 were transferred while unsentenced or untried²² and 15 were transferred after sentence.²³

2.18 A rise in adult prisoner numbers across England and Wales has contributed to decades of prison overcrowding.²⁴ The prison system as a whole has been overcrowded every year since 1994 (Prison Reform Trust, 2018). In 2018, four out of five prisons in Wales were overcrowded. The only prison to be operating under its Certified Normal Accommodation in 2018 was HMP Berwyn (96%)²⁵ (Figure 4).

²¹ These were HMP Low Newton, HMP Send, and HMP Styal.

²² This includes people on remand (i.e. anyone who has been detained by the court but not convicted) and so transferred to hospital under the relevant provisions (under section 48 of the Mental Health Act 1983).

²³ People who are transferred to hospital at some time during their prison sentence.

Data obtained from the Ministry of Justice via the Freedom of Information Act 2000. A request for this information was sent to the Ministry of Justice by Dr Robert Jones in August 2019.

²⁴ A prison is classified as overcrowded if the number of prisoners held exceeds the establishments Certified Normal Accommodation (CNA). The CNA is HMPPS’ own measurement of accommodation and represents the ‘decent standard’ of accommodation that HMPPS aspires to provide all prisoners (Sturge, 2019).

²⁵ All prison population figures presented here are taken from the Ministry of Justice’s Prison Population Statistics – 2018. <https://www.gov.uk/government/statistics/prison-population-figures-2018>

Figure 4

Levels of overcrowding at Welsh prisons in 2018²⁶

	Certified Normal		
	Accommodation	Population	Overcrowding
Berwyn	1,173	1,123	96%
Cardiff	504	707	140%
Parc	1,559	1,650	106%
Swansea	268	395	147%
Usk / Prescoed	377	523	139%
Total	3,881	4,398	113%

2.19 The most overcrowded Welsh prison in 2018 was HMP Swansea (147%) followed by HMP Cardiff (140%), HMP Usk/Prescoed (139%) and HMP Parc (106%). The overcrowding rate in Welsh prisons was 113% in 2018, compared to a level of 110% in England.

2.20 Out of the 35 adult male prisons inspected by during 2018-19, HMI Prisons (2019) found that violence had increased in more than half of the prisons visited by inspectors. Since 2013, the number of prisoner-on-prisoner assaults in Wales (excluding HMP Berwyn) have increased by 212% from 294 in 2013 to 916 in 2018. Assaults on prison staff increased by 410% from 67 in 2013 to 342 in 2018.²⁷

2.21 The Equality and Human Rights Commission's (2019) *Torture in the UK* report recommended that the UK Government work to reduce prison overcrowding and to develop viable non-custodial alternatives. These recommendations have been made against the backdrop of growing concerns over the effectiveness of probation services in Wales and England

²⁶ All prison population figures presented here are taken from the Ministry of Justice's Prison Population Statistics – 2018. <https://www.gov.uk/government/statistics/prison-population-figures-2018>
Populations for each year have been calculated as an average using readings from March, June, September and December 2018.

²⁷ Safety in Custody quarterly: update to September 2018. <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2018>

following UK Government reforms in 2015 (HMI Probation, 2019; National Audit Office, 2019). The use of community sentences in Wales has fallen by 18% since 2015 (Jones, 2019).

2.22 In 2018, there were a total of 140 prison disturbances in England and Wales. 102 were classified by the Ministry of Justice as 'active' disturbances and 38 as 'passive'. In Wales, there were 13 prison disturbances recorded in 2018, all of which took place at HMP Parc. Indeed, despite holding just 2% of the total prison population in England and Wales, 9.3% of all prison disturbances were recorded at HMP Parc in 2018.²⁸

2.23 Although data relating to the number of prisoner-on-prisoner assaults and assaults on staff are routinely made available by the Ministry of Justice, information concerning the number of assaults committed by prison staff are not currently publicly available.

2.24 Guidance on the use of force or restraint in prison is provided within Prison Service Order 1600 *Use of Force*. According to the Order, the use of force by prison staff can be justified when it is deemed 'reasonable in the circumstances', if it is 'necessary', if it is proportionate to the seriousness of the circumstances, and if no more force than necessary is used.

YOUTH SECURE ESTATE

2.25 Serious concerns have also been raised in recent years about poor levels of safety within custodial institutions for children across England and Wales. These concerns have emerged following allegations about the mistreatment of children at Medway Secure Training Centre in January 2016 (BBC News, 2016) as well as a number of "very troubling" inspections carried out at STCs and YOIs (HMI Prisons, 2017: 9). In his most recent annual report, HM Chief Inspector of Prisons (2019) identified that bullying remains a serious issue within the youth secure estate and reported that 35% of children felt unsafe at their current Young Offender Institution.

2.26 Distances and dispersal will often add to the problems that children experience in custody. HMI Prisons (2016: 19) found that placing children in units in unfamiliar areas has the potential to exacerbate any "feelings of isolation, loneliness and vulnerability" that children in custody are

²⁸ Data obtained from the Ministry of Justice via the Freedom of Information Act 2000. A request for this information was sent to the Ministry of Justice by Dr Robert Jones in May 2019.

already likely to face. During a visit to HMYOI Parc, HMI Prisons' review team were told by one child from England that, despite receiving regular visits from their caseworker when held in England, they had failed to receive a single visit since being transferred to a facility in Wales.

2.27 Research into the experiences of Welsh children in custody has shown that distal placement can add to the problems that Welsh-speaking children face when held in an “unfamiliar linguistic environment” (Hughes and Madoc-Jones, 2005: 378). The study found that Welsh-speaking children can often feel “isolated and under threat” and can experience bullying and intimidation from other children because of their distinct identity within an English institution (Hughes and Madoc-Jones, 2005: 378).

2.28 A study on Welsh girls in custody showed that “isolation from their home country” is a major problem for children held in England (Hughes et al., 2012: 523). The research found that Welsh-speaking children can often find themselves “discriminated against” by other children and may struggle to access key services, including education, through the medium of Welsh (Hughes et al., 2012: 525).

2.29 In the year ending March 2018, self-harm incidents in the youth secure estate in England and Wales increased by 40% on the previous year. Out of 1,800 self-harm incidents, the Ministry of Justice (2019a) reported that 535 required medical treatment. There have been no self-inflicted deaths in YOIs since 2012 (HMI Prisons, 2019).

2.30 Data broken down by institution are only available using the Freedom of Information Act 2000. In 2017, HMYOI Parc in Bridgend recorded the highest self-harm rate amongst all Young Offender Institutions in England and Wales (see Figure 9).²⁹

2.31 Concerns have also been raised over the high use of restraint in the youth secure estate. One in two (49%) children surveyed by HMI Prisons said that they had been physically restrained through minimising and managing physical restraint (MMPR) during their time in custody (HMI Prisons, 2019). 5,410 Restrictive Physical Interventions (RPIs) were carried out in the youth

²⁹ With the exception of the Keppel Unit. The Keppel Unit is a High Dependency/Enhanced Support Unit and operates to provide more developed support for some of the most challenging and vulnerable young people in custody. Data were obtained from the Youth Justice Board via the Freedom of Information Act 2000. A request for this information was sent to the Ministry of Justice by Dr Robert Jones in August 2019.

secure estate in England and Wales in the year ending March 2018. On average, 451 RPIs were made each month in England and Wales (Ministry of Justice, 2019b).

MENTAL HEALTH DETENTION

2.32 Health Inspectorate Wales (HIW) monitors places where patients are detained under the Mental Health Act 1983 or the Mental Capacity Act 2005 deprivation of liberty safeguards. In their most recent monitoring report they identified problems with the use of restraint during some inspections, including observing “oppressive and intimidating” behaviour by staff and non-approved forms of restraint during one unannounced hospital inspection, and raised particular concerns about “excessive” use and duration of restraint by Regis Healthcare in Ebbw Vale (HIW, 2019: 13-26). HIW also highlighted gaps in training on restraint in some services.

2.33 A Freedom of Information request by Mind Cymru revealed that there were 48 uses of facedown restraint in Wales in 2017/18. The highest number were recorded by the Aneurin Bevan University Health Board (37) followed by the Cym Taf University Health Board (11). Cardiff and Vale University Health Board, Hywel Dda University Health Board, Betsi Cadwaladr University Health Board, and Powys Teaching Health Board have stopped using face down restraint. Abertawe Bro Morgannwg University Health Board do not record the types of restraint used, and Powys Teaching Board does not have in-patient mental health services.³⁰

2.34 The data obtained by Mind Cymru show that there are significant gaps in the information available on the use of restraint in Wales. Cym Taf University Health Board did not record information broken down by sex and neither the Aneurin Bevan University Health Board nor the Cym Taf University Health Board held any data broken down by patient ethnicity.

2.35 At the time of writing, the Welsh Government is consulting on new guidance to reduce restrictive practices in childcare, education, health and social care settings. This guidance aims to work within a human rights context and use positive behaviour support to minimise the use of restraint. It states that prone restraint is permissible in ‘exceptional’ circumstances, subject to a specific policy, senior board approval and with an additional staff member present to monitor

³⁰ These data have not been made publicly available. We are extremely grateful to Mind Cymru for sharing this information.

the restrained person's health and wellbeing. The consultation on the guidance closes in January 2020.

3. DEPRIVATION OF LIBERTY

3.1 Mental health and mental disability related detention in Wales are governed by the Mental Health Act 1983 (MHA) and the Mental Capacity Act 2005 deprivation of liberty safeguards (MCA DoLS) as they are in England. The provision of health and social care is devolved in Wales, leading to some differences in how these are implemented, and data is gathered about their use.

3.2 In 2019 there were 87 people with learning disabilities in NHS run mental health hospitals in Wales; down from 117 in 2018 (StatsWales, 2019a). This figure does not include people in independent hospitals or placed out of area in English hospitals.

3.3 Wales has taken important steps towards strengthening community and preventive mental health support in order to reduce crisis interventions that may result in detention or involuntary treatment. In 2010, the National Assembly for Wales passed the Mental Health (Wales) Measure 2010, a statutory instrument that imposes new duties on local health boards and local authorities to improve support to mental health service users living in the community. The measure was intended to improve access to independent mental health advocacy, to improve provision of mental health services, to ensure all patients in secondary services have a Care and Treatment Plan and to enable patients discharged from secondary services to refer themselves back to receive further assessment and support if needed. There is no analogous provision under English mental health law.

3.4 The Measure had an inbuilt statutory duty to review its implementation within four years. This review, published in 2015 (Welsh Government, 2015), was broadly positive, finding that the development of Local Primary Mental Health Support Services had resulted in over 80,000 people receiving holistic mental health assessments, with over 42,000 receiving therapeutic interventions. Over 90% of people receiving these services rated them positively.

LEARNING DISABILITIES

3.5 There is no official data on the length of hospital admission for people with learning disabilities in Wales, nor data on whether they are admitted informally or detained under the MHA or the MCA DoLS.

3.6 Almost four out of five (78%) people admitted to NHS mental health hospitals in Wales in 2017-8 were admitted informally (StatsWales, 2019c), a much higher proportion than is reported in England (Care Quality Commission, 2018). This could reflect a higher number of truly voluntary admissions in Wales than England, but could also potentially reflect a higher rate of *de facto* detention.

3.7 Across Wales, 52% of adults with learning disabilities were living with their families in 2017-18, 10% were living in residential care, 17% in 'supported living' services providing specialist accommodation and support in the community, and 11% were living in mainstream housing in the community with support (StatsWales, 2019b).

3.8 A 2014 review of learning disability services in Wales concluded "further transformation is needed to maximise opportunities for independent living and reduce overall service costs" (Social Services Improvement Agency, 2014: 4). However, in 2018-19 the number of specialist supported living placements in 2017-18 was lower than at any point prior to 2012-13, and the overall percentage of people with learning disabilities in supported living placements has fallen to 17% from 18% in 2015-16. Similarly, the absolute and proportion of people with learning disabilities being supported living in mainstream housing has fallen since 2017-18 (StatsWales, 2019b). These data suggest trends away from supporting people to live independently in the community.

3.9 A national inspection programme reviewed care and support for people with learning disabilities across six local authorities and their corresponding Local Health Boards, finding evidence of good practice but a need for stronger leadership, particularly in a challenging financial climate (Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales, 2016). More recently, the Welsh Audit Office concluded that local authorities' approach to commissioning accommodation and services for people with learning disabilities is potentially unsustainable. Few authorities have effective arrangements in place to commission accommodation services for people with learning disabilities and authorities are not effectively evaluating outcomes of prior commissioning decisions for people with learning disabilities (Auditor General for Wales, 2018).

3.10 The key deliverables of the Welsh Government's learning disability transformation programme, *Improving Lives* (Welsh Government, 2018), include reducing health inequalities, partnership working and improved housing options. The policy maintains that the focus on prevention and promoting independence in the Social Services and Wellbeing (Wales) Act 2014 will help to keep people out of long term and institutional care (Welsh Government, 2018).

3.11 The Welsh Local Government Association has recently published guidance for local authority commissioners on accommodation and support for people with learning disabilities to live a 'good life' (Welsh Local Government Association, 2019). A good life is defined in the guidance as having a home, occupation, relationships, pursuing activities that meet needs, managing responsibilities and fulfilling aspirations, living "in a variety of places' – usually with people we choose and care about, being supported, and 'a voice, choice and some control over these basic rights" (Welsh Local Government Association, 2019: 6). This might be thought to reflect a somewhat diluted version of the right to independent living contained in article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

3.12 In Wales, unlike in England, there has been no national programme of individualised reviews of people in assessment and treatment units (UK Government Department of Health, 2012; UK Department of Health, 2015; NHS England, Local Government Association and Association of Directors of Adult Social Services, 2015). In England, the Care Quality Commission (2017) has adopted a policy that prohibits the registration of new services that do not reflect best practice in supporting people with learning disabilities to live independently in the community, however Welsh inspectorates have no equivalent policy on 'registering the right support'.

DEPRIVATION OF LIBERTY

3.13 Following the Supreme Court's ruling in *Cheshire West* ([2014] UKSC 19), which adopted a very broad definition of 'deprivation of liberty', the number of applications from hospitals and care homes to authorise deprivation of liberty under the MCA DoLS has increased dramatically.

3.14 Applications for authorisation of deprivation of liberty in Wales have increased every year since the *Cheshire West* judgment, as they have in England. In 2017-18 there were 12,743 DoLS applications across Wales, an increase of eight per cent from the previous year. This was

equivalent to a rate of 590 DoLS applications for every 100,000 people, with the majority of applications relating to older people living in care homes (Care Inspectorate Wales and Healthcare Inspectorate Wales, 2019).

3.15 Local authorities and Local Health Boards who act as supervisory bodies under the DoLS are struggling to keep up with the demand for assessments. In 2017-18 48% of standard DoLS applications and 66% of urgent applications breached statutory timescales (Care Inspectorate Wales and Healthcare Inspectorate Wales, 2019). This means that many people are detained in hospitals and care homes without the safeguards required by law.

3.16 The Court of Protection has a dual role in relation to deprivation of liberty under the MCA: it can authorise it in settings where the DoLS do not apply, such as supported living, and it hears appeals against DoLS authorisations issued by local authorities and Local Health Boards (MCA s21A).

3.17 It is not known how many people in Wales may be deprived of their liberty in settings outside the DoLS, but it was estimated to affect 53,000 people in supported living type settings across England and Wales (Department of Health and Social Care, 2019). Some local authorities were reportedly seeking court authorisations for these (Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales, 2016). No official data are gathered in Wales, however the overall numbers of applications to the Court of Protection to authorise deprivation of liberty falls well below the estimated numbers of people who are deprived of their liberty in supported living settings (Ministry of Justice, 2019c).

3.18 There are very few Court of Protection reviews of DoLS authorisations across both England and Wales, raising concerns about the ability of people detained under the DoLS to exercise rights of appeal (Joint Committee on Human Rights, 2018a). Of the 4,604 DoLS authorisations issued in 2017-18 there were only 72 challenges against applications in the Court of Protection (Care Inspectorate Wales and Healthcare Inspectorate Wales, 2019); this indicates an appeal rate of around 1.5% of all authorisations (and an even lower proportion of all applications). This is slightly higher than the equivalent rate in England (Department of Health and Social Care, 2019). However, this still reflects the considerable difficulty that people who are deprived of their liberty under the DoLS have in exercising their article 19(4) ICCPR rights of appeal.

3.19 In 2020, the MCA DoLS will be replaced by a new system for authorising deprivation of liberty: the Liberty Protection Safeguards (LPS) (MCA Sch AA1, as introduced by Mental Capacity (Amendment) Act 2019). Unlike the DoLS, the LPS will apply across *all* settings where a person may be deprived of their liberty in connection with their care arrangements. This will remove the need for costly and time-consuming applications to the Court of Protection to authorise deprivation of liberty in settings like supported living.

3.20 The LPS are also intended to apply to 'domestic DoLS' – care arrangements in a person's own home that are considered, post-*Cheshire West*, to amount to a deprivation of liberty. This will include supported living and may include some family-based forms of care.

3.21 The LPS are intended to be more flexible and 'proportionate' than the DoLS, to cope with the volume of applications and address backlogs in providing safeguards. However, there is concern that the LPS may fail to adequately protect human rights (Joint Committee on Human Rights, 2018b). Particular concerns include limited independent scrutiny unless the person is regarded as objecting to the arrangements, weak provision for facilitating appeals to the Court of Protection (the appeal rate is projected by the government to fall to 0.5%) (UK Government Department of Health and Social Care, 2019), and a lack of clarity over who may undertake key assessments and how these will be funded.

IMMIGRATION REMOVAL

3.22 Immigration removal in Wales is governed by the Immigration Act 2014, as it is in England.

3.23 There are no immigration detention facilities in Wales. Information relating to each of the Immigration Removal Centres in England, Northern Ireland and Scotland can be accessed via HM Inspectorate of Prisons (see para 1.10).

3.24 According to Home Office statistics, there were 1,727 people held in the immigration detention estate by the end of June 2019. A total of 24,052 individuals had entered the detention estate in the year ending June 2019 (Home Office, 2019, para 5.1). At the end of June 2019, there were 1,727 people held in the detention estate, 22% fewer than a year earlier. In the year ending

June 2019, 24,052 individuals entered the detention estate, 8% fewer than the previous year. This represents a fall for the fourth consecutive year to the lowest level since comparable records began in 2009 (Home Office, 2019).

3.25 In 2018, one individual died in immigration detention. This figure does not include any individuals who died while detained in the prison estate under immigration powers, or after leaving detention (Home Office, 2019, para 5.1). It is unclear from the statistics how many people died while detained in prison under immigration powers or after leaving detention.

3.26 There are no publicly available statistics on whether and how many individuals domiciled in Wales have been removed to an IRC. The research team contacted various organisations such as the Home Office, the Welsh Refugee Council, the Migration Observatory, and the Welsh Government to ask whether data was available. The result was that a Freedom of Information (FOI) Request was sent to the Home Office. The Home Office were asked to provide figures relating to those who were domiciled in Wales before being removed to an Immigration Removal Centre (IRC) (previously known as an Immigration Detention Centre). The Home Office were also asked to provide a breakdown in figures relating to ethnicity and to breakdown the figures according to 'Welsh' individuals detained at each IRC (see para 1.10).³¹

3.27 The Home Office advised that they do not record the ethnicity of those detained at IRCs. They also suggested that providing the address information held in their database would not ensure that the individual was indeed living at the address, suggesting that it could, for example, be the address of a solicitor or simply a correspondence address. They therefore stated that they could only provide this information at probative cost. On this basis, the Home Office declined our request. The result of this is that it is not known how many individuals held in IRCs were domiciled in Wales before removal.³²

3.28 The authors are of the view that there are implications of removing someone based in Wales to an IRC in England. The most notable implication is that the individual is taken a significant distance from his or her network such as friends, family and legal advice. This may increase the

³¹ That is how many individuals domiciled in Wales have been removed to an IRC.

³² A request for this information was sent to the Home Office by Dr Robert Jones in in April 2017.

individual's sense of isolation and may have serious implications for access to legal advice and assistance.

RECOMMENDATIONS

RIGHT TO LIFE & TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND CONDITIONS IN DETENTION

We recommend that

1. The UK Government works to radically reduce the number of people held in prison. This will alleviate prison overcrowding and help to reduce the number of people currently being held in unsafe prison conditions.
2. Urgent action is taken to reduce the number of Welsh women in prison. Although the arguments against women's imprisonment have been convincingly made elsewhere (e.g. Cortson, 2018), the distances facing Welsh women held in English prisons adds even further weight to this recommendation (Jones, 2019).
3. Further steps are taken to reduce the number of children being held in the secure estate. Information relating to the number of behavioural incidents in the youth secure estate should be made publicly available.
4. Information on the number of self-harm incidents in police custody be made publicly available.
5. The Welsh Government carry out a review into the state of prison healthcare in Wales. A major focus of the review should be the rising number of 'natural' deaths recorded in Welsh prisons.

DEPRIVATION OF LIBERTY

We recommend that

6. Data on the number of people previously domiciled in Wales now held in immigration detention should be made freely available. We also recommend that this data include information on detentions by gender, ethnicity/race, age, and nationality.
7. The Welsh Government considers adopting a comprehensive approach, incorporating individualised reviews, to discharging patients with learning disabilities from mental health units, and improving support in the community.
8. The Welsh Government creates secondary legislation and its own Codes of Practice on mental capacity law (mental capacity law is not devolved in Wales, but the Welsh Government does have powers to create secondary legislation). These could be used to strengthen some of the weaknesses in the new Liberty Protection Safeguards, for example through incorporating stronger duties for independent assessments and to support and enable rights of appeal.
9. The Welsh Government should work with Ministry of Justice to improve access to justice in the Court of Protection, including by reducing costs, improving disability accessibility and participation, and ensuring matters are dealt with without delay.

OVERALL

We recommend that

10. The EHRC and academics in Wales work more closely to share information and expertise on conditions of detention, human rights and the deprivation of liberty. A list of academic contacts whose expertise cover these broad areas should be developed and further research carried out into each of these distinct areas in Wales.

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LEGISLATION

Immigration Act 2014

Mental Capacity (Amendment) Act 2019

Mental Capacity Act 2005

Mental Health Act 1983

CASES

P v Cheshire West and Chester Council and another; P and Q v Surrey County Council [2014]

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APPENDICES

Figure 5

Police custody suites and the number of police cells in Wales

Dyfed Powys ³³	
Ammanford	6
Llanelli (temporary)	8
Aberystwyth	8
Cardigan (temporary)	6
Haverford West	17
Newtown	9
Brecon	8
Total	62
Gwent ³⁴	
Newport Central	28
Ystrad Mynach	31
Total	59
North Wales ³⁵	
Dolgellau	8
Caernarfon	16
St Asaph	32
Wrexham	24
Holyhead	9
Mold	9
Total	98
South Wales ³⁶	
Bridgend Bridewell	42
Cardiff Bay	60
Merthyr Bridewell	42
Swansea Central	25
Total	169

³³ The links to these data are publicly available for each force. <https://www.dyfed-powys.police.uk/media/7845/final-response-1802019-doc.pdf>

³⁴ https://www.whatdotheyknow.com/request/custody_suites_43

³⁵ <https://www.north-wales.police.uk/media/651456/2017-199-custody.pdf>

³⁶ https://www.whatdotheyknow.com/request/397010/response/966857/attach/3/Response%20356%2017.pdf?cookie_passthrough=1

Figure 6

Detentions in police custody under the Mental Health Act 1983 s 136: age³⁷

	Under			Total
	18	Over 18	Unknown	
Dyfed-Powys	7	263	-	270
Gwent	18	259	1	278
North Wales	56	654	85	795
South Wales	36	877	-	913
Total	117	2,053	86	2,256

Figure 7

Detentions in police custody under the Mental Health Act 1983 s 136: ethnicity³⁸

	White European	Dark European	Black	Asian	Chinese/Japanese/South East Asian	Other	Unknown	Total
Dyfed-Powys	213	1	2	-	-	-	54	270
Gwent	261	1	2	5	-	3	6	278
North Wales	-	-	-	-	-	-	795	795
South Wales	872	6	9	3	-	3	20	913
Total	1,346	8	13	8	-	6	875	2,256

³⁷ Table MHA.02 – Number of detentions under section 136 of the Mental Health Act (1983), by age group, 2018/19.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

³⁸ Table MHA.03 – Number of detentions under section 136 of the Mental Health Act (1983), by ethnicity, 2018/19.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841259/detentions-mental-health-act-police-powers-procedures-mar19-hosb2519-tables.ods

Figure 8

Self-inflicted deaths in female prisons in England since 2010³⁹

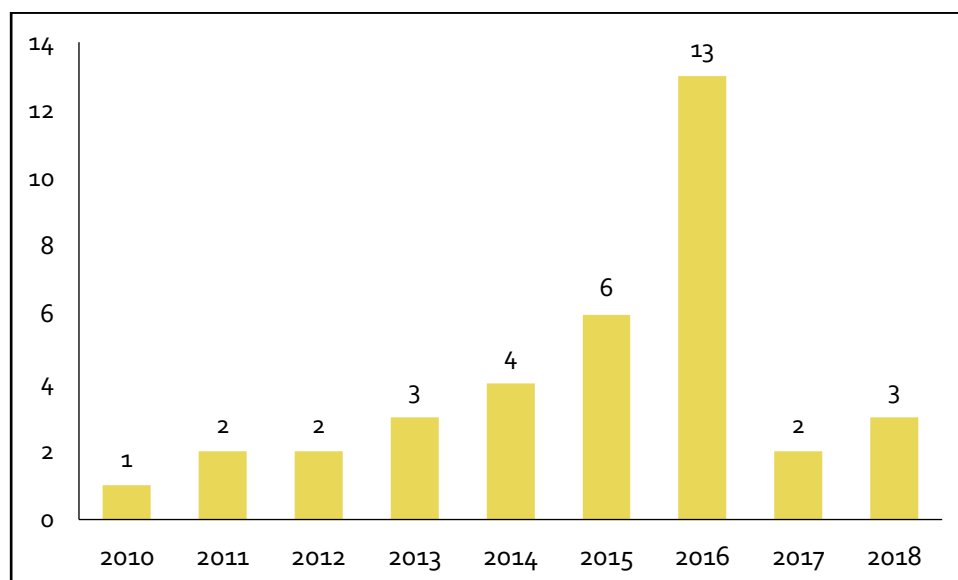


Figure 9

The rate of behavioural incidents per 100 people at Young Offender Institutions in England and Wales in 2018⁴⁰

	Cookham					
	Wood	Feltham	Parc	Werrington	Wetherby	Keppel Unit
Population	164	144	40	107	213	34
Self-harm rate per 100	42	82	43	63	104	294
Assaults on children and young people per 100	230	219	350	256	216	232
Assaults on staff per 100	96	89	120	131	41	62

³⁹ Table 1.16 – Safety Statistics in Custody update to September 2018.

<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2018>

⁴⁰ Data obtained from the Youth Justice Board via the Freedom of Information Act 2000. A request for this information was sent to the Ministry of Justice by Dr Robert Jones in August 2019.



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