

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill

Community Justice Scotland submission to Equalities & Human Rights Committee of the Scottish Parliament – 16 October 2020

In September 2020, Community Justice Scotland was invited to submit evidence to the Scottish Parliament's [Equalities & Human Rights Committee](#) in relation to the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill:

1. Will the Bill make it easier for children to access their rights?

Yes

2. What do you think about the ability to take public authorities to court to enforce children's rights in Scotland?

The central duty at the heart of the Bill is to ensure that public authorities don't do anything incompatible with children's rights. It is therefore important that remedies to enforce this duty are available.

3. What more could the Bill do to make children's rights stronger in Scotland?

The Bill and accompanying material doesn't explicitly refer to the impact on children of parental imprisonment, whether on a custodial sentence or being held on remand and how this aligns with a child's right to parental care under the UNCRC provisions. Setting aside cases where the removal of a parent is imperative for child safety or public protection, it is important to recognise that children whose parents are in custody often experience negative consequences, from emotional impact related to the de facto loss of a parent and the stigma of parental incarceration, through to devastating practical consequences such as loss or reduction of family income which can lead to loss of a home, requiring children and families to move away from their communities and schools at the very time when they may most be needing support. In some circumstances a child may end up being placed in care due to parental imprisonment. The above consequences can arise from even relatively short sentences or periods of remand, such decisions adding significantly to children's trauma with long term, potentially life time implications. We would particularly recommend the [research of Families Outside](#) and the [KIN project of Vox Liminis](#) for more information on how parental imprisonment affects young people and children.

As the body responsible for the promotion of community justice across Scotland we would like greater consideration in the Bill and emerging guidance on the beneficial impact of community justice provisions which not only achieve demonstrably improved outcomes for the perpetrators of crime but also for their families and children.

As we stated in our evidence to the Justice Committee during its deliberations on the presumption against short-term sentences (PASS) in 2019 (reproduced here in italics) *'the case against the use of short spells of imprisonment is strong. People who receive short sentences have the highest level of reoffending* (Source: Scottish Government, 2015 "Evaluation of CPOs, CJSW reports and PASS" <https://www.gov.scot/publications/evaluation-community-payback-orders-criminal-justice-social-work-reports-presumption-against-short-sentences/pages/4/>)

'Short sentences are expensive, present limited opportunity for rehabilitative services to engage with criminogenic needs while incarcerated, can often contribute to damaging circumstances including the loss of stable housing, employment, financial stability, access to benefits, family relationships (Source: Sapouna et al (2015) "What Works to Reduce Reoffending: A Summary of the Evidence"

<https://www2.gov.scot/resource/0047/00476574.pdf>) - all of which are strongly associated with failing to desist from crime. Upon release from a short sentence, many of the needs present at the time of offending and conviction remain unaddressed, or circumstances are worsened through loss of housing and income. This is likely to play a part in the high levels of reoffending present in this group. The impact of the above is felt not only by the person convicted, but also by their families. **Where a parent or caregiver is sentenced to custody, children lose not only their parent, but often their homes, their sense of security and stability. Parental imprisonment is rightly named as a significant Adverse Childhood Experience, with potentially long term traumatic impact for the children of those sentenced.**

'In comparison, community sentences, such as the Community Payback Order, are associated with lower levels of reoffending (Source: Scottish Government, 2015 "Evaluation of CPOs, CJSW reports and PASS cited above) and have a less substantial negative impact on life circumstances such as those outlined above. CPOs aren't easy to complete. People find them personally and practically challenging, but many report that engaging with elements including supervision and unpaid work is key in helping them move on from offending (8. Community Justice Scotland (2019), "Community Payback Order: CJS Summary of Local Authority Annual Reports 2017-18"

https://communityjustice.scot/reports_and_stats/community-payback-order-cjs-summary-of-local-authority-annual-reports/). A shift toward greater use of community sentences has the potential to increase the number of people achieving these positive outcomes, reducing reoffending. '

At present, the Scottish Sentencing Council guidelines on the principles and purposes of sentencing highlight that many factors are used in deciding what sentence is appropriate depending on the relevant factors of the case such as the offence and impact on the victim, the circumstances of the person to be sentenced, and the options available to the sentencer. We would suggest that given the above evidence, it would be appropriate for discussions around the UNCRC Bill and whatever implementation plans to be developed to specifically consider the likely impact of the justice process and sentencing decisions made about parents or caregivers on a dependent child. It would be helpful if during the UNCRC Bill deliberations the Committee could clarify whether sentencing decisions or, given their strategic nature, sentencing guidelines, should also be made subject to children's impact assessments (given the requirement of section 14 refers to decisions of a strategic nature) or whether existing judicial requirements are considered sufficient.

The rights of young people sentenced to custody and the nature of the custodial regime should be considered in the light of this legislation as there may be modifications required in order to be fully compatible with UNCRC. We would urge the Committee to consider how this Bill's provisions could directly influence the use of custody vs community settings. We would recommend the concluding report of an SPS International Symposium on 'Reimagining Custody, Community and Citizenship for 21st Century Scotland' held in 2016 which considered how to restructure sentences so people can maintain jobs, family links, and contacts with community. This report outlines examples of alternative custodial arrangements around the world.

Reimagining the nature of justice and custody is important in a context where Scotland locks up more people per capita than any other country in Europe. Research estimates that 16,500 children in Scotland have a parent in prison on a given day, with up to 27,000 experiencing parental imprisonment every year (Scottish Consortium for Crime and Criminal Justice (2016) "Children, Families, Young People and the Criminal Justice System", McGinley (2018) "The impact of parental imprisonment: an exploration into the perspectives and experiences of children and young people affected", Families Outside. To compare, consider that more children experience a parent's imprisonment than a parent's divorce. In addition the pressure of the high prison population on the

prison service is well-documented. Incorporating the UNCRC into domestic law will shine a light on other areas where policy and practice falls short of international comparators.

In order to successfully comply with community justice sentences and maintain community and family connections, support and supervision services are often required. The financial provisions in the Bill may therefore be inadequate to support community justice services (the delivery of which directly supports children's rights to a life where they are cared for by their parents), in particular public services such as supervision by criminal justice social work, and more broadly other services addressing needs such as addiction, mental health, employability, provided by public and third sector partners.

The list of public authorities at section 16 should also include the Independent Reviewer as per the recent Disclosure Scotland and Age of Criminal Responsibility Acts.

4. If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example.

CJS is not a service delivery body but we would welcome greater consideration of the impact of sentencing decisions, in particular for custody, on children and young people, either directly for those young people in custody or for the families of those placed in custody and the support services they may require.

The consideration of something akin to the Presumption Against Short Term Sentences (PASS) approved by Parliament in 2019 but explicitly addressing the needs of children and young people whose parents are in the justice system and young people themselves in the justice system would also be welcome. Concomitant resources for community justice service providers in the public and third sector would be required. CJS would be happy to be involved in any discussions on how to achieve this as part of the three-year implementation period for this Bill.

We also note the recent consultation by the Scottish Sentencing Council on sentencing guidelines for young people. It may be appropriate to also consider the development national guidance on sentencing for accused people who are parents or carers of children or young people.

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There are five questions on this page.

1. Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?

The equalities and human rights of children whose parents are in prison custody should be considered as well as the impact on children under 18 in custodial settings.

2. What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?

No specific comment.

3. What are your views on the Children's Rights Scheme and the requirement on public authorities to report?

It is important that public bodies report on the impact that these changes and their policy and actions is having on children's rights. We propose that the Independent Reviewer (re the Disclosure and Age of Criminal Responsibility Acts) be added to the listed authorities in Section 16

4. Is there anything else you want to tell us about the Bill?

We would refer the Committee to the conclusions of an earlier consultation in 2015 on a proposed [Private Members Bill on Support for Children \(Impact of Parental Imprisonment\)](#) which specifically focused on the rights of children whose parents are imprisoned.

CJS welcomes the Bill and appreciates the engagement to date with the Scottish Government's Bill Team on this matter. CJS is happy to work with Scottish Government and community justice stakeholders on the eventual proposed 3-year implementation period of the Bill to ensure that the implications for Community Justice Service, including resourcing of non-custodial options, are appropriately addressed.