

# **Bail and Release from Custody (Scotland) Bill**

## **Child Rights and Wellbeing Impact Assessment (CRWIA)**

**June 2022**



**Scottish Government**  
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## **Introduction**

As set out in Part 1 of the Children and Young People (Scotland) Act 2014, Scottish Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration. Undertaking a CRWIA helps Ministers to fulfil this duty.

There are two key considerations when undertaking a CRWIA:

**Participation:** The United Nations Convention on the Right of the Child (UNCRC) sets out that children have the right to participate in decisions which affect them. When assessing the impacts of the policy/measure, you are recommended to consult with children and young people. You can do this directly, through organisations that represent children and young people or through using existing evidence on the views and experiences of children where relevant. Participation of children and young people should be meaningful and accessible.

**Evidence:** You are recommended to gather evidence when assessing the impact of the policy/measure on children's rights and also for measuring and evaluating the policy/measure. If you identify any gaps in the evidence base, you can discuss how you will address these with analytical colleagues.

## **1. Which articles of the UNCRC does this policy/measure impact on?**

### **Content of the Bill**

The Bill introduces a number of reforms designed to deliver on the Scottish Government's commitment to refocus how imprisonment is used. They are intended to ensure that, as much as possible, the use of custody for remand is a last resort for the court when a risk of serious harm arises. The Bill is also intended to give greater focus to the rehabilitation and reintegration of individuals leaving prison custody. The Bill is underpinned by a commitment to public safety and the protection of victims, and is intended to support a reduction in future risk of reoffending, fewer victims and improved outcomes for individuals and their families.

### **Bail Law**

For those accused of criminal offences, the Bill to refocuses the legal framework which is used to make decisions as to when custody is able to be imposed by a criminal court, so that accused persons who do not pose a risk of serious harm should be admitted to bail as the criminal justice process proceeds. All bail decisions will remain a matter for the independent courts in each case.

Provisions in the Bill relating to bail can be broadly split into four distinct areas. These are:

- Reform to the legal framework within which bail decisions are made;
- Enhanced role for justice social work in provision of information to the court;
- Recording of reasons when bail is refused;
- How periods on electronically monitored bail conditions affects time served for custodial sentences

### **Release from prison custody**

The Bill will also include reforms on arrangements around release from prison custody, with an emphasis on providing greater opportunities to support the reintegration of people leaving prison to reduce the risk of future offending and to enable people to move on towards more positive outcomes.

The provisions cover four broad areas:

- Point of release
- Improved support for people leaving prison
- Provision of information to victim support organisations on prisoner release
- Early release of prisoners in emergency situations

The policy has the potential to impact any child or young person (CYP<sup>1</sup>) who comes into contact with the Criminal Justice system. However, in an attempt to clarify how the legislation may impact different groups of CYP, this impact assessment separates the potential impacts by; those accused of an offence, those being released from prison, victims of crime and those whose parent/carer is accused of an offence or being released from prison custody. The impact of the legislation will be different for these groups (although one person may belong to several of the groupings) which is why the impact assessment has been set out in this way.

### **CYP accused of an offence**

- Article 3: In all actions concerning a child, the child's best interests must be a primary consideration of the court or administrative body.
- Article 9: Ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
- Article 12: In all matters affecting the child, the child has a right for their views to be heard and for such views to be given due weight in accordance with the age and maturity of the child.
- Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- Article 40: A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage a justice system that enables children who have been in conflict with the law to reintegrate into society.

### **CYP as victims of crime**

- Article 3: In all actions concerning a child, the child's best interests must be a primary consideration of the court or administrative body.
- Article 19: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

### **CYP being released from prison custody-**

- Article 3: In all actions concerning a child, the child's best interests must be a primary consideration of the court or administrative body.

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<sup>1</sup> N.B In keeping the definitions under the UNCRC within this document "child" refers to anyone under 18 yo. However given the evidence provided as part of the Scottish Sentencing Council's recent guidelines this assessment also considers the Bill impacts on young people up to the age of 25.

- Article 12: In all matters affecting the child, the child has a right for their views to be heard and for such views to be given due weight in accordance with the age and maturity of the child.
- Article 37(c): Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.

### **CYP whose parent/carer is accused of an offence or being released from prison custody**

- Article 2: Non-discrimination: The State has a duty to protect a child from punishment or discrimination, which they suffer because of the status or activities of their parents.
- Article 3: In all actions concerning a child, the child’s best interests must be a primary consideration of the court or administrative body.
- Article 5: Governments must respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights. This must be done in a way that recognises the child’s increasing capacity to make their own choices.
- Article 7: Every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents
- Article 9: Ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
- Article 18: Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.
- Article 20: If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided with alternative care that is continuous and respects the child’s culture, language and religion.

	<b>CYP accused of an offence</b>	<b>CYP as victims of crime</b>	<b>CYP being released from prison custody</b>	<b>CYP whose parent/carer is accused of an offence or being released from prison custody</b>
<b>Article 2</b>				✓
<b>Article 3</b>	✓	✓	✓	✓
<b>Article 5</b>				✓
<b>Article 7</b>				✓
<b>Article 9</b>	✓			✓
<b>Article 12</b>	✓		✓	
<b>Article 18</b>				✓
<b>Article 19</b>		✓		
<b>Article 20</b>				✓
<b>Article 37(b)</b>	✓			
<b>Article 37(c)</b>			✓	
<b>Article 40</b>	✓			

## 2. What impact will your policy/measure have on children's rights?

### Summary

The Bail and Release from Custody (Scotland) Bill responds to the Programme for Government commitment to refocus how custody is used, reserving it for where a risk of serious harm has been identified. Alongside the Bill, enhanced community justice services will be supporting diversion from prosecution, alternatives to remand, and community sentencing. The Bill aims to refocus the way in which custody is used in Scotland when a person first enters the criminal justice process. It aims to reserve remand for those who pose a risk of serious harm, while providing more person centred, holistic support in the community for those on bail and upon release from custody.

The Bill contributes to the National Outcome, "We live in communities that are inclusive, empowered, resilient and safe". This legislation provides some opportunity for alignment with the incorporation of the UNCRC into the decision making framework of the courts when considering bail and when planning for the release of people from custody (both parents and young people).

This legislation does not contain specific provisions relating to CYP who come into contact with the justice system. For example, if a child or young person is held on remand or in prison custody this Bill will not impact where they are held. A separate Scottish Government consultation has begun, which focuses on issues specific to CYP, including where they are held in custody.

While there is no specific provision in the Bill focused entirely on CYP, the legislation within the Bill will impact (directly and indirectly) on CYP as outlined below.

### Direct Impacts for CYP accused of an offence -

**Summary** - The decision on whether an accused person is bailed or remanded in custody is made by the independent courts. The measures in the Bill propose adjustments to the legal framework applying to all those accused of offences, including CYP, within which courts make decisions on the question of bail. The effect of the changes is that any decision to refuse bail must, with some limited exceptions, be justified on public safety grounds. In addition, it is proposed that additional information should be available to the court to inform the bail decision, as a result of enhanced involvement by Justice Social Work (JSW). Where a court refuses bail, it will be required to record explanations for that decision, including why the use of electronic monitoring (EM) as a means of the accused remaining in the community was not appropriate.

Whilst decision-making will remain with the independent court in individual cases, the intention of the legislation relating to the bail decision is anticipated to have an overall **positive impact** on the rights of CYP.

**Detail** - The criminal justice system can make decisions that mean people accused of criminal offences are removed from their home and community and held in custody (held on remand). The changes implemented through this legislation will look at when a person accused of an offence is initially considered for bail or remand (the bail decision).

When making the bail decision, the need to protect public safety, with some exceptions, will become a required ground to justify the refusal of bail. Additional information will be available to the court to inform the bail decision, as a result of enhanced involvement by JSW. The way in which decision-making will be carried out under a reformed legal framework is that a risk of serious harm will be required to justify remand. This is likely to impact CYP in a positive way, meaning they are less frequently removed from their family and community (UNCRC Article 37(b)).

Separate from the reforms to the bail legal framework, the independent court will be subject to the UNCRC requirements. This includes article 3 relating to the primary consideration being given to the best interests of the CYP in decision-making.

Where a court refuses bail, it will be required to record explanations for that decision, including why the use of electronic monitoring (EM) as a means of the accused remaining in the community, was not appropriate. If EM bail is granted during the bail decision then time spent on EM curfew may be relevant for time spent in custody upon sentencing. These changes have the potential to help increase the understanding of why bail may not be granted and emphasise the gravity of a decision to remand in any given case.

On 16 May 2022 there were 10 under 18s in prison custody, 8 of which were held on remand. There were 694 16-25s of which 306 (44%) are held on remand. While the overall number of CYP in custody is much lower than in the past, the number of young people on remand remains high as a proportion of those in custody. In 2011-12, the average daily population of under 18s was around 126, with around 50 (40%) held on remand. The average daily population of 16-25s was around 2,074, with around 503 (24%) held on remand.<sup>2</sup>

Young people are more likely to experience barriers to complying with their bail conditions, which could act as alternatives to remand, such as being prohibited from certain areas, contact with certain persons or groups, or curfews<sup>3</sup>. However, while Scotland-specific data is scarce, a study conducted in Ireland found that young people enrolled on a bail supervision scheme had a 72% reduction in reoffending, and that this reoffending rate was half that of those young people refused bail<sup>4</sup>.

Evidence provided through the consultation responses suggested that CYP may have difficulties in fully understanding and participating in the court process<sup>5</sup>. Recently the Scottish Sentencing Council have advised that sentencing decisions (which bail decisions are not part of) relating to CYP should also include consideration of their ongoing brain development and the effect the deprivation of liberty can have on the support and relationships available to them<sup>6</sup>. It is anticipated the provision of written reasons for the bail decision (including why EM was not suitable) by the court could be used by supporting services as a tool to support CYP to understand the court process and increase their participation. The legislation may result in an increase in the use of EM bail and bail supervision. These alternatives may present specific challenges to CYP and should be considered and mitigated against where possible as the policy is developed to further deliver these alternatives to remand.

The available evidence, and that provided through the consultation, suggest that the legislative change relating to the bail decision is anticipated to either have an overall **positive impact or neutral impact** on the rights on CYP, in line with the UNCRC Articles 3, 9, 12, 37(b).

### **Direct impacts for CYP as victims of crime**

This legislation brings in changes that will centre the voice and needs of victims throughout the bail and release process.

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<sup>2</sup> [Scottish Prison Population Statistics: Legal Status, 2019-20 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Scottish_Prison_Population_Statistics_Legal_Status_2019-20.pdf)

<sup>3</sup> <https://www.cycj.org.uk/resource/use-and-impact-of-bail-and-remand-in-scotland-with-children/>

<sup>4</sup> [Evaluation of the bail supervision scheme for children \(pilot scheme\) \(ul.ie\)](https://www.ul.ie/~cjs/evaluation-of-the-bail-supervision-scheme-for-children-pilot-scheme/)

<sup>5</sup> See responses from - Care Inspectorate; NPM; Families Outside; CYCJ, Barnardos at [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Scottish_Government_-_Citizen_Space_consultation_responses_for_bail_and_release_from_custody_arrangements_in_scotland.pdf)

<sup>6</sup> Sentencing Young People Guidelines (scottishsentencingcouncil.org.uk)

The court will be required to have particular regard to victim safety, as part of the overall consideration of public safety, when the bail decision is made. This consideration will include both physical and psychological harm of the CYP where they are the alleged victim of the offence. Additionally, when a prisoner is released from custody, there will be an opportunity to provide Victim Support Organisations (VSO) with information about their release. Providing VSOs with this information may allow CYP to be supported during this time and allow families to engage in proactive safety planning with the support of organisations if necessary. Therefore the intention of the legislation relating victim support is anticipated to have an overall **positive impact** on the rights on CYP.

Selected quotes from the consultation responses:

Social Work Scotland - "SWS strongly agrees with the principle of proactively sharing information on a prisoner's release as we believe this will reassure victims, improve safety planning and be trauma informed."

### **Direct impacts for CYP in custody-**

**Summary** - The changes proposed by this legislation will also look at when a person convicted of an offence may leave custody, and what support and planning needs to be in place before this can happen. These changes include release arrangements, ensuring release can no longer occur on a Friday (or day before a public holiday), providing increased availability of support upon release. Specific duties will also be placed on public bodies to engage in pre-release planning for prisoners, so the right support can be in place before they are released. Finally, the current Home Detention Curfew (HDC) model will be revised. These changes aim to provide a person-centred support approach to individuals on release, which aims to benefit everyone leaving custody, including CYP.

The intention of the legislation relating to support on release from custody is anticipated to have an overall **positive impact** on the rights of CYP in custody.

**Detail** - Article 37(b) states that "the arrest, detention or imprisonment of a child shall...be used only as a measure of last resort and for the shortest appropriate period of time." The available evidence, and that provided through the consultation, suggest periods in custody can have a disproportionately negative impact on CYP. The charity, Includem, highlighted within their consultation response the often unintended impacts of time in custody for CYP, including that CYP are more likely than adults to find themselves in unstable employment (including zero-hours contracts) and temporary accommodation<sup>7</sup>. Therefore even a short period in custody can result in a loss of employment and housing<sup>8</sup>. In addition, it was suggested that current systems and processes are not always adapted to suit the needs of CYP, who can often find themselves unable to fully participate.

Selected quotes from the consultation responses:

The Care Inspectorate – "It is imperative that every effort is made to avoid children and young people ever entering the criminal justice system as we know they do so to their ultimate detriment".

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<sup>7</sup> Includem consultation response available at [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/bail-and-release-from-custody-arrangements-in-scotland)

<sup>8</sup> Includem consultation response available at [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/bail-and-release-from-custody-arrangements-in-scotland)

Children and Young People’s Centre for Justice (CYCJ) – “Children’s need and rights within the justice system are often overlooked and systems/processes are not designed or adapted to meet their needs.”

Risk Management Authority (RMA) – “the justice system should be designed to support early ages as much as possible with even more emphasis placed on seeking alternatives to custody.”

The proposed changes to the legal framework within which the bail decision is made, and the possibility of an earlier point of release due to HDC amendments, are likely to mean CYP are not held in custody unduly.

The Children and Young People’s Centre for Justice (CYCJ) also highlighted within their consultation response that they feel there is a need for age-appropriate support for reintegration, including housing and employment, as CYP often have limited choice over their options in these areas<sup>9</sup>.

Therefore, preventing releases on a Friday or day before a public holiday, placing a specific duty on public bodies to engage with pre-release planning and the revision of the current HDC model will collectively have an overall **positive impact** on the rights of CYP. These provisions intend to provide a holistic ‘package’ of support to those leaving custody, including CYP, to help their needs to be met.

### **Indirect impact for CYP whose parent/carer is accused of an offence or being released from prison custody**

**Summary** - The impact of having a parent in custody can be significant for CYP, affecting their education, income, stability and mental health<sup>10,11,12</sup>. The bail measures in the Bill may mean parents who do not pose a risk of serious harm will no longer be held in custody before trial, which may indirectly benefit CYP and result in less disruption to their lives and relationships.

The proposed change that specific duties are placed on public bodies to engage with pre-release planning and statutory standards of throughcare, may allow for the individual needs of a person being released to be considered, these could include whole family support to help the family adjust after a parent has spent a period of time in custody.

The overall aim of the reforms is to reduce reoffending and therefore further parental imprisonment. The intention of the legislation in the Bail and Release Bill is likely to indirectly have an overall **positive impact** on the rights of CYP.

**Detail** – Research has estimated as many as 27,000 children a year in Scotland may be affected by parental imprisonment<sup>13</sup>. Additionally it is estimated that approximately 65% of women in prison in Scotland are parents and that only 5% of children whose mother is in prison stay in their own

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<sup>9</sup> Children & Young People’s Centre for Justice consultation response available at [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

<sup>10</sup> [Constructive-Connections-Final-Report-2020-FOR-PRINT.pdf \(familiesoutside.org.uk\)](#)

<sup>11</sup> [SCCJR-Impact-of-crime-prisoners-families.pdf](#)

<sup>12</sup> [FO-In-Brief-No11-Single-Pages.pdf \(familiesoutside.org.uk\)](#)

<sup>13</sup> [Constructive-Connections-Final-Report-2020-FOR-PRINT.pdf \(familiesoutside.org.uk\)](#)

homes<sup>14</sup>. Custody, even if only for a short time, can have serious implications for people who have caring responsibilities, including childcare<sup>15</sup>.

Having a parent in prison is recognised as an Adverse Childhood Experience (ACE)<sup>16</sup>. The Independent Care Review report found evidence that the imprisonment of a parent can lead to an exacerbation of poverty, increased likelihood of care and serious mental health implications<sup>17</sup>. In addition, the impacts of parental imprisonment can include home and school moves, leading to poor academic performance, and an increased likelihood of involvement with the criminal justice system for the child<sup>18</sup>.

'The Promise' states that "Scotland must do all it can to prevent the imprisonment (either on remand or as part of a sentence) of those with parenting responsibility"<sup>19</sup>. In addition, the Council of Europe has issued recommendations aimed at safeguarding the rights of children of imprisoned parents, which recognise their vulnerability, seek to alleviate the negative impact upon them and uphold their right not be punished because of the status of their parent<sup>20</sup>.

It is therefore important that serious consideration is given to alternatives to remand given the impact of familial imprisonment on CYP. Professor Nancy Loucks, Chief Executive of the charity Families Outside stated in her evidence to the Justice Committee at consideration stage of the Management of Offenders (Scotland) Act 2019 that "prison fractures families, whereas with the right support in place, electronic monitoring can keep families together."

Selected quotes from the consultation responses:

Howard League – "Even if the custody is for a very short period of time, this can have serious implications for anyone for whom they have caring responsibilities e.g. children or elderly or infirm relatives."

Shine – "In the case of women, they are often the carer of children and elderly parents. For those women who have had their children removed from their care, remand may make it more difficult to have access to their children or work towards a plan of rehabilitation of their children."

Care Inspectorate – "There is overwhelming evidence that imprisonment of a parent increases the possibility of a child being looked after away from home, exacerbates the impact of poverty, affects mental health in the short and long term and affects key relationships of the child."

The possibility of an earlier point of release due to HDC amendments, are likely to mean those with caring responsibilities, such as parents, are held in custody for shorter periods of time. This

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[http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20women\\_Scotland\\_2017.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why%20women_Scotland_2017.pdf)

<sup>15</sup> Howard League consultation response available at [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

<sup>16</sup> [Adverse Childhood Experiences \(ACEs\) and Trauma - gov.scot \(www.gov.scot\)](#)

<sup>17</sup> The Promise: Independent Care Review (available at: [The-Promise\\_v7.pdf \(carereview.scot\)](#))

<sup>18</sup> Children affected by the imprisonment of a family member: A handbook for schools developing good practice. 2015 Banardo's Northern Ireland. [Children affected by the imprisonment of a family member - A handbook for schools developing good practice 2015.pdf \(barnardos.org.uk\)](#)

<sup>19</sup> [The-Promise\\_v7.pdf \(carereview.scot\)](#)

<sup>20</sup> Recommendation of the Committee of Ministers to member States concerning children with imprisoned parents. Available at:

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016807b3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b3)

may have a **positive** indirect impact on CYP, protecting their right to not be removed from their parents unduly. Specific pre-release planning duties for public bodies and statutory standards of throughcare may help to support the specific needs of CYP whose parents / carers are being released from prison custody.

### **3. Will there be different impacts on different groups of children and young people?**

#### **Care Experienced CYP**

**Summary** – Care experienced individuals are overrepresented in the Scottish prison population, as are people who have had Adverse Childhood Experiences<sup>21</sup>. The use of remand only in cases where there is a risk to public safety, as well as specific pre-release planning and support upon release may help individuals, including care experienced CYP, remain in the community or with their families in the case of parental imprisonment.

**Detail** - Children's early life experiences have a significant impact on their development, and future life chances. As such, experiences gained prior to going into care and while in care can influence the chances a CYP may come into contact with the criminal justice system. The risk factors that make a CYP more likely to become 'looked after' are also those that make it more likely that person may come into contact with the criminal justice system (although that is not to say all care experienced children go on to have contact with the justice system)<sup>22</sup>.

Research has demonstrated that individuals with more ACEs have a higher probability of becoming victims or perpetrators of violence and be placed into custody in the criminal justice system<sup>23</sup>. This can be seen in the Scottish prison population, the 2019 Scottish prison survey shows a large proportion of those in custody have had ACEs<sup>24</sup>.

Local authorities have a responsibility to provide support for certain CYP, known as 'looked after children'. There are a variety of reasons a child may become looked after, including abuse, complex disabilities requiring specialist care, or involvement in the criminal justice system (either as an accused person or with parental/carer imprisonment). While a parent is held in custody, children may go into formal care, or into the care of another family member. They may also have to move house to house or be separated from siblings<sup>25</sup>.

Of the CYP who become involved in the criminal justice system on Scotland, there are an estimated 27,000 children who experience parental imprisonment each year<sup>26</sup>, and 2,203 (2016/17) who are prosecuted in Scotland's courts, of which 51 are detained in custody<sup>27</sup>.

In comparison to the rest of the UK, Scotland has the highest rate of looked after children (in 2020) at 139 children per 10,000 under 18 population<sup>28</sup>. At the end of July 2020, there were nearly 15,000 looked after children in Scotland. SPS estimate around 40% of CYP in custody have been

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<sup>21</sup> [Vision for Young People in Custody \(sps.gov.uk\)](https://www.sps.gov.uk/vision-for-young-people-in-custody)

<sup>22</sup> [YJB response Laming Review keeping children in care out of custody.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864842/YJB_response_Laming_Review_keeping_children_in_care_out_of_custody.pdf)

<sup>23</sup> [Bellis et al. 2013. Adverse Childhood Experiences: retrospective study to determine their impact on adult behaviours and health outcomes in a UK population](https://www.bellis.ac.uk/publications/bellis-et-al-2013-adverse-childhood-experiences-retrospective-study-to-determine-their-impact-on-adult-behaviours-and-health-outcomes-in-a-uk-population)

<sup>24</sup> [17th Prisoner Survey 2019 \(sps.gov.uk\)](https://www.sps.gov.uk/17th-prisoner-survey-2019)

<sup>25</sup> [Children with parents in prison | Info for practitioners | Parenting across Scotland](https://www.gov.scot/publications/children-with-parents-in-prison-info-for-practitioners-parenting-across-scotland/pages/10)

<sup>26</sup> [Children with parents in prison | Info for practitioners | Parenting across Scotland](https://www.gov.scot/publications/children-with-parents-in-prison-info-for-practitioners-parenting-across-scotland/pages/10)

<sup>27</sup> [Prosecution of young people: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prosecution-of-young-people-report-gov.scot/pages/10)

<sup>28</sup> [Children's Social Work Statistics Scotland, 2019-20 \(www.gov.scot\)](https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2019-20/pages/10)

in care, and that high proportions of CYP in custody have experienced trauma. In addition, the SPS report that over 40% of CYP in custody have low levels of literacy, numeracy and speech, language and communication needs<sup>29</sup>.

#### **4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?**

The legislation does not contain specific provisions relating to CYP who come into contact with the justice system. While there is no specific provision in the Bill focused entirely on CYP, the direct and indirect impacts of the legislation have been assessed. Legislatively no fundamental negative impacts have been identified through this assessment. There will be some considerations essential for the implementation of the policy associated with this legislation, for which separate CRWIAs will be drafted.

It will be important to consider how a potential increased use of bail supervision and EM bail may impact CYP differently to adults. It may be that more frequent review points should be built in for CYP to review whether bail conditions remain suitable and are not having an unintended negative impacts. General guidance for bail supervision was published on 12 May 2022<sup>30</sup>.

It will also be important to consider how pre-release planning and statutory standards of throughcare can be strengthened to support the specific needs of CYP upon release, for example engagement with age appropriate support services, as well as the need for whole family support.

#### **5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?**

The provisions of the Bill are underpinned by a commitment to public safety and the protection of victims, and are intended to lead to a reduction in the future risk of reoffending, leading to fewer victims in the future and improved outcomes for individuals and their families.

Amending the framework within which courts make decisions about bail so that: the need to, with some limited exceptions, protect public safety is a required ground that must be present to justify refusal of bail, empowering the court to rely on the general grounds relevant in reaching the decision and making it an explicit requirement for the court to record the reason they consider the use of electronic monitoring as a means of the accused remaining in the community unsuitable in the case, will help support in general terms Article 37(b), accepting that decision-making in individual cases will remain with the court.

If more people are kept in the community to be supported while on bail, with additional supports and supervisions, than remanded in custody, this will apply to all individuals, including CYP appearing before the court. This will ensure that all accused individuals, including CYP are only remanded in custody “as a measure of last resort” .

Where a court refuses bail, requiring the court not only to give, but also to record, explanations for that decision and to improve the provision of information informing decisions in relation to the

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<sup>29</sup> [Vision for Young People in Custody \(sps.gov.uk\)](https://www.sps.gov.uk)

<sup>30</sup> [Bail supervision: national guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot)

question of bail including, enhanced involvement by JSW will support Article 12. This will ensure that CYP are supported to be fully involved and understand the process.

Evidence has been provided during the public consultation that CYP in particular can have difficulties understanding the processes they are subjected to when prosecuted in court and struggle to remember or understand what has been said to them. Therefore requiring written reasons to be provided for the bail decision provides reasoning that can be explained to the CYP after their court appearance by supporting services.

Seeking further information from JSW may provide information about the types of supports and supervisions that would allow someone, including CYP, to remain in their community and ensure that bail conditions are reasonable and achievable. Evidence has been provided through the consultation that currently bail conditions for CYP may in certain cases be inappropriate as a means of keeping them within the community as they have less control over their own lives, for example housing, than adults.

The legislative changes proposed to release from custody arrangements are designed to give people, including CYP, the best possible chance of reintegration and dissidence from offending. This support will have a positive impact on CYP who are being released from prison custody or whose parents are being released from prison custody.

## **6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?**

The public consultation on the proposals ran for 12 weeks (15 November 2021 to 7 February 2022). The consultation sought views on a number of proposals and questions relating to the legislation,

The independent analysis of the consultation responses was published on 25 March 2022. The analysis can be viewed and downloaded at: [Bail and release from custody arrangements: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-analyses/bail-and-release-from-custody-arrangements-consultation-analysis). Responses, where permissions have been given to do so, have also been published on the Citizen Space hub: [Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.citizen.gov.scot/consultation/bail-and-release-from-custody-arrangements-in-scotland).

The Children and Young People's Centre for Justice, Youth Justice Voices, the Scottish Children's Reporter Administration, Barnardo's Scotland, the Child Poverty Action Group in Scotland and the National Youth Justice Advisory Group all provided evidence during the public consultation.

Alongside the public consultation, the Bill team conducted several online stakeholder presentations to provide further detail on the proposals and receive initial feedback. The Bill team also engaged with the Children's Commissioners Office whilst developing the legislation.

As outlined above, the Bill does not contain provisions that specifically impact on CYP. It is clear, however, the Bill is likely to impact generally on CYP where they are going through a particular part of the justice system. e.g. if accused of an offence. Unfortunately it was not possible to publish easy-read versions of the consultation documents or more proactively gather the views of children, young people and young adults who have experience of bail and release.

## **7. What evidence have you used to inform your assessment?**

The table below summarises the key evidence gathered from a variety of data sources and from the responses to the consultation for the Bail and Release from Custody Bill.

Source / Link	Date published / Date accessed	Summary
<a href="https://www.unicef-irc.org/">The Convention on the Rights of the Child (unicef-irc.org)</a>	Published: September 1990. Accessed: February 2022	The United Nations Convention on the Right of the Child (UNCRC) defines a child as a person who is under the age of 18. The UNCRC sets out a series of articles which support children having a right to participate in the decisions which affect them. We have used the UNCRC to identify which of these articles the Bail and Release Bill will impact on.
<a href="https://www.gov.scot/publications/scottish-prison-population-statistics-2019-to-2020/pages/introduction.aspx">Scottish prison population: statistics 2019 to 2020 - gov.scot (www.gov.scot)</a>	Published: 14th July 2020	The Scottish Prison Population statistics publication explores the characteristics of imprisoned people in Scotland and was used to provide information on the number of under 18s in custody in Scotland.
<a href="https://www.cycj.org.uk/reports-and-publications/use-and-impact-of-bail-and-remand-in-scotland-with-children">Use and impact of bail and remand in Scotland with children - Children's and Young People's Centre for Justice (cycj.org.uk)</a>	Published: 15th December 2020	This report shares findings from a nationwide study of the use of bail and remand with children in Scotland. It aims to develop the understanding surrounding the use of remand and the decision making about how bail and remand is enacted, and how this is experienced by children, their families and practitioners.
<a href="https://www.parliament.scot/committees/justice-committee/committees-reports-and-publications/2018-19/2018-19-01-an-inquiry-into-the-use-of-remand-in-scotland">An Inquiry into the Use of Remand in Scotland   Scottish Parliament</a>	Published: 24th June 2018	The purpose of this report is to "consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice". After an inquiry exploring the issues relating to remand and the number of people remanded in custody in Scotland, as well as investigating the impact a period of remand can have on an individual.
<a href="https://www.parliament.scot/committees/justice-committee/committees-reports-and-publications/2021-22/2021-22-01-judged-on-progress-the-need-for-urgent-delivery-on-scottish-justice-sector-reforms">Judged on progress: The need for urgent delivery on Scottish justice sector reforms   Scottish Parliament</a>	Published: 10th January 2022	The purpose of this report was to "consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland." This report covers a number of key issues in the justice sector including a chapter on "Reducing youth offending, offering community justice solutions and alternatives to custody".
<a href="https://www.parliament.scot/committees/justice-committee/committees-reports-and-publications/2021-22/2021-22-02-final-evidence-framework-the-care-review">Final Evidence Framework   The Care Review</a>	Accessed: February 2022	The Independent Care Review compiled a report based on over 5000 CYP, adult and members of the care system experiences heard between 2017 and 2020. The 'evidence framework' "provides a detailed outline of participation and engagement undertaken, a full summary of the outputs of the Care Review's commissioning processes and a bibliography of sources consulted". The Evidence framework is designed to assist in navigating the extensive research and evidence

		collation that was undertaken by the Care Review. It was used here to provide information relating to the support required for the children of imprisoned parents and the effect parental imprisonment can have on the children.
<a href="#">The Promise   The Care Review</a>	Accessed: February 2022	The Promise Scotland was established to, and is responsible for, taking forward the work of the Independent Care Review. This report outlines The Promise, and provides details under each of 5 foundations of how Scotland can embed the Foundations into culture, policy and practice. The Foundation relating to People reports the effects parental imprisonment can have on children.
<a href="#">Recommendation of the Committee of Ministers to member States concerning children with imprisoned parents   Committee of Ministers   Council of Europe</a>	Published: 4th April 2022	The Council of Europe's Recommendation of the Committee of Ministers to member States concerning children with imprisoned parents.
<a href="#">Why focus on reducing women's imprisonment in Scotland   Prison Reform Trust</a>	Published: October 2017	This document is a briefing from the Prison Reform Trust detailing the imprisonment of women in the Scottish criminal justice system, providing the Scottish context, and associated statistics relating to women prisoners in Scotland.
<a href="#">Children affected by the imprisonment of a family member - A handbook for schools developing good practice 2015.pdf (barnardos.org.uk)</a>	Published: May 2015	This handbook produced by Barnardo's is a resource for schools in Northern Ireland, enabling them to better support children affected by parental imprisonment. This provides information on the effect parental imprisonment can have on the academic achievements of children.
<a href="#">Consultation Responses   KSO Research</a>	Published: March 2022	This report contains the consultation responses from the Bail and Release Bill consultation.
Evaluation of Bail Supervision Scheme for Children. Naughton C., Redmond S. & Coonan B.	Published: 2019	This report presents the findings of a pilot study of young people receiving bail supervision support in Ireland.

<a href="#">Constructive Connections: building resilience of families affected by the criminal justice system   Families Outside</a>	Published: March 2019	A research project for NHS Greater Glasgow and Clyde with the aim to explore the impact of parental involvement in the justice system on CYP and their families or caregivers.
<a href="#">Impact of punishments: families of people in prison   SCCJR</a>	Published: October 2015	An overview of the effects of imprisonment of a family member can have on children and families.
<a href="#">Rendering them Visible: a review of progress towards increasing awareness and support of prisoners' families   Families Outside</a>	Published: April 2016	A briefing highlighting the main findings of a review of the current literature in the field of the support needs of prisoners' families in Scotland, and in particular, children. This review was commissioned by Families Outside.
<a href="#">Children's Social Work Statistics Scotland, 2019-20   Scottish Government</a>	Published: March 2021	Information collected from local authorities and secure units on CYP who were formally looked after; under child protection measures; or in secure care at some point between 1 August 2019 and 31 July 2020.
<a href="#">Prosecution of young people report   Scottish Government</a>	Published: November 2018	The Inspectorate for Prosecution in Scotland's thematic report on the prosecution of young people in the Sheriff and Justice of Peace courts.
<a href="#">Children with parents in prison   Parenting Across Scotland</a>	Accessed: April 2022	An organisation supporting children, parents and families across Scotland. This article pulls together statistics relating to children with parents in prison.
<a href="#">17<sup>th</sup> Prisoner Survey 2019   Scottish Prison Service   2019</a>	Published: October 2020	A report showing the key findings from the SPS biennial prison survey, undertaken in each of the 15 Scottish prisons, and involved all those held in custody (response rate of 30%).
<a href="#">Vision for Young People in Custody   Scottish Prison Service</a>	Published: March 2021	This paper describes the long-term vision for all young people who are in custody in Scotland. It explains how SPS, with partners, is working to use the time a CYP is in custody to prepare them for a positive future.
<a href="#">Bellis et al.   2013   Adverse childhood experiences: retrospective</a>	Published: 2013	Retrospective cross-sectional survey showing the relationship between ACEs and adverse behavioural, health and social outcomes.

<a href="#">study to determine their impact on adult health behaviours and health outcomes in a UK population   Journal of Public Health</a>		
<a href="#">Keeping children in care out of trouble: an independent review chaired by Lord Laming   Youth Justice Board for England and Wales.</a>	Published: August 2015	A response by the Youth Justice Board for England and Wales to the call for views and evidence.

## 8. How will the impact of the policy/measure be monitored?

As part of the normal decision making process, the implementation of the policy/measure should be monitored. Please set out plans for measuring the impact of your policy/measure, including how it will support public bodies in Scotland to meet their duties to safeguard, support and promote the wellbeing of children in their area. Wellbeing is defined by eight wellbeing indicators: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

Provision will be set out in legislation to review regularly measures such as revised standards of throughcare support.

## 9. How will you communicate to children and young people the impact of the policy/measure on their rights?

Providing information to children and young people on how their rights will be impacted helps to ensure that policy making is transparent. Are you publishing a child-friendly or accessible CRWIA?

The general content of the Bill will be communicated to some CYP via events throughout summer recess including a joint Staff/CYCJ session in response to the consultation response which was submitted. A trauma informed approach will be crucial for this work, with the Scottish Government committed to ensuring that any engagement with CYP on this Bill does not have adverse effects. Accordingly, CYP will not be directly engaged around the Bill unless they are being supported by a relevant organisation.

## 10. Sign & Date

Policy Lead Signature & Date of Sign Off: Andrew Corrigan 23/05/2022

Deputy Director Signature & Date of Sign Off: Cat Dalrymple 26/05/2022

# Annex 1 – UNCRC Article Clusters

## [CRC Clusters \(unicef-irc.org\)](http://www.unicef-irc.org)

### I General measures of implementation

[Article 4](#) implementation obligations

[Article 41](#) respect for existing standards

[Article 42](#) making Convention widely known

[Article 44\(6\)](#) making reports widely available

### II Definition of a child

[Article 1](#)

### III General principles

[Article 2](#) non-discrimination

[Article 3\(1\)](#) best interest to be a primary consideration

[Article 3\(2\)](#) State's obligations to ensure necessary care and protection

[Article 3\(3\)](#) standards for institutions services and facilities

[Article 6](#) the right to life, survival and development (see also: [VI Basic health and welfare](#) )

[Article 12](#) respect for the views of the child

### IV Civil rights and freedoms

[Article 7](#) right to name, nationality and to know and be cared for by parents

[Article 8](#) preservation of child's identity

[Article 13](#) freedom of expression

[Article 14](#) freedom of thought, conscience and religion

[Article 15](#) freedom of association and peaceful assembly

[Article 16](#) protection of privacy

[Article 17](#) child's access to information, and role of mass media

[Article 37\(a\)](#) right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

### V Family environment and alternative care

[Article 5](#) parental guidance and child's evolving capacities

[Article 18\(1\) and \(2\)](#) parental responsibilities and State's assistance

[Article 9](#) separation from parents

[Article 10](#) family reunification

[Article 11](#) illicit transfer and non-return

[Article 27\(4\)](#) recovery of maintenance for the child

[Article 20](#) children deprived of their family environment

[Article 21](#) adoption

[Article 25](#) periodic review of placement and treatment

[Article 19](#) protection from all forms of violence

[Article 39](#) rehabilitation and reintegration of victims of violence (see also: [VIII - Special protection measures](#) )

## VI Basic health and welfare

[Article 6](#) right to life, survival and development (see also: [III - General principles](#) )

[Article 18\(3\)](#) support for working parents

[Article 23](#) rights of disabled children

[Article 24](#) right to health and health services

[Article 26](#) right to social security

[Article 27\(1\)-\(3\)](#) right to adequate standard of living

## VII Education, leisure and cultural activities

[Article 28](#) right to education

[Article 29](#) aims of education

[Article 31](#) right to leisure, play and participation in cultural and artistic activities

## VIII Special protection measures

### **A - Children in situations of emergency**

[Article 22](#) refugee children

[Article 38](#) children and armed conflict

[Article 39](#) rehabilitation of child victims (see also: [V Family environment and alternative care](#) )

### **B - Children involved with the system of administration of juvenile justice**

[Article 40](#) [administration of juvenile justice](#)

[Article 37\(a\)](#) [prohibition of capital punishment and life imprisonment](#)

[Article 37\(b\)-\(d\)](#) [restriction of liberty](#)

[Article 39](#) rehabilitation and reintegration of child victims (see also: [V Family environment and alternative care](#) )

### **C - Children in situations of exploitation**

[Article 32](#) child labour

[Article 33](#) drug abuse

[Article 34](#) sexual exploitation

[Article 35](#) sale, trafficking and abduction

[Article 36](#) other forms of exploitation

### **D - Children belonging to a minority or an indigenous group**

[Article 30](#)

[Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict](#) Governments

should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers. The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

[Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography](#) Governments

must prohibit the sale of children, child prostitution and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

## Annex 2 – General Comments

General Comments are non-legally binding interpretive aids issued by the UN Committee on the Rights of the Child to provide State parties with assistance regarding the interpretation of an article or issue relating to the UNCRC, and what actions governments should take to ensure its implementation. New General Comments appear at irregular intervals.

[Treaty bodies Search \(ohchr.org\)](#)

1. [The aims of education \(2001\)](#)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child \(2002\)](#)
3. [HIV/AIDS and the rights of children \(2003\)](#)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child \(2003\)](#)
5. [General measures of implementation on the Convention on the Rights of the Child \(2003\)](#)
6. [Treatment of unaccompanied and separated children outside their country of origin \(2005\)](#)
7. [Implementing child rights in early childhood \(2005\)](#)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(2006\)](#)
9. [The rights of children with disabilities \(2006\)](#)
10. [Children's rights in juvenile justice \(2007\)](#)
11. [Indigenous children and their rights under the Convention \(2009\)](#)
12. [The right of the child to be heard \(2009\)](#)
13. [The right of the child to freedom from all forms of violence \(2011\)](#)
14. [On the right of the child to have his or her best interests taken as a primary consideration \(2013\)](#)
15. [On the right of the child to enjoyment of the highest attainable standard of health \(2013\)](#)
16. [State obligations regarding the impact of the business sector on children's rights \(2013\)](#)
17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts \(2013\)](#)
18. [On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\) \(2019\)](#)
19. [Public budgeting for the realisation of children's rights \(2016\)](#)
20. [Implementation of the rights of the child during adolescence \(2016\)](#)
21. [Children in street situations \(2017\)](#)

22. General principles regarding the human rights of children in the context of international migration ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families](#)) (2017)
23. State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families](#)) (2017)
24. [General comment No. 24 \(2019\)](#) on children's rights in the child justice system
25. [General comment 25 \(2021\)](#) Children's Rights in relation to the digital environment.



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