

CHILDREN IN CONFLICT WITH THE LAW: THINGS THAT ARE WRONG AT THE MOMENT

The Scottish Government says that when it comes to children: **“We should grow up loved, safe and respected so that we realise our full potential”**. But for children who are in conflict with the law there are things that happen that mean these children do not experience love, safety or respect.

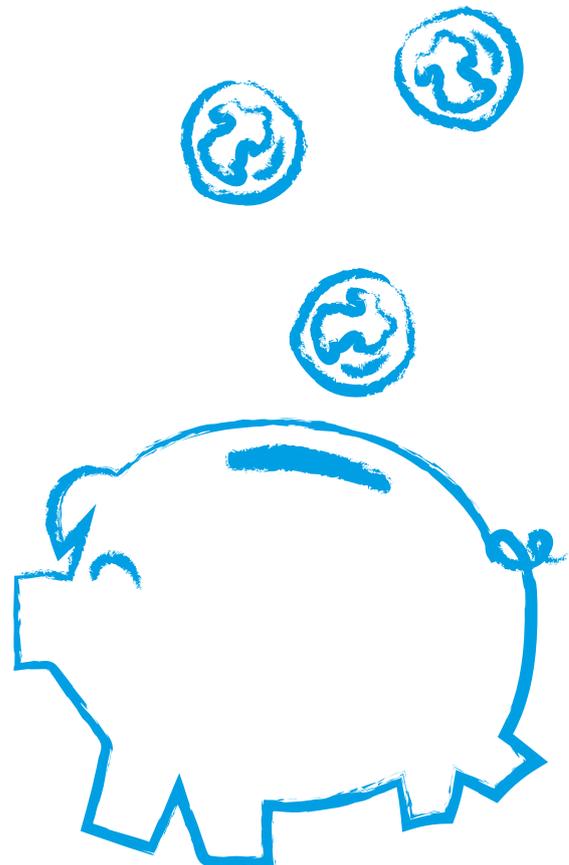
It is a problem when we focus on needs and wellbeing; and not enough on the rights of the child

- When the Scottish Government talks about children in conflict with the law they say that children’s needs must be taken into account. They also talk about children’s wellbeing. But they don’t say what the UNCRC says - that **‘the best interests of the child shall be a primary consideration’**. The justice system does not clearly say that children have rights and that these rights should be met.
- As an example of this - children have a basic right to understand what is happening to you if you are in conflict with the law, and also to have your say. But in Scotland children in conflict with the law say they do not have things explained to them, they don’t understand what is happening and they feel powerless. Some children report that when they are sent to secure care or a Young Offenders’ Institution they do not know why this has happened.

Poverty, social exclusion and childhood trauma are linked to committing offences and being the victim of crime

- A child aged 15 who lives in poverty is more likely to be involved in violence towards others, compared to a child who lives in a better off community.
- Young people in poorer communities who gather together in public places are more likely to be charged by the police. Police are unfairly targeting some children from poorer backgrounds.

- Children who are considered to be a very serious risk to others are more likely than other children to have experienced trauma, including abuse or neglect.
- The Secure Care Census in 2018 found that in the year before they were admitted to secure care 35% of children had attempted to end their own life through suicide, 71% had self-harmed, 88% had run away, 48% had been subjected to Child Sexual Exploitation, and 45% had experienced sexual health concerns.
- Of the 12 year olds who go to a Children’s Hearing because they have committed an offence, 4 in every 5 have a parent that is a risk to them due to domestic violence, substance misuse, mental health issues, criminal behaviour, abuse or neglect.
- However, it is also important to note that children can do well at school despite adversities and there are many adults in a range of jobs that experienced adversity as children.





When you have an additional support need or experience social exclusion you are more likely than others to be in conflict with the law, and to be treated unfairly

- If you come from a poorer neighbourhood, if you have autism, if you have a learning difficulty or if you are care-experienced and you commit an offence, you are more likely to face the formal justice system. So, you are more likely to be in conflict with the law if you are already experiencing disadvantages in your life.
- Children with additional support needs are often not supported enough when they are in conflict with the law. Sometimes the speech, language and communication needs of children are not known or not understood or professional people don't know what to do to communicate with and support the child.
- At least 1 in 9 young men from the most deprived communities have spent time in prison by the time they are 23 years old.

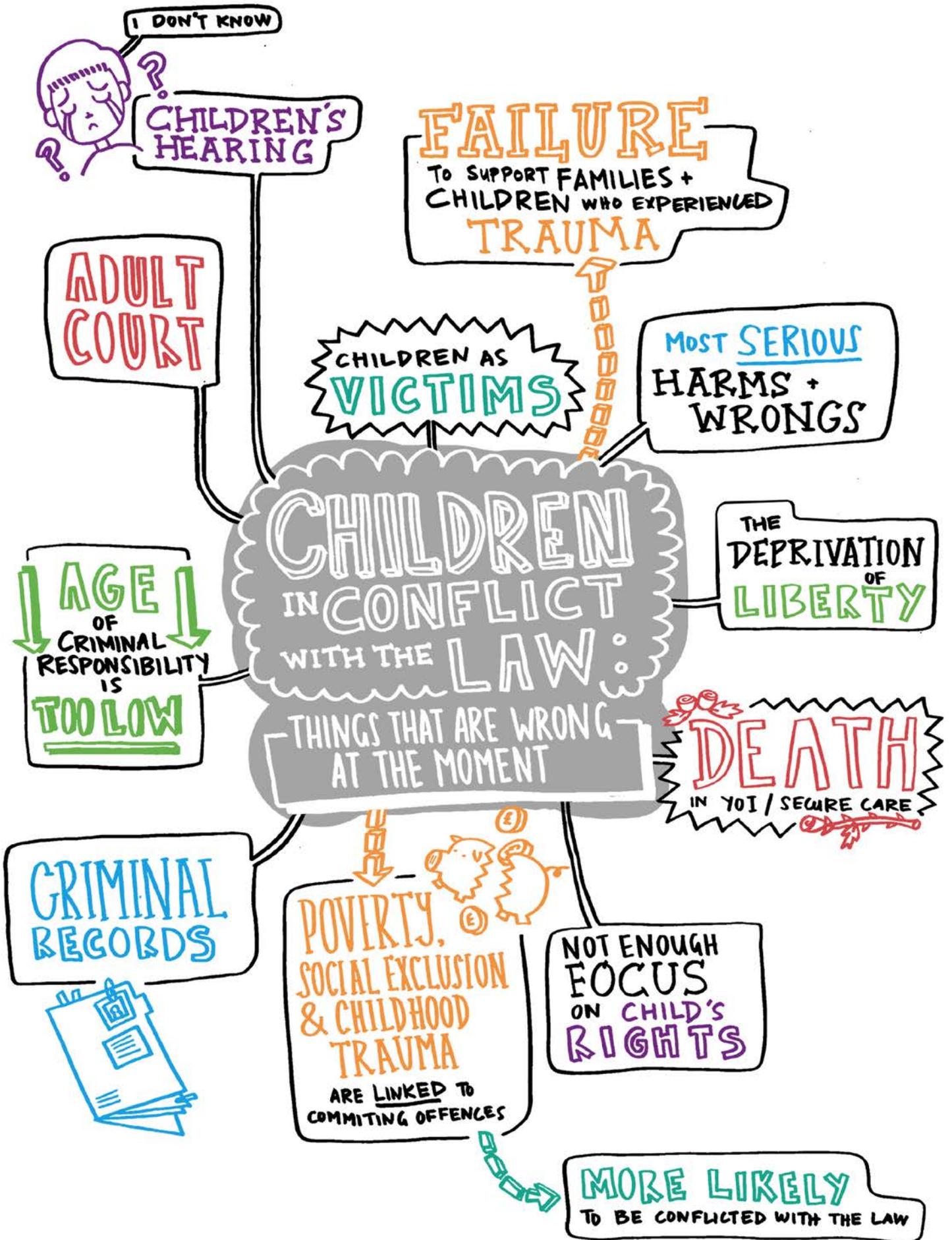
When children go to a Children's Hearing

- Sometimes children have to tell very personal things about themselves over and over to different people. This can happen when there are different adults on the panel every time the child goes to a Hearing.
- When a child goes to a Hearing there might be no adult there who is a legally qualified person. This can mean the child does not have a fair Hearing with a person who properly understands and respects the child's legal rights.

- Even though a child goes to a Hearing, and the hearing makes a decision that the child needs something, this doesn't always mean they get the help and support they or their family need.

When children go to an adult Court

- The vast majority of children in Scotland who come into contact with the adult Courts are not there because they have committed the most serious types of crimes.
- We know that between 50% and 70% of children in conflict with the law have additional support needs such as a speech, language or communication issue; this can be because of things like learning difficulties, learning disability or autism. We also know that children in conflict with the law are more likely to have experiences of childhood trauma. The Royal College of Psychiatrists say that going to an adult Court for children in these circumstances is distressing and traumatic.
- It is likely that many children do not understand what is happening in an adult Court or do not feel able to have their say. If a child in Court is upset or confused the way they behave might be misunderstood. For example if a child avoids eye contact, or cannot explain what has happened, or gives very simple short answers, then people might think they must be guilty.
- When children go to an adult Court many are found not guilty (16%) or receive an admonition (20%). This means that they have had to go through something very upsetting and scary, when the adults who made the decision for them to go there probably should have known this was not necessary.



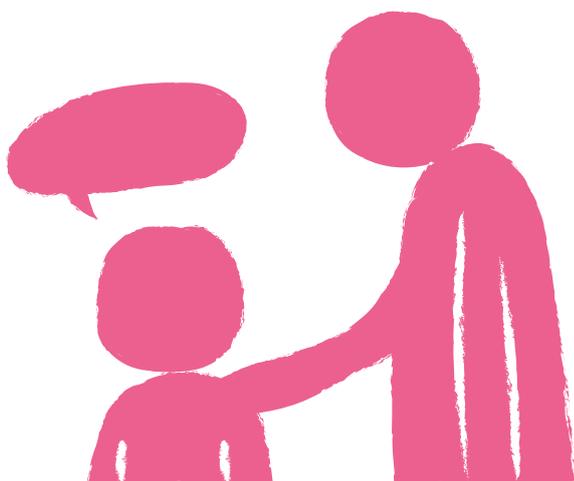
- It has recently been decided that if a 16 or 17 year old is on a Compulsory Supervision Order and has a social worker then they should be considered as a child - and if they are in conflict with the law they should go to a Children's Hearing. But if a child doesn't have a Compulsory Supervision Order they can still be sent to an adult Court. This difference is not okay.

When we fail to support families and children who have experienced trauma

- When a child is in conflict with the law it might be that their whole family needs support and help but is not getting it.
- School exclusion is linked to continued offending, so to exclude a child in conflict with the law is to punish them and put them at further risk.
- Children in conflict with the law may have experienced childhood trauma, but they and their families are not receiving the kind of therapeutic helping support they need. Being in a Children's Hearing or a court can build on this trauma and leave the child intimidated or frightened.

Children as victims

- When children are victims of a crime it is often another child who has harmed them.
- There is a lack of information about children who are victims of crime in Scotland. In England and Wales the annual crime survey collects data and estimates that between 10 to 15 in every 100 children aged 10-15 years old were victims of at least one crime in 2018, usually this is a crime of violence.



Children who commit the most serious harms and wrongs

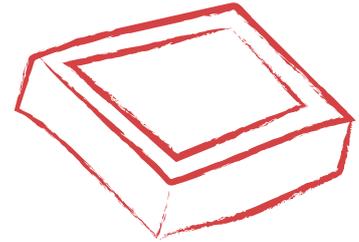
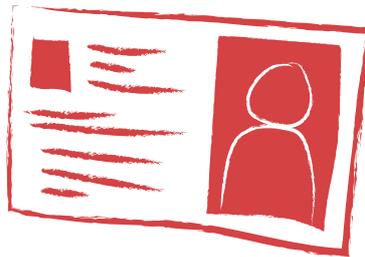
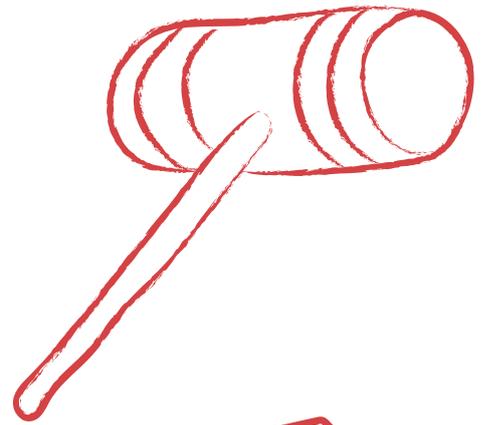
- Some children are accused and convicted of very serious crimes.
- We do not think enough about the kinds of things we do when a child has committed a serious crime and harmed others. We need to keep other people safe, think about how to make sure they understand what they have done, the impact it has had on others, we need to hold them to account for what they have done, but we need to avoid punishing a child by depriving them of their liberty.

The age of criminal responsibility is too low

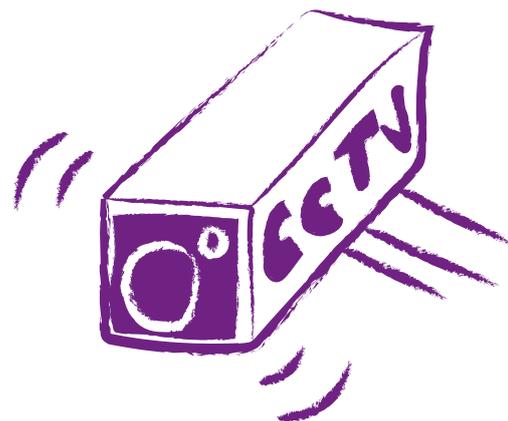
- The age of criminal responsibility is 12 years old. This means that Scotland still has one of the lowest ages of criminal responsibility in Europe. The UNCRC has said that this age should be at least 14, and that countries should really be working to make this age 15 or 16. As long as Scotland has an age of criminal responsibility that is 12, it is saying that children as young as 12 are fully responsible for any criminal acts.

Children in custody/the deprivation of liberty

- There are children in secure care or custody because there are no appropriate supports for them in the community - this does not mean that there isn't a way to support them in the community, it means we are not making it available.
- Secure care can be a safer place for children than where they were before - but not if it is unclear when they can leave, or if it ends up feeling like a punishment.
- Reports from experts have told us that even if a child is in detention for a very short time this can affect the child's psychological and physical well-being and their development.
- When children are deprived of their liberty they may not be able to keep in contact with family or friends, maybe because there is no telephone line they can use, or staff shortages mean that there is no-one to help make it happen.



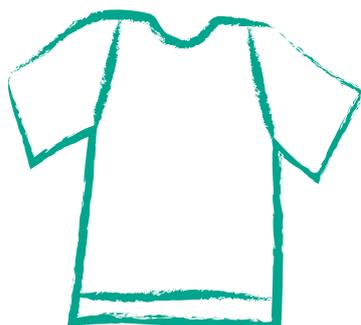
- When a child is in custody they are at risk of violence from others, including the use of violence by staff if they restrain a child. When staff restrain a child they can accidentally cause pain and in Young Offenders' Institutions staff are allowed to deliberately cause pain.
- The use of separation or segregation of a child to punish them is cruel.
- The Independent Inquiry into Child Sexual Abuse reports on 1,070 alleged incidents of child sexual abuse in custodial institutions in England and Wales between 2009-2017. Of these, 578 were described as sexual assault or rape. We do not have the information we need about the experiences of separation, segregation, restraint or about sexual abuse in custodial settings in Scotland.
- Children are also experiencing strip searches. In one year we know that 788 strip searches of children took place by the police in Scotland, of which 753 found nothing of concern. Three intimate searches also took place, all of which found nothing (information from Police Scotland, 2018). So, in 96% of cases nothing was found, this means that strip searches are being used as routine rather than good information that the child has something on them.
- The number of children who are on remand, this means they are deprived of their liberty before a court has found them guilty or sentenced them to imprisonment, has increased: 41% of children in custody are on remand and 36% of young people aged 18-20 in custody are on remand.
- It seems that the adult Courts and Children's Hearings System are less likely to use alternatives to custody like electronic tagging when it comes to children (than they are for adults).
- When children leave custody there is often no planning and no support for them. They might not even have the medication they need.



- There are more children from England being put into secure placements in Scotland. For children so far away from family and friends this is a difficult situation. It makes it more difficult to help them with the transition to getting home.

When children have criminal records

- When a child is in conflict with the law, in childhood, they may have to declare (say) as an adult that they committed such an offence. They might have to say when they are applying for a job, to volunteer, applying to college/ university or for training, or to get a visa to travel. This can leave the adult feeling anxious, embarrassed, ashamed or excluded. It can stop them doing things because they don't want to share such information.
- Because children in conflict with the law are already more likely to be poorer or experience social exclusion or discrimination, having to declare an offence from their childhood acts as another burden and a barrier to new opportunities.
- Many children and their families do not understand what happens to a child's criminal record when they become an adult.



The deaths of children and young people in YOI/secure care

- In the past 10 years two children have taken their own lives whilst in a Young Offenders' Institution in Scotland. They are **Raygen Malcolm Josep Merchant** in 2014 (aged 17) and **William Lindsey** (also known as William Brown) in 2018 (aged 16).
- Two children have also died who were in an open unit as part of a transition from spending time in secure care. They are **Neve Frances Bysouth** (aged 15) and **Georgia May Rowe** (age 14).
- In the last 10 years, 24 young people under the age of 25 have died while in a prison or Young Offenders' Institution. Their names were:
 - In 2018: **William Lindsey** (aged 16), **Katie Allan** (aged 21), **Zach Banner** (aged 22) and **Gary Williamson** (aged 22)
 - In 2017: **Robert Wagstaff** (aged 18), **Liam Kerr** (aged 19) and **Ryan Forbes** (aged 23)
 - In 2016: **Kevin John Gartland** (aged 24)
 - In 2015: **Mark John Andrew Smith** (aged 23) and **John William Monteith** (aged 24)
 - In 2014: **Dione Kayleigh Kennedy** (aged 19) and **Colin Penrose** (aged 22)
 - In 2013: **John Perry** (aged 24) and **James Summer Barr** (aged 24)
 - In 2012: **Ross McColm** (aged 18), **Ryan Jamie McNeil** (aged 19) and **Sarah Mitchell** (aged 19)
 - In 2011: **Ross James Drummond** (aged 21) and **Dale Mulholland** (aged 22)
 - In 2010: **Andrew Adam Stone** (aged 19) and **Paul James Murdoch** (aged 24)
 - In 2009: **Matthew Kirk** (aged 22)
- Children do not feel safe in Young Offenders' Institutions. High rates of self-harm and bullying were a factor in nearly all deaths in custody.
- We know that being traumatised, being young, being held on remand and being in the first three months of custody increases the risk of suicide.
- We know that when a child or young person needs support for mental health issues often they do not get it.

