

Remittal from Court

Fiona Dyer, CYCJ

Evidence

Recent research has established a strong association between children who have experienced some form of trauma and adversity and those engaging in harmful or risk-taking behaviours, bringing them into contact with the criminal justice system ([SCRA, 2022](#); [McAra and McVie, 2022](#)).

The recognition of the impact of prolonged exposure to stress and trauma in childhood resonates with the central premise of the Kilbrandon Report: that many children who present a significant risk of offending are often highly vulnerable, with complex needs ([Scottish Government, 2018](#)).

The Independent Care Review (2020, p. 41) stated that:

"Despite the principles of Kilbrandon that aimed to ensure a welfare based approach to offending, a significant number of children involved in offending behaviour are dealt with in criminal courts rather than through the Children's Hearing System...Traditional criminal courts are not settings in which children's rights can be upheld and where they can be heard."

Evidence highlights that bringing children into adult justice systems can have a detrimental impact on their future behaviour and outcomes, often leading to further offending and more serious disposals ([McAra and McVie, 2022](#)). Agencies should maximise every opportunity to prevent children from entering the criminal justice system to prevent these lifelong consequences.

"The substantial number of young people that continue to be prosecuted and a higher imprisonment rate than most other European countries, including a disproportionate number of looked after or formerly looked after children or young people, remains a source of concern" ([Scottish Government, 2018, p.4](#)).

Tackling the cause and impact of offending behaviour through addressing the wider needs of the child and keeping them out of the formal criminal justice system, wherever possible, is a key objective of the [Scottish Government's vision and action plan](#) (2021). From evidence, the majority of children who end up in court could have had their behaviour addressed and supported more effectively through the Children's Hearing System (CHS) ([Dyer, 2016](#)). The [United Nations Convention on the Rights of the Child](#) (UNCRC) stresses that children should not be in adult judicial processes and should be diverted to a variety of disposals such as care, guidance and supervision orders. Many children entering the criminal justice system have a range of unmet needs that can lock them into a cycle of reoffending ([CYCJ, 2016](#)).

There are various situations which can result in failure to maximise the use of the CHS to manage assessed needs and risks in a child-friendly, age-appropriate way, including:

Children in Scotland can be prosecuted in adult courts from the age of 12 years. All children under the age of 16 years and 16- and 17-year-olds subject to a Compulsory Supervision Order (CSO) or are otherwise open to the Scottish Children's Reporter Administration (SCRA) can be referred to the Children's Reporter from Court (Criminal Procedure (Scotland) Act 1995). All children aged 12-17.5 years can also be remitted from Court to the CHS. A Sheriff must obtain advice for children on a CSO and may obtain advice for all other children under 17.5 years.

Remittal to the CHS is underused in every area of Scotland. Recent figures show that on average only 5% of children whose cases could be remitted to the CHS are in fact remitted.

Social Work assessment

All Justice Social Work Reports (JSWR) on children aged 17.5 years or under should assess the suitability of the child being remitted to the CHS within their report. National Guidance (2010) states that the individuals completing the report:

"Must always comment on the option of remittal back to the Children's Hearing (where the subject of the report meets the criteria of being under 17 years and six months), but it is critical to be clear that remittal is being considered with a view to work being undertaken which will address both the needs and risks already identified as well as being tailored to the young person's stage of development".

- Welfare/best interests of the child
- Can risk, vulnerabilities and (complex) needs be better managed and addressed through CHS
- Levels of maturity/functioning/capacity to understand and participate in processes
- Plan of work to manage and reduce risk, address needs and build strengths
- Victim impact/restorative justice assessment
- Assess risk/need/vulnerabilities/strengths
- Supports available to child - parents/caregivers/other agencies
- Speech, language and communication needs
- Where child's rights will be best upheld
- Care And Risk Management (CARM)
- Public protection

It is important for JSWR authors to bear in mind that remittal to a Children's Hearing may be a suitable disposal even in cases where the offence is serious and a custodial sentence would be a consideration were the Court disposing of the case (Scottish Government, 2011). When making an assessment within JSWR these areas should all be emphasised. If the case is remitted to the CHS, the panel will decide whether to make a CSO, or if there is a CSO in place, whether to continue or vary that Order, which could include a period in secure care.

To meet the requirements of the UNCRC and The Promise, no child under 18 should be prosecuted in an adult court, but in an arena and child friendly environment where they can understand and meaningfully participate in the process. In Scotland, the view of CYCJ is that this is the CHS.