

# CONSULTATION RESPONSE: CHILDREN'S CARE AND JUSTICE BILL

This response was submitted as part of the government's 2022 consultation on potential legislative reforms to promote and advance the rights of children in the care and justice systems and people who have been harmed, [which you can read here](#).

## SUMMARY OF OUR KEY MESSAGES

### MAIN QUESTIONS AND OUR POSITION:

#### **Maximising the use of the children's hearings system and support to children beyond the age of 18.**

We support efforts to maximise the use of the children's hearings system and support children beyond the age of 18.

#### **Where a child requires to be deprived of their liberty, should this be secure care rather than a YOI in all cases?**

Yes, if a child requires to be deprived of their liberty, this should be in secure care rather than YOIs.

#### **Do you agree that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interest?**

Yes, all children should be placed in secure care when deemed necessary, proportionate and in their best interest.

#### **Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests?**

Yes, children should be able to remain in secure care beyond their 18th birthday for as long as the child's needs require it.

## KEY MESSAGES

### **The children's hearing system and criminal justice system**

- The children's hearing system provides an opportunity to prioritise and understand the needs of the child (including trauma, neurodivergent conditions and mental health) and the reasons they may have committed a crime rather than simply responding to the crime itself – we therefore support efforts to allow more children to go through the children's hearing system rather than the adult criminal justice system.

Maximising the use of the children's hearing system increases the chances of upholding the rights of the child by enabling children to understand and communicate their needs rather than navigating the complex jargon used in the court settings.

- It is our experience that young people do not cope well with being moved from the children's hearing system into the adult criminal justice system at the age of 18, and the transition in itself can undo any progress made to date. We believe that support through the children's hearing system should continue after a child turns 18.
- Extending the children's hearing system and its supports to children over the age of 18 enables a further window of time for intervention before a child becomes entwined in the adult system and its disposals.
- Maximising the support to children after the age of 18 and increasing the age of referral to the Principal Reporter reduce the chances of young people receiving custodial sentences and can prevent re-traumatisation for those who are put in YOIs or adult prisons.
- Supporting the whole family rather than viewing the young person in isolation can provide long-term solutions for young people coming into contact with the justice system, such as strengthening relationships and reducing conflict.

### Secure care:

- We want to see a shift in how the secure care system is perceived and utilised. Secure care should be used to care for young people rather than simply manage their risk and should be utilised in all cases where a young person's multiple and complex needs can be addressed.
- Removing Young Offender Institutions (YOI's) as disposals for children under the age of 18 increases the chance of determent from crime and an opportunity to re-route the paths young people have been on.
- We need to use an asset and rights-based approach to children in secure care rather than a justice-based approach. This would address the reasons why the child has ended up in the secure system rather than punishing and re-traumatising children.
- In order for secure care to be effective, staff need to be trained in trauma informed practice, neurodiversity and children's rights in line with The Promise.
- For secure care units to be a more effective disposal for children, there needs to be concerted efforts to consider the whole family structure through development of a relationship-based approach throughout the process of securing and releasing a child.
- Offering early interventions within the secure setting (such as conflict resolution workshops and family mediation) as well as informal interactions with families and that child that has been secured can offer alternative ways to deal with conflict and tools to break the cycle of intergenerational trauma.
- A more collaborative way of working between secure units, community-based organisations and third sector organisations would allow children to engage with services in the time they spend in secure care and provide links to the community which will benefit their reintegration when the time comes and prevent future involvement with the justice system.
- We believe children should be able to stay in secure care beyond their 18th birthday rather than being moved to an adult prison, taking them away from existing relationships and care packages and disregarding any progress achieved in the secure unit.

## FULL CONSULTATION RESPONSE

### RAISING THE MAXIMUM AGE OF REFERRAL TO THE PRINCIPAL REPORTER

[Question 1-5 left blank]

**6. Should MRCs (Movement Restriction Condition) be made available to children who do not meet the current criteria for secure care?**

**Yes**

It should be considered what the SCRA will do if measures are not adhered to by the child to avoid further criminalisation of the person, which we know can lead to continuation of crime beyond teenage years.

Criteria for MRC should be about the level of support available more than the level of crime. It should be evidencable that rehabilitation through this method is effective.

### MAXIMISING THE USE OF THE CHILDREN'S HEARINGS SYSTEM AND SUPPORTS TO CHILDREN BEYOND THE AGE OF 18

**7. Should any of the above options be considered further? If yes, which options?**

**Yes, all three**

The nature of the needs of young people who come into the criminal justice system are multiple and complex. Therefore, in maximising the use of the children's hearing system and subsequent support to children beyond the age of 18, the system can begin to address these needs such as trauma, poor mental health, neurodivergent conditions, and the structural inequalities rooted within them.

Maximising the use of the children's hearing system provides an opportunity to prioritise and understand the needs of the child and the reasons they may have committed the crime rather than simply responding to the crime itself. The focus can be on prescribing care needs and designing packages of support for the child rather than removing them from society and widening their marginalisation.

The pressing need for holistic, preventative and earlier interventions for young people at risk of offending, which cut across policy areas, including increasing educational attainment and improving adolescent health and well-being, has already been well-documented, and the children's hearing system is more likely to be aware of effective interventions in local areas, and better able to make referrals.

Maximising the use of the children's hearing system will enable a child to understand the consequences of their crimes in a setting where the language used is familiar to them rather than navigating the often-complex jargon used in the court systems. This will increase the chances of upholding the rights of the child by enabling them to understand and communicate their needs, whilst also taking into consideration any neurodivergent conditions of the child and their capacity to be part of the process. Children can often lose their sense of self in the criminal justice system and it is vital that they have a say in how they are treated – and feel comfortable and secure to express their needs and make use of the options they have. For example, children are entitled to an independent advocate but they are not always aware of, or able to take up this offer.

Earlier identification of neurodivergent conditions within young people will increase our understanding of why a young person may act in a certain way, struggle to respond, understand or communicate their needs. Maximising the age that a child can make use of the children's hearing system enables the chance for a child with neurodivergent conditions to be understood in a more comprehensive way. This will allow the reaction to their actions or circumstances to be responsive to their care needs rather than exacerbated by the court system and its disposals.

Maximising the support to children after the age of 18 and increasing the age of referral to the Principal Reporter reduce the chances of young people receiving custodial sentences and can prevent re-traumatisation for those who are put in YOIs or adult prisons. Court disposals such as custodial sentences have the potential to re-traumatise children and these environments, in our experience, are not trauma informed, and are run by staff who are not always trained to sufficient levels of trauma informed practice. Extending the children's hearing system and its supports to children after the age of 18 therefore enables a further window of time for intervention before a child becomes entwined in the adult system and its disposals. It extends their support and offers disposals such as compulsory supervision orders and movement restriction conditions to those most vulnerable to coming into contact with the justice system, providing a break in the cycle of intergenerational trauma.

Moreover, there needs to be an endorsement of the family structure rather than focusing on the child as an individual within the care and criminal justice system. This will enable a consideration of how intergenerational trauma has affected the skills and abilities of parents to keep their children safe and address their needs. Having this level of understanding about a family's circumstances will allow support packages to be designed which address issues within the whole family. This will provide long-term solutions for young people coming into contact with the justice system, such as strengthening relationships, reducing conflict, and having relevant supports in place.

**8 Please give details of any other ways in which the use of the children's hearings system could be maximised, including how the interface between the children's hearings system and court could change.**

It is our experience that young people do not cope well with being moved from the children's hearing system into the adult criminal justice system and the transition in itself can undo any progress made to date. Better collaboration is needed between the children's hearings and the court system and the Principal Reporter and Procurator Fiscal. If these relationships are not strengthened, there is no follow-through and previous efforts are wasted.

Taking into consideration the care experience of a child in a setting with a welfare approach, like the children's hearing system, ensures the rights of the child are upheld. This includes the right to support and care up until the age of 26 for children with care experience. This is a way in which the interface between the children's hearing system and the court can change as crime is responded to through a lens of care, rather than retribution and forgoing the needs of the child.

Furthermore, we see another possible link between the children's hearing system and the criminal justice system through the new Scottish Sentencing Guidelines that came into force in January 2022. The sentencing guidelines state that those under 25 years of age should have their maturity assessed taking ACE, trauma, addiction and other factors into consideration. This is based on scientific evidence that cognitive maturity is affected by these factors and that there is a great capacity for change and rehabilitation for young people. These guidelines could indicate that young people under 25 should be considered for the children's hearing system or at least encourage a closer collaboration between the systems.

Endorsing and supporting the whole family rather than viewing the young person in isolation will also increase the chance of the children's panel hearing designing a package of support which caters to the needs of the young person. As well as providing opportunity to address any issues within the family such as conflict, poor communication and anger problems. These support packages can cater to all aspects of a child's life to provide a positive and viable intervention for their behaviour.

This process of maximisation could also contribute towards the shift in perceptions of how the public view some of the most vulnerable young people in our society. Moving the focus away from punishment to addressing the needs of the child, including trauma, neurodivergent conditions, mental health, support in communication and level of understanding, can provide a more coherent response to the needs of these young people and the structural inequalities that led to the situation. As well as providing invaluable input on the rehabilitative support necessary for each child, ultimately reducing recidivism in young people.



## CHILDREN AND THE CRIMINAL JUSTICE SYSTEM

[Question 9 left blank]

**10. Where a child requires to be deprived of their liberty, should this be secure care rather than a YOI in all cases?**

**Yes**

Secure care should be utilised in all cases where a young person's multiple and complex needs can be addressed. This is to address the causes of behaviours and the needs of the child that would otherwise be exacerbated in a prison setting.

Secure care should be used as a way to care for young people rather than simply manage their risk. This can take form through a relationships-based approach, building trust and more qualified levels of understanding in order to address the multiple and complex needs of young people who come into the units. In doing so, we secure young people based upon an endorsement of their experiences and trauma rather than their actions, seeing their needs rather than their risk.

However, in order for secure care to be effective, staff across the board need to be trained in trauma informed practice, neurodiversity and children's rights in line with The Promise that Scotland made to children and young people, offering the best support for the most vulnerable young people in our society. Providing care in smaller, trauma informed settings is preferable to large secure institutions.

In better resourcing secure units to support the child and enabling trusted relationships to form, children are able to transition more effectively into the community. In endorsing a therapeutic model for a young person this will allow beneficial and long-term change to take place as part of a response to crime rather than an exacerbation of trauma in a custodial setting.

However, it is worth noting that cross-border placements remove the ties to the community and proximity of relationships that are crucial for a child. In adopting the secure estate as a disposal in all cases rather than YOI's, cross border placements threaten the ability for the child to be able to engage with support offered in secure care that can promote a positive transition into the community.

Another thing to consider is what happens when a sentence finishes after the child's 18th birthday which causes them to go into the adult system. It should be considered whether they should be allowed to stay in secure care since this would only apply to a small number of people and moving someone for a short time would be detrimental (explored more in Q21).

[Question 11-13 left blank]

## SECURE CARE

[Questions 14-15 left blank]

**16. Do you agree that all children under the age of 18 should be able to be placed in secure care where this has been deemed necessary, proportionate and in their best interest?**

**Yes, through all routes**

An endorsement of a rights-based and trauma informed approach is essential for this to happen. With this becoming standard practice, it removes the process of re-traumatisation, and effective support can be provided to address complex and multiple needs.

There needs to be a shift in how we perceive and utilise the secure care system. We need to use an asset and rights-based approach rather than a justice-based approach. This would allow the focus to be on understanding and addressing the reasons why the child has ended up in the secure system rather than punishing and traumatising children. A rights-based approach within the secure setting will also allow a recognition of children as being vulnerable and in need of support. This will contribute to secure care being used where necessary, proportionate and in the best interest of the child rather than only focusing on assessing risk.

Removing YOI's as disposals for children under the age of 18 increases the chance of determent from crime and an opportunity to re-route the paths young people have been on.

Offering early interventions within the secure setting and before (such as conflict resolution workshops and family mediation) as well as support that challenges behaviour and nurtures relationships can offer alternative ways to deal with conflict and tools to break the cycle of intergenerational trauma.

However, for secure care units to be a more effective disposal for children under the age of 18, there needs to be concerted efforts to consider the whole family structure through development of a relationship-based approach throughout the process of securing and releasing a child. In doing so a child can have an effective transition back into the family and community, empowered by the stable relationships they have built with throughcare workers. And they will feel supported to mend relationships with family members if needed through mediation and family outreach worker resourcing, enabling young people to communicate their needs to others positively. Encouraging and supporting regular informal interactions between families and the child who has been placed in secure care are much-needed ways to motivate sustainable change, and promote alternative ways of communicating that may have led to conflict previously.

A more collaborative way of working between secure units, Local Authorities and community-based third sector organisations would allow children to engage with relevant

support services whilst in secure care and the support they have received should follow them into the community. This would provide consistency and stronger links for the child in the community before they are released and benefit their reintegration when the time comes. Where possible ongoing support should also be available for the wider family in order to address previous conflicts and rebuild relationships. A more joined-up way of working will increase the effectiveness of placing children under the age of 18 in secure care as meaningful work can be done to prevent their future involvement with the justice system.

Since April 2020, Cyrenians has been running Keeping Families Together – a service specifically targeted at children (aged 12+) in alternative care and at greatest risk of spiralling further into the criminal justice system. We are working alongside Scotland's five secure units to strengthen family relationships and reintegration. We provide family outreach, mediators, workshops in anger management, conflict management, etc.

Keeping Families Together supports young people in secure care at two key points; at the point of admission, and those who are in the process of returning home. It is also closely aligned with several articles in the UNCRC. Research on desistance and resilience shows clear links between positive supportive relationships and reduction in offending. Keeping Families Together has also been designed to work across generations, to break the vicious cycles experienced by some children.

We believe that each Local Authority should have a similar service to ensure consistency across the country. Our greatest successes have been with those Local Authorities where we are known and have a proven track record. There is mutual awareness and strong relationships, at a local level, of the benefits of complementary approaches.

### **17. Should the costs of secure care placements for children placed on remand be met by Scottish Ministers?**

**Yes**

The utilisation of secure units should not be used as a strategy for profit and viability of centres. Placing the financial onus on the Scottish Government to fund a child's place in secure care in all contexts rather than solely if the child is convicted removes the transaction process that dictates the priorities and actions of local authorities, and allows the driving force behind decision making to be based only upon the best interests of the child.

### **18. Is a new national approach for considering the placement of children in secure care needed?**

**Yes**

There should be a single-agency approach with a national remit across the whole country and Central Government support is needed to ensure consistency of services offered. This national approach should be both trauma informed and rights based.

It is vital to remember the importance of relationships and advocates, especially when



children are placed in units far away from their network. Young people need continuity but in the current system they do not always know where they are going at the end of a hearing due to how beds are currently allocated. In itself, this can cause additional confusion, frustration and trauma for both the child and other family members.

[Questions 19 and 20 left blank]

**21. Do you agree children should be able to remain in secure care beyond their 18th birthday, where necessary and in their best interests?**

**Yes, for as long as the child's needs require it.**

In moving a child to the adult system beyond their 18th birthday we are taking them away from the relationships and care packages they have, which would not follow them into the adult system. This would mean that any progress achieved in the secure unit from working with the child is essentially disregarded.

The numbers in the adult system do not allow a trauma informed environment to function, and staff are not always trained in trauma informed practice or recognition of neurodivergent conditions, and the difficulties these can present for a child's capacity to understand or communicate their needs.

Regular reviews of support and care in place would promote what is best for the child. In having this as standard practice the assessment of the child would be based on the child as a person rather than on their level of risk. Appropriateness to remain in secure care after a child's 18th birthday or to be placed back in the community can be based on their ability to manage and the support packages that need to be in place, rather than on measuring their chances of re-offending or relapsing.

Community alternatives should be utilised to address a child's behaviour, promote healing and understanding of the child's conditions and circumstances for both the child and relevant workers. As mentioned previously, this would also enable a child to transition into the community gradually and with the support to do so meaningfully, rather than setting children up to fail with poor throughcare and ineffective community interventions.

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