

## **Response to the Scottish Government's Consultation on The Youth Justice Standards**

**January 2020**

CELCIS is Scotland's Centre for excellence for children's care and protection, based at the University of Strathclyde. We welcome the opportunity to respond to the Scottish Government's consultation on the Youth Justice Standards. These will update the minimum standards for delivery of youth justice in Scotland, ensuring that vulnerable children and young people within the criminal justice system receive appropriate support, care and protection.

### **Background**

Children and adults with care experience are often disproportionately affected by the criminal justice system. Research shows that children in residential care are likely to have increased contact with the police. In addition, they are more likely to be involved in formal processes in the justice system where they may be criminalised and given convictions for behaviour that would otherwise be resolved in families' lives.<sup>1</sup>

Children who are involved in frequent or serious offending behaviour are often the most vulnerable, experiencing a high level of adverse childhood experiences including neglect, abuse and bereavement, making their needs for care and protection vital. Whilst it is important to discern that the majority of children who experience adversity do not engage in frequent or serious offending behaviour, it should be recognised that for those that do, significant trauma is a near universal experience.<sup>2</sup>

The need for more action to prevent the criminalisation of children is internationally recognised.<sup>3</sup> Whilst the Scottish government is committed to the incorporation of the [United Nations Convention of the Rights of the Child](#) (UNCRC) into Scots law, the [GIRFEC](#) approach, which forms a part of the overarching policy framework for the Youth Justice Standards, is grounded in the UNCRC.<sup>4</sup> Both the UNCRC and the 2010 [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) are unambiguous in stipulating that all children aged under 18 should access child friendly justice, and that if their liberty is deprived, their other rights under the UNCRC should be upheld.

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<sup>1</sup> Scottish Government (2016) [The Report of the Advisory Group on the Minimum Age of Criminal Responsibility](#). Edinburgh: Scottish Government; The Howard League of Penal Reform (2016) [Criminal Care](#). London: The Howard League of Penal Reform; Moodie, C. & Nolan, D. (2016) [Between a rock and a hard place: Responses to offending in residential childcare](#). Glasgow: CYCJ

<sup>2</sup> CYCJ (2016) [Key messages from the Centre for Youth and Criminal Justice](#). Glasgow: CYCJ

<sup>3</sup> Davidson, J., Elsley, S., Giraldi, M., Goudie, A., Hope, K., Lyth, A., & Van Kiersbilck, B. (2019) [Justice for Children, Justice for All: The Challenge to Achieve SDG16+ Call to Action](#). Glasgow: CELCIS – Inspiring Children's Futures – University of Strathclyde

<sup>4</sup> Aldgate, J (2013) [UNCRC: the foundation of Getting it right for every child](#). Edinburgh: Scottish Government

We welcome the references to the UNCRC and look forward to further development of the Standards to ensure that the adherence to the UNCRC is comprehensive throughout the Youth Justice Standards.

There are currently discrepancies between how children aged 16 and 17 access the justice system in Scotland. Alongside the Independent Care Review, we would stress that children aged 16 and 17 should only access child-friendly justice rather than be placed in Young Offenders Institutes (YOIs).<sup>5</sup> Many children involved with the justice system are supported through the Children's Hearings System, formed from the recommendations of the Kilbrandon report to respond to children's 'needs not deeds'<sup>6</sup>. Where children who are under 16 are referred to the Children's Hearings System or are otherwise the subject of a compulsory supervision order are deprived of their liberty, they must be accommodated in suitable accommodation which includes secure care but excludes a YOI. However, children aged 16 and 17 who are not the subject of a Compulsory Supervision Order will instead be detained in a YOI.

The need for children aged 16 and 17 as well as young people over this age to access child friendly justice systems stems from a recognition of the distinct developmental needs of this age group. Research has demonstrated that the brain does not fully develop until the mid-twenties, and that the effect of criminal justice systems on children and young people is disproportionate due to these developmental differences.<sup>7</sup> Whilst more detailed discussion of this issue has been made by organisations with specific expertise in child and youth justice, such as [The Centre for Youth and Criminal Justice](#) (CYCJ), the ambiguous position of 16 and 17 year olds in the justice system should be considered, and is raised in our response in relation to the placing children aged 16-17 in child friendly settings such as secure care rather than YOIs, as well as flexibility in adherence to age limits in the movement of these children from secure care to custody of a YOI.

Our response to this consultation draws on recommendations from the 2019 report by the Justice Committee, [Secure care and prison places for children and young people in Scotland](#), the [Scottish Care Leavers Covenant](#) and the [Independent Care Review](#). We would also draw attention to the forthcoming National Secure Care Standards and hope that these will be considered during the development of the Youth Justice Standards. CELCIS' knowledge and expertise relates to children in need of care and protection. Whilst the disproportionate contact between vulnerable children, especially those in or with experience of care and the criminal justice system has been discussed, our response to this consultation will be restricted to matters related to our expertise only, and focus on the most and least helpful aspects of the draft standards (question 3 & 4).

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<sup>5</sup> CYCJ (2016) *Key messages from the Centre for Youth and Criminal Justice*. Glasgow: CYCJ; Justice Committee (2019) [Secure care and prison places for children and young people in Scotland](#). Edinburgh: Scottish Parliament, Scottish Government (2020) [Prevention of and Responses to Harmful Sexual Behaviour by Children and Young People](#). Edinburgh: Scottish Government

<sup>6</sup> HMSO (1964) *The Kilbrandon Report*, Edinburgh: HMSO

<sup>7</sup> CYCJ (2016) *Key messages from the Centre for Youth and Criminal Justice*. Glasgow: CYCJ

## Key messages

- A distinct standard for corporate parenting responsibilities towards children and young people with care experience in the criminal justice system in Scotland
- Review of the comprehensiveness of Standard 5
- Ensuring children aged 16 and 17 access child friendly justice systems and flexibility in the movement of young people turning 18.
- Further detail on approaches to monitoring and evaluation
- Review of the comprehensiveness of the Youth Justice Standards in general

## Corporate Parenting Standard

We are pleased to see that corporate parenting is discussed in the introduction of the Youth Justice Standards. In light of the recommendations of the recent Independent Care Review we recognise that good parenting where the state has legal and moral responsibilities may be more appropriate terminology to inform future work. There are legal duties of 'corporate parents' to children in care and care leavers are mandated in Part 9 of the [Children and Young People \(Scotland\) Act 2014](#), including to perform any necessary actions to ensure the rights and wellbeing of children in care or care leavers up to the age of 26 are met. This includes being alert to matters that this group are adversely impacted by, and ensuring access to support and services are in place.<sup>8</sup> In light of the disproportionate impact of the criminal justice system on children with care experience, and to implement the recommendations of Scottish Care Leavers Covenant, we would recommend a more thorough incorporation of corporate parenting duties into the Youth Justice Standards through the inclusion of a separate standard for corporate parenting duties. This would enable guidance to be provided on how these duties should be implemented by any corporate parent relevant to children or care leavers involved in the Justice System, who include but are not limited to local authorities, Children's Hearings Scotland, The Scottish Children's Reporter Administration, the Chief Constable of the Police Service of Scotland and the Scottish Ministers, which includes the Scottish Prison Service and Disclosure Scotland.

Providing a separate standard in this way would allow for the clarification of the role of corporate parents who are involved in the recording and disclosure of information about children's involvement with the criminal justice system. This is particularly relevant as information about childhood offences would be liable to disclosure if an adult were to seek membership of the Protecting Vulnerable Groups Scheme in the future, and the Scottish Care Leavers Covenant has called for limits to this practice.<sup>9</sup> The Scottish Parliament is currently seeking to reform the processes involved in the disclosure of this information through the [Disclosure \(Scotland\) Bill](#), which we have recently [responded](#) to.

## Comprehensiveness of Standard 5

We welcome the inclusion of Standard 5 relating to secure care. We have some concerns about the comprehensiveness of this standard and the congruency of

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<sup>8</sup> Scottish Government (2015) [Statutory guidance on Part 9 \(Corporate Parenting\) of the Children and Young People \(Scotland\) Act 2014](#). Edinburgh: Scottish Government

<sup>9</sup> Scottish Care Leavers Covenant (2015) *Scottish Care Leavers Covenant*, Glasgow; CELCIS.

content with recommendations made in the 2019 report by the Justice Committee, the [Scottish Care Leavers Covenant](#) and the [Independent Care Review](#). We would draw particular attention to the following recommendations from these reports.

- Mental Health

We welcome the connection of the Youth Justice Standards with the Health and Social Care standards, as well as the assertion that these standards apply to all children and young people. However, we draw attention to the high rates of mental health need within the secure care estate in Scotland, and the findings of the 2019 Justice Committee Report that there are discrepancies in provisions for Child and Adolescent Mental Health Services (CAMHS) across different secure care services, with the report concurring with the Barnardo's Scotland assertion that mental health provision should be made available regardless of whether a formal diagnosis has been made, in order to provide adequate support for trauma.<sup>10</sup> This is repeated in recommendations in the Independent Care Review for secure care to be trauma informed and therapeutic rather than with a primary purpose of the 'containment' of children<sup>11</sup>.

- Speech and language therapy

In addition to specifying a minimum standard in the provision of mental health services, we also note that at least 60% of all children and young people who receive support from criminal justice services have a speech, language or communication need,<sup>12</sup> but that there is no ring-fenced provision for support for speech and language therapy within secure care in Scotland. We would recommend that all health needs, including speech and language therapy are accounted for in minimum standards for secure care.

- Participation

We are pleased that [Article 12](#) of the UNCRC, the right for a child to express their views in matters that affect them is mentioned in the introduction of the Youth Justice Standards, through ensuring that the voices of children involved at any stage of the criminal justice system in Scotland are heard. We would welcome explicit attention to children's participation though the inclusion of sub-standards for the participation of children across all standards, and particularly so for standard 5 where our comments for this consultation are focused. This would meet the recommendations for secure care by the Independent Care Review, as well as those laid out in the report by Claire Lightowler of the CYCJ in the report [Rights Respecting? Scotland's Approach to Children in Conflict with the Law](#).<sup>13</sup>

- Commissioning of Secure Care Services

The 2019 report by the Justice Committee relays concerns from a range of stakeholders drawing attention to the relationship between some gaps in

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<sup>10</sup> Justice Committee (2019) *Secure care and prison places for children and young people in Scotland*. Edinburgh: Scottish Parliament

<sup>11</sup> Independent Care Review (2020) *The Promise*. Glasgow: The Independent Care Review (pg. 83).

<sup>12</sup> CYCJ (2016) *Key messages from the Centre for Youth and Criminal Justice*. Glasgow: CYCJ.

<sup>13</sup> Lightowler, C (2020) [Rights Respecting? Scotland's Approach to Children in Conflict with the Law](#). Glasgow: CYCJ (pg. 45).

provision in secure care such as mental health provision, speech and language therapy and the system of funding individual placements, stating that this system can be unclear over the responsibility for mental or other health care provision in contracts for placements. The report concludes that this commissioning model is 'weak' and recommends it be reviewed<sup>14</sup>. The Independent Care Review highlights competition for secure care contracts can hinder the sharing of good practice and collaboration, proposing 'strategic, needs based planning' and avoiding the 'monetisation of care' that can arise through this method of funding.<sup>15</sup> In order to ensure that the recommendations we are making for the Youth Justice Standards can be feasibly implemented, the issues with the current funding model may need to be revisited.

- Transition Plans for young people

We welcome the recognition of the issues that arise for children during the transition from secure care back into the community through mention of a transition plan in standard 5.7. We would seek justification for why these plans should be distinct from explicit consideration of the needs arising from transitions in the child's plan as required under [GIRFEC](#). We would also point to a need to consider planning for the needs of children and young people during other types of transitions, such as from the community or between secure care placements or YOIs.

### **Provisions for young people aged 16 and 17**

The wider context of discrepancies in how 16 and 17 year olds access criminal justice systems has been discussed. We note that standard 5.4 states that where practicable, all children under 18 should be placed in secure care with a YOI only used as a last resort. We would query the placement of any child under 18 in a YOI, even as a last resort or where there are practicalities to be resolved. We draw attention to the recommendations in the Independent Care Review for all 16 and 17 year olds to be accommodated in secure care rather than be detained in YOIs or other 'prison like' settings that are not appropriate for children, including whilst on remand, and with careful planning undertaken to ensure provisions are appropriate for the differing needs of these populations<sup>16</sup>.

We welcome the inclusion of standard 7 that recognises the issues that may arise when children and young people move between places in the criminal justice system. This includes where they might move between secure care and a YOI for short periods of time due to their age. We would draw attention to the recommendations of the 2019 Justice Committee report calling for flexibility around age limits when considering the movement of children who turn 18 from secure care to custody of YOIs for short periods of time. The Independent Care Review makes similar recommendations calling for flexibility for those who turn 18 in secure care, so that they are not automatically transferred to a YOI, in addition to retaining support of social workers through continuing care provisions.

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<sup>14</sup> Justice Committee (2019) *Secure care and prison places for children and young people in Scotland*. Edinburgh: Scottish Parliament (pg. 18).

<sup>15</sup> Independent Care Review (2020) *The Promise*. Glasgow: The Independent Care Review (pg. 112).

<sup>16</sup> *ibid* (pg. 82)

## **Monitoring and evaluation**

We would welcome clarity on the implementation of the Youth Justice Standards, including timelines and guidance for delivery, as well as for monitoring and evaluation activities required.

## **Conclusion**

We welcome the recognition of the UNCRC, GIRFEC and the Health and Social Care Standards in the Youth Justice Standards. As do we welcome acknowledgement of the needs of children with care experience and the legal duties of corporate parents as set out in the Children and Young People (Scotland) Act 2014. The Standards could be strengthened by inclusion of the diverse care experiences of children and young people (including foster care, kinship care and children looked after at home, alongside residential care) and the impact this has in upholding their rights.

We would also query the criteria for the standards that have been included in this consultation. Those included are prevention and early intervention, the Children's Hearings system, alternatives to prosecution, court, secure care and young offenders institutions, risk assessment and care and risk management, transitions and improving outcomes. Whilst the inclusion of these standards is welcome, we would query the exclusion of other standards that are critical to ensuring that the rights and wellbeing of children and young people in the criminal justice system are respected.

There should be consideration in the standards of the following issues: access to mental health and other health support, access to education, maintaining relationships with family and carers, use of restraint, participation such as having views taken into account, and well as access to legal advice.

We look forward to the development of the Youth Justice Standards which have the capacity to incorporate current and upcoming legislative developments, as well as policy and practice recommendations. This would begin to facilitate the implementation of a rights-based set of standards for children and young people in the justice system.

## **About CELCIS**

CELCIS is a leading improvement and innovation centre in Scotland. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care.

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