

IDEAS ABOUT WHAT NEEDS TO CHANGE SO THAT WE RESPECT THE RIGHTS OF CHILDREN WHEN THEY ARE IN CONFLICT WITH THE LAW

The justice system must focus on the rights of the child

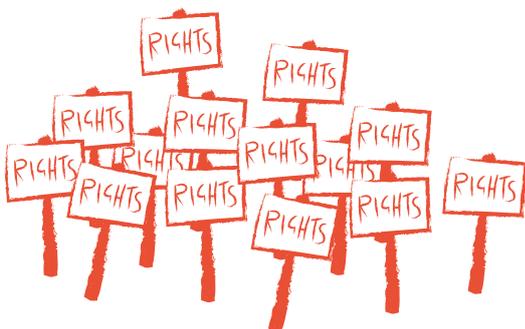
- As we said earlier, the Scottish Government says we have a justice system that cares about the child's needs and wellbeing. But it would be better for the child in conflict with the law if there was a focus on their rights, so that everyone could understand how children find themselves in conflict with the law, and what we need to do to fully deliver on our promise to children that they be loved, safe and respected. If we think about rights first, then we can understand that some children experience social exclusion and they are at more risk of getting into conflict with the law. We need a justice system that cares about social inclusion and social justice.

The justice system must see the child first

- When a child commits an offence we need to see the story and distress behind their behaviour. This matters if we want to make sure we do not punish or criminalise that child, and understand their experiences and needs and any harms done to them.

Everyone under 18 should be considered a child

- The law in Scotland needs to say that you are a child up to and including being 17 years old, so everyone under 18 is a child.
- If everyone under 18 is a child, they should be part of the Children's Hearing System, no matter what their needs are or if they have committed a crime.



Everyone must learn about and respect children's rights

- We need to remember that human rights apply to children, children are human too! We have 'children's rights' because we want to put a focus on the best interests of children and think especially hard about how to nurture, protect and support them to participate in decisions made about them.
- There are many international agreements and laws that help us understand the rights of children, including when children are in conflict with the law. It is the responsibility of the Government and public bodies like the Children's Hearing System, Courts and Police to understand these rights and make sure they are protecting and promoting children's rights.
- Every child should have opportunities to learn about their rights.
- When a child is in conflict with the law they (and their parent or carer) should be given clear information about their rights. If they need it, they should have an adult they can trust who can help them understand these rights.
- If children are in conflict with the law they have a right to understand what is happening to them in a Children's Hearing or a Court.
- Adults need to learn about rights too - this includes parents and carers, adults in the community and professional people, including those that work and volunteer in the Children's Hearings System and the justice system; this would include Police Scotland and the Scottish Prison Service. Social workers are often the professional people who deal with and support children in conflict with the law. It is especially important that social workers understand and work to promote and protect children's rights.
- When adults learn about children's rights they need to think about how they might be discriminating against certain children because they are poorer or have a disability.



- When adults learn about children’s rights they need to think about how they involve children in decision making and having their say.
- Some adults could be champions for children in conflict with the law. These champions would uphold children’s rights and support children to access their rights.

Help to prevent offending and keep children safe

- As a country, we need to do more to help prevent children from offending in the first place.
- When a child does something that harms themselves or others they need to get the support they need, as early as possible, to make them safe and help them think about what they may have done.
- When a child is in conflict with the law it might be that their whole family needs support and help.
- If a child is in conflict with the law they should be able to get involved in support or learning programmes that means they do not have to be prosecuted.
- When a child is in conflict with the law they should not be excluded from school because this puts them more at risk of harming themselves or others by committing crimes.

Changing the experience of attending a Children’s Hearing or adult Court

- The Children’s Hearings System and adult Courts need to look and see if any part of the child’s experience might be frightening or intimidating, and if it is they need to make changes. Children need to be involved in reviewing what happens and making it better.

- The adults on the panel at a Children’s Hearing need to have training in children’s rights and understand any additional support needs, for example speech, language or communication needs a child might have, or experiences of trauma that impact on their lives.
- All children in the Children’s Hearing System or going to an adult Court should have access to an advocacy worker and independent legal advice, to ensure that all children in conflict with the law know their rights and have help to make them real.
- Children in conflict with the law need access to free legal aid.
- If a child goes to an adult Court a fair trial for them would mean that what happens is adapted to meet their needs. It means that there needs to be specially trained professional people who understand and can support children, especially children experiencing trauma and who need communication support.
- There is new guidance in Scotland that says that 16 and 17 year olds should go to a Children’s Hearing or an alternative to prosecution unless it is very serious. We don’t know yet if this is working, we need to watch what happens.
- It is important to remember that even though we want all children, including those aged 16 and 17, to have their offences dealt with at a Children’s Hearing, some children say that Children’s Hearings can also be traumatic, judgemental or disrespectful. Children’s Hearings also need to understand and respect the experiences and the needs and rights of children.

The rights of children going into care or custody/when a child is deprived of liberty

- If a child is put in secure care or a Young Offenders’ Institution this must be a last resort, and only happen if there is clear evidence that there is a need to protect the public or the child from significant harm. Before a child in conflict with the law is deprived of their liberty all the other options in the community must be considered.
- If a child is going into any kind of care away from their family, such as a residential centre or secure care or custody, they should have a

Coordinated Support Plan or a Child's Plan that goes with them so that information about them is used to help think about what they need to be loved, safe and respected. A plan must consider the education, family contact and mental health needs of a child.

- If a child is in secure care or custody they must be able to get any support they were getting before being put there.
- If a child is going to a Hearing or Court and they might be placed in care or custody - or if they might be released from care or custody - then their appearance should as early as possible in the day to make sure this happens as smoothly as possible and with support. This is especially important when a child has additional support needs.
- We need to know when, why and how staff use separation, segregation, strip or intimate searches or restraint when a child is in custody. The use of these things suggest that children's rights are not being respected and that they are being treated with methods that are degrading and cruel. If any of these things are done to a child there needs to be clear rules as to how they are done.
- A child should never be put in solitary confinement.
- Scotland needs a plan to help our country work toward being one where no children are deprived of liberty.
- Scotland needs to pass a law that says that no child under the age of 18 can be put in a Young Offenders' Institution or an adult prison.

The rights of children who are victims of crime

- When a child is the victim of a crime we need to make sure they get the support they need.
- Children who are victims should have the chance to be heard and to talk about what happened to them and how they feel.
- It is possible to involve children in restorative approaches if they want to be, but sometimes this is not appropriate because the child who committed the crime may struggle to understand this approach. Whatever happens, the victim of a crime should be listened to, and it may be possible to help repair relationships where harm has been done.

The rights of children who commit the most serious harms and wrongs

- Children and adults, including professional people, need to know more about why some children do the most serious harms and wrongs. We need to be better at seeing when a child (including younger children under the age of 13) is distressed, has experienced trauma and might cause serious harm - then we can support them. It is best to do this before they become violent towards others.
- The child who commits serious harm may also be the victim of harm caused by other children or adults.
- We must remember that no matter what a child has done, they are still a child and need all the things that every child needs, including love, respect and safety.

Changing the age of criminal responsibility

- The age of criminal responsibility in Scotland is 12. It should be raised to at least age 14, as recommended as the minimum acceptable age by the UNCRC. But Scotland can do better than this, and we should be looking to raise the age of criminal responsibility to 16.

Changing what happens for children with criminal records

- There can be circumstances when an adult is asked if they have had committed an offence, including when they were a child. Children and adults need information that helps them to understand what they need to share, and when.
- The law about what an adult needs to disclose should be looked at to make sure that what they have to share from their childhood really is fair and necessary.
- A rights-respecting system would mean that offences from childhood would not need to be declared in adulthood unless they were very serious.
- This law is being looked at in Scotland at the moment.

