# A Guide to Youth Justice in Scotland: policy, practice and legislation

## Overview of Sections

**June 2018**

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# Introduction

Whether you're a practitioner, researcher or educator, you should be familiar with the latest policy and practice legislation in youth justice.

That's why the Centre for Youth & Criminal Justice (CYCJ) has produced a guide to youth justice in Scotland. This is aimed at practitioners and managers who work with children and young people who offend or who are at risk of offending. It is also valuable for academics, educators and anyone else with an interest in youth and criminal justice.

This document is intended as an overview of the 11 sections that comprise the guide, which can be accessed on our website at www.cycj.org.uk/youthjusticeguide.

To ensure that the information we are providing is relevant, accurate and meaningful, this guide will be reviewed and updated annually. The next revisions will be made in June 2019. Please get in touch at cycj@strath.ac.uk if you have any queries or wish to access a specific section.

# Section 1: Background, Policy and Legislation

**In brief**

With youth justice sitting in both children and families and criminal justice services and the Children's Hearings and criminal justice systems, this section aims to offer some understanding of the parameters in which services dealing with children and young people who offend are framed. It gives an overview of the time frame and historical developments of youth justice in Scotland, from the Kilbrandon Report to present day.

**How youth justice has developed in Scotland - timeline**

*It all started with the Kilbrandon Report…*

Since 1964, a welfare approach has underpinned social work with children and young people who offend in Scotland. This was the result of work undertaken by the Kilbrandon Committee in 1964, which formed the basis of the Social Work (Scotland) Act 1968. The principles of justice and welfare underpinning this approach are still a fundamental feature of social work practice in Scotland today.

**1960:** A Committee was set up in 1960 under Lord Kilbrandon in response to concern that change was needed in the way society dealt with children and young people in trouble or at risk. The result was the Kilbrandon Report, which recommended a national co-ordinated system to deal with children in need of compulsory measures of care, and stressed the importance of intervening early on.

**1968:** Decisions on what action was needed in the welfare interests of the child were to be the responsibility of a new and unique kind of hearing.  These findings were incorporated into the Social Work (Scotland) Act 1968.

**1971:** Children's Hearings took over most of the responsibility for dealing with children and young people under 16 years and in some cases up to 18 years who commit offences or are in need of care and protection. This radical way of dealing with children and young people who offend is a fundamental principal of the Children (Scotland) Act 1995 and the Children's Hearing (Scotland) Act 2011.

**2002:** Scotland's Action Programme to Reduce Youth Crime was introduced in response to Audit Scotland's review of Scotland's Youth Justice System: 'Dealing with Offending by Young People'.

**2005:** The Scottish Parliament passed the Management of Offenders etc (Scotland) Act. This introduced a legislative basis for agencies to work together not only to assess and manage Registered Sex Offenders, but also any other individuals who are considered to pose a danger to the public.

**2004:** Getting it right for every child (GIRFEC) was first introduced as a new national approach to working with all children and young people in Scotland. GIRFEC is the Scottish Government's strategic vision for all services that are either delivered to, or which affect, children.

**2008:** The Scottish Government published the strategy document 'Preventing Offending by Young People: A Framework for Action'. This outlines a shared vision of what national and local agencies working with young people who offend, or are at risk of offending, should do to prevent, divert, manage and change that behaviour.

**2012:** Scottish Government published Preventing Offending by Young People: A Framework for Action - Progress (2008-2011) and Next Steps. This report demonstrated what had been delivered under the five key strands of the Framework since 2008.

**2015:** The Scottish Government Youth Justice Strategy was refreshed. It identifies 3 themes for action: Advancing Whole System Approach, Improving Life Chances, and Developing Capacity and Improvement.

Read it here.

# Section 2: Youth Justice in Scotland

**In brief**

Youth justice in Scotland involves many professionals, agencies and organisations. This section will give an overview of who is involved, in what capacity, and how they work.

**These include:**
The Scottish Government
Youth Justice Implementation Board
Youth Justice Implementation Groups
The Centre for Youth & Criminal Justice (CYCJ)
National Youth Justice Advisory Group ((NYJAG)
Local Authorities

Social Work
Education Services
Health Services
Police Scotland
The Scottish Children's Reporter's Administration (SCRA)
The Crown Office and Procurator Fiscal Service (COPFS)
Secure Care
Young People in Custody
Third Sector Organisations

The Youth Justice Improvement Board is responsible for overseeing and driving the delivery of the youth justice strategy. The Board is chaired by the Scottish Government and it includes senior representation from a wide range of organisations including Police Scotland, COSLA, Scottish Children's Reporters Administration, Crown Office and Procurator Fiscal Service, the Centre for Youth & Criminal Justice, Education Scotland, health and third sector.

The Youth Justice Implementation Groups are multi-agency groups focusing on identifying and promoting effective youth justice practice within the key priorities set out by the Youth Justice Improvement Board. There are three implementation groups: Advancing the Whole System Approach; Improving Life Chances; and Developing Capacity and Improvement. CYCJ provides support to these groups.

Read it here.

# Section 3: Theory and Methods

**In brief**

This section introduces some important research concepts, and explores current intervention methods and the theories underpinning these.

**Some of the many social work theories in this area include:**

**Child Development**

Children and young people involved in patterns of offending, or more serious offending, are often our most vulnerable, victimised and traumatised children (CYCJ, 2016). It is essential that we ensure their wider needs are being met as these are often the drivers underlying their offending behaviour. Some examples of child development theories are:

- Resilience, vulnerability and protective factors (Daniel & Wassell, 2002)
- Attachment Theory (Ainsworth, Blehar, Waters, & Wall, 1978; Bowlby, 1958)
- Neurodevelopmental Theory (Perry, Pollard, Blakley, Baker, & Vigilante, 1995)

**Desistance**

**Maruna (2001) identified three broad theoretical perspectives important to understanding desistance:**

>**Ontogenic theories** which stress the importance of age and maturation and suggest that children and young people can outgrow certain behaviours as they mature.

>**Sociogenic theories** which stress the importance of social bonds and ties and suggest that if the individual has family ties, positive social relationships and are in education or employment, they are less likely to offend as they have more to lose than those who have no social bonds.

>**Narrative Theories** which stress the importance of subjective changes in the person's sense of self-identity, personal and social 'connectedness' or integration, which in turn are reflected in changing motivations, greater concern for others and consideration of the future. The way the young person makes sense of their situation, the changes they make and the way they view and value themselves can have an impact on their own behaviour, concern for others and more consideration as to their own future (Maruna, 2000).

**Attachment theory**

Attachment theory was first developed by John Bowlby in 1958 and has since been expanded on. The central theme of attachment theory, according to Bowlby, is that parents and carers who are available and responsive to an infant's needs establish a sense of security in the child. Bowlby also premised that over time, as the child becomes more independent, they rely on their internal working models of attachment to guide their future social interactions.

**Neurodevelopment theory**

Research into neurodevelopment offers a neurological perspective on the damaging effects of pre-birth and early childhood abuse, neglect and exposure to violence, including domestic abuse, on infant brain development.

Read it here.

# Section 4: Early and Effective Intervention & Diversion from Prosecution

**In brief**

This section focuses on Early and Effective Intervention (EEI) and diversion from prosecution for children and young people who are at the early stages of being involved in low to moderate level offending behaviour. EEI is considered within the context of the legal frameworks for children and criminal justice services relating to single and multi-agency work

with eight to 18 year olds in Scotland. Diversion is in relation to those aged 16 and 17 years diverted from prosecution by the Crown Office and Procurator Fiscal Service (COPFS).

**Definition**

There is a degree of overlap between the terms **prevention** and **early intervention**. For the purpose of this paper, the distinction between prevention and early intervention is informed by the following definitions, from Moira Walker (2005) and from the Framework for Action (2008):

- Prevention refers to activities which stop a social or psychological problem arising in the first place
- Prevention services are available as part of universal provision
- Early intervention is activity aimed at halting the development of a problem which is already evident
- Early intervention is targeted assistance for vulnerability towards offending

**Key points**

- Children and young people who start to offend come from a range of social backgrounds and cultures, and possess a wide range of personal difficulties and individual strengths requiring a range of responses

- The majority of anti-social behaviour and youth offending takes place in areas of economic and social deprivation. Therefore early intervention has implications for community planning strategies if it is to be effective in reducing offending.

- Research indicates that poor parental supervision and monitoring is a key feature for young people who offend

Read it here.

# Section 5: Managing High Risk of Serious Harm

"Risk of serious harm is defined as the likelihood of harmful behaviour of a violent or sexual nature, which is life threatening and/or traumatic, and from which recovery, whether physical or psychological, may reasonably be expected to be difficult or impossible" (RMA, 2011, p24).

In brief

There are a small but significant number of children and young people in Scotland who present a risk of serious harm to themselves and others as a result of their involvement in harmful sexual behaviour and/or serious acts of violence.

This section provides a summary of the key messages from research relating to violent and harmful sexual behaviour. It provides an overview of the current policy context relating to this area of practice and the principles and processes governing effective risk assessment, management and reduction in practice.

**Key points**

- There are a small but significant number of children and young people who present a high risk to themselves and others

- They are considered to be at high risk because their behaviour has already caused serious harm to a victim

- Many young people involved with offending of a serious nature will have complex needs and may have experienced multiple traumas in their lives

- Not all individuals who been involved with offending of a serious nature will necessarily offend again and part of the assessment and intervention process will be to determine the risk of recidivism (the likelihood of another offence occurring).

- Whatever the approach taken, the child or young person should be at the centre of processes tailored to their unique needs and age and stage of development

Read it here.

# Section 6: Reintegration and Transitions

**In brief**

In this section, the transitions from the Children's Hearings System to the Criminal Justice System, to and from secure care or custody and reintegrating back to the community, will be focused upon to provide information on the importance of good practice and how this can be achieved to deliver the best possible outcomes for young people.

'Reintegration and Transitions' is an umbrella term frequently used to describe policy and practice in respect of children and young people who are at the interface between services, systems and processes. In this section 'transitions' refers to children and young people:

- Moving from children to adult services;
- Moving from school to employment, training and further/higher education;
- Moving from childhood into adolescence in developmental terms;
- Moving from the Children's Hearings System (CHS) to the Criminal Justice System (CJS);
- Moving from the community to secure care or custody and vice versa; from secure care to custody; and Young Offenders Institutions to adult establishments

Likewise, 'reintegration' means:

- Children and young people moving from having a legal order in place, for example a Community Payback Order or Compulsory Supervision Order, to having no such order;
- Young people returning from secure care or custody to their community

Read it here.

# Section 7: Vulnerable Girls and Young Women

"Effective working with girls and young women who have been drawn into the criminal justice system is considerably hampered by a set of interrelated problems" (Batchelor, S and Burman, M. 2004)

**In brief**

This section attempts to draw on some of the literature and evidence and suggests how outcomes for girls and young women might be improved by applying good practice principles more holistically and more tailored to the individual needs of girls and young women. Research completed by McNeish and Scott (2014) highlights that girls exhibit the behavioural manifestations of early childhood experiences and unresolved trauma in different ways to boys.

**Key points**

- Historically, there has been a tendency to group girls and young women's offending and risk taking behaviours alongside those of boys and young men. This is due in part to the relatively low numbers of girls and young women and their invisibility within systems predominantly designed for males.

- Literature and evidence on offending behaviour in young people has tended to be presented under the assumption that girls and boys are the same. Most current services available to address offending and other risk taking behaviours are derived from the principles of 'What Works?' which stem from theories of male offending and often do not meet the needs of females.

- It is generally accepted that although there are similarities in some risk factors associated with offending behaviour in boys and girls, some are more strongly associated with girls, and there are differences in how girls and boys respond to risk factors and practice interventions.

- Relationship issues feature strongly in girls' offending and risk factors related to recidivism are more associated with poor parenting, dysfunctional family environment and absconding. A correlation exists between the victimisation and abuse of young women, traumatic and distressing experiences, and high risk behaviours such as substance misuse and self-harm.

- Violence is a common theme across both genders and while girls do engage in physical aggression, relational aggression is more prevalent. Girls and young women can present challenging behaviour which is unpredictable, violent and manipulative, and themes within this are substance misuse, negative peer association, absconding and sexually risky behaviours.

Read it here.

# Section 8: Residential Child Care

**In brief**

This section explores the role of residential child care (RCC) as a vital part of the continuum of care and the key concepts, models and programmes, and practice challenges in RCC.

**Key points**

- Residential childcare should be recognised as being an important, valued and integral part of children's services that can offer the best possible care and protection for children and young people of all ages, which builds their resilience and prepares them for the future challenges they will face.

- Children who require support and intervention present a range of needs, meaning a range of possible services and types of care placements must be available

- Research has noted gender differences in approaches and learning styles for girls and boys

Read it here.

# Section 9: Speech, Language and Communication Needs in Youth Justice

**In brief**

This section was the result of collaboration between TalkLinks, the Royal College of Speech & Language Therapists and Autism Network Scotland. It explores key issues in communication development, examines difficulties common in the youth justice population and identifies the applications of this knowledge to practice.

**Key points**
- Communication development begins before birth, and progresses rapidly through the first year of life and beyond. Following birth, the most important single influence on development of communication is the child's relationship with the primary caregiver or caregivers, usually one or both parents

- Speech, Language and Communication Needs (SLCN) are extremely common in youth justice populations. Most studies to date have focussed on prevalence of

language difficulties in males, with 50% to 70% of this group found to have significant difficulties with language function. Young people with SLCN involved in the criminal justice system may be regarded as presenting a 'perfect storm' of vulnerability and lack of protective factors

- The high rates of SLCN in young people in custody mean that young people in these environments have others with communication difficulties as their primary source of interaction

Read it here.

# Section 10: Mental Health

In brief

The aim of this section is to offer advice and guidance to practitioners working in youth justice services or with young people presenting with risk behaviours. It is not a review of the evidence base, nor is it a comprehensive summary of all mental health problems and their treatments.  The primary purpose is to provide key information for practitioners to raise awareness of some of the more common mental health presentations encountered in youth justice and related services. This includes a brief introduction of the policy context, an overview of the typical structure of mental health services and some information on what we know about mental health needs relevant to children and young people and how these are classified.

**Key points**

- Over approximately the last 15 years in Scotland, there has been a growing emphasis on promotion of a multi-agency approach to maximising mental well-being in children and young people

- Perhaps the culmination of these agendas can be seen with Getting It Right for Every Child (GIRFEC). Since its introduction, GIRFEC has developed from a set of standards reflecting key principles to a method of informing attainment of key outcomes, many of which are now enshrined in legislation in the Children and Young People (Scotland) Act 2014.

- There is limited research on the mental health needs of children and young people involved in youth justice services in Scotland, although this is growing

- An additional factor complicating understanding of individual mental health needs in this population (and children in general) is the potential for under-identifying internalising difficulties (such as anxiety or depression), as these may be obscured by, or manifest as, externalising problems (such as behavioural difficulties).

- The experience of childhood trauma may influence risk of violence in numerous ways - for example, the modelling of violence, by denying safety and the development of self-regulation capacities, or by engendering the belief that the world is unsafe and one must be vigilant and protect oneself.

Read it here.

# Section 11: Children's Rights, Our responsibilities

**In brief**

The aim of this section is to demonstrate the principles and provisions of a rights-based approach to youth justice, grounded in the United Nations Convention on the Rights of the Child (UNCRC) and other international and European human rights conventions. It provides support and guidance to those working in youth justice to ensure children and young people's rights are embedded across policy and practice. To achieve this, the chapter sets out the international obligations and standards against which Scotland has agreed to be held to account and offer guidance as to how these standards can be implemented across the youth justice system in practice.

**Key points**

- International human rights law places governments under a legal obligation to respect, to protect and to fulfil human rights, including children's human rights

- The Council of Europe Guidelines on child-friendly justice set out basic rules that Council of Europe countries should follow when adapting justice systems to meet the specific needs of children

- A rights-based approach to youth justice seeks to ensure that children are not unduly criminalised or stigmatised as a result of their behaviour, but instead supported to address that behaviour and to rehabilitate

- Young people who offend, often have significant underlying needs, and a failure to address these needs is a violation of their human rights

- A rights-based approach takes into account the need to ensure public protection, and to acknowledge the harm that can sometimes be caused to others by a child's behaviour

# Section 12: Supporting all under 18 years in the Court System

**In brief**

This section focuses on the supports which should be provided for all under 18 years within the adult justice system and subsequently in court. The provision of support to navigate the justice system, as for all support and intervention with children involved in offending behaviour, should be underpinned and adhere to the guiding principles of the United Nations Conventions on the Rights of the Child (UNCRC, 1989), Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice (Council of Europe, 2010) and

[Getting It Right for Every Child](link) (GIRFEC) which recognise those under 18 years as children, and who will be referred to as such within this section.

The practice outlined is intended to set the parameters for a minimum standard to be achieved and to give an overview of 'good practice' principles for all partners involved when children enter the court system and criminal justice services. Good practice indicates the principles are also applicable to over 18s and there is a particular need for various partners and agencies to take account of their [corporate parenting responsibilities](link) (Scottish Government, 2015) as outlined in the *Children and Young People (Scotland) Act 2014.*

The key messages highlighted by the Scottish Government's Assisting Young People aged 16 and 17 in Court (Scottish Government, 2011a) toolkit remain critical, that all agencies should maximise every opportunity in preventing children entering the criminal justice system. However, where diversion from formal systems has not been possible:

- "The outcomes for children are enhanced when those involved work together and when there is effective information sharing and communication

- Sentences imposed in closer proximity to the committing of an offence have a greater impact upon children and supports such cases to be handled without delay

- All children should be supported - failure to support children through the criminal justice process or address their wider risks and needs, can lock them into a cycle of reoffending

- Courts must be provided with a range of credible alternatives to remand and custodial sentences that provide robust risk management and reduction processes as well as meaningful opportunities. It is recognised that short custodial sentences provide limited opportunities for children to engage in behavioural change or education programmes, which can significantly reduce reoffending." (Scottish Government, 2011a).

[Read it here.](link)