

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

## **Overview of Sections**

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## Contents

<b>Introduction.....</b>	<b>3</b>
<b>Section 1: Background, Policy and Legislation.....</b>	<b>3</b>
<b>Section 2: Youth Justice in Scotland.....</b>	<b>5</b>
<b>Section 3: Theory and Methods .....</b>	<b>5</b>
<b>Section 4: Early and Effective Intervention &amp; Diversion from Prosecution .....</b>	<b>6</b>
<b>Section 5: Managing High Risk of Serious Harm.....</b>	<b>7</b>
<b>Section 6: Reintegration and Transitions.....</b>	<b>8</b>
<b>Section 7: Diversity.....</b>	<b>9</b>
<b>Section 8: Residential Child Care .....</b>	<b>9</b>
<b>Section 9: Speech, Language and Communication Needs in Youth Justice.....</b>	<b>10</b>
<b>Section 10: Mental Health.....</b>	<b>11</b>
<b>Section 11: Children’s Rights, Our responsibilities .....</b>	<b>11</b>
<b>Section 12: Supporting children in the Court System.....</b>	<b>12</b>
<b>Section 13: Restorative Justice .....</b>	<b>13</b>
<b>Section 14: Trauma and Adversity.....</b>	<b>14</b>
<b>Section 15: Participation .....</b>	<b>14</b>

## 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 Children and Young People's Centre for Justice (CYCJ) produces a guide to youth justice in Scotland. This is aimed at practitioners and managers working with children and young people who are in conflict with the law, or who are at risk of being so. 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 15 sections that comprise the guide, which can be accessed on our website at [www.cycj.org.uk/youthjusticeguide](http://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. Please get in touch at [cycj@strath.ac.uk](mailto:cycj@strath.ac.uk) if you have any queries or wish to access a specific section.

## Section 1: Background, Policy and Legislation

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 - a 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:** The 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 three themes for action: Advancing the Whole System Approach, Improving Life Chances, and Developing Capacity and Improvement.

**2016:** The Criminal Justice (Scotland) Act 2016 was passed, which seeks to modernise and enhance the efficiency of the Scottish criminal justice system.

**2019:** The Age of Criminal Responsibility Act was passed, which will raise the age of criminal responsibility from eight to 12.

**2020:** The Children and Young People's Centre for Justice (CYCJ) published ['Rights Respecting? Scotland's approach to children in conflict with the law'](#).

**2021:** The Scottish Government published ['The Rights-Respecting Approach to Justice for Children and Young People - Scotland's Vision and Priorities 2021'](#).

[Read it here.](#)

## Section 2: Youth Justice in Scotland

Youth justice in Scotland involves many professionals, agencies and organisations. This section gives 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 Children and Young People's Centre for 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  
Children in Custody  
Third Sector Organisations

[Read it here.](#)

## Section 3: Theory and Methods

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. 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 is 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.

## 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

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).

There is a degree of overlap between the terms **prevention** and **early intervention**. The distinction between prevention and early intervention is informed by the following definitions, from [Moira Walker \(2005\)](#) and 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).*

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 violence and HSB, and an overview of the current policy context and the principles and process 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 have 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 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, are 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. '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: Diversity

This section draws on some of the literature and evidence on diversity and suggests how outcomes for those from diverse backgrounds might be improved. It is aimed at practitioners with direct responsibility for providing services to girls and young women; children and young people who identify as Lesbian, Gay, Bisexual, Transgender and other (LGBT+) backgrounds; children and young people from BAME backgrounds, the Roma community and those of diverse faiths. It is also relevant for managers and other professionals who may be involved in service design, commissioning and procurement.

### Key points

- Whilst statistically, most crime in Scotland is committed by white, heterosexual males, there remains a substantial number of children from outwith this group who come into conflict with the law.
- Their needs are as diverse as the individuals themselves and whilst they encounter similar issues to their peers, practitioners ought to be mindful that the manifestations of these issues may differ.
- Children from diverse backgrounds face the particular needs, vulnerabilities and prejudices associated with their identities, which may include membership of more than one group.
- It is not possible to fully describe the complex, multi-faceted lives that each individual leads
- It is both erroneous and risky to assume that approaches and interventions designed for one particular group are necessarily suitable and effective with another

[Read it here.](#)

## Section 8: Residential Child Care

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

- RCC 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
- There has been longstanding concern regarding the criminalisation of looked after children, particularly those in RCC, nationally and internationally
- Relationships are fundamental to RCC and play a key role in responding to offending behaviour

[Read it here.](#)

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

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

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 information on what we know about mental health needs relevant to children and young people, and how these are classified.

### Key points

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

[Read it here.](#)

## Section 11: Children's Rights, Our responsibilities

This section aims 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.

## 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.

[Read it here.](#)

## Section 12: Supporting children in the Court System

This section focuses on the supports that should be provided for all children under 18 years within the justice system, and those who are subsequently prosecuted 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 \(GIRFEC\)](#) 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.

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 support 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.](#)

## Section 13: Restorative Justice

This section discusses restorative justice, a term that emerged in the 1970s as an alternative to traditional justice processes. It is a process of independent, facilitated contact between those who have experienced harm and those responsible for that harm. The key to restorative justice is that it allows those with a stake in the outcome of a crime related intervention or conflict to communicate in a safe and structured way.

The following definition has been agreed by the Scottish Government and used within their current [guidance](#):

*“Restorative justice is a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, a child, a young person or a representative of a corporate or other body) arising from an offence or alleged offence.”*

### Key points

- Restorative justice is voluntary, confidential and safe for all participants
- Many of the principles of restorative justice have been around for centuries and can be found in studies of ancient communities and civilisations
- Restorative justice has continued to increase in popularity across many areas of the justice system worldwide, with much of this growth coming from its use in addressing lower-tariff offences.
- It is not widely or consistently used in Scotland, with services being sporadic and sparse
- As restorative justice has expanded throughout the justice system, the definition of restorative justice has also expanded

[Read it here.](#)

## Section 14: Trauma and Adversity

**Adversity** (n) a difficult or unpleasant situation

Adversity is a broad term, which encapsulates a wide range of events, circumstances or experiences that might have an impact on an individual's physical, psychological, social or emotional wellbeing. Examples include: poverty; abuse; bereavement; bullying; serious injuries or accidents; disability; violence and parental separation. Exposure to adversity can cause short-term distress as well as longer-term harm to everyday functioning.

This section (new for 2020) does not aim to systematically review all evidence on the subject of childhood adversity, does not cover all possible forms of adversity, nor is it intended to provide the reader with a comprehensive guide to practice with children affected by adversity. Rather the purpose is to provide a general introduction to the most common types of childhood adversity and to draw upon the key messages from research to raise awareness about the impact of adversity and the relevance for youth justice practice.

### Key points

- In order to recover and grow from stress and adversity, children need to have access to stable, caring and supportive environments and relationships
- It is imperative that steps are taken to prevent and reduce the adversity and inequality that children face wherever possible, but also to ensure that our society, systems and services are set up to promote optimal recovery and resilience in the face of adversity.
- Exposure to adversity can cause short-term distress as well as longer-term harm to everyday functioning. However, adversity is widespread and it is neither practical nor possible to protect children from all potentially adverse events in their lives.
- Research has shown a relationship between exposure to Adverse Childhood Experiences (ACEs) and future violence, whether as a victim, a perpetrator, or often both.
- Children who are in conflict with the law have been found to have experienced a higher rate of childhood bereavement than the adolescent population

[Read it here.](#)

## Section 15: Participation

*“Participation is not about giving young people a voice. They already have that. Participation is about letting children and young people’s voices have real weight. It is about recognising that every young person has the right to be actively engaged in the making of decisions that will influence their lives” (Maloney)*

Participation is swiftly becoming a key tenet of Scotland's response to children and young people in conflict with the law. It is not only a moral and ethical right, but a means by which children and young people can develop as individuals, whilst shaping public policy and other decisions affecting their lives

Participation should not be thought of as an 'add-on' or an additional piece of work, and rather is a key component of ethical and effective service provision. Despite this, participation across the youth justice sector has yet to fully mature and embed itself, and making participation a routine element of practice requires a significant change to the culture and skills of Scotland's workforce and organisations. [The Promise](#) may well affect that change in time, with some local authorities and organisations already making tentative steps on that journey, reporting successes and with learning to share.

This section highlights research, ideas and literature relating to participation to support the establishment of effective, ethical and meaningful participation across Scotland.

[Read it here.](#)