Raising the age of criminal responsibility: What the data and research tells us

Paper produced on behalf of the ACR Data and Research Group

Updated January 2024

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1. Introduction

The Age of Criminal Responsibility (Scotland) Act 2019 (the 2019 Act) was passed by the Scottish Parliament on 7 May 2019, received Royal Assent on 11 June 2019 and was fully commenced on 17 December 2021. Section 1 of the Act raises the age of criminal responsibility (ACR) in Scotland from 8 to 12. This means that when behaviours that would otherwise constitute an offence occur when a child is under the age of 12, the child will not be held criminally responsible. Children under the age of 12 can still be reported to the reporter on welfare grounds but not offence grounds. Children aged 12 to 17 years will still be able to be held criminally responsible and their behaviour responded to, where appropriate, through either the criminal justice system or the Children's Hearing System. The number of children being prosecuted in court decreased by 78% from 9,813 in 2006-07 to 2,203 in 2015-16. Similarly, the number of children referred to the Scottish Children's Reporter Administration (SCRA) on offence grounds reduced by 83% from 16,229 in 2006-07 to 2,761 in 2015-16 (Scottish Government, 2017). The impact of criminal convictions on a child's future can be substantial (General Comment no.24, 2019).There is also a growing body of research, which demonstrates that physical brain development and cognitive functioning continues into the early twenties and that there are differences in the judgment and consequential thinking processes between children, young people and adults (Arthur, 2012; Delmage, 2013; Farmer, 2011; McDiarmid, 2013). For these reasons the UNCRC recommends that states adopt an absolute minimum age of criminal responsibility of 14 years and the Committee commends states that have a higher minimum age, for instance 15 or 16 years of age (General Comment no.24, 2019).

Provision was incorporated into the 2019 Act to ensure that consideration is given to further possible increases to the ACR and thus the Scottish Government Age of Criminal Responsibility Advisory Group has committed to reviewing a future raise in age beyond 12 years. The Age of Criminal Responsibility Advisory Group set up the Data and Research subgroup to examine this. The terms of reference for the Data and Research subgroup state that the group will work with key partners to collect [and analyse] data and research as part of the Advisory Group's remit of considering a future age of criminal responsibility.

Specifically, the subgroup was tasked with gathering data and research to inform the raising of the ACR beyond 12, up to the age of 18. As such, this updated data paper details the potential impact that raising the ACR would have across each of the age groupings – 13, 14, 15, 16, 17, and 18 years. The data examines the number of children that would be impacted, the type and frequency of behaviours that would be involved and the change in outcomes that would potentially be involved. This data will inform the consideration of the operational implications for stakeholders across services. **[redacted s.29 (1)(a)]**

Due to the data being held within different organisations, across different systems, and being counted and presented in different ways and across different time periods, it is not possible to get a seamless picture of children's journeys through the justice system. There is limited data available on children's contact with the justice system at the early stages as well as the outcomes from this. However, more data is available on their contact with the justice system at the later stages and overall, there is sufficient data available to give an indication of the changes that would be seen because of increasing the ACR across the different age groupings.

This paper starts by providing an outline of all detected crimes in Scotland that are alleged to have been committed by children. This is followed by reporter's decisions on offence referrals and then charges reported to the Crown Office and Procurator Fiscal Service (COPFS). The next three sections go on to provide an overall summary of the data on non-court disposals, court proceedings and convictions across all ages and ACR groupings for the most recent year available 2020-21. Where data is available, we have set out the actual number of children in each age group before then providing the cumulative data for each increase in the age of criminal responsibility (e.g., ACR of 15 includes children aged 12, 13 and 14). The paper then has a section for each age of criminal responsibility grouping which contains more detailed information across the past eight years.

2. Detected Crimes

Police Scotland provided the following data for the report produced in October 2021. No new data has been provided since this time, so this section of the report remains unchanged. The data provided is the number of detected crimes by the age of children in years. **[redacted s.29 (1)(a)]**

It is noted, however, that this data does not constitute official Police Scotland statistics.

The number of detected crimes alleged to have been committed by children is high. **[redacted s.29 (1)(a)]**

3. Reporter's decisions on offence referrals

[redacted s.29 (1)(a)]

It should be noted that behaviour that would previously be described in terms of an offence as laid out in criminal law or statute will in the future be described in a different way. The decrease in 'offences' will likely be accompanied by a corresponding increase in conduct grounds for referral which detail wider concerns.

Under the current legislation 16- and 17-year-olds can only be dealt with by the Reporter if they are already on a Compulsory Supervision Order; a referral is received before a child's 16th birthday or if they are remitted from court for disposal (until 6 months before their 18th birthday). If the ACR starts to get closer to 18, changes may already have occurred around jointly reported cases for 16- and 17-year-olds which may increase the numbers of 16- and 17-year-olds referred to SCRA for offending.

It is acknowledged that the Children (Care and Justice) (Scotland) Bill is currently at stage 2 within the Scottish Parliament. If this bill becomes an Act of Parliament, then this will alter the legislation surrounding 16- and 17-year-olds. With this new legislation all 16- and 17-year-olds will be considered children, and their cases would be automatically diverted to SCRA for disposal.

4. Reports to COPFS

[redacted s.29 (1)(a)]

5. Non-Court Disposals: Summary across all ages for 2020-21

[redacted s.29 (1)(a)]

6. Court Proceedings: Summary across all ages for 2020-21

[redacted s.29 (1)(a)]

7. Convictions: Summary across all ages for [redacted s.29(1)(a)

[redacted s.29 (1)(a)]

8. Raising the age of criminal responsibility to [redacted s.29 (1)(a)

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15. Appendices

[redacted s.29 (1)(a)]

Children and Young People's Centre for Justice

www.cycj.org.uk

Age of Criminal Responsibility (ACR); Country Case Studies Report

Children and Young People's Centre for Justice

UPDATED March 2024

Introduction

This report is an update to the report written in October 2022.

Given that we are now in the third year of the review of the Age of Criminal Responsibility (ACR) in Scotland, it was felt that it was appropriate to update the previous requested information from both Sweden and Portugal to see if there have been any changes to the practice within those countries.

Information regarding Sweden was gained from a face-to-face discussion with political representatives for the Social Democratic Party of Sweden at a meeting on 11 January 2024, while information in relation to Portugal was requested via email and the information was provided on 16 January 2024.

Sweden

Current Minimum Age of Criminal Responsibility (MACR)
The age of criminal responsibility in Sweden is set at **15** and has been for many decades.

Political Context
In the last 10 years, Sweden has been affected by gang violence and shootings. In 2017, 36 fatal shootings were recorded, which jumped to 62 in 2022. In 2023 the total number of fatal shootings decreased slightly, to 53.

The steady increase in gun crime has led to The Swedish National Council for Crime Prevention instructing a study of trends in fatal shootings in comparison to other European countries. The study found that Sweden ranks very highly in relation to other European countries, at approximately four deaths per million inhabitants per year. The average for Europe is approximately 1.6 deaths per million inhabitants.

In October 2022 a new, conservative, government was voted into power. This government has set out its plans to reduce the MACR to 13. It has been clear that if you are old enough to commit murder, then you are old enough to be imprisoned for it. Despite any proposed change to the age of criminal responsibility (ACR) in Sweden, the United Nations Convention on the Rights of the Child (UNCRC) will remain in place.

Lots of changes to criminal laws concerning young people are expected with this new government. There is considerable media pressure on politicians to make the country safer and deal with the gangs. Ordinary citizens have been clear that they feel unsafe. As a result, they are in support of lowering the MACR to 13. Previously public opinion was very much in support of the MACR being 15, as members of the public were of the view that anyone under this age was a child.

Crime Rates
General crime rates are down. Young people are committing less crime than previous generations, and 2023 saw the lowest rates of violent crime ever.

Why Gangs?
The gangs are mainly in the big cities, and while there is no definitive answer on why they have formed, it is likely to have been due to ethnic segregation. Also, society in Sweden has become more unequal in the last 25 years. Statistics show that the income within the country has not been this unevenly divided for more than 40 years. This has led to an increase in relative poverty.

The areas that have been identified as vulnerable by the Swedish Police do have high populations of residents born outside Europe and second- and third-generation immigrants. However, they have also been affected by socioeconomic circumstance over a long period. Experts within Sweden feel that this far more concerning than the

individual's origin/ethnicity. Long-term unemployment rates are above average in most of these areas, as is the number of people at risk of poverty. Research across the globe has shown that socioeconomic factors increase the risk of a young person engaging in criminal behaviour.

Gang Hierarchy
Leaders: age 25 – 35
Local bosses: age 18 – 25
Soldiers: age 12 – 15 and are mostly involved in drug dealing. They themselves are likely victims of criminal exploitation. This is noted and accepted within the opposition party and those who work with this group, e.g., social workers, youth workers etc., however, the public do not feel the same way.

Legal Situation
Previously, individuals aged 18 - 21 had special regulations applied if they were convicted of a crime due to research around brain development and related factors. This meant that the penalties would be reduced. The special regulations were removed two years ago due to the gang violence, which has meant that gangs have been recruiting younger and younger children to try to avoid the harshest penalties.

In the summer of 2023, a new law was passed which makes it illegal to recruit children to gangs and exploit them.

Approach to Different Age Groups
Currently, if someone under the age of 15 is suspected of committing a crime, they cannot be found guilty in a criminal court as they are not considered to be legally responsible for their actions. They are instead dealt with by social work in the local 'municipalities'. This means that they are considered from a care and welfare perspective. If their liberty needs to be removed or restricted then children's homes would be used, but the preference would always be for them to remain in the family home and be supported there.

If someone under 15 committed a very serious crime such as murder, they would be interviewed by police and social work. This would take place at a police station, but the child would not be put in a cell. Following this they would be taken to a special administration court for a special investigation hearing, but no guilt would be established. The purpose of this hearing is mainly to ratify the social work plan for the child. This is very similar to Scotland's Children's Hearings System (CHS). Under 15-year-olds subjected to a special investigation hearing should expect the same robust police investigation as an adult over 18.

If someone under the age of 15 was guilty of low-level offending then they would be supported by social work, hopefully within the family home. This would be to strengthen the network around the child, to try to prevent the offending from escalating. A child involved in low level offending like this would only be separated from the family home as a last resort.

When the child is referred to their municipality for support, their situation is discussed at a board which comprises five politicians. The board then makes decisions on how to proceed, and whether they agree with social work recommendations or not. The board can take rights away from parents if this is in the best interests of the child. The board looks at care and welfare cases as well as offending behaviour. Again, this is very similar to Scotland's Children's Hearings System.

There is no youth court in Sweden, but special regulations are applied to anyone convicted of a crime between the ages of 15 and 18, and 18 – 21 if the offence is not related to gang culture/criminality.

Within Sweden the court system is based around the Principle of Immediality. This means that what you say in court is the most important statement made. This supersedes anything previously said to the police. So, to prevent arrested youths from changing their story, interfering with witnesses, running away or being vulnerable to reprisals from their

own gang (for perceived actions against the gang), or rival gangs, more and more of these children are having their liberty removed.

Removal of Liberty

If, once found guilty of a crime, the child's liberty needs to be restricted, institutions are used in Sweden. These very closely resemble secure care centres used in Scotland. Like in Scotland, children can be sent here for committing a crime, or for care and welfare reasons. The institutions are very similar to prison but are more about care than punishment.

There are approximately 1,000 children sent to these institutions every year, and 80% of these children are re-offenders. If the MACR is lowered to 13 it is expected that the population in the institutions will double.

'Remand'

While held awaiting trial, children are locked up for 22 hours per day for up to a year. So, guilt has not yet been established. Then, if guilt is subsequently established, a child cannot be sentenced to prison if they are aged 15 – 18, as special regulations would be applied given the child's age. Due to the current demand for such places, they are heavily oversubscribed.

Minimum Age Criminal Responsibility Criteria Absolute

The MACR criteria in Sweden is absolute. So, for example, if a child murdered someone at the age of 14 years and 11 months, they would be treated as a minor and would receive social work support, and this would continue past their 15th birthday as the 'sentence' doesn't change once they reach the MACR. This social work support could continue until they turn 21 but is more likely to stop at age 18. The child cannot refuse to engage with social work, the plan is reviewed 6-monthly.

Young Perpetrators as Victims

The debate on child criminal exploitation is only just starting in Sweden.

Places of Safety

Within Sweden, there are 30 Barnahus houses used to support children who have been witness to or a victim of violent crimes. There are no beds there, so children cannot stay there if they cannot return home. The Barnahus Houses can only be used for victims and witnesses, not for alleged perpetrators, even those under the age of 15 who are not considered criminally responsible.

If a child under the age of 14 needs to be removed from the family home due to an alleged crime, then foster carers will be used.

Cross Border Issues

If a child under the MACR commits a crime in Sweden but lives in another country, then the information gathered about the incident would be passed back to their home country and the matter dealt with by social work there.

Sexual Violence/Domestic Violence

Domestic violence is not getting the attention it deserves due to the government's preoccupation with the gangs and the crimes they are committing. The young offenders involved in crimes are found to have the highest frequency of witnessing domestic violence with the family home.

Portugal

Current Minimum Age of Criminal Responsibility
The age of criminal responsibility in Portugal is set at **16**.

Political Context
There is no public or political debate on the MACR issue at present. However, there are elections for Parliament next March, and it is expected that the issue will arise for discussion since there has been a major shift in juvenile and young adult crimes becoming much more violent.

Crime Rates
Unfortunately, there has been a significant rise in juvenile delinquency and young adult crime, not only in terms of rates of crime, but particularly concerning the violence used to commit crimes, especially in the Lisbon Metropolitan Area. The number of homicides and attempted homicides committed by young people, and particularly young adults (aged 16-21) has significantly increased in these last three years – particularly knife crime, and in the last 1.5 years, homicide with guns.

Why Gangs?
Most of the crimes committed by juveniles, are 'territorial conflicts', 'honour conflicts', and 'war' between gangs or criminal groups. In some cases, victims don't have any connection with criminality or gangs, they were just at the wrong place at the wrong time. These types of crime are not common in Portugal and may be related not only to what happens in other countries but could be associated with major shifts in transnational organized crime – particularly drug and weapons traffic, with new routes coming from South America. In the last 1.5 years, Portuguese authorities have identified very active members from 'Primeiro Comando Capital', from São Paulo, Brazil, acting from Portugal for the rest of Europe, as well other groups from Eastern Europe.

Approach to Children in Conflict with the Law
Below the age of 12, children are not considered to be criminally responsible for any offences committed and will instead be treated the same as a child who is at risk of harm or neglect. This may be within the family home or out with it. The intervention is within the child protection (welfare) system. Measures may be applied by the local Commissions for the Protection of Children and Youth, or by the Family and Minors Courts.

Children aged between 12- 16 are not considered to be criminally responsible and are dealt with via 'educational measures' through youth justice. Again, this can be within or out with the family home. These young people are dealt with within the youth justice system - Family and Minors Courts. In cases of minor offences, and if there is any need for protection of the young person, the case may be subject to child protection measures since the most important factor for consideration is the risks affecting that young person, more than the consideration of the minor criminal offence.

A young person who commits any criminal offence while under the age of 16 will be submitted to the youth justice system, outside criminal justice, and criminal courts. What counts is the age at the time of the offence. If the young person committed the criminal offence between the ages of 12-16, he or she will be submitted to the youth justice system, and when turning 16 will continue under youth justice system intervention. The youth justice system's court decision must be taken before the young person turns 18, after that age it is no longer possible to have a decision made within the youth justice system.

Many times, what happens is that the youth justice measure is only used when the young person is 16 or 17 years old because the stage of enquiry, led by the Public Prosecution services supported on the expertise of the Directorate-General on Reinsertion and Prison Services (the state department in charge of conducting the evaluation of the young person to support the decision of the Court), tends to take a long time (many times longer than a year, in some cases even longer), mainly due to the significant lack of human resources in both services.

A youth justice measure may be enforced until the young person turns 21 and must begin before the age of 18. For instance, in December 2023, the most represented age group in youth justice educational centres was the 16-year-olds, followed by 17year olds, and then 15-year-olds.

The law determines that young person subject to youth justice proceedings who is simultaneously accused in criminal proceedings cumulatively complies with the 'educational measures', and the penalties applied to them, whenever they are concretely compatible with each other. In the case of measures of admonition, reparation to the victim in the form of economic compensation or economic benefits in favour of the community, the execution does not cease with the conviction and imposition of a prison sentence, in cases where the specific situation of the young person, guarantees sufficient economic resources to meet the costs resulting from compliance with the measures during the execution of the sentence.

There is still a possibility in the law that allows the judge of the criminal court to dismiss the criminal proceeding and the young person to remain only with the youth justice measure. This depends on the evaluation of each case and the seriousness of the situation. There is little data available on this.

The police can only take the responsibility for identifying the young person, registering the occurrence, and sending all the information to the local Public Prosecution services at Family and Minors Courts. The young person's family is contacted and informed of the situation and the need to support the young person.

A youth justice proceeding is organized in two stages: the investigation/enquiry stage, led by the public prosecution services (Ministério Público, MP), and the jurisdictional stage, led by the judge. This two-stage organisation promotes the emergence of the young person as 'the procedural subject', who has individual rights and guarantees. The proof of the facts of a criminal offence is indispensable to the lawsuit, but by itself it is insufficient; also required is the evaluation of the young offender's need for 'education in the law'. Only by the corroboration of the above assumptions could the youth court decide to apply an educational measure.

From their first contact with the police, the young person must be assisted by a defence lawyer whose action is extended to all the proceedings and stages of the process in which is the young person is participating. It is compulsory for a young person to be assisted by a defence lawyer in the first interrogation when detained, and in any hearing during the investigation stage and on the trial. When arrested, they should have the chance to communicate in private with the defence lawyer.

A young person suspected of having committed an act qualified by the penal law as a crime cannot remain in a police station for purposes of identification for more than three hours.

The Ministério Público (MP) assumes a central investigative role and the conducts of interrogations in accordance with the legal principle of a speedy procedure. When present at the young person's first interrogation, the parents, legal representative, or legal guardians must refrain from any interference.

The MP requests information from the auxiliary body of the judiciary administration concerning the enforcement of youth justice measures, which is currently the Directorate General of Reinsertion and Prison's Services (DGRSP).

The DGRSP staff provide a young person's social report, and when there is the possibility of a custodial measure in an educational centre in the open or semi-open regime, this report must include a psychological assessment, and in

the cases of a closed regime (only for those aged over 14), the young person's psychological assessment in a forensic context is mandatory. If the offence is qualified as a crime punishable with a prison sentence of up to three years, and the MP does not conclude there is a need for education in the eyes of the law, then the case can be closed. In the light of the evidence of the facts, if the MP considers it necessary to enforce an educational measure as an essential pre-condition for verifying the educational needs, the jurisdictional stage will follow the investigation. A similar situation occurs for cases where the offence is qualified as a crime punishable with a prison sentence of more than three years, even when the MP does not consider it necessary to apply such an order.

After the MP requests to open the jurisdictional stage, the judge may dismiss the process in those cases where he/she evaluates the MP's proposal of educational measures as unnecessary.

The imposition of preliminary measures or of the dismissal of the case requires a prior hearing with the parents. Portuguese legislation emphasises the involvement of parents or legal guardians at each stage of the youth justice proceedings, court trial, and even during the enforcement of the judicial measures.

A young person could also be assisted by an expert in psychiatry or in psychology whenever required for the purpose of assessing the need to apply any educational measure. The trial audience in the jurisdictional stage can take one of three forms. It could be an informal and short session intended to obtain the young person's agreement concerning the order proposed by the MP in which the judge also agrees, or a similar type of session seeking the consensus of the MP regarding an order proposed by the judge. A formal and more complex session with a preliminary audience could be carried out, in which the contradictory procedure of proof is guaranteed prior to the judge's decision. Whenever the MP requests the application of liberty-depriving measures, a formal audience is required.

A formal youth audience is public, but the law allows the judge to limit or even exclude the publicity concerning it based on certain limited grounds, such as when it is considered that the presence of the public might psychologically affect the young person. The court's final decision must always be read at public sittings. Each youth justice file is confidential until the court order scheduling a trial; even afterwards, the publicity of the case must respect the young person´s privacy, concealing their identity as much as possible. According to the law, the judge can order that the media must refrain from reporting on or reproducing certain acts or documents of the case file or disclosing the young offender's identity.

A young person can avoid a trial in specific cases. Based on the principle of opportunity, if the offence committed by a young person corresponds to a crime punishable with a prison sentence of less than five years, the process may be suspended by the public prosecutor, and instead, an offender's conduct plan can be implemented It is a way of promoting a consensual solution in the cases of minor offences involving both the young person and their parents or legal guardians. The suspension of the process can take a maximum of one year. In developing and implementing the plan, the young person, their parents or legal representatives or legal guardians may seek the assistance of mediation services. The conduct plan may require the young person to engage in one or more restorative actions.

Over 16 and up to 21 years olds are subjected to adult criminal justice proceedings and held criminally responsible for their actions. These young people may benefit from the Special Penal Regime for Young Adults, which is not compulsory, and its enforcement depends on the evaluation of each case by a judge. The goal of this special regime is to avoid the enforcement of a prison sentence for these age groups.

Removal of Liberty

The educational measures for 12–16-year-olds are ordered by a specialised judge, and a panel of three judges is required, for the application of a liberty-depriving measure, composed of one professional judge and two lay judges. In all cases, the procedural initiative rests with the public prosecution services.

In the case of youth justice, the Portuguese law is very strict and seeks to avoid the need to place a young person in detention/custody/institutions at all costs. Youth Justice Educational Centres are reserved for the most serious cases.

If there is the need to remove the young person due to being in danger or at high risk in the family home, it is the child protection system that intervenes, many times only after the youth justice proceeding which triggered the situation is identified. In such cases, within the child protection system, the young person may be placed in Children's Houses (institutions) that operate in an open regime. There is no secure care in the Portuguese child-protection system, only three to four specialised Children's Houses for some behavioural problems, and all the others are generalist.

Foster care in foster families is a measure that has no tradition in Portugal and even for very young children it is residential care within the child-protection system that they would go to if separation from their family was in their best interests.

After finishing a youth justice measure in an educational centre, the young person may be placed in a Children's Home or in an Apartment for Autonomy within the child protection system, if she/he has a child protection proceeding initiated before they turn 18 years-old and express her/his wish to have this support.

Minimum Age of Criminal Responsibility Criteria Absolute

There are no exceptions to the age limit of 16. A 16- or 17-year-old with a learning difficulty will be held criminally responsible and submitted to criminal justice and courts as a (young) adult. However, the Special Penal Regime for Young Adults could be enforced to mitigate the sentence, depending on the nature and on the evaluation of each case by the judge(s) and public prosecutor.

A young person never transfers to the criminal justice system unless they commit other crime(s) after turning 16, and if, for that crime, they are convicted to an effective prison sentence. In such cases, all the previous youth measures are removed.

Places of Safety

Currently, there is a pilot underway to apply the Barnahus model in Portugal for child victims of sexual abuse (Project 4Children, EEA Grants) co-ordinated by the Association for Family Planning in partnership with the National Council for the Promotion of Children's Rights and Protection of Children and Youth, the Centre for Judiciary Studies (where judges and prosecutors are trained), the National Institute of Legal Medicine and Forensic Sciences, the Judiciary Police and the Council of the Baltic Sea States. This project follows a first approach of these organisations to the Barnahus model within an international project in which some of these entities were involved. However, there is a legal issue related to the guarantees of the offender in the proceeding that may limit, up to a point, the full implementation of the Barnahus model in Portugal concerning the hearings of victims of crime.

In case of child victims of domestic violence that needed to be removed from home with one of the parents or caregivers, there are Specialised Shelters/Houses where they may be placed with the adult.

Young Perpetrators as Victims/Child Criminal Exploitation (CCE)

Those who work in State departments (such as justice, health, social security, etc.) and the current Government and in most third sector organisations tend to recognise the overlap or victimisation-aggression that marks the trajectories of many of those who are under a youth justice measure, and this is a subject of major concern. Moreover, the data from the population of young people who are subject to institutional measures of deprivation of liberty in educational centres in the past years shows that more than half of the population (in some years around 2/3) comes directly from Children's Homes from the child protection system.

That was also a finding obtained through the work of the Commission for the Integrated Analysis of Juvenile Delinquency and Violent Crime established in 2002 by the Ministry of Internal Affairs to face the rising of violent juvenile delinquency and crime in the country. A major concern from organisations relates to the mental health of the young person.

With regards to CCE there is some consideration of this up to a point by the police and the justice system and some third sector organisations, but it is not a topic on the public agenda. In 2022, the Ministry of Internal Affairs created the Commission for the Integrated Analysis of Juvenile Delinquency and Violent Crime, in which representatives of police forces, Ministério Público (MP), child protection services, youth work, academic experts and other services take part. This Commission has already presented two interim reports in which these themes are debated and presented data and a set of recommendations after 23 hearing audiences (more than 70 hours of sessions), involving 163 participants (including 21 experts), from more than 100 official, private and ONGs, from over the country. As well as this, there were interviews with 12 young people who were placed in educational centres and their families. This issue was debated within the Commission work.

Cross Border Issues

If a child under the MACR commits a crime in Portugal but lives in another country, then the process is the same as for young people living in Portugal, and the Portuguese authorities may activate international co-operation under international conventions for any intervention in the country of origin, or request the cooperation of foreign authorities for dealing with the matter or even, in very serious crimes, to ask for the detention for interrogation of the young person. It will depend on the nature of the crime. Since most of the cases concern minor offences, after a time the proceeding is dismissed.

The intervention in other countries will depend on the law of each country, or even on the international agreements Portugal may have with other states.

ACR data and research subgroup – SCRA analysis

Introduction

SCRA were asked to profile children referred on offence grounds over the past few years by whether the behaviour in the offence is likely to come within the test in s.39 of the Age of Criminal Responsibility Act that:

- by behaving in a violent or dangerous way, the child has caused or risked causing serious physical harm to another person, or
- by behaving in a sexually violent or sexually coercive way, the child has caused or risked causing harm (whether physical or not) to another person.

Method

The first task required was to identify which offences could come within the test. As there was no pre-defined list, SCRA shared alleged offences received with Police Scotland and Social Work Scotland to seek their expertise. We subsequently met in February 2024 to review the mappings and agree a position. Just looking at the name of offences and not digging deeper in to cases means though that it is not always possible to know whether an individual offence would meet the test. Therefore we came up with four categories to reflect this:

- Yes – where it appears clear from the name of the offence that it would meet the test in s.39
- Yes – if - where it appears from the name of the offence that it would meet the test, but only if certain facts and circumstances were present (see Appendix 1)
- No – maybe – where it appears from the name of the offence that it would not meet the text, unless certain facts and circumstances were present (see Appendix 1)
- No – where it appears clear from the name of the offence that it would not meet the test in s.39.

These categories will be used throughout the report.

Once the mapping was completed, SCRA referral data was extracted from the period **[redacted s.29 (1)(a)]** to providing us with three full years of data. This data was linked to the mapping and has then been interrogated to provide analysis for the group.

Data notes

Where we have the incident date, the age of the child is calculated using this. However, we don't always have this information, especially for children who are now over 18 as the incident date is a personal identifier and all personal identifiers are removed at 18. In addition, a small number of referrals have no charge associated with them. This is generally where a report has been added manually. It won't materially affect data as it is only **[redacted s.29 (1)(a)]** referrals but as the mapping is around charges, these are also excluded.

Offences received by SCRA

It is important to note that not all alleged offences will come to SCRA. Some will be diverted by the police where appropriate to options such as EEI whilst other more serious offences may be dealt with by the Procurator Fiscal.

High level

The following tables and charts represent the high level data for the years in question.

Chart 1 - Children referred by age and mapping

[redacted s.29 (1)(a)

Table 1 - Children referred by year, age and mapping

[redacted s.29 (1)(a)

Table 2 – Children referred by age and mapping groupings

[redacted s.29 (1)(a)

Table 3 – Children referred by sex and age where mapping equals yes

[redacted s.29 (1)(a)

Table 4 – Children referred by type of charge and age where mapping equals yes

[redacted s.29 (1)(a)

Table 5 – Children referred by year and Reporter decision where mapping equals yes

[redacted s.29 (1)(a)

Table 6 – Children with arrange Hearing decision by age where mapping equals yes

[redacted s.29 (1)(a)

Appendix 1 Yes – if and No – unless detail

[redacted s.29 (1)(a)

Appendix 2 – list of alleged offences by mapping

[redacted s.29 (1)(a)

(only includes charges where there were five or more offences received on this charge)