

Open custody for criminal youth hold back re-offending

Abstract

In Sweden, youths who commit very serious offences are sentenced to youth custody. This article addresses issues relating to how these children experience being incarcerated, the significance of custodial openness for their everyday institutional lives, and how the experience of more open custodial forms during youth custody sentences is related to re-offending. The empirical data provide support for the significance of more open custodial forms as a means of both providing incarcerated youths with a less destructive environment and increasing the likelihood of more positive re-offending outcomes following their release.

Keywords: re-offending, youth custody, custodial openness

THE NORDIC COUNTRIES are well known for the humaneness of their criminal justice systems in an international perspective (Pratt 2008). However, this humaneness has also been problematized (Barker 2013; Ugelvik and Dullum 2012). One reason for questioning the low levels of incarceration in the Nordic countries is that both a large amount of incarceration and other forms of repressive interventions take place within the welfare system rather than via the justice system. This is particularly true for young offenders, since Sweden has a tradition of re-directing them into the care of the social services (Pettersson 2017). Youth custody, the sanction that constitutes the focus for this study, is a good example of this tradition. It was introduced in 1999, in part in response to the requirements of Article 37 of the UN Convention on the Rights of the Child, which states that the use of prison for children should be avoided as far as possible. Children between the ages of 15 (the age of criminal responsibility in Sweden) and 17 are (almost always) sentenced to youth custody instead of prison. These sentences are served in youth institutions known as special approved homes. These institutions are state-administered, and prior to 1999 they only provided care for youths placed by the social services. They are, however, secure institutions, and most of the units are locked. The special approved homes occupy a unique position within the framework of youth care provision in Sweden. They are the only institutions in which youths may be kept in locked units. The staff also have special powers in relation to the institutionalized youths (e.g. to place the youths in isolation, to conduct searches and to take blood and urine samples).

The criticism of the idea of the (supposedly) lenient Nordic justice systems may be illustrated by reference to the results produced by the introduction of youth custody. On the one hand, the new legislation has meant that youths are no longer sentenced to prison, but on the other hand it has also generated a so-called net-widening effect in the sense that the *number* of youths sentenced to incarceration has increased, as well as the *length of time* they spend incarcerated. In part this may be explained by the fact that the sanction is focused on treatment provision, and may therefore be perceived as less severe than a prison sentence (Pettersson 2017). Given the findings of previous research, which have shown incarceration to produce criminogenic effects (Nagin, Cullen, and Jonson 2009; Bales and Piquero 2012), an increase in the number and length of custodial sentences is unfortunate to say the least, and the issue of strategies to reduce the negative effects of incarceration is an important one. This article addresses one possible strategy to do so, namely by opening up secure institutions by giving youths institutional leave and allowing them to stay on open units towards the end of their sentences. In a study that followed up boys¹ sentenced to youth custody during the years 1999–2006 (N= 638) for five years subsequent to their youth custody sentences, and that also interviewed youths and staff at special approved homes, the importance of custodial openness both for re-offending and for everyday life at the special approved homes was examined (Pettersson 2017).

The quantitative data were collected from both official crime statistics and the youths' journals. These data show that, after matching (using propensity score matching) on the most important variables for both the risk for re-offending and the likelihood of ending one's sentence on an open unit,² the risk for re-offending resulting in a new custodial sentence is significantly lower for youths that conclude their sentences on an open unit.³ After matching, the excess risk of being awarded a new custodial sentence among those released from a locked unit, by comparison with those released from an open unit, is 1.4 (CI 95 %: 1.3 – 1.4) (Pettersson 2017: chapter 6).

Taken together, the quantitative results strongly suggest that one way of reducing the criminogenic effects of incarceration is to open up the locked environment experienced by the youths in custody. The qualitative interviews conducted among staff and boys serving youth custody sentences also point to the significance of periods of custodial leave and time spent on an open unit at the end of the sentence. One reason is the extent of the process of institutionalization to which youths are sometimes subject, which then leads to e.g. feelings of intense stress when they temporarily spend

1 Only 21 girls were sentenced to youth custody between 1999 and 2006.

2 Matching variables: Prior convictions, prior placement in a special approved home, principal offence in the youth custody conviction, custodial leave/100 days of sentence, length of sentence, having leave rescinded for bad behavior, being subject to isolation during sentence, absconding, having changed unit because of problems.

3 The analysis showed that it was more important for the risk for re-offending to conclude one's sentence on an open unit than it was to have been given custodial leave on a large number of occasions. For this reason, the frequency of custodial leave is used as a matching variable in the analysis, and not as the treatment variable (having been released from an open unit).

time in a residence outside the institution. Periods of custodial leave and time spent on an open unit serve to reduce the extent of this process. They also enable the youths to maintain contacts with significant persons outside the institution, such as their family. These contacts are important both for the youths' willingness to desist from offending, and for their chances of achieving this. Custodial leave is also important as a means of providing the youths with an opportunity, under controlled conditions, to practice realizing their intention to avoid re-offending (almost all of the boys expressed a desire to desist from offending, a finding in line with several other interview studies of incarcerated individuals). However, the interviews also serve to complicate the picture of the importance of custodial openness. On the basis of different points of departure, both Goffman (1991) and Foucault (1991) have pointed to the importance of discipline in these kind of institutions. In this environment, the opportunity to obtain a more open custodial existence becomes a powerful disciplinary tool for the staff, and gives them substantial power over the youths. When the staff, as sometimes happens, use this primarily to produce a calm and peaceful environment on a given unit, and in this way to make their own work easier, there is a risk that this will produce a range of problems. For example it generates resistance among the youths, which in turn leads to superficial adaptation rather than real change. It is also clear from the interviews that the micro-discipline it generates undermines the perception that the staff really care, and instead contributes to producing a more destructive relationship between staff and youths. All of this means, however, that the potential effects of increasing the degree of custodial openness as a means of reducing re-offending are actually greater than is shown by the results of this study, provided the staff make use of their power in a more constructive manner, and not simply for the purposes of short-term strategies intended to produce a calm environment on a given unit.

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