

The role of social work services in promoting children's rights when deprivation of liberty is being considered

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Article 37b of the United Nations Convention on the Rights of the Child (UNCRC) specifies that: The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. **General Comment No. 24** specifically highlights that in those few situations where deprivation of liberty is justified, that it is strictly time-limited, and subject to regular review. Through the UNCRC (Incorporation) (Scotland) Act 2024 there is now legal recourse for the child should any requirements be found to have been breached, determination of which can include considerations of General Comments and Concluding Observations from the United Nations Committee on the Rights of the Child. Therefore, anyone involved in decisions about depriving a child of their liberty must ensure the totality of their rights are upheld. This information sheet outlines the role of social work services in doing so. More detail about the different situations where this could happen is available: **Supporting children in the court system and Depriving children of their liberty and alternative measures.**

When a child is arrested and charged by the Police: Options to prevent a child remaining in police custody include: release (including on investigative liberation); release on an **undertaking** to appear on a stated court date and comply with attached conditions; or, if the child requires to remain in **police custody to appear at court**, utilising an **alternative place of safety**. Information should be provided to the police to inform their decision making including;

- An assessment of the child's needs (as far as possible);
- What developmentally appropriate multi-agency supports could be put in place to scaffold the use of an undertaking or an alternative place of safety (such as a non-secure local authority residential establishment or the home of a family member) to meet the child's needs, including the frequency of social worker contact;
- The potential impact of undertaking conditions or place of safety stipulations, and related concerns, such as restrictions on the child accessing their home or education;
- How risks could be managed including via formal **risk management processes**;
- How any plan will uphold the child's rights and the child's views of the plan; and
- How the proposed period will be utilised-in the child's best interests, such as to further assess and prepare for court.

Secure care can be a place of safety in **certain circumstances**. Social workers should highlight the legal responsibilities of the Chief Social Work Officer and requirements to be met before such a placement could be agreed, with their assessment of whether these are met.

Where an alternative is agreed, discussion should take place about responsibilities for the child, including transport and support to the child and at court.

Where a decision is to be made regarding prosecution: For both singly and **jointly reported cases** the social worker should reach out locally to the Scottish Children's Reporter Administration (SCRA) and the Procurator Fiscal (PF) to share information to inform decision making as to whether the case will be referred to the Children's Reporter; diverted from prosecution; or if prosecution is to be proceeded with. The final decision is for the PF to take in line with the joint agreement with SCRA. Information should focus on the child's circumstances, needs and potential risks, benefits and rights implications of available options; and what supports and interventions each option could provide to address these issues.

Where a child is to be prosecuted at court: There are local arrangements to inform social work services where a child is appearing at court, including PF notification. This information often goes to justice social work services, who should immediately link with their children and families counterparts. Early contact should be made by the child's social worker with the child's defence lawyer, recognising their key role as a conduit to the court but also that they may have no previous knowledge of the child, and the information below will aid. Ahead of a child's appearance at court, the PF will decide whether they are opposing bail, although ultimately this is a decision for the judiciary. There is a presumption of bail except in limited circumstances, where having regard to the **legal grounds relevant to the question of bail** and the public interest, there is a good reason for refusing bail, alongside in **certain solemn cases**. The PF will notify the local authority if it is decided that bail will be opposed. Social work should therefore provide information to;

- Aid the PF in deciding whether these legal tests are met;
- Assess as far as possible the impact of the different decisions on the wellbeing of the child and their rights, recognising the traumatic impact even short periods of deprivation of liberty can have on children;
- Explain the child's needs and circumstances, including past and current service involvement, current legal orders, and offer a robust alternative plan to remand.

The PF's opposition of bail may be avoided if they are equipped with more information, but reaching this decision can take time. Therefore, even before being informed, where the local authority believe that remand is a possibility, contact should be made with **secure care centres** (as children can no longer be remanded to **Young Offenders Institutions**) and secure transport providers to start the referral process and potentially make provisional bookings. This will have resource implications (and therefore local policy should be followed) but could prevent delays if a child is remanded.

When a child is appearing at court: The social worker supporting the child, or court-based social workers, should provide information to the sheriff either directly (through court notes) or via the child's defence lawyer to inform decisions. A member of social work staff should be available at court to answer any questions. This information will be similar to that previously provided to the PF but with specific information about bail and remand options and their impact. Alternatives to remand could including a bail supervision plan, in accordance with **bail supervision guidance**. Electronic Monitoring is an option along with or without bail supervision if a court wishes to do so. When a child is **remanded**, there are options to return to court with an alternative robust plan such as at the next court date where the child has been remanded for further examination or where there is a material change of circumstances or new information is available, a **bail review** can be requested via the child's defence solicitor. Where a child is remanded for the local authority to identify a suitable place of safety, the child can be placed or moved to a secure or non-secure setting, as per **regulations**.

In all of the above situations:

- Assessments should be holistic, as per **GIRFEC**, developmental and trauma informed;
- Known information should be supplemented by visiting the child, contacting parents/carers, and other services the child is known to. There is a balance between providing as full information as possible, proportionality, limited time, and **expedience**;
- Collaborative working across out of hours, children and families, court-based and justice social work services is key and requires local processes to support. Contact should be coordinated by the child's allocated social worker if they have one;
- It is good practice that a **Child's Rights and Wellbeing Impact Assessment** is completed for processes and procedures surrounding bail and custody decisions for children.

For further info/support contact CYCJ on 0141 444 8622 or cycj@strath.ac.uk