



Children and Young People's
Centre for Justice



SUMMARY: THE USE AND IMPACT OF
BAIL AND REMAND WITH CHILDREN
IN SCOTLAND

July 2021



A SHORT REPORT FOR CHILDREN

At the *Children and Young People's Centre for Justice* we believe that there are many things wrong with the way that children are treated in the justice system. We believe that Scotland needs a plan to make this right. We believe everyone, including children, needs to be involved in making sure we get it right for children.

We have written a report about how bail and remand are used with children. To find out what is going on we spoke to children who this has happened to, their parents and carers and to professional people who work in social work, the law and in the courts. We also had an online survey that we asked local councils to complete.

- A **child** is a person under the age of 18.

From April 2017 to April 2018 (that's the latest year we have numbers for) a total of 4,836 children were in conflict with the law and so they were involved with the justice system.

Of these children around two-in-three (63%) were referred to the Children's Hearing System but more than one-in-three children (37%) - that is a total of 1,776 children aged 13 to 18 years old - were prosecuted in an adult court.

You might be asking: **Why would you send someone under the age of 18 to an adult court anyway?**

This is because of something called the **age of criminal responsibility**. This is the age at which a person is considered old enough to understand

the crime they have committed and able to take *full responsibility for their actions*. **In Scotland the age of criminal responsibility is 12.**

This is just one of the things we think is wrong about what happens to children in conflict with the law. You can read our full report to find out about other things that are wrong and need to change.

If you do go to a Court there might be a gap between the time you first appear, and the time your court case takes place. Before you go to court you may sometimes be placed on bail or remand:

- **Remand** is when the Court decides that you will go to a secure care centre or Young Offenders Institution until your court case takes place.
- **Bail** is when the Court decides that you can stay at home or in a place that is agreed until your court case takes place. There will be things you have to agree to if you get bail - these are called **conditions** and they are like the rules you have to follow. If you don't agree or you break the conditions of your bail then you can be put on remand.

On average, there were 14 children per day held on remand in a YOI in 2020.

The numbers of children being prosecuted in an adult court is falling every year. *But* if you do go to a YOI it is more likely that you will be there on remand rather than convicted and sentenced.

THESE ARE THE MAIN PROBLEMS WITH USING BAIL AND REMAND FOR CHILDREN

- In Scotland today children from the age of 12 can still appear in an adult court.
- Children and families often don't understand what is happening when they appear in court. They feel they aren't heard. The system doesn't feel fair.
- The support or help that a child can get depends on where they live, it isn't the same everywhere.

- Children who are care-experienced often don't have the same supports as other children.
- It is often difficult for children to keep to the conditions of bail.
- 16 and 17 year olds can be remanded to HMP&YOI Polmont. Children should not be remanded unless it is the only way to keep people safe. If they are remanded it should be to secure care, which is designed for children.
- Although it should be the case that most 16 and 17 year olds are diverted away from courts and to the Children's Hearings System, this still isn't working for everyone.

THIS IS WHAT WE CAN DO DIFFERENTLY

The main thing we should do is make sure that children under 18 who commit an offence are referred to the Children's Hearing System and not to the Procurator Fiscal or courts.

But as long as children aged under 18 appear in courts we need to do these things *now*:

- Children who appear in court should get the information and support they need to understand what is happening. Things like easy read leaflets and videos that explain things would help.
- There should be special court times used for children, earlier in the day and with no public in the courtroom.
- If a child is appearing in a court they should be in a different waiting room from adults. There should be activities to help pass the time.
- To help Procurator Fiscals and Sheriffs think about using bail instead of remand they should be told what supports there are for children in the community. Social Work should be given the time to think about what they can offer to help a child stay in the community.
- Children should be on bail for as short a time as possible and with the least conditions possible.

- If a child needs to be on remand this should be in a secure care unit and not HMP&YOI Polmont.
- Children should be given the support they need to remain in the community, or be able to access a secure placement if needed.

Then, we should do these things *as soon as we can*:

- There might be some very serious cases that involve a child. When this happens there should be new ways to deal with children, not just sending them to adult courts. We need special courts to do this work.
- Any professional person who deals with children (everyone under 18) who are in conflict with the law should have special training to understand the needs and rights of children.

One final important point to end:

- If we want to change how children are treated when they are involved with criminal justice then we need to involve children in thinking about and planning better ways to do things.



#RIGHTSRESPECTING

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