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# Responding to Neurodivergence in the Youth Justice System

Transdisciplinary Research for Youth Justice (TRYJustice)

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## 1. Introduction

In December 2025, the TRYJustice Network[1] met to discuss the over-representation of neurodivergent children in the youth justice system. TRYJustice is a transdisciplinary network of academics, practitioners, and those with lived experience of the youth justice system, who meet with the common goal of reducing the number of children who come into contact with the law, and improving life outcomes for those who do.

Despite clear empirical evidence that children with neurodivergent conditions are over-represented at every stage of the criminal justice system, and clear obligations under international human rights treaties to address this, the response to these children before, during, and after contact with the youth justice system remains fragmented and inadequate. In this paper we argue that the over-representation of neurodivergent children in the justice system is not one that the justice system can solve alone: It is a systemic issue requiring a systemic response spanning education, health, social care, policing, courts, youth offending teams, probation, and the secure estate. We propose ten key actions, spanning early intervention, diversion, courts, the secure estate, workforce design, funding, data-sharing, and accountability.

## 2. Key Context

The United Nations Convention on the Rights of the Child (UNCRC) is the most widely ratified human rights treaty in the world; ratified by all member states except the USA. In 2019, the United Nations Committee on the Rights of the Child published General Comment no. 24 on children's rights in the justice system. This explicitly states that:

> *'Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, foetal alcohol spectrum disorders, or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.'*

In addition, The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (Article 13: Access to Justice) states that:

> *'States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

[1] www.tryjustice.org.uk

*In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.'*

The principle of non-discrimination embedded in both frameworks requires not equal, but *equitable* treatment for these children. As discussed by Hughes, Sheahan, et al. (2020), non-discrimination is not synonymous with equal treatment for everyone, but instead requires special measures or adaptations as needed to ensure that all children have their rights equally respected, protected, and fulfilled. However, the current evidence indicates that we are falling significantly short of achieving these standards, both in the UK and globally. The table presented in appendix 1 summarises the current evidence base on the prevalence of neurodivergent conditions amongst children in custodial settings, compared with children in the general population. For example, 11-21% of children in custodial settings have Foetal Alcohol Spectrum Disorder (FASD), compared with 0.7% of children in the general population. Additionally, 60-64% of children in custodial settings have Speech, Language, and Communication needs, compared with 1-9% of children in the general population (although the Youth Justice Board (2020) produced an even higher estimate, 71%).

The estimates presented in the table are wide in places – e.g. between 50% and 87% for acquired brain injury. This reflects the variation in methodology of the underlying studies; estimates vary significantly depending on whether children self-report their difficulties, clinical interviews are used, or medical records are used. Moreover, it can be difficult to identify individuals with specific diagnostic conditions, as many such conditions are defined by behavioural traits rather than by markers that can be reliably tested using natural science methods. Further studies are needed to establish more precise estimates, particularly as many existing studies use very small sample sizes due to the difficulties of conducting research in the children's secure estate. However, even if we take the most conservative estimates of prevalence in justice-involved children, and the most generous estimates in the general population, the pattern of significant over-representation remains. The evidence base indicates that children with neurodevelopmental conditions are being systemically criminalised.

## 3. Linguistic framework

A coherent rights-based response to the over-representation of children with neurodivergent conditions in youth justice systems requires a coherent vocabulary. Language in this field is contested, and it carries identity implications for the children at the centre of the discussion. Many children and young people with lived experience resist 'disability' framings to explain their personal experiences. Language should therefore be co-constructed with children themselves, attending to their own voices and preferences rather than being imposed (Lewis-Dagnell et al., 2023). The precise, definitional language appropriate to academic and legal argument will not always be the language that works at the frontline, where more accessible,

relational and child-led terms may serve children and practitioners better. A shared vocabulary must therefore be capable of holding both rights-based and identity-based work simultaneously, and of flexing across the settings in which it is used. For the purposes of this paper, we use these terms as follows.

**Neurodiversity** describes the natural, population-level variance in human cognition and thinking styles. It acknowledges that this variation is a feature of the human species and can be a strength.

**Neurodivergent** means having a 'neurocognitive' experience - to do with how information is processed by the brain - that 'diverges' from (is different to) what is considered typical[2].

**Neurodisability** describes a systemic relationship: what happens when institutional, social and structural systems fail to accommodate neurodevelopmental differences, producing disabling effects. It is the term most directly connected to the rights claims that flow from the UNCRC and UNCRPD, and is therefore the term we have adopted where legal and structural arguments are at stake[3].

## 4. Conceptual framework

A clear rights-based response also depends on a coherent conceptual model with which to understand the systemic processes underpinning their pathways into the youth justice system. The Social Model of Disability (Oliver, 1983) posits that disability is not created by impairment, but by the barriers in society that prevent disabled people from participating fully. Disability is therefore not a medical condition, it is a *social state imposed on people with impairments*.

Individual or medical models locate the 'problem' of disability within the individual – difficulties arising from physical or psychological impairments. Social models locate the 'problem' in society – a failure to create accessible and appropriate services fully taking into account the needs of a disabled person. As discussed by Oliver (1996):

> *'The consequences of this failure do not simply and randomly fall on individuals but systematically upon disabled people as a group who experience this failure as discrimination institutionalised throughout society.'*

The Social Model is foundational to understanding how it is the actions of our systems and services which fail to support neurodivergent children, which creates systemic and disproportional criminalisation. However, it is also important to recognise that the embodied reality of impairment for children can also be distressing and often interacts with the disablement created by systems. Children experience sensory overwhelm, communication frustration, sleep disruption, and other difficulties that exist independently of societal response. A purely social model risks abstracting these experiences in ways that the children

[2] See https://www.autism.org.uk/advice-and-guidance/identity/autism-and-neurodiversity
[3] Our usage of the term 'neurodisability' is different from how it is used by medical practitioners – where it specifically refers to a collection of conditions impacting the nervous system.

themselves do not recognise, and that practitioners working with them cannot meaningfully apply.

A critical-realist refinement of the social model is therefore more useful for the purposes of this paper. Critical realism examines the interaction between individual functional impairment and the marginalisation, exclusion and isolation produced by societal responses (Shakespeare, 2013). It preserves the political force of the social model - locating disability in social structures rather than the individual - while acknowledging that impairment is part of the lived experience to which systems must respond. Disability remains a social state. But the impairments affecting children who are interacting with these systems are real, varied, and often distressing.

This framing has direct operational implications. It pushes the response in two directions simultaneously: outwards, to reform the systems that produce disabling effects (educational structures, justice procedures, sensory environments); and inwards, to acknowledge that some children require active, individualised support to manage their impairments alongside system reform. This duality underpins the universal-plus-specific operational model proposed in section 7.7.

## 5. Why disproportionality persists: An intersectional lens

The over-representation of children with neurodisability in custody is not produced by a single mechanism, and it cannot be understood by examining neurodevelopmental conditions in isolation. The drivers operate across multiple sectors, accumulate over the life-course, and interact with pre-existing inequalities impacting children marginalised by their race, gender, poverty and care-experience.

One mechanism for pathways into the justice system is through school exclusion. Research has now clearly demonstrated that significant harm is conferred on children who experience exclusion, beyond their individual circumstances (Cornish & Brennan, 2025). Emerging evidence also indicates that school exclusion plays a role in pathways into the justice system for neurodivergent children specifically, with those excluded from school multiple times having first contact with the justice system at a younger age (Kent et al., 2023). Where SEND (Special Educational Needs and Disabilities) systems are under-resourced, children's behaviour may be misinterpreted as defiant or 'naughty', rather than being understood as an unmet need arising from the interaction of their neurodivergence with neuro-normative expectations. Where Ofsted incentives reward exclusionary practice, and where zero-tolerance behaviour policies treat the symptoms of neurodevelopmental difference as conduct issues, the system is constructed in a way that channels neurodivergent children towards justice contact in a form of structural discrimination, the consequences of which fall systematically on this group of children rather than randomly across the school population.

Disproportionality in access to diagnosis compounds this pattern. There are barriers to accessing diagnosis for children who live in poverty, or are in the care-system, and achieving support often requires substantial advocacy from parents and families (which, not all children

have) (Smith-Young et al., 2022). Evidence indicates that neurodivergent girls may not receive diagnosis and support until later in life than their male peers (Klefsjö et al., 2021). There is also a significant paucity of research on diagnostic disparities in children from minoritised ethnic groups, which is a significant gap given the over-representation of these children in custodial settings, however evidence from the US indicates that there are racial disparities in diagnosis (Shi et al., 2021). Diagnosis-gated support therefore reinforces rather than corrects existing inequalities: the children least likely to be identified are precisely the children most likely to enter the justice system. The result is an implicit dichotomy of "deserving" (diagnosed) and "undeserving" (undiagnosed) children that maps onto pre-existing patterns of disadvantage and racial inequity.

We also know that child poverty plays a role; children living in poverty are more likely to come into conflict with the law, as are children with neurodivergent conditions. But, when both are present, they interact synergistically – the resultant vulnerability is more than the sum of its parts (Kent et al., 2025). Psychological trauma then further complicates the picture. 'Crossover children' in contact with both the child welfare and child justice systems have significantly higher levels of neurodisability (Baidawi et al., 2023; Baidawi & Piquero, 2021), and children who are care-experienced have often lived through traumatic and disrupted lives. A whole-child approach which encapsulates both psychological and neurodevelopmental differences is therefore necessary.

Most children who enter the formal justice system have had multiple prior contacts with the police, each representing an identification opportunity the system has not used. Children who are visibly distressed, who communicate atypically, or who respond to authority in ways shaped by trauma and neurodevelopmental difference are at elevated risk of being read as non-compliant rather than as needing support. These misreadings have a well-documented effect of propelling children further into the youth justice system, with entrenchment becoming progressively harder to reverse (Baldry et al., 2018).

In our recommendation 7.10 we propose an investigation into these mechanisms of criminalisation, which should examine not only the over-criminalisation of neurodivergent children in aggregate, but the specific intersections at which disproportionality is most acute: how identification, charging, sentencing, and use of custody vary by race, gender, care experience and socioeconomic background.

## 6. Issues with the current response

The failure to respond appropriately to the evidence indicating the vulnerability of these children is not the product of the actions of any one system, but interlocking dysfunctions across sectors. We attempt here to diagnose these issues, rather than to attribute blame. Each of these dysfunctions has evolved within a wider system over decades, and no single agency can correct these alone. The corollary is a diffusion of responsibility: where a problem belongs to every sector, it is owned by none. Our transdisciplinary lens makes this gap visible.

**Identification and assessment occur too late, or not at all.** Despite the prevalence data, validated screening tools are not routinely deployed at the point of arrest, charge or first court appearance. Where identification does occur, it is often too late in the process to affect diversion, plea or sentencing decisions. Identification systems remain calibrated to children who present for diagnosis in healthcare settings, which structurally excludes the children most likely to enter the justice system. These children are therefore inadequately supported across both education and health systems prior to contact with the justice system: health pathways that could identify need early (even before school age) are not reaching them, and where education would ordinarily instigate identification, the children most likely to end up in the justice system are often excluded from school or have disrupted schooling journeys (Kirby, 2016; Middleton, 2025).

**Diversion is under-utilised.** The UNCRC identifies diversion as a crucial component of any child justice system, and diversion can produce strong outcomes for children with neurodevelopmental conditions where appropriate support is in place. Diversion is important both to prevent justice system contact in the first place (through interventions earlier in life), and to prevent children entering the secure estate once they have had contact with the police. Police custody, for example, should only ever be used as a matter of last resort, but evidence suggests that this is not currently happening as the majority of children who spend time in police custody suites receive 'no further action' as their case outcome (Kemp, 2023).

**Universal accessibility is not the default**. Justice system procedures are rigid, complex, and difficult to navigate for all children, but especially those with neurodivergent conditions (Hughes, Sheahan, et al., 2020). Universal accessibility would mean building these processes so that they are clear and navigable for every child by default, so that no child needs a diagnosis or formal identification to understand their rights and take part in proceedings. The adaptations this requires, such as accessible language, checks for understanding, and less rigid procedures, would benefit all children. But without them, neurodivergent children with executive function difficulties, communication impairments or learning disability are at heightened risk of waiving rights they do not understand, accepting plea agreements without comprehending consequences, and making false confessions in police interviews (Gilbert et al., 2022). Expressive language difficulty is widely misread as rudeness or non-compliance, affecting decisions by police, prosecutors and judicial officers (Holloway-George et al., 2025). Universal accessibility measures are not currently the norm.

**Young Offender Institutions (YOIs) are configured around risk-suppression, not therapeutic care.** The institutional culture in YOIs is organised around the prevention of violence and the management of children as risks - separating children living on different wings, applying behavioural sanctions, restricting movement - rather than around truly relational practice, identity-building or credible release pathways. YOIs were designed in an era, and around a population, that no longer matches the children now held in them. The operating model has not yet caught up with the evidence base or with the demographic profile of the current custodial cohort, and is not currently configured to deliver developmentally informed, neurodisability-aware care at scale. Where specialist support is unavailable, the

principles articulated in General Comment No. 24 imply that detention is incompatible with the state's obligations.

**Children's own voices are absent from decisions about them.** Across education, health and justice, decisions about a neurodivergent child's needs, abilities and support are routinely made for them rather than with them (Creaney et al., 2024). The absence of the child's own account of what they experience and need can compound stigma, anxiety and disengagement (Fisher et al., 2025). The participatory principle the state has committed to under the UNCRC (Article 12) is not, in practice, reaching this population.

**Cross-sector coordination is structurally inhibited**. Education, health, social care and justice settings operate on incompatible data systems, with no functioning information flow even within sectors - between NHS trusts, for example, or between police forces (Children's Commissioner, 2023; Kemp, 2023). Children entering the secure estate often arrive without their educational, health or social care history accompanying them; on release, information learned about the child in custody is not reliably transmitted back. The educational cost of this is particularly acute: without access to prior records, children are frequently re-assessed from scratch on entry to the youth estate, losing valuable time, compounding assessment-fatigue, and driving further disengagement from education. Successive safeguarding reviews have called for better information flow (The Child Safeguarding Practice Review Panel, 2026), yet the underlying data-sharing architecture has not been reformed to make that learning operational. Domestic data protection regimes are not currently configured to recognise that under-sharing of safeguarding information is, for this population, a more frequent and more consequential harm than over-sharing.

**The implementation gap**. Whilst concrete knowledge about the over-representation of children with neurodivergent conditions in the youth justice system has existed for well over a decade (see Hughes et al., 2012), practical responses to this knowledge have been slow. The SEND system in schools is in crisis through under-resourcing, and is currently under reform (Department for Education, 2026). Responsibility for a child's Education, Health and Care Plan is, in practice, contested and ambiguous when that child enters the secure estate. There is also a lack of clarity relating to procedures, practice and responsibilities relating to the planning and transition of a child from the secure estate back to the community. External accountability measures often reward exclusion, profiling schools with high performance and low levels of behaviours that challenge expected norms. Consequently, zero-tolerance behaviour policies continue to be part of the national narrative despite a consistent evidence base demonstrating harm. These same accountability pressures can also drive 'off-rolling' where children are removed from the school to improve a school's performance data rather than in the child's interest.

In the secure estate, workforce conditions generate burnout and turnover at rates incompatible with sustained relational practice (Zempi, 2025). Staff are often early-career, may be neurodivergent themselves, and receive limited training and support.

## 7. Ten key actions

To remedy these structural issues, we are proposing ten key actions.

### 7.1 Establish a shared linguistic and conceptual framework

A shared framework is a precondition for coherent practice.

Government, the Ministry of Justice and the Youth Justice Board should adopt a clear and consistent set of definitions distinguishing neurodiversity, neurodivergence and neurodisability, anchored to the rights implications that flow from each.

Terminology for initiatives (such as Neurodiversity Support Managers) should then be rooted in this shared framework and aligned to the conceptual grounding. Examination of whether children's rights are being upheld should refer to disabling systems, in accordance with the protections set out in the UNCRC.

### 7.2 Move to a transdiagnostic, needs-based model in the youth justice system

Children are arriving in the youth justice system with their needs previously unassessed. Even where children's needs have been assessed, limitations in data sharing between and within organisations mean they may remain unknown to those working on the frontline.

Needs-based, transdiagnostic assessments (for example, capturing difficulties in attention and concentration, learning and memory, social communication, physical motor skills) can help frontline staff to gain a clearer understanding of the children they are supporting, without needing expertise across different diagnoses. These should be conducted in brief where information is required to understand a child's ability to engage in legal processes (such as a police interview or court appearance), and in more depth in the secure estate, where children are supported over a prolonged period.

This approach also ensures that disproportionality in access to diagnosis does not further embed disadvantage, and that children with sub-clinical needs (which may sit just below arbitrary diagnostic thresholds, but still significantly impact children's lives) still receive support. It is also better equipped to manage the complexity and comorbidity that exists for children with impairments spanning several different conditions.

This aligns with the UNCRC's individual-assessment requirement under General Comment No. 24.

### 7.3 Leverage educational *inclusion* as an intervention

In-school SEND provision should be properly resourced, and the changes proposed in

the recent Schools White Paper (*Every Child Achieving and Thriving, 2026*) and the parallel SEND consultation (*SEND reform: putting children and young people first*) must be accompanied by appropriate resources to support teachers in implementation.

Work within the NHS should reduce lengthy waitlists for diagnosis and support, particularly targeting areas with waitlists for assessment exceeding 12 months.

External accountability metrics for schools should be broadened to include and incentivise both high expectations *and* inclusive practice, while ensuring schools take an approach which embodies 'our children, our responsibility' (see Excluded Lives, 2025).

Zero-tolerance behaviour policies must be actively discouraged or banned: the evidence base consistently shows they confer unique harm in children's pathways into the justice system. Reliance on zero-tolerance should be understood as a sign that a school is not yet equipped to shape positive behaviour by responding to children's underlying needs, rather than as a legitimate strategy. Schools should be resourced and supported to meet those needs, so that such approaches become unnecessary.

The transdiagnostic data already collected from a young age (for example, the Early Years Foundation Stage Profile) should be mobilised to provide more support to the children who need it most, earlier in life.

Alternative Provision (and particularly Pupil Referral Units) should be resourced to a standard that makes it a meaningful pathway to education and opportunity, rather than a 'holding cell' for children vulnerable to justice system contact. Children attending Alternative Provision should have access to the very best resources, and should not have their opportunities to take higher-level exams or access a wide curriculum limited, affording them equity of access to further education.

Properly funded early-years support of the kind Sure Start Local Programmes once provided should be reinstated and given long-term investment. The new Best Start Family Hubs, for example, should have their longevity protected against changing cycles of government wherever possible.

### 7.4 Reform the budgeting and reinvestment architecture

Budgeting systems in government should be redeveloped in a way that is cross-departmental and allows investment upstream (e.g. in education) to share in the savings produced downstream (e.g. in justice). This could be done using a justice reinvestment framework; under which, projected savings from reduced use of custody for children are quantified and reinvested into community-based projects for prevention.

Evaluation of savings from prevention must be done over multiple years – the savings

from upstream interventions for young children will take a number of years to reflect in reduced justice-system contact further down the line, but most policy evaluations are done in the short term, before benefits have had the chance to be realised.

A statutory pooled-budget mechanism for at-risk children should be established, analogous to the Section 75 NHS Act 2006 framework that underpins the Better Care Fund, enabling the Department for Education, Department of Health and Social Care, Ministry of Justice, and local authorities to align spending around shared outcomes for this population.

Without this, the structural disincentive against early intervention will continue to derail well-designed individual programmes.

### 7.5 Diversion as default

As a network, we would advocate for closure of the remaining YOIs, with children being supported in Secure Children's Homes or in the community instead. With enough diversion, this may inevitably come about as the custodial population of children hopefully continues to shrink.

Training for police officers should be improved at a national level, through the College of Policing, to help officers recognise the indicators of neurodevelopmental difference, supported by validated brief screening tools. This should include training around what adaptations may be necessary to police interviews, to lower the likelihood of false confessions because of leading questions, for example. Specialist training for Appropriate Adults is also essential.

Receiving services in health, education and social care should be resourced so that diversion has meaningful community-based alternatives to divert *to*. This includes reducing the use of police custody as a place of safety for vulnerable children, by ensuring local authorities are adequately resourced to provide alternatives.

A public health framing should be adopted, in which justice-based responses are a last resort among several legitimate responses to harm caused by children, rather than the default.

International models should be examined for transferable design features.

### 7.6 Improve data-sharing between, and within, organisations

Systems used in police forces should be standardised, so that data can be universally extracted (for monitoring and reporting) as well as shared across forces. The same principle applies across NHS trusts, which should share an electronic system.

It is essential that information about children's health needs should be able to follow them from their community GP into the justice system, and information about the child learned in the justice system should be able to follow them back into the community. Otherwise, children have to repeatedly answer the same questions, and knowledge about their needs cannot be properly used.

Domestic data-protection regimes should be reformed to recognise and respond to the fact that under-sharing of safeguarding information is currently a much more frequent harm than over-sharing. Consideration could be given to whether the role configured as 'Data Protection Officer' is correctly named, or whether 'Data Sharing Officer' would be the more appropriate framing.

### 7.7 Adopt a universal-plus-specific operational model

This should combine universal adaptations to make the youth justice system more accessible and navigable for *all* children, with specialist pathways of support for children with more significant needs.

The universal offer should include environmental and procedural adaptations designed to make justice systems less rigid and complex to understand and navigate. Within the secure estate, the Youth Custody Service and establishment operators should reduce sensory overwhelm in the environment (adaptations like reducing the noise of slamming doors on a wing, for example) and improve the quality of children's sleep and nutrition. In education settings in custody, adaptations should be made to learning material to fit the level of the learner, and the environment should allow for regular breaks. The offered curriculum should be engaging and meaningful to the child, and focus initially on re-engagement (ahmed Shafi, 2018). Children should also not have their access to education limited by institutional regimes, which can restrict time out of rooms, particularly when the institution is managing low staffing levels or responding to crises.

The universal adaptations also extend to how all children are communicated with across the justice process. In police custody, a child's rights should be explained carefully and clearly, using accessible language (see 7.5). In the courtroom, communication should be simplified, with checks for understanding and adjustments to questioning and testimony in line with existing vulnerable-defendant guidance. Where a child's neurodevelopmental needs may affect their participation in proceedings, the court should routinely seek expert input from psychologists, psychiatrists or neurologists to inform decisions on fitness to plead and capacity to stand trial.

A specific offer for children with more significant needs should include input from specialist clinicians, educational psychologists, and where possible, children's families. Multi-disciplinary plans should be put in place, including input from health, social care, education, and justice professionals to ensure that children's needs are understood and

responded to.

### 7.8 Apply the UNCRC to the existing custodial population

It is not enough to consider only how to prevent new children from coming into contact with the justice system, those already inside it must also have their rights realised. The current custodial population of children is small enough that community-based alternatives are conceivable for most.

All children in custody should have their neurodevelopmental needs comprehensively assessed, and this assessment should inform adjustments, additional support, and accessibility measures within the system. Social care assessments and support planning should be initiated prior to release, with clear pathways to community-based social care that are neurodisability-informed and co-produced with the child.

There should be a shift from risk-suppression culture towards relational practice, identity-building and credible release pathways grounded in education, employment and connections with families and the local community.

There should also be honest evaluation and application of the principle that where specialist support is unavailable, detention is incompatible with the state's obligations and should be avoided. This principle applies at every stage of the decision-making pathway - police detention, court decisions on remand and sentencing, and placement within the secure estate.

### 7.9 Strengthen support for the youth justice workforce

The youth justice workforce, and the secure estate in particular, faces acute resourcing pressures: high vacancy rates, and turnover at levels incompatible with the sustained relational practice these children need (Zempi, 2025). Addressing this is the precondition for every other reform in this section.

Many staff are themselves young adults and may also be neurodivergent. Workplace accommodations should be provided accordingly. Particular emphasis should be given to identifying and reducing the causes of burnout and staff turnover. Recruitment models should receive more investment to bring in staff with experience in health and social care settings, and roles should offer genuine career progression so that they are valued long-term positions rather than transitional ones.

Training for new staff should be extended to be commensurate with the complexity of the population, and include specific training on responding to neurodivergence, in line with the UNCRPD.

Governors, senior staff, and Youth Custody Service staff who transition from the adult estate to the youth estate should receive specific training in child development, recognising that this is a specialist population.

Reflective supervision models should be adopted for frontline staff.

### 7.10 Establish mechanisms of accountability

Many of the actions proposed in this paper require implementation not by a single agency but across every stage of a child's pathway - and often well before justice contact, in health, social care and education, as well as in policing, courts, custody and probation. This creates a recurring risk: where responsibility is shared across many sectors, it can end up being held by none, and reforms that depend on action at several points can fail in the gaps between them. Mechanisms are therefore needed to make responsibility clear within and between systems, and to hold the relevant bodies to account for the actions that fall to them.

One example is the void of responsibility that exists for a child's EHCP when they enter the secure estate. Currently, legislation indicates that the Local Authority must hold financial responsibility for the EHCP to be met, but in practice the MoJ/YJB contract education providers who include EHCP provision in their budget. This means the Local Authority often ceases to maintain, review and update the EHCP, leaving children with gaps in implementation when released from custody. Clarity is therefore needed about where responsibility lies for maintaining an EHCP, and for ensuring appropriate provision continues for a child who is on remand.

Finally, an independent investigation into the reasons behind the over-criminalisation of neurodivergent children should be commissioned, with explicit attention to intersectional disproportionality (race, gender, care experience and poverty).

## 8. Conclusion

The empirical evidence unambiguously sets out that children with neurodivergent conditions are over-represented in the youth justice system, with prevalence rates significantly higher than children in the general population. Our obligations under the UNCRC and UNCRPD are equally clear – these children should not be in youth justice systems, and where they are, they should be receiving specific assessment, and age-appropriate adaptations and support.

However, our practice is falling behind, largely because of systems acting in fragmentation. We have exclusionary school discipline, a diagnostic infrastructure that systematically misses the children who need it most, and a justice system which is ill-equipped to respond to the complex needs of the population it serves. The ten actions proposed in this paper are designed to span the sectors implicated, to anchor reform in the rights framework the state has already accepted, and to identify levers specific enough that progress against them can be measured.

The cost of delay falls on a generation of children whose pathways are being shaped now. The action proposed in this paper is offered as a constructive route forward, anchored in obligations the state has already accepted, and designed to be taken up incrementally by the sectors implicated. Progress against each of the ten actions is measurable, and shared accountability across education, health, social care and justice is the precondition for that progress. These recommendations are therefore essential, rather than a 'nice to have'. How we respond to these children says something about how we understand ourselves as a society. Children with neurodisability in the justice system are not only doubly vulnerable (Moore & Miller, 1999) as children and as a group with neurodisability, but trebly so, given their neurodisability, their childhood, and their place within the criminal justice system. A society is measured in part by how it treats those most at risk of harm, and that places an obligation on all of us, grounded in both justice and moral responsibility.

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## Appendix 1

This table, taken from an upcoming book (Hughes & Kent, In Press), presents peer-reviewed evidence on the prevalence of neurodisabilities in children in detention and in the general population – an update and extension of the tables presented in Borschmann et al. (2020), Hughes et al. (2020), and Hughes et al. (2012).

| | **Typical diagnostic symptoms** | **Reported prevalence in children in custodial justice settings** | **Reported prevalence in children in the general population** |
|---|---|---|---|
| Attention-deficit hyperactivity disorder (ADHD) | Persistence in multiple symptoms of inattention, hyperactivity, and impulsivity | 30.1% [1] | 7.2% [2] |
| Autism Spectrum Disorder (ASD) | Persistent deficits in social communication and social interaction across multiple contexts | 3-18%[3] | 0.3 – 1.9%[4] |
| Speech, Language, and Communication Needs | Problems with speech, language, or hearing that significantly affect academic achievement or day-to-day social interactions; includes expressive and receptive language, speech sound disorder, and stuttering | 60-64% [5] | 1-9% [6] |
| Foetal alcohol spectrum disorder (FASD) | Reduced height, weight, or head circumference; characteristic facial features; deficits in executive functioning, memory, cognition, intelligence, attention, or motor skills; resulting from prenatal alcohol exposure due to maternal consumption during pregnancy | 10.9 - 21% [7] | 0.7% [8] |
| Learning disability | Deficits in cognitive capacity (measured by an IQ score of <70); occasionally with adaptive functioning (significant difficulties with everyday tasks) | 10-32% [9] | 1% [10] |
| Acquired brain injury | Injury to the brain that is not congenital (i.e. it is acquired after birth). This could be due to infection, disease, oxygen deprivation (e.g. through strangulation or stroke), or a traumatic injury. | *50-87.1% [11] | *20.2% [12] |
| Epilepsy | A condition arising from abnormal electrical signals produced by neurons, which causes recurring unprovoked seizures. | 5.9% [13] | 0.3-0.6% [14] |
| Developmental co-ordination disorder | A condition affecting physical co-ordination (also known as dyspraxia). | 30.3% [15] | 1.8-5% [16] |
| Dyslexia | A specific learning difficulty which primarily affects accurate and/or fluent word recognition and spelling. | 50%[17] | 7.1% [18] |
| Tourette's syndrome | A condition causing the individual to make sudden, repetitive sounds or movements (tics). | **6% [19] | 0.3-0.9% [20] |

***Note** that the studies on brain injury that we report here examined only *traumatic* brain injury; a sub-type of acquired brain injury. Comprehensive data on the prevalence of all types of acquired brain injury in youth justice populations isn't available to our knowledge. The comparative general population estimate therefore relates to traumatic brain injury also, to allow for a more valid comparison.

****Note** that this study was of young adults aged 18-25, due to lack of data relating to children

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